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# FEDERAL REGISTER

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# Codification Guide

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# Presidential Documents

## Title 3—THE PRESIDENT

### Executive Order 10929

### ESTABLISHING A COMMISSION TO INQUIRE INTO A CONTROVERSY BETWEEN CERTAIN CARRIERS AND CERTAIN OF THEIR EMPLOYEES

By virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

SECTION 1. There is hereby established a Presidential commission to consider a controversy between, and involving certain proposals of, the carriers represented by the New York Harbor Conference Carriers' Committee and certain of their employees represented by Local No. 1, International Organization of Masters, Mates & Pilots, Local No. 3, International Organization of Masters, Mates & Pilots, the Marine Engineers Beneficial Association No. 33, and the Seafarers International Union of North America, Atlantic and Gulf District, Railroad and Marine Division, AFL–CIO, all members of the Railroad Marine Harbor Council, AFL–CIO. The commission shall consist of the chairman of the commission established by Executive Order No. 10891, who shall also serve as the chairman of the commission established by this order, and eight other members who shall be designated by the President as follows: three members from among persons nominated by the carriers, three members from among persons nominated by the employees, and two members selected by the President from among those persons who are members of the commission established by Executive Order No. 10891 in pursuance of Presidential designations made thereunder without nominations.

SEC. 2. The commission is authorized and directed to investigate and inquire into the issues raised by the aforementioned proposals as set forth in the notices incorporated in the joint recommendation for settlement signed and accepted on January 23, 1961, by the parties involved in the aforementioned controversy, with the objective of making a report to the President, including its findings and recommendations with respect to the controversy, and assisting in achieving an amicable settlement and agreement with respect to issues in dispute between the parties. In connection with its inquiry, the commission is authorized to hold such public hearings and to hear such witnesses as it may deem appropriate. It shall provide a full and fair hearing to the said parties and shall otherwise endeavor to conform its proceedings and activities to the understanding upon the basis of which the controversy is submitted to the commission by the parties thereto.

SEC. 3. The commission shall be separate from the Presidential commission established by Executive Order No. 10891, but the two commissions are authorized and directed, under such arrangements as may be appropriate, to establish and maintain such procedures as may best promote economy and efficiency in their operations, including the utilization of staff and facilities.

SEC. 4. All executive departments and agencies of the Federal Government are authorized and directed to cooperate with the commission in its work and to furnish the commission with such information and assistance, not inconsistent with law, as it may require in the performance of its duties.

SEC. 5. The controversy referred to in Sections 1 and 2 of this order is hereby found to constitute an emergency affecting the national interest within the meaning of the provisions appearing under the heading "Emergency Fund for the President—National Defense" in Title I of the General Government Matters Appropriation Act, 1961, 74 Stat. 473, 475, approved July 12, 1960. The expenditures of the commission may be paid out of an allotment made by the President from the appropriation made under the aforesaid heading "Emergency Fund for the President—National Defense"; and, to the extent permitted by law, from any corresponding or like appropriation made available for fiscal years subsequent to fiscal year 1961. Such payments may be made without regard to the provisions of (a) section 3681 of the Revised Statutes (31 U.S.C. 672), (b) section 9 of the Act of March 4, 1909, 35 Stat. 1027 (31 U.S.C. 673), and (c) such other provisions of law as the President may hereafter specify. The members of the commission shall receive such expense allowances as the President shall hereafter fix. The chairman of the commission and those other members of the commission who are designated by the President under section 1 without nominations shall receive such compensation as the President shall hereafter specify, but no such compensation shall be payable with respect to any day or other period of service for which other compensation is payable by the United States.

SEC. 6. The commission shall make a final written report of its findings and recommendations not later than 60 days after the Presidential commission established by Executive Order No. 10891 makes the final report described in section 5 of such order. The commission shall cease to exist 30 days after the rendition of its final report to the President.

SEC. 7. Funds may be allotted under section 5 of this order immediately, such funds to become available for obligation and expenditure on such date or dates as the President may specify, and nominations may immediately be submitted and designations of members made under section 1 of this order, but the provisions of this order shall otherwise become effective only when all members of the commission have been designated by the President under section 1 hereof.

JOHN F. KENNEDY

THE WHITE HOUSE,
*March 24, 1961.*

[F.R. Doc. 61–2768; Filed, Mar. 27, 1961; 10:10 a.m.]

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### Executive Order 10930

### ABOLISHING THE GOVERNMENT PATENTS BOARD AND PROVIDING FOR THE PERFORMANCE OF ITS FUNCTIONS

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. The Government Patents Board, established by section 3(a) of Executive Order No. 10096 of January 23, 1950, and all positions established thereunder or pursuant thereto are hereby abolished.

SEC. 2. All functions of the Government Patents Board and of the Chairman thereof under the said Executive Order No. 10096, except the functions of conference and consultation between the Board and the Chairman, are hereby transferred to the Secretary of Commerce, who may provide for the performance of such transferred functions by such officer, employee, or agency of the Department of Commerce as he may designate.

SEC. 3. The Secretary of Commerce shall make such provision as may be necessary and consonant with law for the disposition or transfer of property, personnel, records, and funds of the Government Patents Board.

SEC. 4. Except to the extent that they may be inconsistent with this order, all determinations, regulations, rules, rulings, orders, and other actions made or issued by the Government Patents Board, or by any Government agency with respect to any function transferred by this order, shall continue in full force and effect until amended, modified, or revoked by appropriate authority.

SEC. 5. Subsections (a) and (c) of section 3 of Executive Order No. 10096 are hereby revoked, and all other provisions of that order are hereby amended to the extent that they are inconsistent with the provisions of this order.

JOHN F. KENNEDY

THE WHITE HOUSE,
*March 24, 1961.*

[F.R. Doc. 61–2767; Filed, Mar. 27, 1961; 10:10 a.m.]

# Rules and Regulations

## Title 6—AGRICULTURAL CREDIT

### Chapter III—Farmers Home Administration, Department of Agriculture

SUBCHAPTER A—GENERAL REGULATIONS

[FHA Instruction 427.1]

### PART 307—TITLE CLEARANCE AND LOAN CLOSING

The designation "Subpart A—Title Clearance and Loan Closing" in Title 6, Code of Federal Regulations, (23 F.R. 9825) is revoked and the designation of Part 307 is changed to read "Title Clearance and Loan Closing" and revised to read as follows:

Sec.



AUTHORITY: §§ 307.1 to 307.6 issued under R.S. 161, as amended, secs. 3, 41, 44, 2, 6, 50 Stat. 523, as amended, 528, as amended, 530, as amended, 869, as amended, 870, sec. 12, 60 Stat. 1076, as amended, secs. 502, 510, 1, 2, 63 Stat. 433, 437, 883, sec. 4, 64 Stat. 100, secs. 9, 10, 68 Stat. 735, sec. 16, 69 Stat. 553, as amended; 7 U.S.C. 1003, 1015, 1018, 16 U.S.C. 590s, 590w, 7 U.S.C. 1005b, 42 U.S.C. 1472, 1480, 7 U.S.C. 1006a, 1006b, 40 U.S.C. 442, 16 U.S.C. 590x–2, 590x–3, 7 U.S.C. 1006d; Order of Acting Sec. of Agr., 19 F.R. 74, 22 F.R. 8188.

#### § 307.1 General.

(a) *Farm Ownership, Farm Housing, and Individual Soil and Water Conservation loans.* This part contains the title clearance and loan closing authorities, policies, and procedures for all Farm Ownership, Farm Housing, and Individual Soil and Water Conservation loans, except subsequent insured Farm Ownership loans and loans in connection with transfers and assumption agreements or credit sales by the Farmers Home Administration.

(b) *Other types of loans and transactions.* Title clearance and closing of all other loans and transactions involving real estate security will be handled as provided in regulations applicable thereto.

(c) *Definition of terms.* As used in this part "title clearance" includes title examination and title insurance; "mortgage" includes deed of trust and deed to secure debt; "borrower" means the loan applicant; "title insurance company" includes its local representatives, agents, and attorneys; and "Farmers Home Administration" refers to the United States of America acting through the Farmers Home Administration. Also, a loan is considered to be closed when the mortgage is filed for record.

(d) *Methods of title clearance and loan closing.* Title clearance and loan closing will be handled by title insurance companies approved by the State Director and attorneys designated by the State Director whenever such companies and attorneys will furnish all the services required by this part. When complete services are available from more than one source, the borrower or the seller, or both, as appropriate, will choose a single source to be used. In any county or area where the State Director is unable to obtain the services of a designated attorney or a title insurance company that will furnish complete services, and in any exceptional or complex case or situation in which the State Director determines with the advice of the Office of the General Counsel that it would be more reasonable or practical, the services of the Office of the General Counsel may be used. When the services of the Office of the General Counsel are to be used on a county or area basis, the State Director with the advice of the Office of the General Counsel will determine whether the title clearance and loan closing will be accomplished with the assistance of a local attorney, title insurance company, or other method. In other cases, the title clearance and loan closing will be handled as the Office of the General Counsel deems appropriate.

(e) *Designation of attorneys.* The State Director, upon the advice and concurrence of the Office of the General Counsel as to professional qualifications, will designate attorneys in each county or area in which it is possible to have them furnish all the legal services required of such attorneys by this part.

(f) *Approval of title insurance companies.* The State Director will approve any company issuing satisfactory title insurance policies, licensed to do business in the state, which has or will agree or states in writing (by exchange of letters, publication of services, or otherwise) that it can validly and will furnish for a stated charge, a title insurance binder, a mortgagee or joint protection title insurance policy (hereinafter referred to as "mortgagee title policy"), and all of the related services prescribed herein, provided:

(1) The mortgagee title policy will be in such form and will contain only such standard types of exceptions as are approved in advance by the State Director with the advice of the Office of the General Counsel.

(2) The title insurance company understands that the request for insurance and services will be made by sellers or borrowers and that no cost of insurance or services will be charged to or paid by the Farmers Home Administration or an insured lender.

(3) The title insurance company representative who supervises the closing is authorized to receive, and give receipts for, the company's charges.

(g) *Costs of title clearance and loan closing.* Neither the Farmers Home Administration nor an insured lender will be responsible for any costs of title clearance or loan closing. The costs of title clearance and loan closing will include any costs of abstracts of title, land surveys, attorney's services, title insurance, obtaining curative material, notary fees, documentary stamps, recordation costs, and other expenses necessary to make the loan. The borrower or the seller, or both will be responsible for payment of all costs of title clearance and loan closing and will arrange before the loan is closed for such payment. In cases involving the purchase of land, the option should contain their agreement.

(h) *County Supervisor's responsibilities.* The County Supervisor will:

(1) Provide the borrower, and seller if land is being acquired, with the name and address of the designated attorney and approved title insurance companies.

(2) Furnish to the selected designated attorney or title insurance company on Form FHA–826 or FHA 427–4, "Transmittal of Title Information," all the information and documents called for therein concerning the loan to be made or insured, including any waivers, easements, and so forth, and Farmers Home Administration forms or other documents necessary to effect title clearance and loan closing.

(i) *Ordering title examination or insurance.* Application for title cearance and loan closing services will be made by the borrower or the seller, or both, to a designated attorney or an approved title insurance company selected by the loan applicant or seller, or both. Application for title insurance will be made on forms furnished by the company and will request issuance of a form of mortgagee title policy approved by the State Director in an amount at least equal to the amount of the loan. The borrower also may obtain an owner's policy or a combination policy if he desires. The mortgagee named in the policy will be the "United States of America," except that if a direct loan is being made with State Rural Rehabilitation Corporation trust funds, the name of the mortgagee will be "United States of America, Trustee of the assets of (name of State Rural Rehabilitation Corporation)." The borrower will instruct the designated attorney or title insurance company to deliver the preliminary title opinion or title binder to the County Supervisor.

#### § 307.2 Initial loan cases.

(a) *Services.* Title clearance and loan closing services to be provided by designated attorneys and title insurance companies will include examining title; preparing, obtaining, or approving simple curative material, conveyances, and security instruments; advising borrowers, and sellers if land is being acquired,

regarding the adequacy of the legal description of the farm; issuing either preliminary and final title opinions or certificates of title, or title insurance binders and mortgagee title policies; and performing other legal services necessary to close the loan properly. The designated attorney or title insurance company will advise the County Supervisor, upon his request, as to the nature and legal effect of outstanding interests or title defects to assist him in determining whether such outstanding interests or defects affect the value of the farm or its operation and which must be corrected in order for the Government to obtain from the borrower a lien of the required priority upon a title merchantable in fact. The designated attorney or title insurance company will be expected to perform these services with diligence and dispatch so that the loan can be closed without unnecessary delay.

(b) *Examination of title.* Title examination will be made from public records, abstracts of title, or a combination of these methods.

(1) *Scope of search.* The designated attorney or title insurance company will determine whether there are any judgments or pending suits in State or Federal courts, Federal or State tax claims (including taxes which under State law may become a lien superior to a previously attaching mortgage lien), or bankruptcy, insolvency, or probate proceedings, involving any part of the farm, whether already owned by the borrower or to be acquired with loan funds, or involving the borrower, or the vendor in a land acquisition case, which would prevent the Farmers Home Administration from obtaining an enforceable mortgage lien of the required priority. Title examination upon which this determination will be based will include such searches of the records, or certificates from the clerks, of the appropriate United States district courts as may be necessary in the particular State.

(2) *Period of search.* When title insurance is obtained, title examination will cover such period of time as the title insurance company determines necessary in order to insure the Farmers Home Administration mortgagee interest in the title. In other cases the title search must cover the shortest period necessary to include one of the following:

(i) A warranty deed from a party other than the United States which has been of record for at least 40 years.

(ii) A Farm Ownership, Farm Housing, or individual Soil and Water Conservation (not Water Facilities) security instrument.

(iii) A patent or deed from the United States, except that where such patent or deed recorded within 40 years was issued under the Federal homestead or reclamation laws or where title is held under but a patent or deed has not been issued under such laws, the search must cover either 40 years or the period necessary to include the entry or purchase contract whichever is shorter.

(c) *Preliminary title opinion or title insurance binder.* When the services of a designated attorney are used, he will issue his preliminary title opinion to the County Supervisor. The preliminary title opinion will be on Form FHA–312 or FHA 427–9, "Preliminary Title Opinion," or if that form is not legally sufficient in a particular State, the State Director with the advice of the Office of the General Counsel, may approve a satisfactory State form. When title insurance is obtained, the title insurance company will furnish the County Supervisor a title insurance binder disclosing the defects in and encumbrances against the title, the conditions to be met to make the title insurable, and the curative or other actions to be taken before loan closing. The binder also will include a commitment to issue an approved mortgagee title policy in an amount at least equal to the amount of the loan.

(d) *Title exceptions.* Upon receipt of the preliminary title opinion or title insurance binder, the County Supervisor will:

(1) Check the opinion or binder carefully to see that it is complete in all respects. If any required information is omitted or if the standard form of opinion or binder is amended, the County Supervisor will not accept the opinion or binder but will return it for completion or correction. If the designated attorney or title insurance company is unable or unwilling to complete or correct it, the County Supervisor will send it with a full explanation to the Office of the General Counsel, which may approve or disapprove it.

(2) Determine that the legal description covers all the property rights, including water rights, intended to be taken as security and whether the opinion or binder shows exceptions, reservations, encumbrances, or defects which must be corrected, eliminated, or waived. The County Supervisor will consult with the designated attorney, title insurance company, or the State Director when he needs advice in making these determinations.

(3) Waive any exceptions which he or the State Director determines will not affect adversely the suitability, security value, or successful operation of the farm.

(4) Submit any exceptions which will affect adversely the title to the farm or its suitability, security value, or successful operation to the State Director. The State Director may waive them conditionally. If necessary, the County Committee will reconsider the suitability of the farm for a loan and prepare a new certification. If it is favorable and the conditions imposed in the State Director's waiver can be met, the County Supervisor will inform the designated attorney or title insurance company.

(e) *Preparation of deeds, mortgages, and curative instruments.* The designated attorney or title insurance company will prepare or approve deeds, mortgages, affidavits, releases, and other simple curative documents necesary for title clearance and loan closing. Farmers Home Administration mortgage forms will be used in all cases and other Farmers Home Administration forms, whenever possible.

(1) *Types of estates.* (i) Where loan funds are being used to acquire land, title to the entire farm will, if permissible under State law, be vested in the borrower and spouse with right of survivorship (including any part of the farm to which title is already vested in one or both in some other manner) subject to the following exceptions:

(*a*) Upon request of the borrower, supported by reasons which the State Director determines to be justifiable, title may be vested in any way which will permit obtaining the required mortgage lien.

(*b*) When one spouse is under disability of minority or mental incompetency and it is necessary under State law in order for the Farmers Home Administration to obtain a valid lien not subject to disaffirmance and enforceable against the security, including all interests therein required to be mortgaged, title will be vested in the eligible spouse only.

(*c*) When the eligible spouse is a citizen and the other spouse is a noncitizen, title will be vested only in the citizen, if possible under State law.

(ii) In all other cases title may be held in any manner which will permit obtaining the required mortgage, subject, however, to the provisions of subdivision (i)(*c*) of this subparagraph in any case.

(2) *Preparation of deeds.* Deeds will be prepared as follows:

(i) Except for conveyances from the United States and subject to the following additional exceptions, conveyance of title to borrowers must be by general warranty deed. The usual and appropriate form of deed may be accepted from fiduciary or straw parties. Upon the prior approval of the Administrator in any case where the seller refuses to give a general warranty deed, a quitclaim or special warranty deed may be accepted if the title it conveys is approved by the Office of the General Counsel as free from substantial objections. If the grantors or their predecessors in title acquired the property by conveyance from the Farmers Home Administration or one of its predecessor agencies, a special warranty deed may be used warranting against title defects arising subsequent to that conveyance.

(ii) The deed should show the exceptions, reservations, liens, and other encumbrances subject to which the loan is being made. Where customary, the legal description of the land should include a provision further identifying the security as that described in an earlier conveyance identified by date, parties, and recording data.

(iii) Each deed should recite a legal consideration.

(3) *Preparation of mortgage.* The designated attorney or title insurance company will obtain from the County Supervisor the proper type of Farmers Home Administration mortgage form, which will be prepared as follows:

(i) *Forms.* Form FHA–127.__, or FHA 427–2 (State) will be used for all direct loans. Form FHA–177.__, or FHA 427–1 (State) will be used for all insured loans. Form FHA–157 or FHA 427–3 (State) Rider will be used as attachment to Form FHA–127.__ or FHA 427–2 (State)

or FHA–177__ or FHA 427–1 (State) when a loan is made to a homestead entryman or to a contract purchaser of a farm unit from the Bureau of Reclamation.

(ii) *Number of copies.* Ordinarily it will only be necessary to prepare the original and one copy of the mortgage, the original to be recorded in the public records and then retained in the Farmers Home Administration County Office and the copy to be delivered to the borrower. An additional copy will be necessary in States where the original is retained by the recorder. Additional copies also will be necessary in some cases in which the interests of other parties are involved. The County Supervisor will conform the needed copies and distribute them to the proper parties at the time of loan closing or as soon as possible thereafter.

(iii) *Persons required to execute mortgage.* The mortgage will be executed by the borrower and all other persons having interests in the farm which are required in each case to be mortgaged. Persons required to sign the mortgage should use exactly the same names in which they hold title, and each person who signs the promissory note and the mortgage should sign both with exactly the same name.

(iv) *Title exceptions.* The mortgage must describe specifically by reference or other method sufficient under State law, the exceptions, reservations, liens, and other encumbrances subject to which the loan is being made, except that any exceptions and reservations so numerous or with descriptions so lengthy as to increase substantially legal or recording costs, may be described by use of a general statement similar to the following: "Subject, however, to all valid outstanding easements, rights-of-way, mineral leases, mineral reservations, and mineral conveyances of record."

(v) *Releasing or retaining existing mortgages in refinancing cases.* If any outstanding Farmers Home Administration real estate loan is not being refinanced, the mortgage with respect thereto will not be superseded or released; the mortgage, the note therein secured or described, and any related mortgagee title policy will remain in force. When there is an outstanding Farmers Home Administration direct or insured real estate mortgage against the property and the loan which the mortgage secures is being refinanced with the current loan, the mortgage for the loan being refinanced will be superseded and will be released at the time of loan closing, unless it is legally necessary to keep the existing mortgage in effect in order to have a valid lien.

(vi) *Notes to be described in mortgages.* (*a*) In the case an insured loan, only the note evidencing the insured loan being made will be described in the mortgage, and under no circumstances will a direct note and an insured note be described in one mortgage. If, at the time an insured loan is being made, any other kind of loan (whether insured or direct) is being made simultaneously or additional security is desired for a loan already outstanding, it will be necessary to take a separate mortgage on the form appropriate for the other loan.

(*b*) When a direct loan is being made, the note will be described in the mortgage. When two or more direct loans are made to the same borrower on the same security and closed simultaneously, only one mortgage will be taken and the notes for all such loans will be described in the mortgage. Notes evidencing existing direct loans to borrowers receiving a new direct loan will also be described in ther new mortgage unless prohibited by Farmers Home Administration regulations or policies or deemed by the loan approval official inadvisable in the particular case. When a subsequent direct Farm Ownership, Farm Housing, or Soil and Water Conservation loan is being made without refinancing the initial loan, both the subsequent loan note and the related initial loan note will be described in the mortgage.

(*c*) For a direct Farm Ownership or a Farm Housing loan, the "Due date of final installment" to be shown in the mortgage, and for an insured Farm Ownership loan, the date to be inserted in "the final installment being due on _____, 19__," is determined by adding the number of years over which the loan is payable to the date of the promissory note. For all other direct loans and for insured Soil and Water Conservation loans, it is the final installment date shown on the promissory note.

(vii) *Alteration of mortgage form.* A mortgage form may be altered by deletion, revision, or addition pursuant to authorization by the State Director or in a special case where it is necessary in order to comply with the terms of loan approval prescribed in accordance with pertinent Farmers Home Administration regulations. No other alterations in the printed mortgage forms may be made without prior approval of the National Office.

(f) *Loan closing.* The designated attorney or the title insurance company will arrange with the County Supervisor, the borrower, the seller if land is being acquired, and other necessary parties for the time and place of loan closing. The designated attorney or the title insurance company will assist with the loan closing to determine that the Farmers Home Administration obtains a valid mortgage lien on the property of the priority required by the Farmers Home Administration, subject only to such other encumbrances, reservations, and exceptions as have been permitted by the County Supervisor or the State Director. Where a second mortgage Farm Ownership loan is being made simultaneously with another Farmers Home Administration loan (both subject to a prior lien), the other Farmers Home Administration loan will be deemed secured by a third lien.

(1) *Disbursement of loan funds.* Loan funds will not be disbursed prior to filing of the mortgage for record. However, when necessary, loan funds may be placed in escrow before the mortgage is filed for record for disbursement after it is filed. Loan funds for the payment of a lien may be disbursed only upon receipt of a discharge, satisfaction, or release (or assignment where necessary to protect the interest of the Government), except that funds may be disbursed, after the mortgage is filed for record, to a reputable lienholder in reliance on his written agreement to deliver the instrument upon receipt of a specified sum.

(2) *Title examination and liens or claims against borrowers.* The designated attorney or title insurance company will examine title from the public records or from an extended abstract of title, or a combination thereof, and will check for liens or claims against the borrower from the terminal date of the preliminary title examination to and including the time of recording the current mortgage. If there are no entries of record during the period except the documents required in connection with title clearance and any partial releases or subordinations previously approved by the Farmers Home Administration, the loan may be closed. If there are any other entries of record during this period, the loan will not be closed until such entries have been cleared of record, or administratively waived if appropriate. The designated attorney or title insurance company should advise the County Supervisor of the nature of such intervening instruments, the legal method by which they may be eliminated and the effect they may have on obtaining a valid mortgage of the priority required.

(3) *Certificate of inspection.* The County Supervisor will prepare a certificate of inspection which will show the condition of the farm at or shortly before the time of loan closing. Form FHA–874 or FHA 427–7, "Certificate of Inspection," will be used, except that if it is not satisfactory for use in a particular state, the State Director may approve a State form using the same title. The designated attorney or title insurance company will see that the certificate is executed by the County Supervisor or by some other Farmers Home Administration employee, including County Committeemen, acquainted with the facts.

(4) *Taxes and assessments.* The designated attorney or title insurance company will ascertain that all taxes and assessments against the property which are due and payable are paid at or before the time of loan closing. Certificates or receipts should be produced from the taxing authorities to show that taxes or assessments which are due and payable have been paid and, if possible, such certificates or receipts should be kept in the borrower's County Office loan docket with the other loan papers. Where the seller and the borrower have agreed to prorate taxes or assessments which are not yet due and payable for the year in which the loan closing takes place, the seller will pay his portion at the time of loan closing. If the taxes and assessments cannot be paid at the time of loan closing, the amount of taxes and assessments to be paid by the seller will be deducted from the selling price of the land.

(5) *Prior lienholders' agreements.* If other persons hold liens, purchase contracts, or other security interests, herein

called liens, which will remain against the property as a prior lien after the loan is closed, it may be necessary for them to limit their rights thereunder in certain cases.

(i) Forbearance agreements will be obtained where the County Supervisor determines that protection of the Government's interest requires the prior lienholder to gree to one or more of the following:

(*a*) Not to declare his lien in default or accelerate the indebtedness thereunder for a specified period without the written consent of the State Director.

(*b*) Not to make advances for purposes other than taxes, insurance, or payments on other prior liens when his lien secures future advances which the designated attorney, title insurance company, or Office of the General Counsel determines would, under State law, have priority over the mortgage being taken or any mortgage already held or insured by the Farmers Home Administration.

(*c*) To consent to the Farmers Home Administration's making the loan and taking the mortgage, if the prior lien prohibits such loan or mortgage without consent.

(*d*) Not to enforce without the written consent of the State Director as long as the Farmers Home Administration has an interest in the property, any unsatisfactory payment terms or other specified provisions of the prior lien which in the opinion of the County Supervisor would endanger the security position of the Farmers Home Administration.

(ii) Notice of foreclosure or assignment agreements will be obtained in those states whose laws permit junior liens of private parties to be extinguished by foreclosure of a prior lien without the junior lienholders being made parties or being given actual notice.

(iii) In a State in which forbearance agreements only are needed, they will be obtained on Form FHA–446 or FHA 427–8, "Agreement with Prior Lienholder," or, if that form is not legally satisfactory for use in a particular State, on another form approved by the Farmers Home Administration. When only notices of foreclosure or assignment are required, a separate form for such purpose will be used. When both forbearance agreements and notices of foreclosure or assignment are required, Form FHA–446 or FHA 427–8 may be amended in order to serve both purposes or a substitute form approved by the Farmers Home Administration may be used for both purposes, or Form FHA–446 or FHA 427–8 may be used and the notice agreement obtained on a separate form approved by the Farmers Home Administration.

(iv) When a forbearance or notice agreement is required, the designated attorney or title insurance company will determine at the time of loan closing that it is properly completed and executed and, if required by State law, sealed and witnessed; also, that it is properly acknowledged by the prior lienholder and recorded, if recording is required by the Farmers Home Administration.

(6) *Affidavit of sellers.* If land is being acquired, the designated attorney or title insurance company may require that an affidavit of sellers be properly completed and executed at, or shortly prior to, the time of loan closing. This affidavit may be on Form FHA–875 or FHA 427–6, "Affidavit of Sellers," or if that is not legally sufficient in a particular State, a substitute form approved by the Farmers Home Administration may be used. The affidavit will not be recorded unless State law permits and the designated attorney or title insurance company considers it necessary.

(7) *Deeds and curative material.* The designated attorney or title insurance company will determine that deeds, releases, and curative material are properly completed, executed (sealed and witnessed if required by State law), acknowledged, and filed for record at the proper time.

(8) *Promissory note.* The designated attorney or title insurance company will determine that the promissory note is properly completed and executed. The borrower and any person whose signature on the note is necessary to obtain the required mortgage lien will sign the note. In addition, the borrower's spouse, even where not required to sign the note for lien purposes, will sign the note unless he or she is under disability of minority or mental incompetency or is a noncitizen or is excused from signing the note for substantial reasons deemed by the State Director to be justifiable. The note will be dated the date the mortgage is filed for record, except that it may be executed and dated earlier if execution on that date is impossible and the borrower is advised that interest will accrue on the loan from the date of the note.

(9) *Assignment of future income.* If Form FHA–253 or FHA 443–16, "Assignment of Income from Real Estate Security," is required in a particular case, the County Supervisor will prepare the form and have it available for execution by the borrowers at the time of loan closing. The designated attorney or title insurance company will see that the form is properly completed, executed (sealed and witnessed if required by State law), and acknowledged by the borrowers.

(10) *Mortgage.* The designated attorney or title insurance company will see that the mortgage is properly completed, executed, sealed and witnessed if required by State law, acknowledged, and filed for record. The mortgage will be executed and dated the date of the note, except that if that is impossible for one or more of the signers of the mortgage, it may be executed on a different date but not before the date of the note.

(11) *Affidavit of borrowers.* The designated attorney or title insurance company may require that an affidavit of borrowers be properly completed and executed at the time of loan closing. This affidavit may be on Form FHA 427–5, "Affidavit of Borrowers," or if that is not legally sufficient in a particular State, on another form approved by the Farmers Home Administration. Statements in the form should be modified as necessary to make them factually correct. The affidavit will not be acknowledged and recorded unless State law permits and the designated attorney or title insurance company considers it necessary.

(12) *Other services of designated attorneys and title insurance companies.* The designated attorney or title insurance company will assist and advise the County Supervisor, when necessary, in the preparation, completion, obtaining execution, acknowledgment, recordation, and so forth, of documents required in particular cases. Standard FHA forms will be used for such purposes whenever possible. The designated attorney or title insurance company will maintain close communication with, and keep the County Supervisor advised, as to the progress of the title clearance and preparation of loan closing material.

(13) *Final opinion or mortgagee title policy*—(i) *Final opinion.* As soon as possible after loan closing, the designated attorney will issue his final opinion to the County Supervisor. The final opinion will be on Form FHA–313 or FHA 427–10, "Final Title Opinion," or if that form is not legally sufficient in a particular State, on another form approved by the Farmers Home Administration. Since issuance of final opinion will not be held up pending return of recorded instruments, it may not be possible for the final title opinion to show full recording information in all cases, but it should at least show the time of filing, filing number, and as much other recording information as is available. Attached to the final opinion will be all required documents then available, including any which the County Supervisor had furnished to the designated attorney and were not previously returned. With the approval of the designated attorney, arrangements may be made with the recorder to forward or deliver instruments to the proper parties after recordation.

(ii) *Mortagee title policy.* As soon as possible after loan closing the title insurance company will issue to the County Supervisor the mortgagee title policy in favor of the Government as it appears as mortgagee. The policy shall be subject only to approved standard exceptions and such outstanding encumbrances, exceptions, and reservations as were waived administratively in writing by the Farmers Home Administration.

### § 307.3 Office of the General Counsel—Initial loan case.

In any county, area, or case in which the services of the Office of the General Counsel are to be used, the title clearance and loan closing will be accomplished in accordance with the provisions of § 307.2 of this part and closing instructions issued by that Office. As soon as the loan has been closed, a local attorney or title insurance company representative and the County Supervisor will initial or certify the original of the closing instructions to show that the requirements thereof have been met.

**§ 307.4 Subsequent loans not in connection with transfers or credit sales.**

Title clearance and closing of subsequent loans to which this part is applicable will be handled as follows:

(a) *By designated attorney or Office of the General Counsel.* Title clearance and loan closing will be the same as provided for in §§ 307.2 and 307.3 of this part, respectively, with respect to initial loans, except that a preliminary title opinion will not be required on land already owned by the borrower and mortgaged to the Farmers Home Administration for a Farm Ownership, Farm Housing, or Soil and Water Conservation (not Water Facilities) loan. The final title opinion on such land will cover the period subsequent to recordation of the initial loan mortgage. If title clearance is to be handled by the Office of the General Counsel, the County Supervisor will also forward the initial loan mortgage to the Office of the General Counsel.

(b) *With title insurance.* Title clearance and loan closing with title insurance will be the same as provided for in § 307.2 of this part with respect to initial loans except that:

(1) Title insurance will be obtained only when additional land is being acquired or the initial loan is being refinanced with the subsequent loan. If the same title insurance company is being used as the one which issued title insurance in connection with the initial loan, it should only be necessary to examine title to the land already owned by the borrower from the time of issuance of the existing mortgagee title policy.

(2) Regardless of whether the initial loan is being refinanced, the new mortgagee title policy will cover the entire farm including the land already owned and any land being acquired.

(3) If the initial loan is being refinanced, the new mortgagee title policy will cover the entire amount of the subsequent loan, including the amount of the initial loan being refinanced. But, if the initial loan is not being refinanced, the new mortgagee title policy will insure only the amount of the subsequent loan.

**§ 307.5 Additional requirements in connection with loans to homestead entrymen, contract purchasers of farm units from the Bureau of Reclamation and certain Indians.**

Whenever loans are made subject to agreements with other Government agencies, the title clearance and loan closing requirements of special instructions with respect thereto, as well as those of this part, will be applicable.

**§ 307.6 Cancellation of loan.**

If for any reason it is determined that the loan cannot be made, the County Supervisor will promptly notify the borrower and those who are involved in the particular case at the time the determination is made, such as sellers (if land is being acquired), designated attorney, other local attorney, Office of the General Counsel, and title insurance company or its local representative.

Dated: March 21, 1961.

J. V. HIGHFILL,
*Acting Administrator,*
*Farmers Home Administration.*

[F.R. Doc. 61-2683; Filed, Mar. 27, 1961; 8:48 a.m.]

# Title 7—AGRICULTURE

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

### SUBCHAPTER A—MARKETING ORDERS

[Navel Orange Reg. 210, Amdt. 1]

### PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

#### Limitation of Handling

*Findings.* 1. Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges as hereinafter provided, will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act.

2. It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restrictions on the handling of navel oranges grown in Arizona and designated part of California.

*Order, as amended.* The provisions in paragraph (b) (1) (ii) of § 914.510 (Navel Orange Regulation 210, 26 F.R. 2278) are hereby amended to read as follows:

(ii) District 2: 700,000 cartons.

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

Dated: March 23, 1961.

FLOYD F. HEDLUND,
*Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[F.R. Doc. 61-2717; Filed, Mar. 27, 1961; 8:55 a.m.]

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[Valencia Orange Reg. 218, Amdt. 1]

### PART 922—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

#### Limitation of Handling

*Findings.* 1. Pursuant to the marketing agreement and Order No. 22, as amended (7 CFR Part 922), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Valencia Orange Administrative Committee, established under the said marketing agreement and order, as amended, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges as hereinafter provided will tend to effectuate the declared policy of the act.

2. It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Valencia oranges grown in Arizona and designated part of California.

*Order, as amended.* The provisions in paragraph (b) (1) (iii) of § 922.518 (Valencia Orange Regulation 218, 26 F.R. 2278) are hereby amended to read as follows:

(iii) District 3: 125,000 cartons.

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

Dated March 23, 1961.

FLOYD F. HEDLUND,
*Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[F.R. Doc. 61-2718; Filed, Mar. 27, 1961; 8:55 a.m.]

## PART 1021—TOMATOES GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

### Limitation of Shipments

Notice of rule making with respect to proposed limitation of shipments to be made effective under Marketing Order No. 121 (7 CFR Part 1021) regulating the handling of tomatoes grown in the counties of Cameron, Hidalgo, Starr, and Willacy in Texas (Lower Rio Grande Valley), issued under the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), was published in the FEDERAL REGISTER March 14, 1961 (26 F.R. 2153).

The notice of rule making proposed a limitation of shipments regulation on Lower Rio Grande Valley tomatoes to be effective April 1, 1961, through July 15, 1961, and afforded interested persons an opportunity to file data, views or arguments pertaining thereto within five days after publication in the FEDERAL REGISTER. After consideration of all relevant matters, including the recommendation of the Texas Valley Tomato Committee, it is hereby found that limitation of shipments as hereinafter provided will tend to effectuate the declared policy of the act.

*Findings.* It is hereby found that good cause exists for not postponing the effective date of this regulation until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1001–1011) in that (1) the handling of tomatoes grown in the production area will begin on or about April 1, 1961; (2) more orderly marketing in the public interest than would otherwise prevail, will be promoted by regulating the handling of tomatoes in the manner set forth below, on and after April 1, 1961; (3) compliance with this section will not require any special preparation on the part of handlers which cannot be completed by that date; (4) reasonable time is permitted, under the circumstances, for such preparation; and (5) notice has been given of the proposed limitation of shipments set forth in this section through publicity in news media in the production area and by publication in the FEDERAL REGISTER of March 14, 1961 (26 F.R. 2153).

**§ 1021.303 Limitation of shipments.**

Except as otherwise provided in this section, during the period April 1, 1961, through July 15, 1961, the following regulations shall be effective with respect to all varieties of tomatoes handled, as defined in § 102.7 of Order No. 121, and no person shall handle such tomatoes or cause such tomatoes to be handled unless they are inspected and certified as required by paragraph (b) of this section, and meet the requirements of paragraph (a) of this section.

(a) *Requirements*—(1) *Minimum grade.* U.S. No. 2, or better, grade.

(2) *Minimum size.* $2\frac{1}{32}$ inches in diameter or larger. Not more than ten percent, by count, of tomatoes in any lot of size 7 x 7 ($2\frac{1}{32}$ inches minimum diameter to $2\frac{9}{32}$ inches maximum diameter) may be smaller than the specified minimum diameter.

(3) *Sizing arrangements.* (i) Mature green tomatoes shall be packed in one of the following ranges of diameter applicable thereto:

Size arrangements—

| Mature green: | *Diameter (inches)* |
|---|---|
| 7 x 7 | $2\frac{1}{32}$ to $2\frac{9}{32}$, inclusive. |
| 6 x 7 | Over $2\frac{9}{32}$ to $2\frac{17}{32}$, inclusive. |
| 6 x 6 | Over $2\frac{17}{32}$. |

(ii) All tomatoes subject to sizing arrangements shall be packed separately for each size range, except that size 6 x 6 and larger sizes may be commingled.

(iii) To allow for variations incident to proper sizing and handling, for mature green tomatoes, not more than a total of ten percent, by count, in any lot, may be smaller than the minimum diameter or larger than the specified maximum diameter. Tomatoes of turning or greater degree of maturity shall not be subject to size arrangements.

(b) *Inspection.* (1) All tomatoes handled pursuant to this part, other than those specifically excepted therefrom pursuant to paragraph (c) of this section, or exempted pursuant to paragraphs (d), (e) and (f) of this section, shall be inspected and certified pursuant to the provisions of § 1021.60; and (2) no handler shall transport or cause the transportation of any shipment of tomatoes by motor vehicle unless each such shipment is accompanied by a copy of the inspection certificate applicable thereto.

(c) *Excepted varieties.* Elongated types of tomatoes, commonly referred to as pear shaped or paste tomatoes and including but not limited to San Marzano, Red Top, and Roma varieties; and cerasiform type tomatoes commonly referred to as cherry tomatoes, are not subject to the requirements of this section.

(d) *Repacked tomatoes.* A handler who is a repacker within the production area may register with the committee, as a repacker, in accordance with applicable rules and regulations, and thereafter may handle repacked tomatoes without reinspection thereon after repacking, if such tomatoes were previously inspected prior to repacking and met the grade and size requirements of this section.

(e) *Minimum quantity.* For purposes of regulation under this part, each person subject thereto may handle, pursuant to § 1021.53, up to, but not to exceed, 120 pounds of tomatoes per day without regard to the requirements of this part, but this exception shall not apply to any portion of a shipment of over 120 pounds of tomatoes.

(f) *Special purpose shipments.* The limitations set forth in this regulation shall not be applicable to shipments of tomatoes for the following purposes: (1) Relief or charity; (2) processing; and (3) for experimental purposes.

(g) *Safeguards.* Each handler making shipments of tomatoes pursuant to paragraph (f) of this section for relief or charity, for processing, or for experimental purposes, shall apply for and obtain an approved Certificate of Privilege from the committee applicable to shipments for such purposes.

(b) *Definitions*—(1) *Tomato classifications.* For purposes of this section (i) "mature green" shall apply to all tomatoes in which the contents of two or more seed cavities will have developed a jelly like consistency and the seeds will be well developed, slightly hard, and in slicing the fruit with a sharp knife will usually be pushed aside rather than cut; (ii) "turning or of a greater degree of maturity" shall apply to all tomatoes where there is at least a definite break in color to yellow or pink at the blossom end and all higher degrees of color as used and defined under Color Classification in the United States Standards for Fresh Tomatoes (7 CFR 51.1864); (iii) incident to proper classification, any lot of tomatoes containing more than ten percent, by count, of mature green tomatoes shall be classified as mature green tomatoes; and for any lot of tomatoes to be classified as turning or of a greater degree of maturity, not more than a total of ten percent, by count, of such tomatoes may fail to meet the minimum color requirements;

(2) *Grade and size.* The term "U.S. No. 2" means the U.S. No. 2 grade, as set forth in the United States Standards for Fresh Tomatoes (§§ 51.1855–51.1877 of this title; 22 F.R. 4528), including the tolerances set forth therein; and the application of tolerance for size shall be as set forth in § 51.1861 of such standards.

(3) *Other terms.* All other terms used in this section shall have the same meaning as when used in Marketing Order No. 121 (7 CFR Part 1021).

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

Dated: March 23, 1961, to become effective April 1, 1961.

FLOYD F. HEDLUND,
*Deputy Director,*
*Fruit and Vegetable Division.*

[F.R. Doc. 61–2719; Filed, Mar. 27, 1961; 8:55 a.m.]

[1033.301 Amdt. 2]

## PART 1033—ONIONS GROWN IN SOUTH TEXAS

### Limitation of Shipments

*Findings.* (a) Pursuant to Marketing Agreement No. 143 and Order No. 133 (7 CFR Part 1033) regulating the handling of onions grown in designated counties of South Texas, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of recommendations and information submitted by the South Texas Onion Committee, established pursuant to said marketing agreement and order, and other available information, it is hereby found that the amendment to the limitation of shipments regulation, hereinafter set forth, will tend to effectuate the declared policy of the act.

(b) It is hereby found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1001–1011) in that (1) the time interven-

ing between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, (2) more orderly marketing in the public interest, than would otherwise prevail, will be promoted by regulating the handling of onions, in the manner set forth below, on and after the effective date of this amendment, (3) compliance with this amendment will not require any special preparation on the part of handlers which cannot be completed by the effective date, (4) information regarding the committee's recommendation has been disseminated to producers and handlers in the production area, and (5) this amendment will facilitate the handling of onions under this part.

*Order, as amended.* In § 1033.301 (26 F.R. 2169) delete subdivision (ii) of paragraph (a)(1) and paragraph (b), and substitute in lieu thereof a new subdivision (ii) of paragraph (a)(1) and a new paragraph (b) as set forth below.

**§ 1033.301 Limitation of shipments.**

* * * * *

(a) *Grades*—(1) *Yellow varieties.* * * *

* * * * *

(ii) From April 1, 1961, through May 31, 1961, U.S. No. 1, or better grade, for Bermuda or Granex varieties of the 2 to 3½ inch size classifications; and not more than 10 percent defects of U.S. No. 1 for the Grano variety of the 2 to 3½ inch size classification.

* * * * *

(b) *Sizes*—(1) *Size classifications.* For purposes of regulation under this part, the size of onions shall be in accordance with one of the following classifications:

(i) "Small" shall be from 1 to 2¼ inches in diameter;

(ii) "Repackers" shall be from 1¾ to 2¾ inches in diameter, with 60 percent or more 2 inches or larger.

(iii) 2 inches to 3½ inches in diameter; or

(iv) 2⅞ inches or larger in diameter.

(2) *Sizing requirements*—(i) *Yellow varieties.* (*a*) From March 23, 1961, through May 31, 1961:

Repacker size;
2 inches to 3½ inches in diameter; or
2⅞ inches or larger in diameter.

(ii) *White varieties.*

(*a*) From April 10, 1961, through May 31, 1961:

Small sizes;
Repacker size;
2 inchs to 3½ inches in diameter; or
2⅞ inches or larger in diameter.

* * * * *

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

*Effective date.* Dated March 22, 1961, to become effective March 23, 1961.

FLOYD F. HEDLUND,
*Deputy Director,*
*Fruit and Vegetable Division.*

[F.R. Doc. 61–2682; Filed, Mar. 27, 1961; 8:48 a.m.]

## PART 1034—LETTUCE GROWN IN THE LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

### Order Terminating Limitation of Shipments

*Findings.* (a) Pursuant to Marketing Agreement No. 144 and Order No. 134 (7 CFR Part 1034), regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas (Cameron, Hidalgo, Starr and Willacy Counties), effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendation and information submitted by the South Texas Lettuce Committee established under the said Marketing Agreement and Order, and upon other available information, it is hereby found that the continuation in effect of § 1034.301, *Limitation of shipments* (25 F.R. 14020), will no longer tend to effectuate the declared policy of the act and, accordingly, such regulation should be terminated.

(b) It is hereby found that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice and engage in public rule making procedure, and that good cause exists for not postponing the effective date of this termination order until 30 days or any other date beyond the date specified (5 U.S.C. 1001–1011) in that (i) compliance with this termination order will not require any special preparation on the part of handlers which cannot be completed by the effective time, and (ii) this order relieves restrictions on the handling of lettuce grown in the production area.

*Order terminated.* The provisions of § 1034.301 *Limitation of shipments* (25 F.R. 14020), are hereby terminated as of 12:01 a.m., c.s.t., March 23, 1961.

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

Dated: March 22, 1961.

FLOYD F. HEDLUND,
*Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[F.R. Doc. 61–2681; Filed, Mar. 27, 1961; 8:48 a.m.]

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## SUBCHAPTER B—PROHIBITIONS OF IMPORTED COMMODITIES

## PART 1065—TOMATOES

### § 1065.6 Tomato Regulation No. 6.

(a) *Findings and determinations.* (1) Notice of rule making regarding proposed restrictions on importation of tomatoes into the United States, to be effective April 1, 1961, through July 15, 1961, pursuant to the requirements of section 8e (7 U.S.C. 608e) of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674) was published in the FEDERAL REGISTER March 14, 1961 (26 F.R. 2154). This notice afforded interested persons an opportunity to file data, views, or arguments in regard thereto not later than 5 days after publication. After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice, it is hereby found and determined that the restrictions on the importation of tomatoes into the United States, as hereinafter provided, are in accordance with section 8e of the act.

(2) It is hereby found and determined that good cause exists for not postponing the effective date of this regulation beyond April 1, 1961 (5 U.S.C. 1001–1011) in that (i) the requirements established by this import regulation are issued pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, which makes such regulations mandatory; (ii) compliance with this tomato import regulation should not require any special preparation by importers which cannot be completed by the effective date; (iii) notice hereof is in excess of the minimum period of three days specified in section 8e of the act; (iv) in fixing the effective date hereof due consideration has been given to the time required for the transportation and entry into the United States after picking of imported tomatoes to which this regulation is applicable as required by section 8e of the act; (v) such notice is hereby determined to be reasonable; and (vi) the regulations hereby established for tomatoes that may be imported into the United States comply with grade, size, quality and maturity restrictions imposed upon domestic tomatoes under Marketing Order No. 121.

(b) *Import restrictions.* During the period from April 1, 1961, to July 15, 1961, both dates inclusive, and subject to the General Regulations (7 CFR Part 1060) applicable to the importation of listed commodities and the requirements of this section, no person shall import any tomatoes of any variety, except elongated types, commonly referred to as pear shaped or paste tomatoes and including, but not limited to, San Marzano, Red Top, and Roma varieties; and cerasiform type tomatoes, commonly referred to as cherry tomatoes, unless such tomatoes meet the requirements of the U.S. No. 2, or better grade, and are 2$\frac{1}{32}$ inches minimum diameter or larger: *Provided,* That not more than ten (10) percent, by count, of the tomatoes in any lot of 7 x 7 (2$\frac{1}{32}$ inches minimum diameter to 2$\frac{9}{32}$ inches maximum diameter) may be smaller than the specified minimum diameter.

(c) *Minimum quantity.* Any importation which in the aggregate does not exceed 120 pounds, may be imported without regard to the provisions of paragraph (a) of this section.

(d) *Plant quarantine.* No provisions of this section shall supersede the restrictions or prohibitions on tomatoes under the Plant Quarantine Act of 1912.

(e) *Inspection and certification.* (1) The Federal or the Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is hereby designated, pursuant to

§ 1060.4(a) of the General Regulations, as the governmental inspection service for the purpose of certifying the grade, size, quality, and maturity of tomatoes that are imported, or to be imported into the United States under the provisions of section 8e of the act.

(2) Inspection and certification by the Federal or the Federal-State Inspection Service of each lot of imported tomatoes is required pursuant to § 1060.3 *Eligible imports* of the aforesaid General Regulations and this section. Each such lot shall be made available and accessible for inspection. Such inspection and certification will be made available in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51). Since inspectors may not be stationed in the immediate vicinity of some smaller ports of entry, importers of uninspected and uncertified tomatoes should make advance arrangements for inspection by ascertaining whether or not there is an inspector located at their particular port of entry. For all ports of entry where an inspection office is not located each importer must give the specified advance notice to the applicable office listed below prior to the time the tomatoes will be imported.

| Ports | Office | Advance notice |
|---|---|---|
| All Texas points. | W. T. McNabb, P.O. Box 111, 222 McClendon Bldg., 305 E. Jackson St., Harlingen, Tex. (Tel. Garfield 3-5644). | 1 day. |
| All Arizona points. | R. H. Bertelson, Room 202 Trust Bldg., 305 American Ave., P.O. Box 1646, Nogales, Ariz. (Tel. Atwater 7-2902). | Do. |
| All California points. | Carley D. Williams, 294 Wholesale Terminal Bldg., 784 S. Central Ave., Los Angeles 21, Calif. (Tel. Madison 2-8756). | 3 days. |
| All Florida points. | Lloyd W. Boney, Dade County Growers Market, 1200 NW. 21st Terrace, Room 5, Miami 42, Fla. (Tel. Franklin 1-6932). | Do. |
| All other points. | E. E. Conklin, Chief, Fresh Products Standardization and Inspection Branch, Fruit and Vegetable Division, AMS, Washington 25, D.C. (Tel. Dudley 8-5870). | Do. |

(3) Inspection certificates shall cover only the quantity of tomatoes that is being imported at a particular port of entry by a particular importer.

(4) The inspection performed, and certificates issued by the Federal or Federal-State Inspection Service shall be in accordance with the rules and regulations of the Department governing the inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51). The cost of any inspection and certification shall be borne by the applicant therefor.

(5) Each inspection certificate issued with respect to any tomatoes to be imported into the United States shall set forth, among other things:

(i) The date and place of inspection;

(ii) The name of the shipper, or applicant;

(iii) The name of the importer (consignee);

(iv) The commodity inspected;

(v) The quantity of the commodity covered by the certificate;

(vi) The principal identifying marks on the containers;

(vii) The railroad car initials and number, the truck and trailer license number, the name of the vessel, or other identification of the shipment; and

(viii) The following statement, if the facts warrant: Meets U.S. Import requirements under section 8e of the Agricultural Marketing Agreement Act of 1937.

(f) *Definitions.* (1) The term "U.S. No. 2" means the U.S. No. 2 grade, as set forth in the United States Standards for Tomatoes (§§ 51.1855 to 51.1877, inclusive, of this title), including the tolerances set forth therein.

(2) All other terms have the same meaning as when used in the General Regulations (7 CFR Part 1060) applicable to the importation of listed commodities.

Dated: March 23, 1961, to become effective April 1, 1961.

FLOYD F. HEDLUND,
*Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[F.R. Doc. 61-2720; Filed, Mar. 27, 1961; 8:55 a.m.]

# Title 9—ANIMALS AND ANIMAL PRODUCTS

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

### SUBCHAPTER A—MEAT INSPECTION REGULATIONS

### PART 27—IMPORTED PRODUCTS

### Eligibility of Foreign Countries for Importation of Product Into United States

Pursuant to the authority conferred by section 306 of the Tariff Act of June 17, 1930 (19 U.S.C. 1306), and after public notice (26 F.R. 846) and due consideration of all relevant material presented, for the purpose of adding Guatemala to the list of countries specified in 9 CFR 27.2(b), as amended, from which meat, meat byproduct, and meat food product may be imported into the United States as provided in the regulations, said § 27.2(b), as amended, of the Meat Inspection Regulations (9 CFR 27.2(b)), issued under said section 306 of the Tariff Act, is hereby amended to read as follows:

**§ 27.2 Eligibility of foreign countries for importation of product into the United States.**

* * * * *

(b) It has been determined that product from the following countries, covered by foreign meat inspection certificates of the country of origin as required by § 27.6, except fresh, chilled or frozen or other product ineligible for importation into the United States from countries in which the contagious and communicable disease of rinderpest or of foot-and-mouth disease exists as provided in Part 94 of this chapter, is eligible for importation into the United States after inspection and marking as required by the applicable provisions of Parts 1 through 28 of this subchapter.

| | |
|---|---|
| Argentina. | Italy. |
| Australia. | Luxembourg. |
| Austria. | Mexico. |
| Belgium. | Netherlands. |
| Brazil. | New Zealand. |
| Canada. | Nicaragua. |
| Costa Rica. | Northern Ireland. |
| Czechoslovakia. | Norway. |
| Denmark. | Panama. |
| Dominican Republic. | Paraguay. |
| England and Wales. | Poland. |
| Finland. | Scotland. |
| France. | Spain. |
| Germany (Federal Republic). | Sweden. |
| Guatemala. | Switzerland. |
| Honduras. | Uruguay. |
| Iceland. | Venezuela. |
| Ireland (Eire). | Yugoslavia. |

(34 Stat. 1264, sec. 306, 46 Stat. 689; 19 U.S.C. 1306, 21 U.S.C. 89; 19 F.R. 74, as amended)

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

Done at Washington, D.C., this 23d day of March 1961.

M. R. CLARKSON,
*Acting Administrator, Agricultural Research Service.*

[F.R. Doc. 61-2721; Filed, Mar. 27, 1961; 8:55 a.m.]

# Title 16—COMMERCIAL PRACTICES

## Chapter I—Federal Trade Commission

[Docket 7920 c.o.]

### PART 13—PROHIBITED TRADE PRACTICES

### Foreign Textile Products, Inc., et al.

Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185-90 Wool Products Labeling Act. Subpart—Neglecing, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-80 Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, Secs. 2-5, 54 Stat. 1128-1130; 15 U.S.C. 45, 68)

[Cease and desist order, Foreign Textile Products, Inc., et al., New York City, Docket 7920, November 16, 1960]

*In the Matter of Foreign Textile Products, Incorporated, a Corporation, and Bela Gyenes, Individually and as an Officer of Said Corporation*

Consent order requiring New York City distributors of woolen fabrics to cease violating the Wool Products Labeling Act by labeling as "95% wool, 5% Nylon", woolen fabrics which contained substantially more non-woolen fibers than indicated by such tags, and by failing to conform in other respects to requirements of the Act.

The order to cease and desist is as follows:

*It is ordered,* That the respondents Foreign Textile Products, Incorporated, a corporation, and its officers, and Bela Gyenes, individually and as an officer of said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act, of wool products as "wool products" are defined in and subject to the Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to affix labels to such products showing each element of information required to be disclosed by section 4(a)(2) of the Wool Products Labeling Act of 1939.

By "Decision of the Commission", etc., report of compliance was required as follows:

*It is further ordered,* That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in the aforesaid initial decision, as modified.

Issued: November 16, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F.R. Doc. 61-2670; Filed, Mar. 27, 1961; 8:47 a.m.]

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[Docket 7955 c.o.]

## PART 13—PROHIBITED TRADE PRACTICES

### Gordon-Masling Optical Co., Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.170 *Qualities or properties of product or service:* 13.170-22 Corrective, orthopedic, etc.; § 13.190 *Results;* § 13.205 *Scientific or other relevant facts.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Gordon-Masling Optical Company, Inc., et al., Rochester, New York, Docket 7955, November 16, 1960]

*In the Matter of Gordon-Masling Optical Company, Inc., a Corporation, Trading Under the Name of Optical Associates of Rochester, and Bernard Masling and Stanley Gordon, Individually and as Officers of Said Corporation*

Consent order requiring sellers of optical goods in Rochester, N.Y., to cease advertising falsely that all persons could successfully wear their contact lenses and could wear them all day without discomfort; that their lenses would correct all defects in vision; and that purchasers could discard their eyeglasses.

The order to cease and desist is as follows:

*It is ordered,* That respondents Gordon-Masling Optical Company, Inc., a corporation, and its officers, and Bernard Masling and Stanley Gordon, individually and as officers of said corporation, respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of contact lenses, do forthwith cease and desist from, directly or indirectly:

A. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that:

(1) All persons in need of visual correction can successfully wear their contact lenses.

(2) There is no discomfort in wearing their contact lenses.

(3) All persons can wear respondents' lenses all day without discomfort; or that any person can wear respondents' lenses all day without discomfort except after that person has become fully adjusted thereto.

(4) Their lenses will correct all defects in vision.

(5) Eyeglasses can always be discarded upon the purchase of their lenses.

B. Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in Paragraph A, above.

By "Decision of the Commission", etc., report of compliance was required as follows:

*It is ordered,* That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: October 28, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F.R. Doc. 61-2671; Filed, Mar. 27, 1961; 8:47 a.m.]

# Title 21—FOOD AND DRUGS

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

### SUBCHAPTER B—FOOD AND FOOD PRODUCTS

## PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

### Demeton; Amendment of Regulation; Tolerances

1. Section 120.105 of the pesticide regulations (21 CFR 120.105) provides for determination of tolerances of demeton by in vitro cholinesterase inhibition of pooled human plasma, using technical demeton as a standard. This method has been found to be no longer suitable and a more reliable and suitable analytical procedure involving paper chromatography and determination of phosphorus is now available.

The Commissioner of Food and Drugs, upon his own initiative, finds that residues of demeton remaining on raw agricultural commodities are more accurately determined by the newer analytical method, and that the elimination of the old method is noncontroversial. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 408(m), 701(a), 68 Stat. 517, 54 Stat. 1055 as amended; 21 U.S.C. 346a(m), 371(a)), and under the authority delegated to him by the Secretary of Health, Education, and Welfare (25 F.R. 8625), *It is ordered,* That the introduction to 120.105 be amended by deleting therefrom the reference to the method above described.

2. A petition was filed with the Food and Drug Administration by Chemagro Corporation, P.O. Box 4913, Kansas City 20, Missouri, requesting the establishment of tolerances for residues of demeton (a mixture of *O,O-diethyl O*(and *S*)-2-(ethylthio) ethyl phosphorothioates) in or on apricots, cottonseed, peppers, and plums (fresh prunes) at 0.75 part per million.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which tolerances are being established.

After consideration of the data submitted in the petition and other relevant material which show that the tolerance established in this order will protect the public health, and by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625), the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities are amended by adding to § 120.105 (21 CFR 120.105; 25 F.R. 4903) tolerances for residues of the subject pesticide chemical in or on apricots, cottonseed,

peppers, and plums (fresh prunes). The introduction to the section is changed as ordered in amendment 1. All paragraph designations are deleted. As amended § 120.105 reads as follows:

**§ 120.105 Tolerances for residues of demeton.**

Tolerances for residues of demeton (a mixture of *O,O*-diethyl *O* (and *S*)-2-(ethylthio) ethyl phosphorothioates) are established as follows:

12 parts per million in or on alfalfa hay, clover hay.

5 parts per million in or on almond hulls, fresh alfalfa, fresh clover.

1.25 parts per million in or on grapes, hops.

0.75 part per million in or on almonds, apples, apricots, broccoli, brussels sprouts, cabbage, cauliflower, celery, cottonseed, grapefruit, lemons, lettuce, muskmelons, oranges, peaches, pears, peas, pecans, peppers, plums (fresh prunes), potatoes, strawberries, tomatoes, walnuts.

0.3 part per million in or on beans.

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

Notice of proposal to amend § 120.105 is not necessary and would be contrary to the public interest because the new method has been found scientifically superior, it presents no points of controversy, and its early use is important to the safety of the pesticide chemicals involved in this order.

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

(Sec. 408(d)(2), (m), 701(a), 68 Stat. 512, 517, 54 Stat. 1055 as amended; 21 U.S.C. 345a(d)(2), (m), 371(a))

Dated: March 17, 1961.

[SEAL] JOHN L. HARVEY,
*Deputy Commissioner of Food and Drugs.*

[F.R. Doc. 61-2684; Filed, Mar. 27, 1961; 8:49 a.m.]

## PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

### Tolerance for Residues of O,O-Diethyl S-2-(Ethylthio)Ethyl Phosphorodithioate

A petition was filed with the Food and Drug Administration by Chemagro Corporation, Kansas City 20, Missouri, requesting the establishment of a tolerance for residues of *O,O*-diethyl *S*-2-(ethylthio)ethyl phosphorodithioate in or on potatoes at 0.75 part per million.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which a tolerance is being established.

After consideration of the data submitted in the petition and other relevant material which show that the tolerance established in this order will protect the public health, and by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625), the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities (21 CFR 120.183; 26 F.R. 1276) are amended by adding to § 120.183 a tolerance for residues of the subject pesticide chemical in or on potatoes, and by indicating that all tolerances under this section are calculated as demeton. As amended, this section reads as follows:

**§ 120.183 Tolerances for residues of *O,O*-diethyl *S*-2-(ethylthio)ethyl phosphorodithioate.**

Tolerances for residues of *O,O*-diethyl *S*-2-(ethylthio) ethyl phosphorodithioate, calculated as demeton, in or on raw agricultural commodities are established as follows:

2 parts per million in or on sugar beet tops.

0.75 part per million in or on potatoes.

0.5 part per million in or on sugar beets.

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

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

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: March 17, 1961.

[SEAL] JOHN L. HARVEY,
*Deputy Commissioner of Food and Drugs.*

[F.R. Doc. 61-2685; Filed, Mar. 27, 1961; 8:49 a.m.]

## PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

### Sodium Propionate; Exemption From Requirement of a Tolerance

No comment having been received to the proposal of the Commissioner of Food and Drugs published in the FEDERAL REGISTER of February 10, 1961 (26 F.R. 1187), with reference to exempting sodium propionate from the requirement of a tolerance when used as a fungicide in the production of garlic, and no request having been received for referral of the proposal to an advisory committee: *It is ordered,* That the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities (21 CFR Part 120) be amended by adding the following new section:

**§ 120.185 Sodium propionate; exemption from the requirement of a tolerance for residues.**

Sodium propionate is exempted from the requirement of a tolerance for residues when used as a fungicide in the production of garlic.

This action is taken pursuant to the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408 (c), (e), 68 Stat. 511, 516; 21 U.S.C. 346a (c), (e)), and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625).

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and

the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

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

(Sec. 408, 68 Stat. 511 et seq.; 21 U.S.C. 346a)

Dated: March 21, 1961.

[SEAL] GEO. P. LARRICK,
*Commissioner of Food and Drugs.*

[F.R. Doc. 61-2686; Filed, Mar. 27, 1961; 8:50 a.m.]

## PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

### Parathion In or On Rice; Tolerance for Residues

No comment having been received to the proposal of the Commissioner of Food and Drugs published in the FEDERAL REGISTER of February 10, 1961 (26 F.R. 1187), with reference to establishing a tolerance for parathion on rice, and no request having been received for referral of the proposal to an advisory committee: *It is ordered,* That the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities (21 CFR 120.121; 25 F.R. 6878) be amended by adding rice to the list of commodities in § 120.121. As amended, § 120.121 reads as follows:

**§ 120.121 Tolerances for residues of parathion.**

A tolerance of 1 part per million is established for residues of parathion (*O,O*-diethyl *O*-*p*-nitrophenyl thiophosphate) in or on the following raw agricultural commodities: Alfalfa, barley, clover, corn forage, garlic, grass for forage, hops, oats, olives, pea forage, rice, vetch, wheat.

This action is taken pursuant to the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408(e)(e), 68 Stat. 514; 21 U.S.C. 346a(e)), and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625).

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

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

(Sec. 408(e)(e), 68 Stat. 614; 21 U.S.C. 346a(e))

Dated: March 21, 1961.

[SEAL] GEO. P. LARRICK,
*Commissioner of Food and Drugs.*

[F.R. Doc. 61-2687; Filed, Mar. 27, 1961; 8:50 a.m.]

## PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

### Tolerances for Residues of Maneb

A petition was filed with the Food and Drug Administration by Rohm and Haas Company, 222 West Washington Square, Philadelphia 5, Pennsylvania, requesting the establishment of a tolerance for residues of maneb (manganous ethylenebisdithiocarbamate) from combined preharvest and postharvest use in or on bananas, at 10 parts per million. The petitioner later amended the petition to request a tolerance of 15 parts per million on the whole banana fruit, of which not more than 2 parts per million may be in the pulp of the banana after removal of the skin.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which a tolerance is being established.

After consideration of the data submitted in the petition and other relevant material which show that the tolerances established in this order will protect the public health, and by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625), the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities are amended by adding to § 120.110 (21 CFR 120.110; 25 F.R. 1246) a tolerance for residues of maneb on bananas. Paragraph designations are deleted to facilitate insertion of new tolerances. As amended, this section reads as follows:

**§ 120.110 Tolerances for residues of maneb.**

Tolerances for residues of maneb (manganous ethylenebisdithiocarbamate), calculated as zinc ethylenebisdithiocarbamate, are established in or on raw agricultural commodities, as follows:

10 parts per million in or on apricots, beans (succulent form), broccoli, Brussels sprouts, cabbage, cauliflower, celery, Chinese cabbage, collards, endive (escarole), kale, kohlrabi, lettuce, mustard greens, nectarines, peaches, rhubarb, spinach, turnip tops.

7 parts per million in or on apples, beans (dry form), carrots (roots), carrots (tops), cranberries, cucumbers, eggplants, figs, grapes, melons, onions, peppers, summer squash, sweet corn (kernels plus cob with husk removed), tomatoes, turnip roots, winter squash.

0.1 part per million in or on almonds, potatoes.

15 parts per million in or on bananas, of which not more than 2 parts per million shall be in the pulp after peel is removed and discarded. The tolerance applies to accumulative residues from both preharvest and postharvest use.

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

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

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: March 21, 1961.

[SEAL] GEO. P. LARRICK,
*Commissioner of Food and Drugs.*

[F.R. Doc. 61-2688; Filed, Mar. 27, 1961; 8:50 a.m.]

## PART 121—FOOD ADDITIVES

### Subpart C—Food Additives Permitted in Animal Feed and Animal-Feed Supplements

*O,O*-DIETHYL *S*-2-(ETHYLTHIO)ETHYL PHOSPHORODITHIOATE

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition filed by Chemagro Corporation, Post Office Box 4913, Hawthorn Road, Kansas City 20, Missouri, and other relevant material, has concluded that the following food additive regulation should issue in conformance with section 409 of the Federal Food, Drug, and Cosmetic Act, with respect to residues of *O,O*-diethyl *S*-2-(ethylthio)ethyl phosphorodithioate present in or on dehydrated sugar beet pulp. Such residues have been shown to occur from application of the pesticide to sugar beet plants under agricultural uses provided for by a concurrent regulation under section 408 of the act. Therefore, pursuant to the provisions of the act (sec. 409(c)(4), 72 Stat.

1786; 21 U.S.C. 348(c)(4)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625) the food additive regulations (21 CFR Part 121) are amended by adding to Subpart C the following new section:

**§ 121.215 *O,O*-diethyl *S*-2-(ethylthio) ethyl phosphorodithioate.**

A tolerance of 5 parts per million is established for residues of *O,O*-diethyl *S*-2-(ethylthio) ethyl phosphorodithioate in dehydrated sugar beet pulp for livestock feed when present therein as a result of the application of the pesticide to the growing agricultural crop.

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

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

(Sec. 409(c)(4), 72 Stat. 1786; 21 U.S.C. 348(c)(4))

Dated: March 17, 1961.

[SEAL] GEO. P. LARRICK,
*Commissioner of Food and Drugs.*

[F.R. Doc. 61-2689; Filed, Mar. 27, 1961; 8:51 a.m.]

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SUBCHAPTER C—DRUGS

## PART 130—NEW DRUGS

### Changes in New-Drug Application Form; New-Drug Samples

On September 23, 1960, the Commissioner of Food and Drugs, pursuant to section 701(a) of the Federal Food, Drug, and Cosmetic Act and under the authority delegated to him by the Secretary of Health, Education, and Welfare (25 F.R. 8625) published in the FEDERAL REGISTER (25 F.R. 9151) notice of a proposal to amend the regulations for the enforcement of the new-drug section of the law for the purpose of requiring manufacturers to furnish samples considered necessary to provide the Administration with sufficient information to evaluate fully the data submitted in new-drug applications. In response to the Commissioner's invitation, comments were received. These, with other available data, have been evaluated, and as a result of this study: *It is ordered,* That the regulations (21 CFR 130.4, 130.5; 25 F.R. 12594) be amended as set forth below.

Although the amendment to § 130.4, adding a new paragraph (f), and the amendment to § 130.5 were not included in the original proposal, they are interpretative in nature and the Commissioner finds that they are necessary for the clarification of the correlated amendments in this order and the order published December 9, 1960.

1. Section 130.4 *Applications* is amended as follows:

a. In paragraph (c), item (5) of the new-drug application form is changed to read:

(c) * * *

(5) Samples of the drug and articles used as components, as follows:

(a) The following samples shall be submitted with the application or as soon thereafter as they become available. Each sample shall consist of four identical, separately packaged subdivisions, each containing at least three times the amount required to perform the laboratory test procedures described in the application to determine compliance with its control specifications for identity and assays:

(i) A representative sample or samples of the finished dosage form(s) proposed in the application and employed in the clinical investigations and a representative sample or samples of each new-drug substance, as defined in § 130.1(g), from the batch(es) employed in the production of such dosage form(s).

(ii) A representative sample or samples of finished market packages of each dosage form of the drug prepared for initial marketing, and if any such sample is not from a commercial-scale production batch, in addition such a sample from a representative commercial-scale production batch; and a representative sample or samples of each new-drug substance, as defined in § 130.1(g), from the batch(es) employed in the production of such dosage form(s). *Provided, however,* That in the case of medicated feeds marketed in large packages the sample should contain only three times a sufficient quantity of the medicated feed to allow for performing the control tests for drug identity and assays.

(iii) A sample or samples of any reference standard and blank used in the procedures described in the application for assaying each new-drug substance and other assayed components of the finished drug; *Provided, however,* That samples of reference standards recognized in the official United States Pharmacopeia or the National Formulary need not be submitted unless requested by the New Drug Branch or the Veterinary Medical Branch.

(b) Additional samples shall be submitted on the request of the New Drug Branch or the Veterinary Medical Branch.

(c) Each of the samples submitted shall be appropriately packaged and labeled to preserve its characteristics, to identify the material in the sample, and to identify it with the name of the applicant and the new-drug application to which it relates.

(d) There shall be included a full list of the samples submitted pursuant to (5)(a); a statement of the additional samples that will be submitted as soon as available; and, with respect to each sample submitted, full information with respect to its identity, the origin of any new-drug substance, as defined in § 130.1(g), contained therein (including in the case of new-drug substances, a statement whether it was produced on a laboratory, pilot-plan, or full-production scale) and detailed results of all laboratory tests made to determine the identity, strength, quality, and purity of the batch represented by the sample, including assays. If the test methods used differed from those described in the application, full details of the methods employed in obtaining the reported results shall be submitted.

(e) The New Drug Branch or the Veterinary Medical Branch may, on request of the applicant or otherwise, waive the requirements of (5)(a), in whole or in part, when in the opinion of the Branch any such samples are not necessary.

b. Section 130.4 is further amended by adding thereto a new paragraph (f), reading as follows:

(f) When laboratory tests are required on samples of the new drug or its components to verify the adequacy of control specifications or laboratory test procedures for identity and assays, and it appears that this will require more time than is provided in the act for consideration of a new-drug application, the applicant will be notified. In such event, the application may be made conditionally effective until such laboratory tests have verified their adequacy and the applicant has been so informed by the New Drug Branch or the Veterinary Medical Branch, but only when the following conditions are met:

(1) The New Drug Branch or the Veterinary Medical Branch has determined that the application may be made effective when the adequacy of control specifications or laboratory test procedures for identity and assays of the new drug or its components have been verified by laboratory tests; and

(2) It is not possible to complete such laboratory tests, when they are required, within the time provided by the act for consideration of a new-drug application.

2. Section 130.5(a)(1) is amended to read:

**§ 130.5 Reasons for refusing to file applications.**

(a) * * *

(1) It does not contain all the matter required by section 505(b)(1), (2), (3), (4), (5), and (6) of the act or by the new-drug application form contained in § 130.4(c).

*Effective date.* This order shall become effective 60 days from the date of its publication in the FEDERAL REGISTER.

(Sec. 701(a); 21 U.S.C. 371(a))

Dated: March 21, 1961.

[SEAL] GEO. P. LARRICK,
*Commissioner of Food and Drugs.*

[F.R. Doc. 61-2690; Filed, Mar. 27, 1961; 8:51 a.m.]

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## PART 141e—BACITRACIN AND BACITRACIN-CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

## PART 146e—CERTIFICATION OF BACITRACIN AND BACITRACIN-CONTAINING DRUGS

### Bacitracin- (or Zinc Bacitracin-) Neomycin-Polymyxin Powder Topical

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as

amended; 21 U.S.C. 357) and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625), the regulations for tests and methods of assay and certification of bacitracin and bacitracin-containing drugs are amended as set forth below:

1a. In § 141e.430, paragraphs (a) and (b) are amended to read as follows:

**§ 141e.430 Bacitracin-neomycin-polymyxin powder topical; zinc bacitracin-neomycin-polymyxin powder topical.**

(a) *Potency*—(1) *Dry powder*—(i) *Bacitracin content.* Proceed as directed in § 141e.401(a). Its content of bacitracin is satisfactory if it contains not less than 85 percent of the number of units that it is represented to contain.

(ii) *Zinc bacitracin content.* Proceed as directed in § 141e.418(a). Its content of zinc bacitracin is satisfactory if it contains not less than 85 percent of the number of units that it is represented to contain.

(iii) *Neomycin content.* Proceed as directed in § 141e.410(b)(1). Its content of neomycin is satisfactory if it contains not less than 85 percent of the number of milligrams that it is represented to contain.

(iv) *Polymyxin B content.* Proceed as directed in § 141b.112(b)(1) of this chapter. Its content of polymyxin B is satisfactory if it contains not less than 85 percent of the number of units that it is represented to contain.

(2) *Powder packaged with inert gases.* Spray, as directed in the labeling, the entire contents of each container to be tested into a separate 1-liter Erlenmeyer flask, held in a horizontal position. Add 500 milliliters of distilled water and shake to dissolve the contents. Remove aliquots of this solution and, using the appropriate buffer solutions to make further dilutions, proceed as directed in subparagraph (1) of this paragraph. Calculate the average total amount of each antibiotic expelled from the containers. The total potency is satisfactory if it contains not less than 85 percent of the number of units of zinc bacitracin and polymyxin and not less than 85 percent of the number of milligrams of neomycin that it is represented to contain.

(b) *Moisture.* Proceed as directed in § 141a.5(a) of this chapter, except if it is packaged with inert gases proceed as directed in § 141a.7(c) of this chapter, but in lieu of the direction for preparing the sample in § 141a.7(c)(3), prepare the sample and calculate as follows: Freeze the container as described in paragraph (a) of this section. After freezing, open the container and remove a representative 10-milliliter aliquot. Place in a Karl Fischer vessel (containing about 15 milliliters of neutralized water in methyl alcohol reagent and 5 milliliters of excess Karl Fischer reagent). Allow to warm to at least 10° C. and titrate to the endpoint.

$$\text{Percent moisture} = \frac{(V_1 - V_2) \times e}{100}.$$

b. Paragraph (c)(2) is amended by changing the subparagraph heading to read as set forth below and by adding to subparagraph (2) a new subdivision designated (ii). As amended, paragraph (c)(2) reads as follows:

(c) *Microorganism count.* * * *

(2) *Conduct of test for bacteria*—(i) *Dry powder.* Weigh each of five immediate containers. Transfer aseptically an aliquot (approximately 1.0 gram) from each of the weighed containers to each of five sterile flasks containing 200 milliliters of sterile distilled water. Reweigh the containers to determine the weight of the sample taken. Shake the flasks thoroughly to dissolve the powder. Filter the solution from three of the flasks through each of three sterile membrane bacteriological hydrosol assay filters having a porosity of 0.45$\mu$ and a diameter of approximately 47 millimeters. Rinse each filter three times by passing 100 milliliters of sterile distilled water through the filter for each rinsing to remove traces of antibiotic. After washing, place the filter pads (filtering side up) on the surface of each of three agar plates containing nutrient agar as described in subparagraph (1)(i) of this paragraph. Incubate the plates for 5 days at 32° C. Count the number of colonies appearing on each filter pad and calculate therefrom the number of viable microorganisms per gram of powder.

(ii) *Powder packaged with inert gases.* Thoroughly cleanse the valve of each container to be tested with a suitable disinfectant. Into each of five sterile, empty Erlenmeyer flasks stoppered with a cotton plug, spray the entire contents of five separate cans, or the equivalent of 1 gram of powder if the can contains more than this amount, respectively, by removing the plug temporarily and using aseptic technique while spraying. Allow propellant to evaporate, add 250 milliliters of sterile 0.05 percent aqueous sodium thioglycolate, and swirl the flask to dissolve the contents. Then proceed as described in subparagraphs (2)(i) and (3) of this paragraph.

c. Paragraph (c)(3) is amended by designating the present text of the subparagraph as subdivision (i) *Dry powder;* by changing the words "subparagraph (2)" in redesignated subdivision (i) to read "subparagraph (2)(i)"; and by adding to subparagraph (3) a new subdivision (ii). As amended, paragraph (c)(3) reads as follows:

(3) *Conduct of test for molds and yeasts*—(i) *Dry powder.* Proceed as directed in subparagraph (2)(i) of this paragraph (using the remaining two flasks), except use the agar medium as described in subparagraph (1)(ii) of this paragraph, and incubate at 25° C. for 5 days. Count the number of colonies appearing on each filter pad and calculate therefrom the number of viable microorganisms per gram of powder.

(ii) *Powder packaged with inert gases.* Proceed as directed in subparagraph (2)(ii) of this paragraph, except use agar medium as described in subparagraph (1)(ii) of this paragraph, and incubate at 25° C. for 5 days.

d. Paragraph (c) is further amended by adding the following new subparagraph (4):

(4) *Evaluation of results.* The microorganism count of the sample is satisfactory if the average number of viable microorganisms is not more than 10 per container or per gram.

2. Section 146e.430 *Bacitracin-neomycin-polymyxin powder topical* * * * is amended in the following respects:

a. Paragraph (a) *Standards of identity* * * * is amended by changing the second sentence to read: "Unless it is packaged with one or more suitable and harmless inert gases, each gram contains not less than 200 units of bacitracin or zinc bacitracin, not less than 1,600 units of polymyxin B, and not less than 3.5 milligrams of neomycin."

b. Paragraph (b) *Packaging* is amended by adding the following new sentence at the end thereof: "Each such container may contain one or more suitable and harmless inert gases; in which case it shall contain not less than 8,000 units of zinc bacitracin, not less than 70 milligrams of neomycin, and not less than 100,000 units of polymyxin B."

c. Paragraph (c) *Labeling* is amended by changing subparagraph (1)(ii) to read as follows:

(1) * * *

(ii) The number of units of bacitracin or zinc bacitracin, the number of units of polymyxin B, and the number of milligrams of neomycin per gram; or (if it is packaged with one or more inert gases), the amount of each antibiotic that shall be ejected when used as directed in the labeling.

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since the amendments are not restrictive in nature and since the drug bacitracin- (or zinc bacitracin) neomycin-polymyxin powder topical, packaged with suitable and harmless inert gases, has been shown to be safe and efficacious for use.

*Effective date.* This order shall become effective 30 days from the date of its publication in the FEDERAL REGISTER.

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

Dated: March 17, 1961.

[SEAL] GEO. P. LARRICK,
*Commissioner of Food and Drugs.*

[F.R. Doc. 61-2691; Filed, Mar. 27, 1961; 8:51 a.m.]

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## PART 146—GENERAL REGULATIONS FOR THE CERTIFICATION OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

## PART 147—ANTIBIOTICS INTENDED FOR USE IN THE LABORATORY DIAGNOSIS OF DISEASE

### Order Acting on Objections to the Regulations

An order was published in the FEDERAL REGISTER on September 30, 1960 (25 F.R. 9369), to become effective 90 days thereafter, amending § 146.24 pertaining to antibiotic powders for diagnostic use and adding Part 147 pertaining to antibiotic sensitivity discs. Objections were

filed by Ankh Laboratories, Inc., Baltimore Biological Laboratory, Inc., Consolidated Laboratories, Inc., National Bio-Test, Inc., Difco Laboratories, and Chas. Pfizer and Company, Inc., with all but Pfizer requesting a hearing on the objections.

These objections raised questions which required further study by the Commissioner and established that portions of the order should be amended. Therefore, the Commissioner issued an order, published in the FEDERAL REGISTER on January 7, 1961 (26 F.R. 127), amending the September 30 order and postponing its effective date until March 1, 1961. The Commissioner then requested each of the objectors to provide any additional information that would further clarify or strengthen the objections. Replies were received from Baltimore Biological Laboratory, Difco Laboratories, and Consolidated Laboratories.

The following issues raised by the initial and supplemental objections were not resolved by the amended order of January 7, 1961:

1. Whether antibiotic discs are drugs.

2. Whether the Commissioner has statutory authority to regulate noncertifiable antibiotics or agents when packaged together with certifiable antibiotics.

3. Whether § 147.2(b), as regards combination packages of discs of more than one potency, should be expanded to permit a medium-potency concentration as well as the proposed highest and lowest concentrations.

4. Whether the expiration date of penicillin-impregnated discs should be extended.

5. Whether the labeling requirements of § 147.2(b), pertaining to the statement of the expiration date on a combination package, should bear expiration dates for each diagnostic agent rather than a single expiration date for the shortest-level agent.

6. Whether the cost of certification of a multiple-type disc under the regulations would make it financially impossible to market such a disc.

7. Whether assay techniques for noncertifiable agents to be packaged with a certifiable antibiotic should be set forth in the regulations.

Issues numbered 1 and 2 relate to the Commissioner's jurisdiction in regulating antibiotic sensitivity discs. These are strictly legal questions and do not serve as proper bases for a hearing; they may be a basis for judicial review.

The objection suggesting the addition of a medium-potency concentration on packaged combination discs has practical difficulties that cannot be overcome in the present state of the science. The regulations, for example, permit packaged combinations of penicillin discs with two-unit and 10-unit potencies, and they permit variations for these levels between 67 percent and 150 percent of declared potency. Should the regulations permit the inclusion of a five-unit disc, the zone of inhibition produced by a two-unit disc containing 150 percent of its labeled potency would be approximately the same as that produced by a five-unit disc which contained 67 percent of its labeled potency. A five-unit disc having 150 percent of declared potency would produce a larger zone of inhibition than a ten-unit disc with 67 percent of declared potency. This would make the disc unreliable. No proposal was made to narrow the 150 percent range. No data were submitted to justify a change in the individual expiration dates set forth in the regulations, including the expiration date for penicillin-impregnated discs. The objections recommending separate expiration dates for each of the diagnostic agents in combination packages would result in a situation in which some, but not all, of the agents could be considered reliable after the earliest expiration dates had passed. But the package, after the expiration date of any one agent of the combination, would be in violation of section 502(l) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(l)).

The objections concerning the cost of certification of multiple-antibiotic discs raise no factual issue that would require a hearing. These discs are employed in testing for the most effective antibiotic to combat a disease condition or infection that may be life-threatening. It is obvious that there must be reliability in all the materials if the disc is to serve its intended purpose. In matters of public heath, where the possible consequences are even less harmful, possible economic hardships cannot justify a compromise with the public health.

It is true that assay methods were not published for all drugs and agents that might be included in a combination package of discs. Such methods are available and will be published in the near future. Until they are published, each manufacturer of a combination package may submit with his request for certification the assay methods he employs for each drug or agent in the package for which methods have not yet been published. If these methods are satisfactory to provide an accurate measure of the potency, they will be accepted by the Food and Drug Administration in the assay of the discs.

In summary, the objections were not supported by reasonable grounds sufficient to require a hearing. Accordingly, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 701(e), 52 Stat. 1055, as amended 72 Stat. 948, 74 Stat. 399; 21 U.S.C. 371(e)), and the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (25 F.R. 8625), the requests for changes in the regulations as published and the petitions for a public hearing are hereby denied.

(Sec. 701(e), 52 Stat. 1055 as amended; 21 U.S.C. 357(e))

Dated: March 16, 1961.

[SEAL] GEO. P. LARRICK,
*Commissioner of Food and Drugs.*

[F.R. Doc. 61-2692; Filed, Mar. 27, 1961; 8:51 a.m.]

# Title 47—TELECOMMUNICATION

## Chapter I—Federal Communications Commission

## PART 11—INDUSTRIAL RADIO SERVICES

### Charts for Channels 4 and 5

In the matter of amendment of Part 11, Subpart A, § 11.8(g) of the Commission's rules governing the Industrial Radio Services.

The Commission having under consideration the desirability of making a certain editorial change in Part 11, § 11.8(g) of its rules; and

It appearing that the change adopted herein consists of the inclusion within the subject rule of certain charts presently referred to therein but not heretofore included by reason of inadvertence; and

It further appearing that the amendment adopted herein is editorial in nature, and therefore, prior publication of notice of proposed rule making under the provisions of section 4 of the Administrative Procedure Act is unnecessary, and the amendment may become effective immediately; and

It further appearing that the amendment adopted is issued pursuant to authority contained in sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and section 0.341(a) of the Commission's Statement of Organization, Delegations of Authority and Other Information;

*It is ordered*, This 22d day of March, 1961, that effective March 22, 1961, § 11.8 of the Commission's rules is amended to include the charts for channels 4 and 5 as they are reproduced below, following paragraph (g).

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

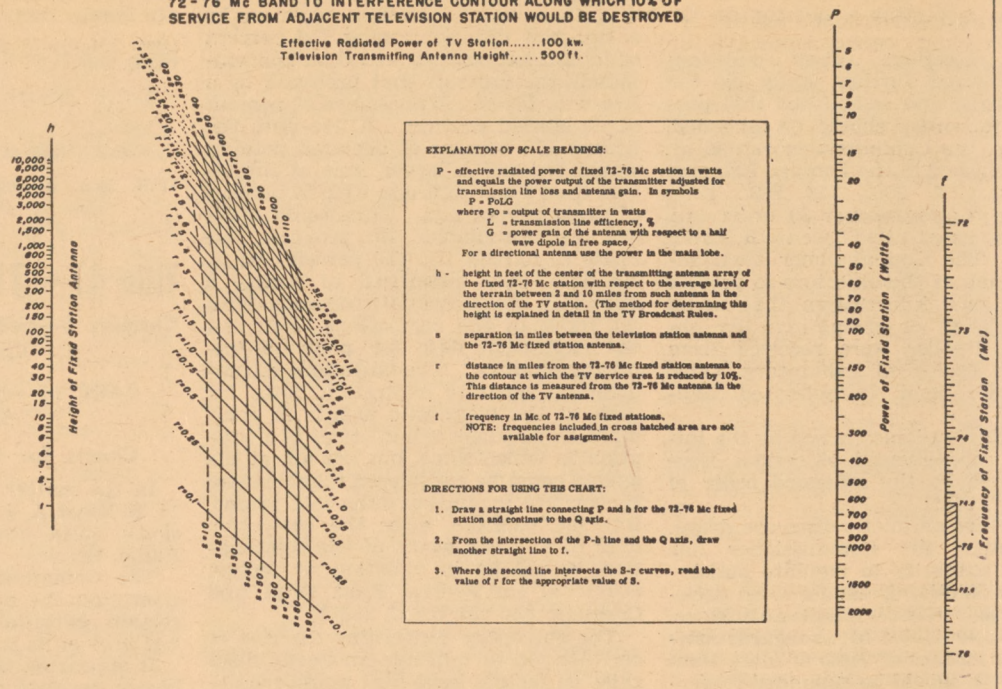
Released: March 22, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
*Acting Secretary.*

## FOR CHANNEL 4

### CHART FOR DETERMINING RADIUS FROM FIXED STATION IN 72-76 Mc BAND TO INTERFERENCE CONTOUR ALONG WHICH 10% OF SERVICE FROM ADJACENT TELEVISION STATION WOULD BE DESTROYED

Effective Radiated Power of TV Station.....100 kw.
Television Transmitting Antenna Height.....500 ft.




EXPLANATION OF SCALE HEADINGS:

P - effective radiated power of fixed 72-76 Mc station in watts and equals the power output of the transmitter adjusted for transmission line loss and antenna gain. In symbols
P = PoLG
where Po = output of transmitter in watts
L = transmission line efficiency, %
G = power gain of the antenna with respect to a half wave dipole in free space.
For a directional antenna use the power in the main lobe.

h - height in feet of the center of the transmitting antenna array of the fixed 72-76 Mc station with respect to the average level of the terrain between 2 and 10 miles from such antenna in the direction of the TV station. (The method for determining this height is explained in detail in the TV Broadcast Rules.

s - separation in miles between the television station antenna and the 72-76 Mc fixed station antenna.

r - distance in miles from the 72-76 Mc fixed station antenna to the contour at which the TV service area is reduced by 10%. This distance is measured from the 72-76 Mc antenna in the direction of the TV antenna.

f - frequency in Mc of 72-76 Mc fixed stations.
NOTE: frequencies included in cross hatched area are not available for assignment.

DIRECTIONS FOR USING THIS CHART:

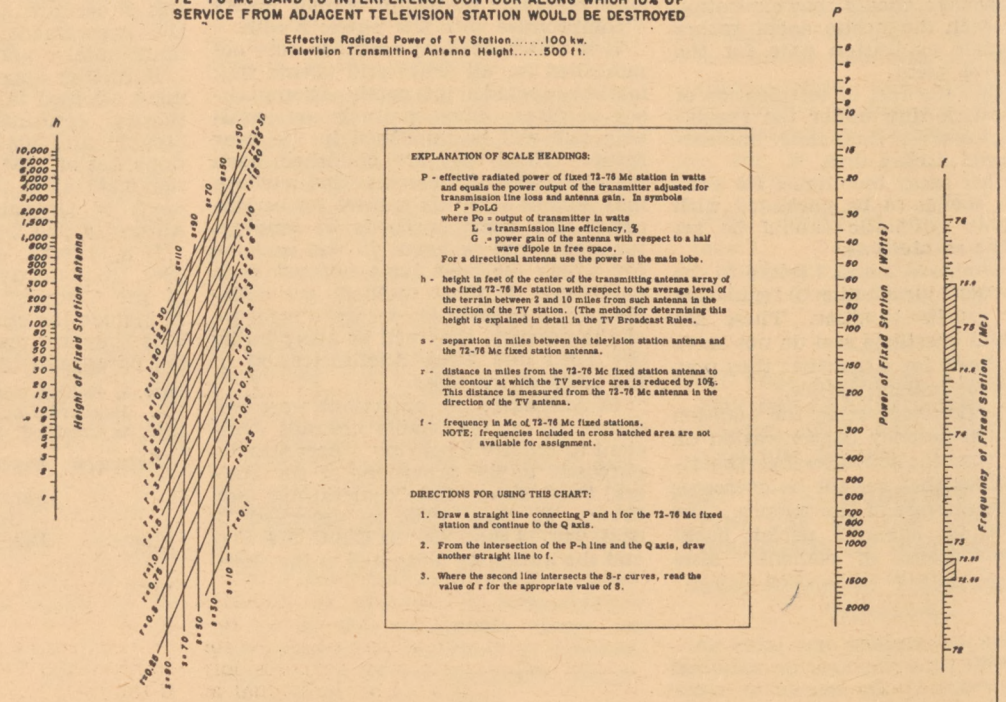
1. Draw a straight line connecting P and h for the 72-76 Mc fixed station and continue to the Q axis.
2. From the intersection of the P-h line and the Q axis, draw another straight line to f.
3. Where the second line intersects the S-r curves, read the value of r for the appropriate value of S.

REVISED SEPTEMBER 1954

## FOR CHANNEL 5

### CHART FOR DETERMINING RADIUS FROM FIXED STATION IN 72-76 Mc BAND TO INTERFERENCE CONTOUR ALONG WHICH 10% OF SERVICE FROM ADJACENT TELEVISION STATION WOULD BE DESTROYED

Effective Radiated Power of TV Station.....100 kw.
Television Transmitting Antenna Height.....500 ft.




EXPLANATION OF SCALE HEADINGS:

P - effective radiated power of fixed 72-76 Mc station in watts and equals the power output of the transmitter adjusted for transmission line loss and antenna gain. In symbols
P = PoLG
where Po = output of transmitter in watts
L = transmission line efficiency, %
G = power gain of the antenna with respect to a half wave dipole in free space.
For a directional antenna use the power in the main lobe.

h - height in feet of the center of the transmitting antenna array of the fixed 72-76 Mc station with respect to the average level of the terrain between 2 and 10 miles from such antenna in the direction of the TV station. (The method for determining this height is explained in detail in the TV Broadcast Rules.

s - separation in miles between the television station antenna and the 72-76 Mc fixed station antenna.

r - distance in miles from the 72-76 Mc fixed station antenna to the contour at which the TV service area is reduced by 10%. This distance is measured from the 72-76 Mc antenna in the direction of the TV antenna.

f - frequency in Mc of 72-76 Mc fixed stations.
NOTE: frequencies included in cross hatched area are not available for assignment.

DIRECTIONS FOR USING THIS CHART:

1. Draw a straight line connecting P and h for the 72-76 Mc fixed station and continue to the Q axis.
2. From the intersection of the P-h line and the Q axis, draw another straight line to f.
3. Where the second line intersects the S-r curves, read the value of r for the appropriate value of S.

REVISED SEPTEMBER 1954

10435

[F.R. Doc. 61-2661; Filed, Mar. 27, 1961; 8:45 a.m.]

# Title 30—MINERAL RESOURCES

## Chapter I—Bureau of Mines, Department of the Interior

SUBCHAPTER E—MECHANICAL EQUIPMENT FOR MINES; TESTS FOR PERMISSIBILITY AND SUITABILITY; FEES

[Bureau of Mines Schedule 25B]

## PART 33—DUST COLLECTORS FOR USE IN CONNECTION WITH ROCK DRILLING IN COAL MINES

### Test Requirements

On page 168 of the FEDERAL REGISTER of January 10, 1961, there was published a notice and text of proposed amendments to the regulations contained in §§ 33.32, 33.33, and 33.34 of Part 33, Title 30, Code of Federal Regulations, pertaining to test requirements for Dust Collectors for Use in Connection with Rock Drilling in Coal Mines. The purpose of the amendments is to equalize performance requirements for combination units having single or multiple drilling heads.

Interested persons were given 30 days after the date of publication, within which to submit written comments, suggestions, or objections concerning the proposed amendments. Only one comment was received, which concerned the amendment to Paragraph (a) of § 33.34 and pertained to an extraordinary set-up of equipment. After careful consideration, it was deemed inadvisable to further amend the regulations. Accordingly the amendments to these regulations are hereby adopted as set forth below.

It is considered in the public interest to have these amendments to the regulations become effective on the date of publication in the FEDERAL REGISTER.

MARLING J. ANKENY,
*Director, Bureau of Mines.*

Approved: March 22, 1961.

STEWART L. UDALL,
*Secretary of the Interior.*

The texts of paragraph (c) of § 33.32, paragraph (a) of § 33.33, and paragraph (a) of § 33.34 are amended to read as follows:

1. In paragraph (c) of § 33.32 the word "operator" in the third and fourth lines is changed to operator(s), indicating one or more.

2. In paragraph (a) of § 33.33 after the word "samples," at the end of the fourth line, the words "collected at each drill operator's position" are inserted, and in the last line of the paragraph the numeral "10" is deleted.

As amended, paragraph (a) of § 33.33 reads as follows:

(a) The concentration of dust determined by the control sample shall be subtracted from the average concentration of dust determined by the test samples collected at each drill operator's position, and the difference shall be designated as the net concentration of airborne dust. Calculations of the average concentration of dust determined from the test samples shall be based upon the results of not less than 80 percent of each set of test samples.

3. Paragraph (a) of § 33.34 is revised to read as follows:

(a) A drilling test shall consist of drilling a set of 10 test holes, without undue delay, under specified operating conditions. When the test involves the control of dust from more than one drill, all the drills shall be used in the intended manner to complete the set of test holes.

[F.R. Doc. 61-2675; Filed, Mar. 27, 1961; 8:47 a.m.]

# Title 32—NATIONAL DEFENSE

## Chapter I—Office of the Secretary of Defense

SUBCHAPTER A—ARMED SERVICES PROCUREMENT REGULATIONS

## MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

The following amendments to this subchapter are issued by direction of the Assistant Secretary of Defense (Installations and Logistics) pursuant to the authority contained in Department of Defense Directive No. 4105.30, dated 11 March 1959 (24 F.R. 2260), as amended, and 10 U.S.C. 2202, and have the concurrence of the military departments.

## PART 1—GENERAL PROVISIONS

1. Revise §§ 1.201-12, 1.307-2, 1.309, 1.707-3, and 1.801-1 to read as follows:

**§ 1.201-12 Possessions.**

Possessions in a geographic sense includes the Virgin Islands, the Canal Zone, Guam, American Samoa, Wake Island, Midway Island, and the Guano Islands, but does not include Puerto Rico.

**§ 1.307-2 Required Use of Priorities, Allocations, and Allotments Clause.**

The contract clause set forth in § 7.104-18 of this chapter shall be inserted in or attached to all rateable contracts, except that no such clause need be attached to purchase orders of less than $500 which are not rated. Rateable contracts are those contracts for supplies which are required to be supported with rating and allotment authority (see Priorities and Allocations Manual, section 2-1).

**§ 1.309 Solicitations for informational or planning purposes.**

It is the general policy of the Department of Defense to solicit bids, proposals or quotations only where there is a definite intention to award a contract or purchase order. However, in some cases solicitation for informational or planning purposes may be justified. Invitations for bids and requests for proposals will not be used for this purpose. Requests for quotations may be issued for informational or planning purposes only with prior approval of an individual at a level higher than the contracting officer. In such cases, the request for quotation shall clearly state its purpose and, in addition, the following statement in capital letters shall be placed on the face of the request: THE GOVERNMENT DOES NOT INTEND TO AWARD A CONTRACT ON THE BASIS OF THIS REQUEST FOR QUOTATION, OR OTHERWISE PAY FOR THE INFORMATION SOLICITED. The foregoing does not prohibit the allowance, in accordance with § 15.205-3 of this chapter, of the cost of preparing such quotations.

**§ 1.707-3 Defense Subcontracting in Small Business Programs.**

Each contractor having a prime contract which contains the clause set forth in § 7.104-22 shall be required to establish and conduct a "Defense Subcontracting Small Business Program" to include the following:

(a) Designate a small business liaison officer who will (1) maintain liaison with the purchasing activity and SBA in small business matters, (2) supervise compliance with the "Utilization of Small Business Concerns" clause; and (3) administer contractor's "Defense Subcontracting Small Business Program";

(b) Provide adequate and timely consideration of the potentialities of small business concern in all "make-or-buy" decisions;

(c) Assure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate small business participation;

(d) Maintain records showing (1) whether each prospective subcontractor is a small business concern, and (2) procedures which have been adopted to comply with the policies set forth in this paragraph;

(e) Include the "Utilization of Small Business Concerns" clause in subcontracts which offer substantial small business subcontracting opportunities;

(f) Require subcontractors having subcontracts in excess of $1,000,000 which contain the clause entitled "Utilization of Small Business Concerns" to establish and conduct a "Defense Subcontracting Small Business Program;" and

(g) Submit such information on subcontracting to small business as is called for on DD Form 1140.

**§ 1.801-1 Labor surplus area concern.**

Labor surplus area concern includes:

(a) Persistent labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Substantial and Persistent Labor Surplus"; and

(b) Substantial labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Substantial Labor Surplus."

A concern shall be deemed to perform a contract substantially in "Areas of Substantial and Persistent Labor Surplus" if the costs that it incurs on account of manufacturing or production (by itself or its subcontractors) in such areas amount to more than 50 percent of the contract price. A concern shall be

deemed to perform a contract substantially in "Areas of Substantial Labor Surplus" if the costs that it incurs on account of manufacturing or production (by itself or its subcontractors) in such areas or in "Areas of Substantial or Persistent Labor Surplus" amount to more than 50 percent of the contract price.

*Example A.* ABC Company, manufacturing in a full employment area bids on a contract at $1,000. ABC Company will incur the following costs:

| | |
|---|---|
| Direct labor | $200 |
| Overhead | 200 |
| Purchase of materials from XYZ, which manufactures the materials in a labor surplus area | 510 |

ABC Company qualifies as a labor surplus area concern.

*Example B.* DEF Company, manufacturing in a labor surplus area, bids on a contract at $1,000. DEF Company will incur the following costs:

| | |
|---|---|
| Direct labor | $200 |
| Overhead | 200 |
| Purchase of materials from UVW, which is located in a labor surplus area but which merely distributes the materials from stocks on hand (the materials having been manufactured by UVW's supplier) | 550 |

DEF Company does not qualify as a labor surplus area concern regardless of whether UVW's supplier manufactures in a labor surplus area.

*Example C.* GHI Company, manufacturing in a labor surplus area, bids on a contract at $1,000. GHI Company will incur the following costs:

| | |
|---|---|
| Direct labor | $230 |
| Overhead | 275 |
| Purchase of materials from RST, which manufactured the materials in a full employment area | 425 |

GHI Company qualifies as a labor surplus area concern.

2. In § 1.804–2, revise paragraph (b), and in paragraph (c), revise clause paragraphs (d), (e), and (f), and add clause paragraph (g), as follows:

**§ 1.804–2 Set-aside procedures.**

* * * * *

(b) In advertised procurements involving set-asides pursuant to this subpart, each invitation for bids shall contain either substantially the following notice or the notice set forth in paragraph (c) of this section. In negotiated procurements, whichever notice is used will be appropriately modified for use with requests for proposals. The appropriate notice shall be made a part of each contract under the set-aside portion of the procurement.

NOTICE OF LABOR SURPLUS AREA SET-ASIDE (JAN. 1961)

(a) *General.* A portion of this procurement, as identified elsewhere in the Schedule, has been set-aside for award only to one or more labor surplus area concerns, and, to a limited extent, to small business concerns which do not qualify as labor surplus area concerns. Negotiations for award of the set-aside portion will be conducted only with responsible labor surplus area concerns (and small business concerns to the extent indicated below) who have submitted responsive bids or proposals on the non-set-aside portion at a unit price within 120 percent of the highest award made on the non-set-aside portion. Negotiations for the set-aside portion will be conducted with such bidders in the following order of priority:

Group 1. Persistent labor surplus area concerns which are also small business concerns.

Group 2. Other persistent labor surplus area concerns.

Group 3. Substantial labor surplus area concerns which are also small business concerns.

Group 4. Other substantial labor surplus area concerns.

Group 5. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, negotiations with such concerns will be in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. The set-aside shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion. However, the Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion

(b) *Definitions.*

(1) A "labor surplus area" is a geographical area which at the time of award is:

(i) Classified by the Department of Labor as an "Area of Substantial Labor Surplus" or as an "Area of Substantial and Persistent Labor Surplus" and listed as such by that Department in conjunction with its bimonthly publication "Area Labor Market Trends"; or

(ii) Not classified as in (i) above, but which is individually certified as an area of persistent or substantial labor surplus by the Department of Labor at the request of any prospective contractor.

(2) Labor surplus area concern includes:

(i) Persistent labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Substantial and Persistent Labor Surplus"; and

(ii) Substantial labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Substantial Labor Surplus."

A concern shall be deemed to perform a contract substantially in "Areas of Substantial and Persistent Labor Surplus" if the costs that it incurs on acount of manufacturing or production (by itself or its subcontractors) in such areas amount to more than 50 percent of the contract price. A concern shall be deemed to perform a contract substantially in "Areas of Substantial Labor Surplus" if the costs that it incurs on account of manufacturing or production (by itself or its subcontractors) in such areas or in "Areas of Substantial or Persistent Labor Surplus" amount to more than 50 percent of the contract price.

(3) A "small business concern" is a concern that (i) is certified as a small business concern by the Small Business Administration, or (ii) is independently owned and operated, is not dominant in its field of operation and, with its affiliates, employs fewer than 500 employees. In addition to meeting these criteria, a manufacturer or regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns; provided, that this additional requirement does not apply in connection with construction or service contracts.

(c) *Agreement.* The bidder agrees that, if awarded a contract as a persistent labor surplus area concern under the set-aside portion of this procurement, he will perform the contract substantially in persistent labor surplus areas, as described in paragraph (b) above; and that if awarded a contract as a substantial labor surplus area concern under the set-aside portion of this procurement, he will perform the contract substantially in substantial or persistent labor surplus areas as described in paragraph (b) above.

Where the definition of a small business concern for a given industry, as prescribed by the Small Business Administration and promulgated by the Departments, differs from that set forth in the notice above the notice shall be appropriately modified to reflect such definition.

(c) Where it is anticipated that bids may be received which appear designed to take unfair advantage of bona fide bidders, by devices such as unrealistically low bids on mere token quantities, the notice set forth below may be used instead of that in paragraph (b) of this section.

NOTICE OF LABOR SURPLUS AREA SET-ASIDE (JAN. 1961)

* * * * *

(d) *Definitions.*

(1) A "labor surplus area" is a geographical area which at the time of award is:

(i) Classified by the Department of Labor as an "Area of Substantial Labor Surplus" or as an "Area of Substantial and Persistent Labor Surplus" and listed as such by that Department in conjunction with its bimonthly publication "Area Labor Market Trends"; or

(ii) Not classified as in (i) above, but which is individually certified as an area of persistent or substantial labor surplus by the Department of Labor at the request of any prospective contractor.

(2) Labor surplus area concern includes:

(i) Persistent labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Substantial and Persistent Labor Surplus"; and

(ii) Substantial labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Substantial Labor Surplus."

A concern shall be deemed to perform a contract substantially in "Areas of Substantial and Persistent Labor Surplus" if the costs that it incurs on account of manufacturing or production (by its self or its subcontractors) in such areas amount to more than 50 percent of the contract price. A concern shall be deemed to perform a contract substantially in "Areas of Substantial Labor Surplus" if the costs that it incurs on account of manufacturing or production (by itself or its subcontractors) in such areas or in "Areas of Substantial or Persistent Labor Surplus" amount to more than 50 percent of the contract price.

(3) A "small business concern" is a concern that (i) is certified as a small business concern by the Small Business Administration, or (ii) is independently owned and operated, is not dominant in its field of operation and, with its affiliates, employs fewer than 500 employees. In addition to meeting these criteria, a manufacturer or regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns; provided, that this additional requirement does not apply in connection with construction or service contracts.

(e) *Agreement.* The bidder agrees that, if awarded a contract as a persistent labor surplus area concern under the set-aside portion of this procurement, he will perform the contract substantially in persistent labor surplus areas, as described in paragraph (d) above; and that if awarded a contract as a substantial labor surplus area concern under the set-aside portion of this procurement, he will perform the contract substantially in substantial or persistent labor surplus areas as described in paragraph (d) above.

(f) *Token bids.* Notwithstanding the provisions of this Notice, the Government reserves the right, in determining eligibility or priority for set-aside negotiations, not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion.

(g) *Instructions for use, and explanation of, notice addendum.* The quantity of each Item which has been set-aside is set forth on the attached Notice Addendum. As provided in (b)(2), the Notice Addendum is to be filled in only by labor surplus area and small business concerns. Furthermore, it is to be used by such concern only when (i) it has submitted a bid for the entire non-set-aside quantity of an Item, and (ii) it desires a total quantity in excess of the non-set-aside quantity thereof. Whether or not a labor surplus area or small business concern may participate in the set-aside portion is dependent on its eligibility in accordance with paragraph (c) above. It should be noted, however, that to be eligible for the set-aside portion it need not have filled in the Notice Addendum. The latter should only be filled in where the concern desires a quantity in excess of the quantity set forth in the Schedule.

NOTICE ADDENDUM FOR SET-ASIDE

The quantity of each item which has been set-aside is as follows:

| 1 | 2 | 3 |
|---|---|---|
| Item No. | Quantity set-aside | Quantity desired |

(The issuing office will identify by line item number the supplies being procured as to which a portion is set aside and will designate the quantity set aside for each such Item. The quantity desired column will be left blank for the bidder or offeror to fill in.)

3. Add new Subpart O to Part 1, as follows:

## Subpart O—Options

Sec.
1.1501 Scope of subpart.
1.1502 Definition.
1.1503 Applicability.
1.1504 Procedures.
1.1505 Exercise of options.
1.1506 Examples of option clauses.

AUTHORITY: 1.1501 to 1.1506 issued under sec. 2202, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 12 U.S.C. 2301–2314.

### § 1.1501 Scope of subpart.

This subpart applies to contracts for supplies and services other than for (a) the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property and (b) research and development. It does not preclude the use of appropriate option provisions in such construction and research and development contracts.

### § 1.1502 Definition.

As used in this subpart, an option clause is a provision in a contract under which, for a specified time, the Government may elect to purchase additional quantities of the supplies and services called for by the contract, or may elect to extend the period of performance of the contract.

### § 1.1503 Applicability.

(a) Option clauses may be included in contracts where increased requirements within the period of contract performance are foreseeable, or where continuing performance beyond the original period of contract performance may be in the best interest of the Government.

(b) Generally, option clauses will not be included in contracts where:

(1) The supplies or services being purchased are readily available on the open market;

(2) The contractor would be required to incur undue risks: e.g., the price or availability of necessary materials or labor is not reasonably foreseeable;

(3) An indefinite quantity contract (see § 3.405–5(c) of this chapter) is appropriate; or

(4) Market prices for the supplies or services involved are likely to change substantially.

(c) Generally, options will definitely fix the amount of additional supplies or services, or the additional period of performance, which may be called for, and will not permit the Government to call for less than the full additional amount or period.

### § 1.1504 Procedures.

(a) Where a contract is to contain an option clause, the invitation for bids or request for proposals must contain an appropriate option provision. The contract shall limit the additional quantities of supplies or services which may be procured, or the duration of extention of the period of performance of the contract, under the option and will fix the period within which the option may be exercised. This period shall be set so as to afford the contractor adequate notice of the requirement for performance under the option but may extend beyond the contract completion date when exercise of the option would obligate funds not available in the fiscal year in which the contract would otherwise be completed. The quantities and the period under option and the period during which the option may be exercised shall be justified and documented by the contracting officer in the contract file.

(b) Invitations for bids and requests for proposals that contain options for additional quantities shall generally state that evaluation will be on the basis of the quantity to be awarded exclusive of the option quantity. However, where it is anticipated that the Government may elect to exercise the option at time of award, invitations for bids and requests for proposals shall state that if the Government does so elect, evaluation will be on the basis of total quantity to be awarded, including the option quantity, but if the Government does not so elect, evaluation will be on the basis of the quantity to be awarded exclusive of the option quantity.

(c) Invitations for bids or requests for proposals may state that bidders or offerors are required to quote separate prices on the option quantities or items and that such separate prices may vary depending on the date on which the option is exercised.

(d) Where exercise of the option would result in increased quantities of supplies, the option may be expressed in terms of (1) a definite percentage of specific contract line items, (2) a definite number of additional units of specific contract line items, or (3) additional numbered line items identified as the option quantity, with the same nomenclature as basic contract line items. Where exercise of the option would result in an increase in the performance of services by the contractor, the option may similarly be expressed in terms of percentages, increase in specific line items, or additional numbered line items, expressed in terms of the units of work used in the basic contract such as man hours, man years, square feet, pounds or tons handled, etc. Where exercise of the option would result in an extension of duration of the contract, the option may be expressed in terms of an extended terminal date or of an additional time period, such as days, weeks, or months.

### § 1.1505 Exercise of options.

(a) The exercise of an option by the Government requires the contracting officer's written notification to the contractor within the time period specified in the contract.

(b) Where the contract provides for price escalation and the contractor requests revision of price pursuant to such provision, or the provision applies only to the option quantity, the effect of escalation on prices under the option must be ascertained before the option is exercised.

(c) Options should be exercised only if it is determined that:

(1) Funds are available,

(2) The requirement covered by the option fulfills an existing need of the Government, and

(3) The exercise of the option is most advantageous to the Government, price and other factors considered.

(d) Insofar as price is concerned, the determination under paragraph (c)(3) of this section shall be made on the basis of one of the following:

(1) A new formal advertisement, or request for proposals if appropriate, fails to produce a better price than that offered by the option. (Where the contracting officer anticipates that the option price will be the best price available, he should not use this method of testing the market but should use one of the methods in subparagraphs (2), (3), or (4) of this paragraph (see § 1.309)).

(2) An informal investigation of prices, or other examination of the market, indicates clearly that a better price than that offered by the option cannot be obtained.

(3) The time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable, considering such factors as market stability and a comparison of the time since award with the

usual duration of contracts for such supplies and services.

(4) Established prices are readily ascertainable and clearly indicate that formal advertising or informal solicitation can obviously serve no useful purpose.

(e) Insofar as the "other factors" mentioned in paragraph (c)(3) of this section are concerned, the determination should, among other things, take into account the Government's need for continuity of operations and potential costs to the Government of disrupting operations, including the cost of relocating necessary Government-furnished equipment (as, for example, in certain repair and overhaul contracts for aircraft or other complex equipment).

**§ 1.1506 Examples of option clauses.**

(a) A clause substantially as follows may be used where the contract expresses the option quantity as a percentage of the basic contract quantity or as an additional quantity of a specific line item.

OPTION FOR INCREASED QUANTITY (JAN. 1961)

The Government may increase the quantity of supplies called for herein by the amount stated in the Schedule and at the unit price specified therein. The Contracting Officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the Contractor. Delivery of the items added by the exercise of this option shall continue immediately after, and at the same rate as, delivery of like items called for under this contract unless the parties otherwise agree.

(b) A clause substantially as follows may be used where the contract identifies the option quantity as a separately priced line item having the same nomenclature as a corresponding basic contract line item.

OPTION FOR INCREASED QUANTITY (JAN. 1961)

The Government may increase the quantity of supplies called for herein by requiring the delivery of the numbered line item identified in the Schedule as an option item, in the quantity and at the price set forth therein. The Contracting Officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the Contractor. Delivery of the items added by the exercise of this option shall continue immediately after, and at the same rate as, delivery of like items called for under this contract unless the parties otherwise agree.

(c) A clause substantially as follows may be used where it is intended to extend the services described in the Schedule.

OPTION TO EXTEND SERVICES (JAN. 1961)

The Government may require the Contractor to continue to perform any or all items of services under this contract within the limits stated in the Schedule. The Contracting Officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the Contractor. The rates set forth in the Schedule shall apply to any extension made pursuant to this option provision.

(d) A clause substantially as follows may be used to provide for continuing performance of the contract beyond its original term.

OPTION TO EXTEND THE TERM OF THE CONTRACT (JAN. 1961)

This contract is renewable, at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor within the period specified in the Schedule; provided, that the Contracting Officer shall have given preliminary notice of the Government's intention to renew at least sixty (60) days before this contract is to expire. (Such a preliminary notice will not be deemed to commit the Government to renewal). If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed --- years.

## PART 2—PROCUREMENT BY FORMAL ADVERTISING

4. In § 2.201, revised paragraphs (a)(12), (15), (23), and (b)(10); and revise §§ 2.202–2, 2.203–1, 2.303–6, 2.304 and 2.305(b), as follows:

* * * * *

(a) For supply and service contracts, including construction, invitation for bids shall contain the following information if applicable to the procurement involved.

* * * * *

(12) Bid guarantee, performance bond, and payment bond requirements, if any (see Subpart A, Part 10 of this chapter). If a bid bond or other form of bid guarantee is required, the invitation shall include the provisions required by § 10.102–4 of this chapter.

* * * * *

(15) When considered necessary by the contracting officer, a requirement that all bids must allow a period for acceptance by the Government of not less than a minimum period stipulated in the invitation for bids, and that bids offering less than the minimum stipulated acceptance period will be rejected. The minimum period so stipulated should be no more than reasonably required for evaluation of bids and other pre-award processing. To accomplish the foregoing, a paragraph substantially as follows may be included in the Schedule or other appropriate place in the Invitation for Bids:

BID ACCEPTANCE PERIOD (APR. 1960)

Bids offering less than ------ days for acceptance by the Government from the date set for opening of bids will be considered nonresponsive and will be rejected.

* * * * *

(23) When considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition, such as improper kinds of multiple bidding, a requirement that each bidder submit with his bid an affidavit concerning his affiliation with other concerns. To accomplish the foregoing, a paragraph substantially as follows may be included in the Schedule or other appropriate place in the invitation for bids:

AFFILIATED BIDDERS (JAN. 1961)

(a) Business concerns are affiliates of each other when either directly or indirectly (i) one concern controls or has the power to control the other, or (ii) a third party controls or has the power to control both.

(b) Each bidder shall submit with his bid an affidavit containing information as follows:

(i) Whether the bidder has any affiliates;

(ii) The names and address of all affiliates of the bidder; and

(iii) The names and addresses of all persons and concerns exercising control or ownership of the bidder and any or all of his affiliates, and whether as common officers, directors, stockholders holding controlling interest, or otherwise.

Failure to furnish such an affidavit may result in rejection of the bid.

[End of Notice.]

Failure to furnish such an affidavit shall be treated as a minor informality or irregularity (see § 2.405).

* * * * *

(b) For supply and service contracts, excluding construction, the invitation for bids shall contain the following in addition to the information required by paragraph (a) of this section if applicable to the procurement involved:

* * * * *

(10) If the contract is to include option provisions, a clear statement of such provisions (see Subpart O, Part 1 of this chapter).

* * * * *

**§ 2.202–2 Telegraphic bids.**

As a general rule, telegraphic bids will not be authorized. However, when in the judgment of the contracting officer, the date for the opening of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms or when prices are subject to frequent changes, telegraphic bids may be authorized. When such bids are authorized, the schedule of the invitation for bids will require the bidder to include in the telegraphic bid specific reference to the invitation, the items or sub-items, quantities, and unit prices for which the bid is submitted, the time and place of delivery, and a statement that the bidder agrees to all the terms, conditions, and provisions of the invitation. In order that the contract may be executed on the proper forms the invitation for bids will also provide that telegraphic bids shall be confirmed on the prescribed form and submitted promptly to the contracting officer. A telegraphic bid telephoned by a telegraph office to the contracting officer prior to the time fixed for opening of bids may be considered if such bid is confirmed by a written telegram. When such a bid is the most advantageous to the Government, the contract award shall be withheld until receipt of the written telegraphic bid.

**§ 2.203–1 Mailing or delivery to prospective bidders.**

(a) Invitations for bids (or pre-invitation notices) shall be mailed (or delivered) to a sufficient number of prospective bidders so as to elicit adequate competition and, in accordance with § 1.1002 of this chapter, may be provided to others having a legitimate interest to the extent invitations for bids are available.

(b) On request, pre-invitation notices and invitations for bids (with plans and specifications) for unclassified construction work will be furnished without

charge to organizations which maintain plan display rooms for the benefit of contractors, subcontractors and material suppliers, without charge to the public. Requests from organizations in the United States may be honored on an annual or semi-annual basis for all or for a stated class of construction projects. The geographical extent of this distribution shall be as determined on a case by case basis by the contracting officer.

**§ 2.303–6 Notification.**

Where a late bid is received and it is clear from available information that under § 2.303–2 such late bid cannot be considered, the contracting officer or his authorized representative shall promptly notify the bidder that his bid was received late and will not be considered. This shall not preclude the contracting officer from considering evidence received prior to award that shows that the bid should be considered. If a late bid is received before award but it is not clear from available information whether under § 2.303–2 such bid may be considered, the bidder shall be promptly notified substantially as follows:

Your bid in response to Invitation for Bids No. ____, dated _____ was received after the time for opening specified in the Invitation. Accordingly, your bid will not be considered for award unless clear and convincing evidence showing that late receipt was due solely to delay in the mails for which you were not responsible is received by _____. (Jan. 1961)
(Date)

The foregoing notification should be appropriately modified in the case of late telegraphic bids.

**§ 2.304 Modification or withdrawal of bids.**

Bids may be modified or withdrawn by written or telegraphic notice received prior to the exact time set for opening. A telegraphic modification of a bid telephoned by a telegraph office to the contracting officer prior to the time fixed for opening of bids may be considered if such modification is confirmed by a written telegram. When such a modification results in a bid most advantageous to the Government, the contract award shall be withheld until receipt of the written telegraphic modification of the bid. In addition, a bid may be withdrawn in person by a bidder or his authorized representative, providing his identity is made known and he signs a receipt for the bid, but only if the withdrawal is prior to the exact time set for bid opening.

**§ 2.305 Late modifications and withdrawals.**

* * * * *

(b) Where a late modification or request for withdrawal is received and it is clear from available information that under paragraph (a) of this section such late modification or request for withdrawal cannot be considered, the contracting officer or his authorized representative shall promptly notify the bidder that his modification or request for withdrawal was received late and will not be considered This shall not preclude the contracting officer from considering evidence received prior to award that shows that the modification or request for withdrawal should be considered. If a late modification or request for withdrawal is received before award but it is not clear from available information whether under paragraph (a) of this section such modification or request for withdrawal may be considered, the bidder shall be promptly notified substantially as follows:

Your (modification) (request for withdrawal) of your bid in response to Invitation for Bids No. _____, dated _____, was received after the time for opening specified in the Invitation. Accordingly, your (modification) (request for withdrawal) will not be considered effective unless clear and convincing evidence showing that late receipt was due solely to delay in the mails for which you were not responsible is received by _____. (Jan. 1961)
(Date)

The foregoing notification should be appropriately modified in the case of late telegraphic modifications or requests for withdrawal.

* * * * *

5. Revise § 2.404–2(h), add new paragraph (e) to § 2.405, revise § 2.407–6 as follows:

**§ 2.404–2 Rejection of individual bids.**

* * * * *

(h) Where a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the invitation for bids, the bid shall be rejected except as otherwise provided in § 10.102–5 of this chapter.

**§ 2.405 Minor informalities or irregularities in bids.**

* * * * *

(e) Failure to furnish an affidavit concerning affiliates, if required pursuant to § 2.201(a)(23).

**§ 2.407–6 Equal low bids.**

(a)(1) Where two or more low bids are equal in all respects, considering all factors except the priorities set forth in subparagraph (2) of this paragraph, award shall be made in accordance with the order of priorities therein. Where two or more low bids are equal in all respects, considering all factors, including the priorities set forth in subparagraph (2) of this paragraph, award shall be made by a drawing by lot which shall be witnessed by at least three persons and which may be attended by the bidders or their representatives.

(2) For the purposes of subparagraph (1) of this paragraph, preference shall be given in the following order of priority:

(i) Persistent labor surplus area concerns (§ 1.801 of this chapter) that are also small business concerns (§ 1.701 of this chapter);

(ii) Other persistent labor surplus area concerns;

(iii) Substantial labor surplus area concerns (§ 1.801 of this chapter) that are also small business concerns;

(iv) Other substantial labor surplus area concerns;

(v) Small business concerns that are not labor surplus area concerns;

(vi) Concerns which do not qualify for any of the foregoing priorities but which will deliver the required end items to the Government from a plant, warehouse, or other establishment in a labor surplus area at which the end items are either produced or available from stocks on hand.

(b) When award is to be made by drawing by lot and the information available shows that the product of a particular manufacturer has been offered by more than one bidder, a preliminary drawing by lot shall be made to ascertain which of the bidders offering the product of a particular manufacturer will be included in the final drawing to determine the award.

(c) When an award is determined by drawing by lot, the names and addresses of the three witnesses and the person supervising the drawing shall be placed on all copies of the abstract of bids or otherwise recorded.

## PART 3—PROCUREMENT BY NEGOTIATION

5a. Revise the introductory portion of § 3.101 as follows:

**§ 3.101 Negotiation as distinguished from formal advertising.**

Whenever supplies or services are to be procured by negotiation, price quotations (see Subpart B, Part 16 of this chapter), supported by statements and analyses of estimated costs or other evidence of reasonable prices and other vital matters deemed necessary by the contracting officer, shall be solicited from the maximum number of qualified sources of supplies or services consistent with the nature of and requirements for the supplies or services to be procured, in accordance with the basic policies set forth in Subpart C, Part 1 of this chapter, to the end that the procurement will be made to the best advantage of the Government, price and other factors considered. Negotiation shall thereupon be conducted, by contracting officers and their negotiators, with due attention being given to the following and any other appropriate factors:

6. In § 3.107–7, delete reference "see § 3.805–1(d)."

7. Revise § 3.202–3, add new paragraph (p) to § 3.210–2, revise § 3.210–3, add new sentence to § 3.214–2, and revise § 3.214–3, as follows:

**§ 3.202–3 Limitation.**

Every contract negotiated under the authority of § 3.202 shall be accompanied by a determination and findings justifying its use, signed by the contracting officer and prepared in accordance with the requirements of Subpart C of this part. The authority of § 3.202 shall not be used when negotiation is authorized by the provisions of §§ 3.203 or 3.206.

**§ 3.210–2 Application.**

* * * * *

(p) when the contract is a facilities contract as defined in § 13.101–16 of this chapter and the performance required can be obtained from only one person or firm.

**§ 3.210–3 Limitation.**

The authority of § 3.210 shall not be used when negotiation is authorized by any other authority set forth in § 3.201 through § 3.217, except that this authority shall be used in preference to § 3.212. The authority contained in § 3.210–2(m) shall not be used in procurements in excess of $50,000 unless its use is approved in advance at a level higher than the contracting officer. Every contract that is negotiated under the authority of § 3.210 shall be accompanied by a determination and findings justifying its use, signed by the contracting officer and prepared in accordance with the requirements of Subpart C of this part.

**§ 3.214–2 Application.**

* * * * *

However, this exception should not be used to avoid duplication of private investment unless this duplication would be likely to result in additional cost to the Government.

**§ 3.214–3 Limitation.**

The authority of § 3.214 shall not be used unless and until the Secretary has determined, in accordance with the requirements of Subpart C of this part, that:

(a) The supplies are of a technical or specialized nature requiring a substantial investment or an extended period of preparation for manufacture; and

(b) Procurement by formal advertising and competitive bidding either:

(1) Would be likely to result in additional cost to the Government by reason of duplication of investment, or

(2) May require duplication of preparation already made which would unduly delay procurement.

8. Revise §§ 3.218–2(a), 3.301, 3.303, 3.304, and 3.305 as follows:

**§ 3.218–2 Limitation on authority to negotiate contracts.**

(a) *Work in the United States.* Contracts for construction work to be performed within the United States shall be formally advertised and may not (except as provided below for small business set-asides) be negotiated unless authorized pursuant to the following subsections of 10 U.S.C. 2304(a): (1), (2), (3), (10), (11), (12), or (15) (see respectively, §§ 3.201, 3.202, 3.203, 3.210, 3.211, 3.212 and 3.215 of this subpart). Construction contracts set aside for small business pursuant to a joint determination of the Small Business Administration and a Department may be negotiated pursuant to 10 U.S.C. 2304(a)(17) and section 15 of the Small Business Act (see § 1.706–8 of this chapter).

* * * * *

**§ 3.301 Nature of determinations and findings.**

The determinations and supporting findings that are referred to throughout this part are documents which justify the use of the authority (a) to enter into contracts by negotiation, (b) to make advance payments under negotiated contracts, or (c) to determine the kind of contract to be used. Determinations and findings shall ordinarily be made only with respect to individual purchases or contracts. However, except as limited by §§ 3.303 and 3.304, in special cases determinations and findings may be made with respect to classes of purchases or contracts, for a specified period only, in accordance with Departmental procedures.

**§ 3.303 Determinations and findings by the head of a procuring activity.**

The following determinations and findings in support thereof, may be made with respect to individual purchases or contracts by the head of a procuring activity signing as a chief officer responsible for procurement:

(a) The determination required by § 3.211 with respect to any negotiated contract for experimental, developmental, or research work, or for the manufacture or furnishing of supplies for experimentation, development, research, or test; provided, that such contract does not obligate the Government to pay more than $25,000; and

(b) The determinations required by §§ 3.403–4, 3.404, 3.404–3, and 3.404–4, with respect to the use of a cost or a cost-plus-a-fixed fee contract or an incentive-type contract.

**§ 3.304 Determinations and findings by a contracting officer.**

To the extent that the authority has been or may be granted by procedures prescribed by the Department concerned, the following determinations and findings may be made with respect to individual purchases and contracts by the contracting officer:

(a) Determinations and findings with respect to authority to enter into contracts by negotiation required by §§ 3.202–3 and 3.210–3;

(b) Determinations and findings with respect to the use of a cost or a cost-plus-a-fixed-fee or an incentive-type contract required by §§ 3.403–4, 3.404, 3.404–3 and 3.404–4;

(c) Any other determinations or findings called for by this subchapter, but not required to be made by higher authority.

**§ 3.305 Forms of determinations and findings.**

(a) Each determinations and findings—whether for (1) authority to negotiate an individual contract, or (2) authority to negotiate a class of contracts, or (3) kind of contract, or (4) any other purpose—shall be prepared in accordance with Departmental procedures, but determinations and findings for advance payments must be prepared in accordance with the format in § 163.60 of this chapter.

(b) Each determination and findings prepared in accordance with Departmental procedures shall set out enough facts and circumstances to justify clearly the specific determination made. Each determination and findings for authority to negotiate either an individual contract or a class of contracts shall clearly indicate that the use of formal advertising would be impracticable and the reasons therefor.

9. Revise the last sentence of § 3.603; revise § 3.605; and revise the introductory sentence of § 3.605–1, as follows:

**§ 3.603 Competition.**

* * * * *

Consistent with § 3.106(a)(2) notification to unsuccessful suppliers shall be given only if requested.

**§ 3.605 Order-invoice-voucher method.**

Standard Form 44 (Purchase Order-Invoice-Voucher) is available in books of twenty-five carbon interleaved sets. Each set consists of four copies; i.e., a seller's invoice, seller's copy of invoice, receiving report, and memorandum copy. Where five, six, or seven copies are required, Standard Form 44 is also available in manifold snapout construction, with interleaved carbon.

**§ 3.605–1 Limitation of use.**

Since there are no clauses on Standard Form 44, it is authorized for accomplishing small purchases only when all of the following conditions are satisfied:

* * * * *

10. Add new §§ 3.610, 3.610–1, 3.610–2 and 3.610–3, as follows:

**§ 3.610 Unpriced purchase order.**

An unpriced purchase order is a purchase order for supplies or services for which the price is not established at the time of issuance of the order.

**§ 3.610–1 Conditions for use.**

An unpriced purchase order may be used only when all the following conditions are present:

(a) The transaction will not exceed $2,500;

(b) Only one delivery and one payment will be made;

(c) It is impractical to obtain pricing in advance of issuance of the purchase order; and

(d) The procurement is for:

(1) Repairs to equipment requiring disassembly to determine the nature and extent of such repairs,

(2) Sole source material not currently in production and on which the cost cannot be readily established, or

(3) Supplies or services not in excess of $250 where prices are known to be competitive but exact prices are not known.

**§ 3.610–2 Procurement and payment.**

(a) DD Form 1155 (see § 16.303 of this chapter) shall be used to issue unpriced purchase orders.

(b) A realistic monetary limitation shall be placed on the unpriced purchase order which shall be an obligation subject to adjustment when the firm price is established.

(c) The supplier shall be notified that where the estimated monetary limitation is sufficient to cover the procurement, the supplier is expected to make delivery or perform and be reimbursed therefor.

(d) The supplier shall be notified that where the total price will exceed the estimated monetary limitation, or if material or services cannot be furnished in exact accordance with the description set forth, the contracting officer shall be

notified and performance shall be withheld pending advice from the contracting officer.

(e) The supplier shall be advised to submit his invoice to the contracting officer for approval as to the fairness and reasonableness of the price.

(f) The contracting officer shall, after approval, process the invoice for receipt and payment purposes in accordance with Departmental procedures.

(g) The following clause shall be included in each unpriced order:

NOTICE TO SUPPLIER

This is a firm order if the price is $------ or less. Make delivery or perform as soon as possible and submit invoice to the contracting officer of the purchase office named herein.

If total price of this order will exceed the above amount or if you cannot furnish material or services in exact accordance with the description set forth herein, notify the undersigned contracting officer immediately, giving your quotation or proposed substitution or charges, and withhold performance pending reply. (Jan. 1961)

**§ 3.610–3 Record of status.**

Suitable local records and controls of outstanding unpriced purchase orders shall be maintained to insure regular followup with suppliers until the order is priced.

11. Revise §§ 3.801–1, 3.805–1 (a) and (b), 3.807–4(a) and 3.807–6 as follows:

**§ 3.801–1 General.**

(a) It is the policy of the Department of Defense to procure supplies and services from responsible sources at fair and reasonable prices calculated to result in the lowest ultimate overall costs to the Government. Sound pricing depends primarily upon the exercise of sound judgment by all personnel concerned with the procurement.

(b) When a contractor persists in negotiating a price, or demands a profit or fee, which the contracting officer considers unreasonable and the contractor refuses to provide or give access to cost data essential for negotiation purposes in accordance with considerations and factors set forth in this Subpart, the contracting officer shall use all possible methods of securing sufficient cost data to permit adequate analysis of the proposal. If the contractor continues to refuse to provide such data and such refusal would seriously affect the best interest of the Government, the contracting officer shall consider the feasibility of developing an alternate source of supply, and take such other action within his authority as may be appropriate in the circumstances. If, after exhausting all of the above courses of action, a satisfactory solution has not been obtained, the contracting officer shall refer the prospective procurement to higher echelons of the Department. Such referral shall include a complete statement of the attempts made to resolve the matter, including steps taken to secure essential cost data, efforts to secure the contractor's cooperation in the establishment of a satisfactory business relationship, and any assurances offered, such as agreements to adequately safeguard information furnished.

**§ 3.805–1 General.**

(a) After receipt of initial proposals, written or oral discussions shall be conducted with all responsible offerors who submit proposals within a competitive range, price and other factors considered, except that this requirement need not necessarily be applied to:

(1) Procurements not in excess of $2,500;

(2) Procurements in which prices or rates are fixed by law or regulations;

(3) Procurements in which time of delivery will not permit such discussions;

(4) Procurements of the set-aside portion of partial set-asides or by small business restricted advertising;

(5) Procurements in which it can be clearly demonstrated from the existence of adequate competition or accurate prior cost experience with the product or service that acceptance of the most favorable initial proposal without discussion would result in a fair and reasonable price. Provided, however, that in such procurements, the request for proposals shall notify all offerors of the possibility that award may be made without discussion of proposals received and hence, that proposals should be submitted initially on the most favorable terms from a price and technical standpoint which the offeror can submit to the Government. In any case where there is uncertainty as to the pricing or technical aspects of any proposals, the contracting officer shall not make award without further exploration and discussion prior to award. Also, when the proposal most advantageous to the Government involves a material departure from the stated requirements, consideration shall be given to offering the other firms which submitted proposals an opportunity to submit new proposals on a technical basis which is comparable to that of the most advantageous proposal, provided that this can be done without revealing to the other firms any information which is entitled to protection under § 3.109 of this part.

(b) Whenever negotiations are conducted with more than one offeror, no indication shall be made to any offeror of a price which must be met to obtain further consideration, since such practice constitutes an auction technique which must be avoided. No information regarding the number or identity of the offerors participating in the negotiations shall be made available to the public or to any one whose official duties do not require such knowledge. Whenever negotiations are being conducted with several offerors, while such negotiations may be conducted successively, all offerors participating in such negotiations shall be offered an equitable opportunity to submit such pricing, technical, or other revisions in their proposals as may result from the negotiations. All offerors shall be informed that after the submission of final revisions, no information will be furnished to any offeror until award has been made. Modifications of proposals received after the submission of final prices shall be considered only under the circumstances set forth in § 3.804–2(b) (relating to late proposals).

**§ 3.807–4 Cost analysis.**

(a) The need for cost analysis depends on the effectiveness of the methods of price analysis outlined in § 3.807–3, the amount of the proposed contract, and the cost and time needed to accumulate the information necessary for analysis. When cost analysis is undertaken, the contracting officer must exercise judgment in determining the extent of the analysis. Cost analysis is desirable whenever:

(1) Effective competition has not been obtained;

(2) Effective competition was obtained, but contractor's treatment of preproduction costs, special tooling costs, or other nonrecurring costs is expected to have a significant bearing on pricing and negotiation of a subsequent new procurement;

(3) Effective competition was obtained, but cost analysis in connection with the initial negotiation will facilitate related pricing actions, such as for engineering changes and spare parts provisioning;

(4) A valid basis for price comparison has not been established, because of the lack of definite specifications, the novelty of the product, or for other reasons;

(5) Price comparisons have revealed apparent inconsistencies which cannot be satisfactorily explained or otherwise reasonably accounted for;

(6) The prices quoted appear to be excessive on the basis of information available;

(7) The proposed contract is of a significant amount and is to be awarded to a sole source;

(8) The proposed contract will probably represent a substantial percentage of the contractor's total volume of business; or

(9) A cost-reimbursement, incentive, price redeterminable, or time and material contract is negotiated.

**§ 3.807–6 Sole source items.**

When purchases of standard commercial or modified standard commercial items are to be made from sole source suppliers, use of the techniques of price and cost analysis may not always be possible. In such instances and consistent with the volume of procurement normally conummated with the contractor, the contractor's price lists and discount or rebate arrangements should be examined and negotiations conducted on the basis of the "best user," "most favored customer" or similar practice customarily followed by the contractor. Such price negotiations should consider the volume of business anticipated for a fixed period, such as a fiscal year, rather than the size of the individual procurement being negotiated.

12. Add new §§ 3.812, 3.812–1, 3.812–2, 3.812–3 and 3.812–4, as follows:

**§ 3.812 Special use allowances for research facilities acquired by educational institutions.**

**§ 3.812–1 Definitions.**

As used in §§ 3.812—3.812–4:

(a) "Special use allowance" means a negotiated direct or indirect allowance for buildings, structures, and real prop-

erty, other than land, computed at an annual rate in excess of the rate which normally would be allowed under Subpart C of Part 15 of this chapter; and

(b) "Research facility" means real property, other than land, and includes structures, alterations, and improvements, acquired for the purpose of conducting scientific research under contracts with agencies of the Department of Defense.

**§ 3.812–2 Policy.**

The expanding requirements of the Department of Defense for the performance of scientific research programs by educational institutions may create special situations wherein the acquisition or construction of additional research facilities by such institutions is essential for the effective performance of scientific research programs of major importance to the Department of Defense. Educational institutions are expected to furnish facilities for the performance of Defense contracts, and the extent of reimbursement by the Government for the research programs of such institutions shall be governed by the principles set forth in Subpart C, Part 15 of this chapter. However, in certain limited situations an educational institution may be unable to provide capital for new laboratories or other expanded facilities necessitated by Defense contracts unless the institution is given Governmental assistance in return for the risks and expenses it assumes in acquiring or constructing such facilities. Special use allowances constitute a means for recognizing these risks and expenses on the part of the educational institution and also provide a basis for permitting essential Government research programs to go forward. The resort to special use allowances as provided in §§ 3.812—3.812–4 is an extraordinary type of arrangement and constitutes an exception to the provisions for normal use allowances contained in § 15.304(e) of this chapter. Any specific agreement providing for a special use allowance shall be negotiated on a case-by-case basis using the criteria established herein.

**§ 3.812–3 Authorization of special use allowances.**

The Secretary concerned, or his sole designee for the purpose, may approve special use allowances for the acquisition or construction costs of research facilities financed by educational institutions only when all of the conditions in paragraphs (a) through (e) of this section are met.

(a) The research facility is essential to the performance of Department of Defense contracts.

(b) The program requirements cannot be met practically and effectively by existing facilities, either Government or non-Government.

(c) The proposed agreement for the special use allowances represents a sound business arrangement.

(d) It is undesirable or impractical for the Government to provide Government-owned facilities for the performance of the research.

(e) The proposed use of the research facility is in consonance with the underlying objective of the Government in granting the special use allowance.

**§ 3.812–4 Negotiation and administration of contracts providing for special use allowances.**

The negotiation and administration of contracts providing for special use allowances are subject to the conditions set forth in paragraphs (a) through (m) of this section.

(a) The terms of the agreement for special use allowances authorized herein shall be specified or incorporated by reference in the applicable contracts.

(b) Where the special use allowance is based on the total acquisition cost, no normal use allowance or other use or depreciation charge will apply during the special allowance period nor after the educational institution has recovered the total acquisition cost under Government contracts or from other users. Where the special use allowance is based on less than total acquisition cost of the research facility, the agreement will specify whether any normal use allowance or other use or depreciation charge will apply to the balance during the special use allowance period; however, no more than the normal use allowance computed in accordance with Subpart C, Part 15 of this chapter may be applied thereafter to the balance.

(c) During the period of the special use allowance, and for subsequent periods to the extent agreed upon, the research facility shall be available for Government research use on a priority basis over non-Government use. Any significant use during such period other than that which justified the special use allowance shall be subject to prior consent of the cognizant approval authority specified in §§ 3.812–3.812–4.

(d) Special use allowances are applicable only in years in which the Government has contracts in effect with the educational institution for research to be conducted in the facility. The Government has no liability to the educational institution for the special use allowance in any year in which there is no Government contract. In any year when the level of research effort under Government contracts has been reduced to a point where the special use allowance is excessive in relation to the extent of the Government research funding, the parties may negotiate a special use allowance for that year at a mutually acceptable rate.

(e) Where more than one Government contract is to be performed in the research facility, special use allowances generally should be allocated to using contracts on an equitable basis.

(f) If during the period when a special use allowance is in effect, any substantial use is made of the research facility for parties other than the Government, only an allocable share of the special use allowance shall be charged to the Government.

(g) Special use allowances shall not include any maintenance, utilities, or other operational costs.

(h) Generally, the period for which a special use allowance is authorized shall be at least ten years. However, a shorter period of time is authorized where the total amount to be allowed is less than acquisition cost for the research facility.

(i) Reimbursements under contracts for special use allowances shall not commence until the research facility is occupied and used for research under the contract. However, equitable adjustments may be made in the special use allowance during the construction period if the research facility is partially used for research under the contract.

(j) Determination of the amount of a special use allowance shall be based on the comparative need for the research facility by the Department of Defense and by the educational institution. In no event shall the institution be paid more than the acquisition costs.

(k) In establishing the annual special use allowance, due consideration shall be given to rental costs for similar space in the area where the research facility is to be located.

(l) No payment shall be made to the educational institution for costs of land or interest charges on capital, used or borrowed, for the acquisition of the research facility.

(m) Information copies of each special use allowance agreement negotiated shall be furnished to each authorizing official specified in § 3.812–3 and to the Director of Defense Research and Engineering, Office of the Secretary of Defense.

13. Revise §§ 3.901 and 3.902; add new subparagraphs (6) and (7) to § 3.903–3 (a); and add subparagraph (9) to § 3.903–4(a) as follows:

**§ 3.901 General.**

(a) Information as to the contractor's "make-or-buy" program, purchasing system, and proposed subcontracts may be important to (1) negotiation of reasonable contract prices (see §§ 3.807–5 and 3.808–2(h)), (2) assurance of satisfactory contract performance, or (3) carrying out Government policies regarding small business (§ 1.707–1 of this chapter), labor surplus areas (§ 1.805–1 of this chapter), acquisition and use of Government facilities, maintenance of mobilization base, or other policies which may be appropriate to the particular procurement. Therefore, Government surveillance of contractor's "make-or-buy" programs and proposed subcontracts is required as set forth in this subpart. Where "make-or-buy" decisions and subcontracting will have a substantial impact on any of the above mentioned factors, the contractor's "make-or-buy" program and subcontracting should, to the extent practicable, be evaluated and agreed on during negotiations.

(b) The subcontracting policies and procedures in this subpart should generally be applied to procurement where (1) the item, system, or work is complex, the dollar value is substantial, or competition is restricted, and (2) either (i) cost-reimbursement, price redetermination, or incentive-type contracts are to be used, or (ii) make-or-buy decisions are expected to have a substan-

tial impact on negotiations leading to a firm fixed-price contract.

**§ 3.902 Review of "Make-or-Buy" Program.**

(a) A "make-or-buy" program is that part of a contractor's written plan for the development or production of an end item which outlines the major components, assemblies, subassemblies, and parts to be manufactured (including testing, treating, and assembling) in his own facilities and those which will be obtained elsewhere by subcontract. A "make" item is any item produced, or work performed, by the contractor or his affiliate, subsidiary, or division.

(b) (1) Where the nature of the procurement is such that, in view of the factors referred to in § 3.901(b), review of the "make-or-buy" program is appropriate or is otherwise considered essential, the prospective contractor shall be required to submit his proposed "make-or-buy" program, together with sufficient data to permit the contracting officer to evaluate such factors in paragraph (e) of this section as are pertinent.

(2) At the time a request for proposal is issued, whether by letter or by use of the Request for Proposal forms, the purchasing activities will request potential suppliers to furnish a "make-or-buy" program on all negotiated procurements except as otherwise provided in subparagraphs (3), (4), or (5) of this paragraph.

(3) A "make-or-buy" program will not be required when a proposed contract has a total estimated value of less than $1,000,000 unless the contracting officer specifically determines that a "make-or-buy" program is appropriate.

(4) Research and development contracts are exempt from the provisions of this subpart unless it can reasonably be anticipated that follow-on quantities of the product will be procured.

(5) A "make-or-buy" program will not be required if the contracting officer determines that none of the factors in § 3.901(b) are applicable.

(c) The contractor will be informed that the program he submits should be confined to important items which, because of their complexity, quantity, cost, or requirement for additional Government facilities, normally would require company management review of the make-or-buy decision. "Detail parts" or "off-the-shelf" items will not be incorporated in a "make-or-buy" program unless their potential impact on program or schedule makes their inclusion necessary. If the design status of the end item being procured is not sufficiently advanced to permit accurate precontract identification of all items that may be subject to "make-or-buy" decisions, the contractor shall be notified that such items must be submitted, when identifiable under the terms of the contract clause entitled "Changes to Make-or-Buy Program".

(d) The contractor will submit, with his approval, a "make-or-buy" program of important items, including, in addition to information required by paragraph (b) of this section, (1) a description by which each such item can be readily identified, (2) a recommendation to make or buy the item or defer the decision, (3) when feasible, the names of proposed subcontractors, and (4) the important items to be made by the contractor, including a designation of the plant and division in which the contractor proposed to perform the work.

(e) "Make-or-buy" programs will be evaluated and agreed upon by the contractor and the purchasing activity at the earliest practicable time during negotiations. In reviewing the "make-or-buy" program during negotiation, the effect of the following factors on the interests of the Government shall be considered:

(1) The effect of the contractor's plan to make or buy, as the case may be, on price, quality, delivery, and performance;

(2) Whether the contractor plans to broaden his base of subcontractors through competition;

(3) Whether the contractor has properly considered the competence, abilities, experience, and capacities available within other firms;

(4) Whether small business concerns are given an equitable opportunity to compete for subcontracts;

(5) Whether the contractor or major subcontractors propose to do work in the plant, the nature of which differs significantly from their normal in-plant operations or for which they are not historically suited;

(6) Whether production of the item or performance of the work will create a requirement, either directly or indirectly, for additional facilities to be furnished by the Government, or the continued use of Government-owned facilities, by the contractor, or by subcontractors.

(7) Whether the contractor proposed to ask the Government to furnish additional facilities to do the work in-plant for which there is capacity elsewhere which is competitive in quality, delivery, and overall cost, and is acceptable as a source to the contractor;

(8) Whether the item or work has been subcontracted on this or previous contracts; and

(9) Other factors, such as the nature of the item, experience with similar items, future requirements, engineering, tooling, starting load costs, market conditions, and the availability of personnel and material.

(f) The purchasing activity will review the "make-or-buy" program, to determine if all appropriate items are included or if it contains items that should be deleted because of their relatively minor importance. In all considerations relative to a "make-or-buy" program, the purchasing activity will obtain the advice and assistance of all appropriate personnel whose knowledge would contribute to the adequacy of all facets of the review.

(g) After agreement on the program is reached, the contracting office shall notify the contractor as to the Government's approval of the program and shall inform the contractor as to any requirement for further review during performance of the contract. For example, if follow-on procurements occur, the procuring activity and the contractor will review the existing "make-or-buy" program to determine whether it should be revised.

(h) The following clause shall be incorporated in all cost-reimbursement, price redetermination, or incentive type contracts as to which a "make-or-buy" program has been agreed upon.

CHANGES TO MAKE-OR-BUY PROGRAM
(JUL. 1960)

The Contractor agrees to perform this contract in accordance with the "make-or-buy" program attached to this contract except as hereinafter provided. If the Contractor desires to change the "make-or-buy" program, he shall notify the Contracting Officer in writing of the proposed change reasonably in advance and shall submit justification in sufficient detail to permit evaluation of the proposed change. Changes in the place of performance of work of any "make" item in the "make-or-buy" program are subject to this requirement. With respect to items deferred at the time of negotiation of this contract for later additions to the "make-or-buy" program, the Contractor shall notify the Contracting Officer of each proposed addition at the earliest possible time, together with justification in sufficient detail to permit evaluation. The Contractor shall not, without the written consent of the Contracting Officer, make changes or additions to the program; provided, that in his discretion, the Contracting Officer may ratify in writing any changes or additions and such ratification shall constitute the consent of the Contracting Officer required by this clause. The "make-or-buy" program attached to this contract shall be deemed to be modified in accordance with the written consent or ratification by the Contracting Officer.

(i) On applicable contracts, the cognizant contract administration office will establish a procedure with the contractor to insure timely compliance with the terms of the contract clause. This procedure will include provisions for processing changes to the established "make-or-buy" program and for obtaining "make-or-buy" decisions for items reserved for deferred decisions or unidentified at the time of contract negotiation.

(j) Approval of the contractor's purchasing system (§ 3.903) shall not constitute approval of the "make-or-buy" program where the latter is required.

(k) When a "make-or-buy" program is agreed upon with a contractor, or there are changes or additions to a "make-or-buy" program, the consideration given each item on such program will be documented in the contract file. If a contract (including supplemental agreements for new procurement), except those specifically exempted by paragraph (b) of this section, does not include the clause entitled "Changes to Make-or-Buy Program", the contracting officer will document the contract file with a written statement of facts to sustain and make clear the appropriateness of the determination not to include the clause. Such determination will be based on one of the following: (1) the contract is on a firm fixed-price basis, (2) the contract is not exempt but there are no items which can be identified as requiring a "make-or-buy" program as defined in paragraph (a) of this section; or (3) a deviation has been approved pursuant to § 1.109 of this chapter.

**§ 3.903–3 Approval of purchasing system.**

(a) Approval of a contractor's purchasing system should be granted only after a survey which includes review of such factors as:

* * * * *

(6) the extent to which the contractor obtains assurance that his principal subcontractors apply sound pricing practices and a satisfactory purchasing system in dealing with lower-tier subcontractors; and

(7) types of contracts used (Subpart D of this part).

**§ 3.903–4 Review of industrial subcontracts.**

(a) In reviewing or consenting to individual subcontracts, the contracting officer should give appropriate consideration to the following:

* * * * *

(9) the extent to which the prime contractor has assured the adequacy of the subcontractor's purchasing system.

14. Add new Subpart F to Part 4, as follows:

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## PART 4—SPECIAL TYPES AND METHODS OF PROCUREMENT

### Subpart F—Procurement of Livestock Products

Sec.
4.601 General.
4.602 Definition of livestock products.
4.603 Exception.
4.604 Procedures.
4.605 Statement of eligibility.
4.606 Humane method of livestock slaughter clause.
4.607 Reporting violations.

AUTHORITY: 4.601 to 4.607 issued under sec. 2202, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 12 U.S.C. 2301–2314.

**§ 4.601 General.**

Public Law 85–765, as amended, commonly known as the Humane Slaughter Act of 1958 (7 U.S.C. 1901–1906), provides certain restrictions on the procurement of livestock products by Federal Agencies and instrumentalities. The Act states the policy of the United States to be that the slaughtering of livestock, and the handling of livestock in connection with slaughter, shall be carried out only by humane methods. In essence, the Act prohibits the purchase by the Federal Government of livestock products produced or processed by any slaughterer or processor which in any of its plants (or in the plants of an affiliated slaughterer or processor) slaughters, or handles in connection with slaughter, livestock by any method other than humane. Further, the Act requires a supplier to make a statement concerning his eligibility under the Act to supply livestock products, the statement to be such that the maker will be subject to prosecution if the statement is false.

**§ 4.602 Definition of livestock products.**

As used in this subpart, "livestock products" means any article of food, or any article for or capable of being used as food, for either humans or animals, which is derived or prepared, in whole or in part, from slaughtered cattle, calves, horses, mules, sheep, swine, or goats. Livestock products do not include (a) supplies, the animal product portion of which is less than five percent by weight of the net unit weight, and (b) poultry.

**§ 4.603 Exception.**

The provisions of this subpart do not apply to contracts for livestock products, executed and to be performed outside the United States, its possessions, and Puerto Rico.

**§ 4.604 Procedures.**

Proposed suppliers of livestock products shall be informed of the requirements of the Humane Slaughter Act and shall be required to furnish a statement of eligibility in accordance with paragraphs (a), (b), or (c) of this section.

(a) Except as provided in paragraphs (b) and (c) of this section, the Statement of Eligibility, set forth in § 4.605, shall be included in all invitations for bids, requests for proposals, and other contractual documents for livestock products, and shall be required to be duly signed by the contractor.

(b) Where small purchases are involved (see Subpart F, Part 3 of this chapter), it will be sufficient if, as part of the purchase documentation, the contractor furnishes over his signature, only paragraph (a) of the Statement of Eligibility set forth in § 4.605.

(c) When frequent purchases are made from the same contractor or the contracting officer deems it otherwise appropriate, the Statement of Eligibility contained in § 4.605 may be obtained from the contractor at reasonable intervals, but not less often than annually. When such statement has been obtained, the clause set forth in § 4.606 shall be inserted, in lieu of the Statement of Eligibility, in all contracts or purchase orders issued to the contractor.

**§ 4.605 Statement of eligibility.**

STATEMENT OF ELIGIBILITY (HUMANE SLAUGHTER ACT) (JAN. 1961)

(a) The Supplier (Contractor) agrees that livestock products sold to the Government, except products produced or processed from livestock slaughtered outside the United States, its possessions, and Puerto Rico, conform to the requirements of the Humane Slaughter Act of 1958 (7 U.S.C. 1901–1906).

(b) "Livestock products" means any article of food, or any article intended for or capable of being used as food, for either humans or animals, which is derived or prepared, in whole or in part, from slaughtered livestock, namely, cattle, calves, horses, mules, sheep, swine, or goats. Livestock products do not include: (i) supplies, the animal product portion of which is less than five percent (5%) by weight of the net unit weight, and (ii) poultry.

(c) A slaughterer or processor shall be deemed to be affiliated with another slaughterer or processor if he controls, or is controlled by, or is under common control with, such other slaughterer or processor.

(d) Livestock products which conform to the requirements of the Humane Slaughter Act of 1958 are products which have been produced and processed either:

(1) By those slaughterers and processors which, in all of their plants and in all of the plants of slaughterers and processors with which they are affiliated, slaughter and handle in connection with slaughter, livestock only by methods designated as humane by the Secretary of Agriculture; or

(2) From livestock slaughtered in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument, which ritual requirements have been designated as humane methods of slaughter by the subject Act.

(e) This statement is made with full knowledge that it will be relied upon by the Government in entering into contracts with the supplier and in payment of claims thereunder.

WARNING

Making any false statement herein or submission of any false claim hereunder, will subject Supplier to punishment as provided in Title 18, United States Code, Crimes and Criminal Procedure.

Date _____

_____
(Name of Supplier-Contractor)

By _____
(Title)

_____
(Address)

**§ 4.606 Humane method of livestock slaughter clause.**

The following clause shall be used in accordance with § 4.604(c):

HUMANE METHOD OF LIVESTOCK SLAUGHTER (JAN. 1961)

(a) The Contractor agrees that livestock products sold to the Government, except products produced or processed from livestock slaughtered outside the United States, its possessions, or Puerto Rico, conform to the requirements of the Humane Slaughter Act of 1958 (7 U.S.C. 1901–1906).

(b) The Contractor shall have furnished the Government a Statement of Eligibility (Humane Slaughter Act) before award of this contract of issuance of this purchase order, and such statement is hereby incorporated by reference.

**§ 4.607 Reporting violations.**

Reports of possible violation of a Statement of Eligibility given in accordance with § 4.604 shall be made to the Department of Justice by the Department concerned.

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## PART 6—FOREIGN PURCHASES

15. In § 6.103–5, revise last sentence of paragraph (a) and add new subparagraph (3) to paragraph (d); revise § 6.605–4; and add new § 6.605–5, as follows:

**§ 6.103–5 Canadian supplies.**

(a) *Listed.* * * * The Departmental lists provide that parts and equipment for listed supplies are considered to be included in the lists, even though not separately listed, when they are procured under a contract that also calls for listed supplies.

* * * * *

(d) *Limitations.* * * *

(3) Food items.

**§ 6.605–4 Follow-on procurement of parts.**

Where, pursuant to § 1.313 of this chapter, parts (whether or not listed) previously procured under a contract for listed end items are to be procured only from sources that have satisfactorily manufactured or furnished such parts in the past, and where the prospective contractor specifically identifies Canadian supplies (whether or not listed) that will constitute, or be directly or indirectly incorporated in, such parts, the contract (regardless of amount) should provide for the duty-free entry of such Canadian supplies by including provisions substantially as described in § 6.605-3 (but providing for "flow-down" only to subcontracts pertinent to such Canadian supplies, regardless of amount), if:

(a) The contractor requests that the contract provide for duty-free entry of such supplies, and

(b) The contract price does not include any amount on account of duty with respect to such supplies.

Nevertheless, if the contract will provide for duty-free entry of such Canadian supplies pursuant to § 6.605–2 or § 6.605–3, this section does not apply.

**§ 6.605–5 Amending existing contracts.**

Any existing contract may be amended so as to be made consistent with § 6.605–2 or § 6.605–3; provided, that in the case of a fixed-price type contract the contract price is reduced by the amount of the applicable duty. Under any cost-reimbursement type contract that has not been so amended, duty-free entry shall be accorded Canadian supplies to the extent permitted by § 6.602 except with respect to individual shipments on which the duty is $50 or less.

## PART 7—CONTRACT CLAUSES

16. In § 7.103–13, revise paragraph (b); revise §§ 7.104–18, 7.104–22, and 7.104–28; and add §§ 7.104–29 and 7.303–16, as follows:

**§ 7.103–13 Renegotiation.**

* * * * *

(b) A renegotiation clause is not required on contracts with foreign governments or agencies thereof. Except in such contracts, one of the clauses set forth in subparagraphs (1) or (2) of this paragraph shall be used in lieu of the clause set forth in paragraph (a) of this section.

(1) Insert the following clause in contracts which are to be wholly performed outside the United States, its possessions, and Puerto Rico by a contractor who is not engaged in a trade or business in the United States and is:

(i) An individual who is not a national of the United States; or

(ii) A partnership or joint venture in which individuals who are not nationals of the United States or corporations which are not created by, or organized under the laws of the United States or any state or possession thereof or Puerto Rico are entitled to more than 50 percent of the profits; or

(iii) A corporation (other than a corporation created by, or organized under the laws of the United States or any State or possession thereof or Puerto Rico) more than 50 percent of the voting stock of which is owned directly or indirectly by persons described in subdivisions (i) and (ii) of this subparagraph:

RENEGOTIATION (OCT. 1959)

(a) This contract has been determined to be exempt from the provisions of the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.), as amended, since it is intended to be wholly performed outside the United States and the Contractor is not engaged in a trade or business in the United States and is:

(i) An individual who is not a national of the United States;

(ii) A partnership or joint venture in which individuals who are not nationals of the United States or corporations which are not domestic corporations are entitled to more than 50 percent of the profits; or

(iii) A corporation (other than a domestic corporation) more than 50 percent of the voting stock of which is owned directly or indirectly by persons described in (i) and (ii) above.

(b) This contract shall cease to be exempt from the Renegotiation Act of 1951, as amended, if all of the requirements for exemption set forth in paragraph (a) above are not met at all times during the performance of this contract. If the Contractor does not meet all of these requirements during the entire performance of this contract, this contract shall be subjected to the Renegotiation Act of 1951, as amended, and to any subsequent act of the United States Congress providing for the renegotiation of contracts; provided, however, that nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of the United States Congress heretofore or hereafter enacted. In the event this contract becomes subject to the Renegotiation Act of 1951, it shall be deemed to contain all the provisions required by Section 104 of that Act, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

(c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts, as that term is defined in section 103g of the Renegotiation Act of 1951, as amended, which meet the requirements for exemption for the Renegotiation Act of 1951 set forth in paragraph (a) hereof. The Contractor agrees to insert the following clause in all subcontracts which do not meet the requirements set forth in paragraph (a):

RENEGOTIATION

(a) To the extent required by law, this contract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.), as amended, and to any subsequent act of the United States Congress providing for the renegotiation of contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of the United States Congress heretofore or hereafter enacted. Subject to the foregoing this contract shall be deemed to contain all the provisions required by Section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts, as that term is defined in Section 103g of the Renegotiation Act of 1951, as amended.

(2) As an alternate to the clause in subparagraph (1) of this paragraph, the following clause may be inserted in contracts which are to be wholly performed outside the United States, its possessions, and Puerto Rico:

RENEGOTIATION (JAN. 1961)

(a) This contract will be exempt from the provisions of the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.), as amended, if it is wholly performed outside the United States, its possessions and Puerto Rico and if throughout the performance of the contract the Contractor is not engaged in a trade or business in the United States, its possessions and Puerto Rico and is:

(i) An individual who is not a national of the United States; or

(ii) A partnership or joint venture in which individuals who are not nationals of the United States or corporations which are not created by, or organized under the laws of the United States or any state or possession thereof or Puerto Rico are entitled to more than 50 percent of the profits; or

(iii) A corporation (other than a corporation created by, or organized under the laws of the United States or any state or possession thereof or Puerto Rico) more than 50 percent of the voting stock of which is owned directly or indirectly by persons described in (i) and (ii) above.

(b) If the Contractor does not meet all the requirements for exemption set forth in paragraph (a) above at all times during the entire performance of this contract, this contract shall be subject to the extent required by law, to the Renegotiation Act of 1951, as amended, and to any subsequent Act of the United States Congress providing for the renegotiation of contracts; provided, however, that nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an Act of the United States Congress heretofore or hereafter enacted. In the event this contract is subject to the Renegotiation Act of 1951, it shall be deemed to contain all the provisions required by Section 104 of that Act, and by any such other Act, without subsequent contract amendment specifically incorporating such provisions.

(c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c) in all subcontracts, as that term is defined in section 103g of the Renegotiation Act of 1951, as amended.

**§ 7.104–18 Priorities, allocations and allotments.**

In accordance with the requirements of § 1.307–2 insert the following clause:

PRIORITIES, ALLOCATIONS, AND ALLOTMENTS (JAN. 1961)

The Contractor shall follow the provisions of DMS Reg. 1 and all other applicable regulations and orders of the Business and Defense Services Administration in obtaining controlled materials and other products and materials needed to fill this order.

**§ 7.104–22 Defense Subcontracting Small Business Program.**

In accordance with § 1.707–2(b) of this subchapter insert the following clause:

DEFENSE SUBCONTRACTING SMALL BUSINESS PROGRAM (JAN. 1961)

(a) The Contractor agrees to establish and conduct a program to afford small business concerns an equitable opportunity to compete for Defense subcontracts within their

capabilities. In this connection, the Contractor shall:

(i) Designate a small business liaison officer, who will (A) maintain liaison with duly authorized representatives of the Government on small business matters, (B) supervise compliance with the clause of this contract entitled Utilization of Small Business Concerns, and (C) administer the Contractor's Small Business Program;

(ii) Provide adequate and timely consideration of the potentialities of small business concerns in all "make or buy" decisions;

(iii) Assure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate small business participation;

(iv) Maintain records showing (A) whether each prospective subcontractor is a small business concern; and (B) procedures which have been adopted to comply with the policies set forth in this clause;

(v) Include the "Utilization of Small Business Concerns" clause in subcontracts which offer substantial small business subcontracting opportunities; and

(vi) Submit DD Form 1140 reports, in triplicate, to the Military Department that reviews his subcontracting program, except that where the Contractor elects to report on a corporate rather than a plant basis, he may submit his reports to the Military Department having industrial readiness planning responsibility at the corporate headquarters.

(b) "Small business concern" is a concern that:

(i) Is independently owned and operated, is not dominant in its field of operations and, with its affiliates, employs fewer than 500 employees; or

(ii) Is certified as a small business concern by the Small Business Administration.

(c) The Contractor further agrees to insert, in any subcontract hereunder which is in excess of $1,000,000 and which contains the clause entitled "Utilization of Small Business Concerns," provisions which shall conform substantially to the language of this clause, including this paragraph (c); except that a subcontractor, will submit the DD Form 1140 reports to the Military Department having industrial readiness planning responsibility or plant cognizance. (A subcontractor may request advice from the nearest military purchasing or contract administration activity as to the Military Department to which he should submit his reports.)

**§ 7.104–28 Quality control system.**

In all contracts for complex supplies other than standard commercial items and items being purchased under specifications which in themselves contain adequate inspection and quality control provisions, insert the following clause:

QUALITY CONTROL SYSTEM (JUL. 1960)

The Contractor shall provide and maintain a quality control system acceptable to the Government for the supplies covered by this contract. The system of quality control shall be in accordance with Military Specifications MIL–Q–9858.

The last sentence of the forgoing clause may be omitted if the application of Military Specification MIL–Q–9858 would be incompatible with the technical objective of the contract, required procurement management flexibility, or military urgency; provided, that when it is so omitted, the contract shall provide by specification, exhibit or otherwise, that the contractor shall maintain quality control measures for all manufacturing processes and documentation pertinent to quality, testing and inspection, fabrication, and delivery. If MIL–Q–9858 is applicable, but additional quality control requirements are necessary, the contract may provide for such additional requirements.

**§ 7.104–29 Price reduction for defective pricing data.**

The following clause shall be inserted in any negotiated fixed-price contract which is expected to exceed $100,000, unless the contract price is based mainly on adequate price competition, established catalogue or market prices, or prices set by law or regulation, and may be inserted in other contracts or modified to apply to additional subcontracts (including lower tier subcontracts) where the contracting officer considers that the circumstances of the particular case warrant such action.

PRICE REDUCTION FOR DEFECTIVE PRICING DATA (JAN. 1961)

(a) If the Contracting Officer determines that any price negotiated in connection with this contract was overstated because of the Contractor, or any first-tier subcontractor in connection with a subcontract covered by (c) below, either (i) failed to disclose any significant and reasonably available cost or pricing data, or (ii) furnished any significant cost or pricing data which he knew or reasonably should have known was false or misleading, then such price shall be equitably reduced and the contract shall be modified in writing accordingly.

(b) Failure to agree on an equitable reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) The Contractor agrees to insert the substance of paragraph (a) of this clause in any of his subcontracts hereunder in excess of $100,000, unless the price is based on adequate price competition, established catalogue or market prices, or prices set by law or regulations.

**§ 7.303–16 Price reduction for defective cost data.**

In accordance with the instruction in § 7.104–29, insert the contract clause set forth therein.

17. In § 7.402–3, revise paragraphs (b)(7), and (8) and (d)(4); and revise §§ 7.402–22, 8.207, and 8.208–3(c), as follows:

**§ 7.402–3 Allowable cost, fixed-fee, and payment.**

* * * * *

(b) * * *

(7) In the case of contracts without fee with educational institutions, the second sentence of paragraph (c) of the foregoing clause and the provisions of subparagraph (4)(i) of this paragraph, which pertain to withholding of fee and costs may be omitted.

(8) In the foregoing clause, the words "Task Order" or other appropriate designation may be substituted for the word "Schedule" as appropriate.

* * * * *

(d) * * *

(4) The instructions set forth in subparagraphs (1), (2), and (8) of paragraph (b) of this section, relating to the clause set forth in paragraph (a) of this section, apply with equal force to the clause set forth in paragraph (c) of this section.

**§ 7.402–22 Patent rights.**

In accordance with the requirements of § 9.107 of this chapter, insert the appropriate contract clause set forth therein with additional or alternate paragraphs as prescribed therein. However, in the case of contracts without fee, the percentage amount specified to be withheld under paragraph (f) of the clause set forth in § 9.107–2 of this chapter or paragraphs (c) and (d) of the clause set forth in § 9.107–3 of this chapter, may be changed from "ten percent (10%)" to "one percent (1%)." In contracts without fee with educational institutions, paragraph (f) of the clause set forth in § 9.107–2 of this chapter may be omitted.

## PART 8—TERMINATION OF CONTRACTS

**§ 8.207 Audit of prime contract settlement proposals and of subcontract settlements.**

(a) Each settlement proposal of $2,500 or over submitted by a prime contractor shall be referred by the contracting officer to the cognizant audit agency for appropriate examination and recommendation. The contracting officer may, when circumstances indicate the necessity therefor, refer settlement proposals of less than $2,500 to the cognizant audit agency. The contracting officer's referral shall be in writing, shall indicate any specific information or data which the contracting officer desires to have developed and will include any facts or circumstances within the knowledge of the contracting officer which will assist the audit agency in the accomplishment of its function. The auditor shall develop such information and may make such further accounting review as he deems appropriate. The audit agency shall submit written comments and recommendations to the contracting officer.

(b) Subcontract settlements submitted by a contractor to the contracting officer for approval or ratification in accordance with § 8.208 shall be referred to the cognizant audit agency for review and recommendations if (1) the settlement involves $25,000 or more unless an accounting review of the settlement proposal has been performed by the cognizant audit agency; or (2) the contracting officer considers an accounting review in whole or in part, desirable. The requirement for review under subparagraph (1) or (2) of this paragraph does not relieve the prime contractor or higher tier subcontractor of the responsibility for performing an accounting review. The audit agency shall submit written comments and recommendations to the contracting officer.

(c) The responsibility of the contractor set forth in § 8.208–1 for settlement of immediate subcontractors' settlement proposals applies equally to prime contractors and subcontractors and includes responsibility for performing accounting reviews and any necessary field audits. However, in the situations outlined

below, a Military Department audit agency generally should be requested to perform the accounting review of a subcontractor's settlement proposal where:

(1) A subcontractor objects to an accounting review of his records by an upper-tier contractor for competitive reasons;

(2) A Military Department audit agency is currently performing audit work at the subcontractor's plant, or where it can be performed more economically or efficiently;

(3) Audit by the Military Departments audit agency is necessary for consistent audit treatment and orderly administration; or

(4) The contractor has a substantial or controlling financial interest in the subcontractor.

Duplication by the Military Department audit agency of accounting reviews performed by the upper-tier contractor on subcontractor settlement proposals will be avoided to the extent possible. However, when appropriate, the Government will make additional reviews. Where the contractor is performing accounting reviews in accordance with this section, the contracting officer should request the cognizant audit agency periodically to examine the contractor's accounting review procedures (including but not limited to audit programs, cost principles applied, working papers, and audit reports) and performance thereunder and make such comments and recommendations to the contracting officer as may be deemed appropriate.

**§ 8.208–3 Settlement procedure.**

* * * * *

(c) The contracting officer shall promptly examine such subcontract settlement required to be submitted to him (including the basis and form of the proposal upon which the settlement was based) to satisfy himself that the subcontract termination was made necessary by the termination of the prime contract (or by issuance of a change order—see § 8.000(d)(1)), and that the settlement was arrived at in good faith, is reasonable in amount, and is allocable to the terminated portion of the contract (or if allocable only in part, that the proposed allocation is reasonable). In considering the reasonableness of any subcontract settlement, the contracting officer shall be guided generally by the provisions of this part relating to the settlement of prime contracts, and shall comply with any applicable requirements of §§ 8.207 and 8.211 relating to accounting and other reviews. Upon completion of the examination, the contracting officer shall notify the contractor in writing of (1) his approval or ratification, or (2) his reasons for disapproval.

18. Revise §§ 8.208–4 (a) and (b), 8.211–2(a) (1) and (2), 8.404–1, and 8.505–1(f) as follows:

**§ 8.208–4 Authorization for subcontract settlements without approval or ratification.**

(a)(1) The contracting officer may, upon written request of the prime contractor, authorize him in writing to conclude settlements of $10,000 or less (see § 8.101–1) of his terminated subcontracts, without approval or ratification by the contracting officer, if:

(i) The contracting officer is satisfied with the adequacy of the procedures used by the contractor in settling termination claims (including proposals for retention, sale, or other disposal of termination inventory) of his immediate and lower-tier subcontractors (the contracting officer shall obtain the advice and recommendations of (*a*) the cognizant audit agency with respect to the adequacy of the contractor's audit administration, including personnel; and (*b*) the cognizant disposal office with respect to the adequacy of the contractor's procedures and personnel for the administration of property disposal matters);

(ii) Any termination inventory included in determining the amount of the settlement will be disposed of in accordance with § 8.513, except that the disposition of such inventory shall not (*a*) be subject to review by the contracting officer under § 8.513–1 or § 8.513–3, or (*b*) be subject to § 8.513–4; provided, however, no production equipment included in such inventory shall be disposed of prior to screening pursuant to § 8.505;

(iii) The settlement will be accompanied by a certificate substantially similar to the certificate set forth in the settlement proposal forms in § 8.802:

provided, that the contracting officer shall not grant to the contractor any authority hereunder for settlements between $2,500 and $10,000 without the written approval as to that contractor of the Head of the Procuring Activity concerned, or of a deputy or principal assistant responsible for contract matters. Except as provided in subparagraph (3) of this paragraph, authority granted to a prime contractor pursuant to this subparagraph by any contracting officer within the Department of Defense shall be applicable to all prime contracts of all procuring activities within the Department of Defense which have been terminated or modified by change order. Such authorization may be exercised only in settling subcontracts which have been terminated as a result of termination for convenience or modification of the prime contract by the Government.

(2) Except as provided in subparagraph (3) of this paragraph, the contracting officer without further approval or ratification shall accept, as part of the prime contractor's termination claim, any settlement of terminated lower tier subcontracts concluded by any of his immediate or lower tier subcontractors who, pursuant to subparagraph (1) of this paragraph, have been granted, by any contracting officer within the Department of Defense, authority as prime contractors to settle subcontracts; provided that the settlement of such lower tier subcontracts is within the limit of such authority.

(3) The provisions of subparagraphs (1) and (2) of this paragraph shall not apply to any contracts under the administration of any contracting officer within the Department of Defense if such contracting officer so notifies the prime contractor concerned. Such notice (i) shall be in writing, (ii) shall be issued only after written approval thereof by the Head of the Procuring Activity concerned or of a deputy or principal assistant responsible for contract matters, and (iii) if subparagraph (2) of this paragraph is involved shall specify any subcontractor affected.

(b) Section 8.513 shall apply to any disposal of completed end items allocable to the terminated subcontracts, except that completed end items allocable to the terminated subcontract may be disposed of without review by the contracting officer under § 8.513–1 or § 8.513–3, and without screening under § 8.513–4 if the total amount thereof (at the subcontract price) when added to the amount of the settlement does not exceed the amount authorized under this section.

**§ 8.211–2 Required review and approval.**

(a) *When required.* Prior to executing a settlement agreement, or issuing a determination of the amount due under the termination clause of a contract, or approving or ratifying a subcontract settlement, the contracting officer shall submit each such settlement or determination for review and approval by a Settlement Review Board if:

(1) The settlement or determination involves $50,000 or more (see § 8.101–1);

(2) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract or subcontract and (i) in the case of a complete termination, the fee, as adjusted, is $50,000 or more; or (ii) in the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is $50,000 or more;

**§ 8.404–1 Submission of settlement proposal.**

If the contractor elects to continue to submit vouchers on Standard Form 1034 for reimbursement of costs and claims a fee, his settlement proposal shall be limited to a claim for an adjusted fee. Such settlement proposal must be submitted to the contracting officer within one year from the effective date of termination, unless the period has been extended in accordance with the terms of the contract. The proposal may be submitted on DD Form 547 (see § 8.803) or by letter appropriately certified; but in either case the contractor must substantiate the amount of the fee he claims. The fee to be paid, if any, shall be established in the manner provided by the contract. Percentage of completion of the contract is generally the basis used. Where this basis is used, factors such as the extent and difficulty of the work done by the contractor (including but not limited to planning, scheduling, technical study, engineering work production and supervision, placing and supervising subcontracts to the extent reasonably required, and work done by the contractor in (a) stopping performance, (b) settling claims of subcontractors, and (c) disposing of termination inventory) shall be compared with the total work required by the contract. The ratio costs in-

curred to the total estimated cost of performing the contract is only one factor in computing the percentage of completion of the contract. This percentage may be either greater or less than that indicated by the ratio of costs incurred, depending upon the evaluation by the contracting officer of the above factors and other relevant considerations.

**§ 8.505–1 Scope of screening.**

* * * * *

(f) Termination inventory, other than production equipment, to which § 8.208–4 is applicable, is not subject to the requirements of this section.

19. Revise § 8.507–6(a); revise § 8.512–2; in § 8.701, revise introductory portion, revise clause heading, and revise clause paragraph (e)(2)(C) and clause paragraph (f); in § 8.703, revise clause paragraph (e)(1)(C) and clause paragraph (f); and in § 8.704–1, revise clause heading and clause paragraph (d), as follows:

**§ 8.507–6 Foreign contractor inventory.**

(a) To prevent diversion, transshipment or reexport of contractor inventory located in foreign countries to prohibited destinations and the use of such inventory adversely to the interests of the United States, the sale or other disposition of such inventory shall be made in accordance with property disposal regulations in overseas commands including security trade control regulations over foreign excess sales and regulations dealing with integrity and reliability checks. Such regulations apply to the sale of contractor inventory located in foreign countries except (1) sales to friendly foreign governments and (2) inventory located in Canada.

**§ 8.512–2 Required review.**

The following property disposal matters shall be reviewed by a Property Disposal Review Board which shall submit its recommendations to the contracting officer prior to approval or ratification by the contracting officer:

(a) A determination that material is scrap or salvage, if the original acquisition cost of the material is $50,000 or more;

(b) A release from a scrap warranty, if the original acquisition cost of the material is $25,000 or more;

(c) Any sales, purchases or retentions of serviceable or usable property at less than cost made without competitive bids (see § 8.507–3) where the original acquisition cost of such property exceeds $25,000;

(d) A determination to destroy or abandon material (see § 8.509) whenever a line item has an original acquisition cost of more than $1,000, or whenever the aggregate sum of line items under $1,000 exceeds $5,000;

(e) Any property disposal matter when requested by the contracting officer; and

(f) Any property disposal matter when required by Departmental procedures.

Actions under paragraph (a) through (f) of this section shall not be divided for the purpose of avoiding the requirements for Board review.

**§ 8.701 Termination clause for fixed-price contracts.**

Except as otherwise permitted by § 8.705, the following clause shall be used in any fixed-price contract in excess of $2,500 for supplies or experimental, developmental, or research work other than (a) construction, alterations, or repair of buildings, bridges, roads, or other kinds of real property, or (b) experimental, developmental, or research work with educational or nonprofit institutions, where no profit is contemplated.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (JAN. 1961)

* * * * *

(e) * * *

(2) The total of:

* * * * *

(C) A sum, as a profit, equal to 2 percent of that part of the amount determined under (A) above which represents the cost of articles and materials not processed by the Contractor, plus a sum equal to 8 percent of the remainder of such amount, but the aggregate of such sums shall not exceed 6 percent of the whole of the amount determined under (A) above: *Provided, however,* That if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

* * * * *

(f) Any determination of costs under paragraph (c) or (e) hereof shall be governed by the principles for consideration of costs set forth in Section XV, Part 2, of the Armed Services Procurement Regulation, as in effect on the date of this contract.

**§ 8.703 Termination clause for fixed-price construction contracts.**

* * * * *

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (OCT. 1959)

* * * * *

(e) * * *

(1) With respect to all contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:

* * * * *

(C) A sum, as a profit, equal to 2 percent of the part of the amount determined under (A) above which represents the cost of articles or materials delivered to the site but not incorporated in the work in place on the effective date of the Notice of Termination, plus a sum equal to 8 percent of the remainder of such amount, but the aggregate of such sums shall not exceed 6 percent of the whole of the amount determined under (A) above; provided, however, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

* * * * *

(f) Any determination of costs under paragraph (c) or (e) hereof shall be governed by the principles for consideration of costs set forth in Section XV, Part 4, of the Armed Services Procurement Regulation, as in effect on the date of this contract.

**§ 8.704–1 Termination clause.**

* * * * *

TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT (JAN. 1961)

* * * * *

(d) Any determination of costs under paragraph (c) shall be covered by the cost principles set forth in Section XV, Part 3, of the Armed Services Procurement Regulation, as in effect on the date of this contract, except that if the Contractor is not an educational institution the determination shall be covered by Section XV, Part 2, thereof.

## PART 9—PATENTS, DATA, AND COPYRIGHTS

20. Revise §§ 9.102, 9.102–1, 9.102–2, and 9.107–1 as follows:

**§ 9.102 Authorization and consent.**

(a) Under 28 U.S.C. 1498, any suit for infringement of a United States patent based on the manufacture or use by or for the United States of an invention described in and covered by a patent of the United States by a contractor or by a subcontractor (including lower tier subcontractors) can be maintained only against the Government in the Court of Claims, and not against the contractor or subcontractor, in those cases where the Government has authorized or consented to the manufacture or use of the patented invention. Accordingly, in order that work by a contractor or subcontractor under a Government contract may not be enjoined by reason of patent infringement, authorization and consent may be given as herein provided. The liability of the Government for damages in any such suit against it may, however, ultimately be borne by the contractor or subcontractor in accordance with the terms of any patent indemnity clause also included in the contract, and an authorization and consent clause does not detract from any patent indemnification commitment by the contractor or subcontractor. Therefore, both a patent indemnity clause and an authorization and consent clause may be included in the same contract.

(b) An authorization and consent clause shall not be used in contracts where both complete performance and delivery are to be outside the United States, its possessions, or Puerto Rico.

**§ 9.102–1 Authorization and consent in contracts for supplies.**

The contract clause set forth may be included in all contracts for supplies (including construction work), except that it shall not be used:

(a) When prohibited by § 9.102(b); or

(b) In contracts exclusively for experimental, developmental, or research work which are subject to the provisions of § 9.102–2.

AUTHORIZATION AND CONSENT (JAN. 1961)

The Government hereby gives its authorization and consent (without prejudice to its rights of indemnification, if such rights are provided for in this contract) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower tier subcontract), of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article the delivery of which is

accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance. The Contractor's entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in the contract and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

**§ 9.102–2 Authorization and consent in contracts for research or development.**

Greater latitude in the use of patented inventions is to be allowed in a contract for experimental, developmental, or research work than in a contract for supplies. Unless prohibited by § 9.102(b), the clause set forth below shall be included in all contracts calling exclusively for experimental, developmental, or research work, and may be included in contracts calling for both supplies and experimental, developmental, or research work. If the clause set forth below is included in a contract, the clause in § 9.102–1 shall not be included.

AUTHORIZATION AND CONSENT (JAN. 1961)

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract).

**§ 9.107–1 General.**

(a) *The license policy.* In framing a policy on the division of property rights in inventions and discoveries resulting from research work performed under contract for the Department of Defense, the Department recognizes that the American patent system was established as an incentive to invention, disclosure, and commercial exploitation of new ideas. In order to take advantage of the incentives implicit in the patent system and to secure American industry's unreserved participation in military research and development under both contracts and subcontracts, while acquiring the rights necessary for the Government freely to carry out its programs, the Department of Defense generally obtains on behalf of the Government a comprehensive license of free use but does not require that full title to the new inventions be assigned to the Government.

(b) *The comprehensive license.* The comprehensive license, which is irrevocable, nonexclusive, nontransferable, and worldwide in scope, permits, royalty-free, any use of the inventions by the Government by itself, any use by a Government contractor or subcontractor in connection with the performance of a Government contract, and any use by anyone in connection with projects funded by the Government, including the Mutual Security Program. The inventions covered are those which are conceived, or first actually reduced to practice, in the course of performing any contract or modification thereof, having experimental, developmental, or research work as one of its purposes, or in the course of performing such work on the understanding in writing that a contract would be awarded.

(c) *Government-acquisition of title.* While it is the general policy not to acquire more than the comprehensive license described above, the Department of Defense recognizes that there may be some situations in which it will be desirable in the public interest to obtain full title to the inventions made under the contracts. In a new technological field, for example, where there is no significant nongovernmental experience to build upon, and inventions which may be made under the contract would be likely to dominate the field or be of critical significance in it, it may be desirable for the Government to hold title to such inventions. Again, where the services of the contractor are largely those of coordinating and directing the work of others, the Government may wish to acquire title to prevent the possibility or appearance of private advantage as to the ideas of others. Likewise, the Government may obtain title in recognition of the overriding public interest in inventions in fields directly relating to the health or safety of the public, if their availability for public use will not depend on patent incentives.

(d) *Contracting Officer's duties.* When a contract or modification thereof having experimental, developmental, or research work as one of its purposes is proposed, the contracting officer, in consultation with his technical and patent advisors, shall consider whether the contemplated project should entail Government acquisition of title in keeping with paragraph (c) of this section or similar considerations. If in his opinion it should, he shall refer the matter, with supporting information (including identification of any inventions on which patent applications are on file and which are expected to be actually reduced to practice under the proposed project), to higher authority, in accordance with the deviation procedures of § 1.109 of this chapter. If a deviation is authorized, the contracting officer shall insert in the contract the clause specified in § 9.107–2(c). In all cases not involving the acquisition of title in keeping with paragraph (c) of this section the contracting officer shall include in the contract the clause specified in § 9.107–2(b), except as provided in § 9.107–3, concerning foreign contracts (unless the clause specified in § 9.107–2(c) has been authorized); § 9.107–4, concerning contracts relating to Atomic Energy; § 9.107–5, concerning contracts relating to Civil Defense; and § 9.107–7, concerning contracts placed for the National Aeronautics and Space Administration. In cases falling within these exceptions, the contracting officer shall follow the instructions stated in the applicable section.

(e) *Other procurement or patent rights.* Except as provided in §§ 9.107—9.107–7, patent rights shall not be requested in the negotiation of contracts other than contracts where the primary item of procurement is a license under, or an assignment of, a patent. Such procurements are made to carry out the policy of the Department of Defense to pay a reasonable compensation for the use of a valid patent enforceable against the Government. The questions of infringement, validity, and enforceability of the patent shall be determined by personnel having cognizance of patent matters for the Department concerned.

21. In § 9.107–2, revise introductory portion of paragraph (b), revise clause heading and clause paragraph (b)(1) of clause in paragraph (b), and add new paragraph (c); revise the introductory portion of § 9.107–3; and revise § 10.101–1, as follows:

**§ 9.107–2 Patent rights; domestic contracts.**

* * * * *

(b) *Contract clause (license).* The clause set forth below shall be included in every contract having as one of its purposes experimental, developmental, or research work which is to be performed within the United States, its possessions, or Puerto Rico, unless the clause set forth in paragraph (c) of this section has been authorized in accordance with § 9.107–1(d), or except as provided in § 9.107–7 with respect to contracts on behalf of the National Aeronautics and Space Administration. See § 16.809 of this chapter for an approved form for optional use by contractors in reporting information required by paragraphs (c)(ii), (c)(iii), and (h) of the clause. In the administration of paragraph (e) of the clause, a request for conveyance of foreign rights to the Government is not required when the contractor does not file an application for patent in a foreign country under the conditions provided in that paragraph, unless the Government intends to apply for such patent.

PATENT RIGHTS (LICENSE) (JAN. 1961)

* * * * *

(b)(1) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, nontransferable, and royalty-free license to practice, and cause to be practiced by or for the United States Govenrment, throughout the world, each Subject Invention in the manufacture, use, and disposition according to law, of any article or material, and in the use of any method. Such license includes the practice of Subject Invention in the manufacture, use and disposition of any article or material, in the use of any method, or in the performance of any service acquired by or for the Government or with funds derived through the Mutual Security Program of the Government or otherwise through the Government. No license granted herein shall convey any right to the Government to manufacture, have manufactured, or use any Subject Invention for the purpose of providing services or supplies to the general public in competition with the Contractor or the Contractor's commercial licensees in the licensed fields; but, provided, however, that the restriction of this sentence shall not be applicable in respect to any services or supplies which the Government has heretofore or may hereafter provide as a governmental function pertaining to the general public health, safety, or welfare.

* * * * *

(c) *Contract clause (title).* The clause set forth below shall be included in contracts in which its use in place

of the clause set forth in paragraph (b) of this section has been authorized in accordance with § 9.107–1(d). If it is so directed by higher authority, paragraph (c) of the clause set forth below, relating to subcontracts, may be replaced, or supplemented in regard to particular subcontracts, by provisions substantially similar to those provided in paragraph (b) of this section, or other provisions acquiring from the subcontractor for the benefit of the Government patent rights at least equivalent to those provided in paragraph (b) of this section. If paragraph (c) is not so replaced, and during the course of contract performance the contractor notifies the contracting officer that a subcontractor refuses to accept a clause containing the provisions of the clause set forth below, the contracting officer may, if he determines that Government acquisition of title under the particular subcontract is not essential for the purposes of the prime contract, authorize the contractor to insert in the particular subcontract, in lieu of the paragraph set forth below, provisions equivalent to those provided in paragraph (b) of this section. Optional paragraph (g) may be used if directed by higher authority to apply to specific inventions disclosed in a patent application filed prior to the award of the contract.

PATENT RIGHTS (TITLE) (JAN. 1961)

(a) The Contractor agrees to grant the Government all right, title, and interest in and to any invention conceived or first actually reduced to practice either:

(i) In the performance of the experimental, developmental, or research work called for or required under this contract; or

(ii) In the performance of any experimental, developmental, or research work relating to the subject matter of this contract which was done upon an understanding in writing that a contract would be awarded;

by any employee of the Contractor who, by reason of the nature of his duties in connection with the performance of this contract, would reasonably be expected to make inventions.

(b) With respect to inventions referred to in (a) above, the Contractor shall furnish to the Contracting Officer the following information and reports:

(i) A written disclosure promptly after conception or first actual reduction to practice of each such invention;

(ii) Interim reports at least every twelve months, commencing with the date of this contract, each listing all such inventions conceived or first actually reduced to practice more than three months prior to the date of the report, and not listed on a prior interim report, or certifying that there are no such unreported inventions;

(iii) Prior to final settlement of this contract, a final report listing all such inventions including all those previously listed in interim reports; and

(iv) At the earliest practicable date, information concerning publication of each such invention made by or known to the Contractor or, where applicable, of any contemplated publication by the Contractor, stating the date and identity of such publication or contemplated publication.

(c) The Contractor shall, unless otherwise authorized by the Contracting Officer, include a patent rights clause containing all of the provisions of this Patent Rights clause (including this paragraph (c)) in each subcontract hereunder of three thousand dollars ($3,000) or more having experimental, developmental, or research work as one of its purposes.

(d) The Contractor shall obtain the execution of and deliver to the Contracting Officer any documents relating to inventions referred to in (a) above as the Contracting Officer may require to enable the Government to file and prosecute patent applications therefor in any country.

(e) In the event that the Government determines not to file a patent application on any invention referred to in (a) above in any particular foreign country or fails to take such action (i) within six months of the filing of an application for the United States patent on the invention, or (ii) within six months of the declassification of the invention if under a security classification, or (iii) within six months after disclosure of the invention to the Government pursuant to (b)(i) above, whichever is later, the Contracting Officer may authorize the Contractor to file a patent application in such foreign country and retain ownership thereof, subject to an irrevocable, nonexclusive, royalty-free license to the Government in any patent which may issue thereon in such foreign country, including the power to issue sublicenses for use in behalf of the Government and in furtherance of the foreign policies of the Government, including the right to grant nonexclusive, nontransferable, royalty-free licenses to United States citizens and to United States corporations when seventy-five percent (75%) or more of the voting interest is owned by United States citizens.

(f) If the Contractor fails to deliver to the Contracting Officer the interim reports required by (b)(ii) above, or fails to furnish the written disclosures for all inventions required by (b)(i) above shown to be due in accordance with any interim report delivered under (b)(ii) or otherwise known to be unreported, there shall be withheld from payment until the Contractor shall have corrected such failures either ten percent (10%) of the amount of this contract, as from time to time amended, or five thousand dollars ($5,000), whichever is less. After payment of eighty percent (80%) of the amount of this contract, as from time to time amended, payment shall be withheld until a reserve of either ten percent (10%) of such amount, or five thousand dollars ($5,000), whichever is less, shall have been set aside, such reserve or balance thereof to be retained until the Contractor shall have furnished to the Contracting Officer.

(i) The final report required by (b)(iii) above; and

(ii) Written disclosures for all inventions required by (b)(i) above which are shown to be due in accordance with interim reports delivered under (b)(ii) above, or in accordance with such final reports, or are otherwise known to be unreported.

The maximum amount which may be withheld under this paragraph (f) shall not exceed ten percent (10%) of the amount of this contract or five thousand dollars ($5,000), whichever is less, and no amount shall be withheld under this paragraph (f) when the amount specified by this paragraph (f) is being withheld under other provisions of this contract. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. This paragraph (f) shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provisions of a subcontract.

(g)(1) Paragraph (a) of this Patent Rights clause shall not be applicable to the inventions covered in [Insert serial numbers and filing dates of patent applications], but the Contractor agrees to grant to the Government an irrevocable, nonexclusive, nontransferable, and royalty-free license to practice, and cause to be practiced by or for the United States Government, throughout the world, such inventions in the manufacture, use, and disposition according to law, of any article or material, and in the use of any method, or in the performance of any service acquired by or for the Government or with funds derived through the Mutual Security Program of the Government or otherwise through the Government. No license granted in accordance with this paragraph (g) shall convey any right to the Government to manufacture, have manufactured, or use any such inventions for the purpose of providing services or supplies to the general public in competition with the Contractor or the Contractor's commercial licensees in the licensed field, but provided, however, that the restriction of this sentence shall not be applicable in respect to any services or supplies which the Government has heretofore or may hereafter provide as a governmental function pertaining to the general public health, safety, or welfare.

(2) The Contractor, or those other than the Government deriving rights from the Contractor, shall as between the parties hereto, have the exclusive right to file applications on inventions identified in paragraph (g)(1) above in each foreign country within:

(i) nine months from the date a corresponding United States application is filed;

(ii) six months from the date permission is granted to file foreign applications where such filing has been prohibited for security reasons; or

(iii) such longer period as may be approved by the Contracting officer.

The Contractor shall, upon written request of the Contracting Officer convey to the Government the Contractor's entire right, title, and interest in each such invention in each foreign country in which an application has not been filed within the time above specified, subject to the reservation of a nonexclusive and royalty-free license to the Contractor together with the right of the Contractor to grant sublicenses, which license and right shall be assignable to the successor of that part of the Contractor's business to which the invention pertains.

(3) The Contractor recognizes that the Government, or a foreign government with funds derived through the Mutual Security Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for royalties for the use of an invention identified in paragraph (g)(1) above on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Mutual Security Program or otherwise through the United States Government, charges for use of patents in which the Government holds a royalty-free license. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

### § 9.107–3 Patent rights—foreign contracts.

A patent right clause shall be included in every contract having as one of its purposes experimental, developmental, or research work which is to be performed outside the United States, its possessions, or Puerto Rico. Except as provided in § 9.107–7 with respect to contracts on behalf of the National Aeronautics and Space Administration, either

the clause set forth below, or in lieu thereof, when authorized in accordance with § 9.107–1(d), the clause set forth in § 9.107–2(c), may be used; however, either clause may be replaced by any other clause tailored to meet requirements peculiar to foreign procurement provided the replacement clause incorporates the principles of the clause being replaced, except that the principles of paragraphs (c) and (d) of the clause below, or of paragraph (f) of the clause set forth in § 9.107–2(c), as the case may be, may be omitted if, in the opinion of the contracting officer (on a case-by-case basis), the inclusion of withholding or other enforcement provisions is neither desirable nor necessary.

## PART 10—BONDS AND INSURANCE

**§ 10.101–1 Bid guarantee.**

Bid guarantee means a form of security accompanying a bid as assurance that the bidder (a) will not withdraw his bid within the period specified therein for acceptance, and (b) will execute a written contract and furnish such bonds as may be required within the period specified in the bid (unless a longer period is allowed) after receipt of the specified forms.

22. Revise § 10.102 and add new §§ 10.102–1, 10.102–2, 10.102–3, 10.102–4, and 10.102–5, as follows:

**§ 10.102 Bid guarantees.**

**§ 10.102–1 Applicability to negotiated procurement.**

Sections 10.102–10.102–5 apply to both negotiated and formally advertised procurements. The terms "bid" and "invitation for bids," as used herein, include their counterparts, "proposal" and "request for proposals," and the latter terms may be used where appropriate.

**§ 10.102–2 Limitation.**

Bid guarantees shall not be required unless the invitation for bids specifies that the contract must be supported by a performance bond or by performance and payment bonds. In no event shall a bid not in excess of $2,000 be required to be supported by a bid guarantee (see § 10.102–4(a)(1)).

**§ 10.102–3 Amount required.**

(a) Whenever a bid guarantee is deemed necessary, the contracting officer shall determine the percentage (or amount) which in his best judgment, when applied to the bid price, will produce a bid guarantee amount adequate to protect the Government from loss should the successful bidder fail to furnish the required performance bond or performance and payment bonds. The percentage determined shall be not less than 20 percent of the bid price except that the maximum amount required shall be $3,000,000.

(b) The penal sum of a bid bond may be expressed as a specified percentage of the bid price. In this fashion, the bid bond may be written by the surety before the bidder's final determination of his bid price.

**§ 10.102–4 Invitation for bids provisions.**

(a) Where a bid guarantee is determined to be necessary, the invitation for bids shall contain (1) a statement requiring that a bid guarantee be submitted with any bid in excess of $2,000 and containing such details as are necessary to enable bidders to determine the proper amount of bid guarantee to be submitted; and (2) the following provision:

BID GUARANTEE (JAN. 1961)

Failure to furnish a required bid guarantee in the proper amount, by the time set for opening of bids, may be cause for rejection of the bid.

A bid guarantee may be in the form of a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit or, in accordance with Treasury Department regulations, bonds or notes of the United States. Bid guarantees, other than bid bonds, will be returned (1) to unsuccessful bidders as soon as practicable after the opening of bids, and (2) to the successful bidder upon execution of such further contractual documents and bonds as may be required by the bid as accepted.

If the successful bidder withdraws his bid within the period specified therein for acceptance (60 days if no period is specified) or, upon acceptance thereof by the Government, fails to enter into the contract and give bonds within the time specified (10 days if no period is specified) after the forms are presented to him, he shall be liable for any difference by which the cost of procuring the work exceeds the amount of his bid, and the bid guarantee shall be available toward offsetting such difference.

(b) The requirement for the provision in paragraph (a)(2) of this section is met where Standard Form 22 (Instructions to Bidders (Construction Contracts)) is used in accordance with §§ 16.401–1(e) and 16.401–3 of this chapter.

(c) The provisions required by paragraph (a)(2) of this section may be appropriately modified in negotiated contracts.

**§ 10.102–5 Failure to submit proper bid guarantee.**

Where an invitation for bids requires that bids be supported by a bid guarantee, noncompliance with such requirement will require rejection of the bid, except that rejection of the bid is not required in these situations:

(a) where only a single bid is received (in such cases the purchasing activity may or may not require the furnishing of the bid guarantee before award);

(b) where the amount of the bid guarantee submitted, though less than the amount required by the invitation for bids, is equal to or greater than the difference between the price stated in the bid and the price stated in the next higher acceptable bid;

(c) where the bid guarantee is received late and the late receipt may be waived under the rules established in § 2.303 of this chapter for consideration of late bids; and

(d) where an otherwise adequate bid guarantee becomes inadequate as a result of the correction of a mistake in bid under § 2.406 of this chapter, if the bidder will increase the amount of the bid guarantee in proportion to the authorized bid correction.

## PART 11—FEDERAL, STATE, AND LOCAL TAXES

23. Revise §§ 11.301 and 11.404, and add new §§ 12.105, 12.105–1, 12.105–2, and 12.105–3, as follows:

**§ 11.301 Applicability.**

As a general rule, Government purchases are exempt from State aand local taxes. This exemption shall be made use of by means of purchase on a tax exclusive basis and execution of an approved tax exemption certificate, except this requirement is not mandatory in the case of purchases of $100 or less. Whenever there is any doubt as to the availability of such exemption, the matter shall be referred to the appropriate office of the Department concerned.

**§ 11.404 Clause for use where foreign agreements do not apply.**

Countries which have not executed a tax agreement with the United States may nevertheless grant relief from certain taxes, e.g., relief from (certain) internal taxes in order to promote or subsidize exports. Accordingly, tax benefits available to the United States in countries not listed in § 11.403–1(a) should be explored, and such taxes should be given specific treatment in the contract. The following clause may be used in lieu of the clause in § 11.403 where contract performance will be entirely in a foreign country where tax relief is not available to the United States under a tax agreement:

TAXES (JAN. 1961)

Except as otherwise provided, the contract price includes any and all applicable taxes.

## PART 12—LABOR

**§ 12.105 Location allowances at unfavorable sites.**

**§ 12.105–1 Description.**

"Location allowances" sometimes called "supplemental pay" or "incentive pay," are compensation in addition to normal wages or salaries that is paid by contractors to especially compensate or induce employees to undertake or continue work at locations which may be isolated or in an unfavorable environment. Location allowances include extra wage or salary payments in the form of station allowances, bonuses, extended per diem, or mileage payments for daily communting; they also include such benefits as contractor-furnished housing.

**§ 12.105–2 Policy.**

Payments of location allowances shall be allowed as costs under cost-reimbursement type contracts, or recognized in pricing fixed-price type contracts, only where and so long as the isolation or unfavorable environment of the site makes such payments necessary to the accomplishment of the contract work without unacceptable delays. Whether the site is so isolated, or its environment is so unfavorable, as to require location

allowances is to be determined in the light of its location and climate; the availability and adequacy of housing within reasonable commuting distance; and the availability and adequacy of educational, recreational, medical, and hospital facilities. The extent to which compensation includes location allowances is to be determined by comparing it with the contractor's normal compensation policy, including pay scales at his principal operating locations; pay scales of other contractors and concerns operating at or near the site; and compensation paid by other concerns within the same industry for similar services elsewhere.

**§ 12.105–3 Procedures.**

(a) Locations at which location allowances are being paid shall be reviewed at least once a year to determine whether such allowances should continue to be allowed or recognized in accordance with § 12.105–2.

(b) Where two or more contracting activities have concurrent contracts at a single facility and the approval of location allowances by one such activity is likely to affect the performance of, or payments in connection with, contracts of another such activity, the activity exercising jurisdiction over the facility shall coordinate with the other interested activities in applying the policy in § 12.105–2 and shall schedule the reviews required by paragraph (a) of this section. Where two or more facilities are so geographically located that determinations as to location allowances at one may affect the other, the activities involved shall coordinate with each other in applying the policy. If the contracting activities do not agree within a reasonable time on application of the policy in § 12.105–2, the matter will be settled by the Secretary concerned or, if more than one Department is involved, by the Assistant Secretary of Defense (Installations and Logistics).

## PART 13—GOVERNMENT PROPERTY

24. Add new paragraph (c) to § 13.102–3, and revise paragraph (c) in § 13.407, as follows:

**§ 13.102–3 Facilities.**

* * * * *

(c) The policy for authorizing special use allowances for research facilities acquired by educational institutions is contained in § 3.812 of this chapter.

**§ 13.407 Right of contractor to use.**

* * * * *

(c) A facilities contract may also provide that the contractor may be authorized by the contracting officer to make incidental use of all or part of the facilities covered by the contract for work other than for an agency of the Department of Defense. Prior approval of the Office of Civil and Defense Mobilization must be obtained, through the Assistant Secretary of Defense (Installations and Logistics), before a facilities contract may authorize over 25 percent nondefense use of Government-owned machine tools (Production Equipment Code Nos. 3411–341999 and 3441–34490) having a unit acquisition cost of $500 or more. Where a facilities contract is no longer required in connection with the performance of a Government contract or contracts, it shall not be continued solely for the purpose of authorizing commercial use of all or any part of the facilities covered by the facilities contract. The rental rates applicable to Government facilities as provided in § 13.601, shall apply to facilities furnished under a facilities contract for the period that such facilities are authorized for use for commercial purposes.

25. In §§ 13.505 and 13.506, the reference to "§ 13.802", in connection with alternate clause paragraph (c), is changed to read "§ 13.803".

26. Revise § 13.803; add new paragraph (j) to § 15.205–6; and revise § 15.304(e), as follows:

**§ 13.803 Contract clauses.**

Where it is anticipated that title to equipment may be vested in the contractor in accordance with this subpart, the alternate paragraph (c) of the clause in § 13.505 shall be included in fixed-price type contracts for basic and applied research, and the alternate paragraph (c) of the clause in § 13.506 shall be included in cost-reimbursement type contracts for basic and applied research.

## PART 15—CONTRACT COST PRINCIPLES AND PROCEDURES

**§ 15.205–6 Compensation for personal services.**

* * * * *

(j) *Location allowances.* "Location allowances," sometimes called "supplemental pay" or "incentive pay," are allowable to the extent consistent with § 12.105 of this chapter.

**§ 15.304 Indirect costs.**

* * * * *

(e) "Use allowance" is a means of compensation for the use of buildings, capital improvements, and equipment over and above the expenses for operation and maintenance when depreciation or other equivalent costs are not considered. (But, see § 3.812 of this chapter for extraordinary arrangement permitting special use allowances for research facilities acquired by educational institutions for performance of Defense contracts.) The use allowance for buildings and improvements shall be computed at an annual rate not to exceed two percent (2%) of acquisition cost. The use allowance for equipment shall be computed at an annual rate not exceeding six and two-thirds percent (6⅔%) of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance shall be computed at an annual rate not exceeding ten percent (10%) of such cost. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding six and two-thirds percent (6⅔%) of such estimate. Computation of the use allowance shall exclude the portion of the cost of buildings and equipment paid for out of Federal funds and the cost of grounds; and

## PART 16—PROCUREMENT FORMS

27. In § 16.202–1, add new subdivision (ix) to paragraph (b)(2); in § 16.303–2, revise paragraph (b)(2) and add paragraph (b)(7) and (8); and revise §§ 16.401–1 and 16.815–1, as follows:

**§ 16.202 Negotiated contract forms.**

**§ 16.202–1 DD Forms 1261 and 1270.**

* * * * *

(b) *Short-form negotiated supply and services contracts.*

* * * * *

(2) No clause on DD Form 1270 may be deleted or altered, and no other clause covering the subject matter of any clause set forth in this subchapter may be used, except:

* * * * *

(ix) The procedures set forth in § 4.604 of this chapter will be followed when required by Subpart F, Part 4, of this chapter, Humane Slaughter of Livestock.

* * * * *

**§ 16.303–2 Conditions for use.**

* * * * *

(b) *Use as a purchase order of not more than $2,500.* DD Form 1155 is authorized for negotiated purchases of not more than $2,500, provided:

(1) The procurement is unclassified;

(2) No clauses covering the subject matter of any clause set forth in this subchapter, other than clauses set forth on the back of DD Form 1155, and clauses referred to in subparagraphs (3), (4), (5) and (7) of this paragraph and in paragraph (c) of this section, are to be used;

* * * * *

(7) The Priorities, Allocations and Allotments clause (§ 7.104–18 of this chapter) may be inserted in the Schedule where required; and

(8) When required by Subpart F, Part 4 of this chapter, Humane Slaughter of Livestock, the procedures set forth in § 4.604 of this chapter, will be followed:

**§ 16.401–1 General.**

The following forms are prescribed for use in formally advertised construction contracts where the work is to be performed in the United States and its possessions:

(a) Standard Form 19—Invitation, Bid and Award (Construction, Alteration, or Repair).

(b) Standard Form 19A—Labor Standards Provisions—Applicable to Contracts in Excess of $2,000.

(c) Standard Form 20—Invitation for Bids (Construction Contract).

(d) Standard Form 21—Bid Form (Construction Contract).

(e) Standard Form 22—Instructions to Bidders (Construction Contract).

Pending revision of the March 1953 edition of Standard Form 22, it should be changed to comply with §§ 2.201(a) (25) and 10.102–4(a) (2) of this chapter.

(f) Standard Form 23—Construction Contract.

(g) Standard Form 23A—General Provisions (Construction Contract).

(h) DD Form 1260—Amendment to Invitations for Bids, on an optional basis.

(i) Continuation Sheet. There is no prescribed form of Continuation Sheet for construction contracts. A blank sheet, incorporating (1) the contract or invitation number, as appropriate, (2) page number and number of pages, and (3) name of bidder or contractor may be used for this purpose. Standard Form 36, Continuation Sheet (Supply Contract) shall not be used for construction contracts.

**§ 16.815–1 Change order (DD Form 1319).**

(a) This form shall be used for:

(1) Any change order issued pursuant to the changes clause of a contract;

(2) Any other unilateral contract modification (see § 1.201–2 of this chapter), except notices of termination (see § 16.701), issued pursuant to a contract provision authorizing such modification without the consent of the contractor; and

(3) Administrative changes, such as the correction of typographical mistakes, changes in the paying office and changes in accounting and appropriation data.

(b) If neither of the introductory statements on DD Form 1319 is applicable, an appropriate statement, such as "Pursuant to the clause entitled _____ of the above numbered contract, the following changes are made therein," should be added.

[ASPR Rev. 3, January 31, 1961] (Sec. 2202, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314)

R. V. LEE,
*Major General, U.S. Army,*
*The Adjutant General.*

[F.R. Doc. 61–2668; Filed, Mar. 27, 1961; 8:46 a.m.]

# Title 43—PUBLIC LANDS: INTERIOR

## Chapter I—Bureau of Land Management, Department of the Interior

### APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2307]

[Nevada 050476, 045154]

### NEVADA

### Withdrawing Lands for Use of the National Park Service, and for the Department of the Air Force, for a Headquarters Site, and for Radar Sites, Respectively. Partly Revoking Executive Order No. 5339 of April 25, 1930

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952: *It is ordered,* As follows:

1. Subject to valid existing rights and the provisions of existing withdrawal, the following-described public lands in Nevada are hereby withdrawn, as indicated:

a. [Nevada 050476]

From all forms of appropriation under the public land laws, including the mining and mineral leasing laws but not disposals of materials under the act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601–604), as amended, and reserved for use of the National Park Service, Department of the Interior, for headquarters site in connection with administration of the Lake Mead National Recreation Area:

MOUNT DIABLO MERIDIAN

ROGER SPRING HEADQUARTERS AREA

T. 18 S., R. 67 E.,
Sec. 12.

The area described contains 640 acres.

b. [Nevada 045154]

From all forms of appropriation under the public land laws, including the mining and mineral leasing laws and disposals of materials under the act of July 31, 1947, supra, as amended, and reserved for use of the Department of the Air Force, for construction and operation of radar facilities:

MOUNT DIABLO MERIDIAN

ELY RANGE

T. 17 N., R. 61 E., unsurveyed,
Sec. 27.
Commencing for reference at U.S.C. and G.S. Triangulation Station entitled "South Ridge", whose geographic position is latitude 39°18'31.20" and longitude 115°05'07.25"; thence south 330 feet to the point of beginning; thence
West, 330 feet;
North, 660 feet;
East, 660 feet;
South, 660 feet;
West, 330 feet to the point of beginning.

The tract described contains approximately 10 acres.

BEATTY RANGE

T. 10 S., R. 46 E.
Sec. 9, unsurveyed.
Commencing for reference at a point on a high peak whose approximate geographical location is latitude 37°05' and longitude 116°49'; thence south 466.69 feet to the point of beginning; thence
West, 466.69 feet;
North, 933.38 feet;
East, 933.38 feet;
South, 933.38 feet;
West, 466.69 feet to the point of beginning.

The tract described contains approximately 19 acres.

2. Executive Order No. 5339 of April 25, 1930, which withdrew lands pending determination of their suitability for inclusion in a national monument, is hereby revoked so far as it affects the lands described in paragraph 1a., of this order.

JOHN A. CARVER, JR.,
*Assistant Secretary of the Interior.*

MARCH 21, 1961.

[F.R. Doc. 61–2672; Filed, Mar. 27, 1961; 8:47 a.m.]

[Public Land Order 2308]

[Anchorage 046424]

### ALASKA

### Withdrawing Lands for Use of the Alaska Railroad for Explosive Storage Purposes. Partly Revoking Public Land Order No. 891 of April 15, 1953

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Subject to valid existing rights, the following-described public lands in Alaska, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws, nor disposals of materials under the act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601–604), as amended, and reserved for use of the Alaska Railroad, Department of the Interior, for storage of explosives:

SEWARD MERIDIAN

BIRCHWOOD AREA

T. 15 N., R. 2 W.,
Sec. 26, NE¼;
Sec. 34, lots 1, 2, 5, 6, SE¼NE¼, SW¼SE¼, and E½SE¼.
(Containing 429.89 acres.)

2. Public Land Order No. 891 of April 15, 1953, which withdrew lands for various public purposes, is hereby revoked so far as it affects the lands described in paragraph 1 of this order.

JOHN A. CARVER, JR.,
*Assistant Secretary of the Interior.*

MARCH 21, 1961.

[F.R. Doc. 61–2673; Filed, Mar. 27, 1961; 8:47 a.m.]

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[Public Land Order 2309]

[1735085]

### ARIZONA

### Partly Revoking Executive Order No. 1032 of February 25, 1909 (Salt River National Wildlife Refuge)

1. By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Executive Order No. 1032 of February 25, 1909, reserving lands in certain reservoir sites, together with certain smallest legal subdivisions adjoining the flow lines thereof, as preserves and breeding grounds for native birds, is hereby revoked so far as it affects lands in the Salt River Reservoir, Roosevelt Dam and Reservoir Project. Public lands in the following areas are affected by this order:

GILA AND SALT RIVER MERIDIAN

T. 4 N., R. 11 E.,
Secs. 1, 2, 11, 12, and 13.
T. 4 N., R. 12 E.,
Secs. 4 to 27, inclusive.
T. 4 N., R. 13 E.,
Secs. 18 to 20 and 25 to 30, inclusive;
Secs. 32 to 36, inclusive.
T. 5 N., R. 11 E.,
Secs. 20 to 23, 25 to 28, and 34 to 36, inclusive.

T. 5 N., R. 12 E.,
Sec. 31.

The areas released from withdrawal for wildlife purposes by this order aggregate approximately 21,060 acres.

2. All the lands are within the Tonto National Forest and all, except the NE¼NE¼ of sec. 13, T. 4 N., R. 11 E., are withdrawn for reclamation purposes. Their wildlife values, which are chiefly outside the national migratory bird management program, will continue under development through cooperative agreement between responsible Federal and State agencies.

3. At 10:00 a.m. on April 26, 1961, the NE¼NE¼ of sec. 13, supra, shall be open to such forms of disposition as may by law be made of national forest lands, not including the homestead, desert land and small tract laws.

JOHN A. CARVER, Jr.,
*Assistant Secretary of the Interior.*

MARCH 21, 1961.

[F.R. Doc. 61-2674; Filed, Mar. 27, 1961; 8:57 a.m.]

# Proposed Rule Making

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### [ 26 CFR Part 519 ]

### CANADA

### Dividends Paid by Related Corporations

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:I, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805) and in Article XVIII of the income tax convention between the United States and Canada of March 4, 1942 (56 Stat. 1405).

[SEAL] MORTIMER M. CAPLIN,
*Commissioner of Internal Revenue.*

PARAGRAPH 1. On December 20, 1960, an Income Tax Act Resolution was introduced in the House of Commons by the Minister of Finance of Canada with his Budget Speech providing that the rate of tax payable by a corporation not resident in Canada on dividends received from a Canadian resident, which rate of tax was limited to 5 percent in accordance with paragraph 2 of Article XI of the income tax convention between the United States and Canada of March 4, 1942, as amended by the supplementary convention signed June 12, 1950, and by the supplementary convention signed August 8, 1956, was increased to 15 percent with respect to dividends paid after December 20, 1960. As announced in Technical Information Release No. 283, issued on December 29, 1960, the Internal Revenue Service stated that paragraph 2 of Article XI of the convention was terminated, by virtue of the provisions of paragraph 3 of Article XI of the convention, effective with respect to dividends paid after December 20, 1960. As indicated in the Technical Information Release, United States income tax and withholding of United States tax at source will apply without regard to the provisions of paragraph 2 of Article XI of the convention (as amended) in the case of dividends paid after December 20, 1960. In conformity thereto, the general regulations (Treasury Decision 5206, approved December 31, 1942) and the withholding regulations (Treasury Decision 6047, approved November 5, 1953) which were issued under the income tax convention between the United States and Canada are amended as follows:

TREASURY DECISION 5206

(A) Section 519.112 (formally 26 CFR 7.31, redesignated at 25 F.R. 14021) is amended by revising the second and third undesignated subparagraphs of paragraph (a) thereof. These amended provisions read as follows:

**§ 519.112 Reduction in rate of the tax withheld at source.**

(a) *General.* * * *

Under the provisions of Article XI, dividends paid to a Canadian corporation not engaged in trade or business within the United States and not having an office or place of business therein by a domestic subsidiary corporation are subject to tax at the rate of only 5 percent, such dividends constituting an exception to the general rule laid down in paragraph 1 of Article XI. Since paragraph 2 of Article XI of the convention (as amended) was terminated with respect to dividends paid after December 20, 1960, the rate of 5 percent prescribed therein will not apply in determining the income tax imposed upon dividends paid after such date to a Canadian corporation. For the purposes of that article, a "subsidiary corporation" is defined in paragraph 6 of the protocol as a corporation (in this case a domestic corporation) all of whose shares (less directors' qualifying shares) having full voting rights are beneficially owned by another corporation (in this case a Canadian corporation), provided that ordinarily not more than one-quarter of the gross income of such subsidiary corporation is derived from interest and dividends other than interest and dividends received from its subsidiary corporations. Thus, for example, the A Corporation is a domestic corporation all of whose shares are owned by B Company, Ltd., a Canadian corporation not engaged in trade or business within the United States and not having any office or place of business therein. The A Corporation pays a dividend to B Company, Ltd., on June 30, 1943. The A Corporation is on a calendar year basis and throughout 1940, 1941, and 1942 derived not more than 15 percent of its gross income from interest and dividends from corporations not controlled by the A Corporation. The Commissioner ascertains and has so notified the A Corporation that the corporate relationship between the A Corporation and the B Company, Ltd., has not been arranged and is not maintained primarily for the purpose of securing the lower rate of tax prescribed in paragraph 2 of Article XI of the convention. The dividend paid by the A Corporation is subject to withholding of the tax at the lower rate of 5 percent.

Any domestic corporation which claims or contemplates claiming, that dividends paid by it, or to be paid by it, are subject only to the 5 percent rate, shall file, as soon as practicable, with the Commissioner the following information: (1) The date and place of its organization; (2) the number of its outstanding shares of stock having full voting rights; (3) the person or persons beneficially owning such stock and their relationship to such corporations; (4) the amount of gross income, by years, of the paying corporation for the 3-year period immediately preceding the taxable year in which such dividend is paid; (5) the amount of interest and dividends, by years, included in such gross income and the amount of interest and dividends, by years, received from the subsidiary corporations, if any, of such domestic corporation; and (6) the corporate relationship between such domestic corporation and the Canadian corporation to which it pays the dividend. As soon as practicable after such information is filed, the Commissioner shall examine it and determine whether the dividends concerned fall within the provisions of such paragraph and may authorize the release of excess tax withheld with respect to dividends which are shown to the satisfaction of the Commissioner to come within the provisions of paragraph 2 of Article XI of the convention. In any case in which the Commission has notified such domestic corporation that it comes within the provisions of paragraph 2 of Article XI of the convention, the reduced rate of 5 percent applies to any dividends subsequently paid by such corporation before December 21, 1960, unless its stock ownership or the character of its income materially changes. In the event of such changes occurring, such corporation shall promptly notify the Commissioner of the then existing facts with respect to such stock ownership and income.

TREASURY DECISION 6047

(B) Section 519.2 (formerly 26 CFR 7.46, redesignated at 25 F.R. 14021) is amended by adding a new subparagraph at the end of paragraph (b) thereof and by revising the first undesignated subparagraph of paragraph (d) thereof. These amended provisions read as follows:

§ 519.2 Dividends.

* * * * *

(b) *Dividends paid by related corporation.* * * *

Since Article XI(2) of the convention (as amended) was terminated with respect to dividends paid after December 20, 1960, the rate of 5 percent prescribed therein will not apply in determining the income tax imposed upon, or the amount of tax to be withheld at the source from, dividends paid after such date to a Canadian corporation.

* * * * *

(d) *Rate of withholding.* Withholding at source in the case of dividends derived from sources within the United States and paid on or after January 1, 1954, to nonresident aliens (including a nonresident alien individual, fiduciary, and partnership) and to foreign corporations, whose addresses are in Canada, shall be at the rate of 15 percent in every case except that in which, prior to the date of payment of such dividends, (1) the Commissioner of Internal Revenue has notified (i) the domestic corporation (pursuant to paragraph (b) of this section) that such dividends fall within the scope of the provisions of Article XI(2) of the convention or (ii) the withholding agent that the reduced rate of withholding shall not apply, or (2) the withholding agent has received the letter of notification prescribed in § 519.7(b). However, see the last subparagraph of paragraph (b) of this section.

(C) Section 519.8 (formerly 26 CFR 7.52, redesignated at 25 F.R. 14021) is amended by revising paragraph (c) thereof. This amended provision reads as follows:

§ 519.8 Release of excess tax withheld at source.

* * * * *

(c) *Dividens paid by related corporation.* In the case of every domestic corporation receiving notification from the Commissioner of Internal Revenue under the provisions of § 519.2(b) that dividends paid or to be paid by it fall within the scope of the provisions of Article XI(2) of the convention, if United States income tax in excess of the applicable rate of 5 percent has been withheld on or after January 1, 1954, from dividends which come within the scope of such provisions, the withholding agent shall, if so authorized in such notification, release and pay over to the corporation from which it was withheld the excess tax withheld with respect to such dividends. This paragraph shall not apply with respect to dividends paid after December 20, 1960.

PAR. 2. The withholding of United States tax at the rate of 5 percent from dividends paid after December 20, 1960, and before December 30, 1960, to a Canadian corporation, which would have been entitled to the benefit of such rate in accordance with paragraph 2 of Article XI of the income tax convention between the United States and Canada of March 4, 1942, as amended, if such paragraph had been in effect during such period, shall be considered to constitute compliance with the provisions of law respecting withholding of tax at source upon such dividends. A Canadian corporation receiving such dividends upon which United States tax at the rate of only 5 percent was withheld shall, however, make a return of income in accordance with paragraph (g) of § 1.6012–2 of the Income Tax Regulations and pay the additional tax due.

[F.R. Doc. 61–2700; Filed, Mar. 27, 1961; 8:53 a.m.]

# DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## [ 7 CFR Part 913 ]

[Docket No. AO–23–A20]

## MILK IN GREATER KANSAS CITY MARKETING AREA

### Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Kansas City, Missouri, on November 15–16, 1960, pursuant to notice thereof issued on November 1, 1960 (25 F.R. 10573).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on February 14, 1961 (26 F.R. 1406; F.R. Doc. 61–1450) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues on the record of the hearing relate to:

1. The pricing of Class II milk;
2. Class butterfat differentials;
3. Shrinkage allowance on bulk tank milk for which a cooperative association is the handler;
4. Allocation of packaged sour cream priced under another order;
5. Classification of dip specialty products;
6. Unfair methods of competition;
7. Miscellaneous administrative and conforming changes;
8. Location adjustments to handlers and producers;
9. Qualifications for obtaining pool plant status; and
10. Accounting for fortified products.

This decision is concerned with all the issues except 8, 9 and 10 which are reserved for future decision.

*Findings and Conclusions.* The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Class II price.* Producer cooperative associations proposed to increase the level of the Class II price by 4 cents per hundredweight.

The Class II price presently is the higher of an average of local plant posted paying prices, plus 15 cents per hundredweight, or a butter-powder formula price which includes a "make allowance" of 78 cents. The proposal would have increased the 15-cent addition to 19 cents, and have decreased the 78-cent "make allowance" to 74 cents.

The 15 cents presently added to local plant posted pay prices is to represent the average payment made by manufacturing plants in addition to posted prices for such items as mechanical refrigeration and minimum volume of delivery. The average cost of such cooling and volume payments made by a cooperative association handling substantial volumes of milk for manufacturing is now 19 cents per hundredweight, a figure which now represents the market average for such payments. Experience of this association shows that a "make allowance" of 74 cents is now appropriate under the butter-powder formula alternative. This alternative price has seldom been the effective price.

Handlers who opposed any change in the Class II pricing formula offered no specific evidence with respect to cooling and volume premium costs or manufacturing costs related to the aforementioned factors contained in the Class II pricing formula. The principal contention of the handlers with respect to Class II pricing was that present prices are bringing in more than a sufficient supply of producer milk, and that recent changes in price support levels are increasing the price.

The predominant influence on the level of market supply is the level of Class I price rather than the Class II price. Changes in the general level of manufacturing milk prices that may be brought about by changes in support prices will also affect costs of supplies from alternative sources. The Class II pricing formula is designed to reflect such changes in the prices paid for manufactured dairy products. The increase proposed at this time would reduce the margin between the price paid for milk used in Class II products and the prices received for the manufactured products regardless of the level of prices paid for such products.

The Class II price should be such as to lead to the manufacture of available reserve supplies of Grade A milk but should not be so low that the handling of such milk is generally a profitable operation which encourages handlers to procure supplies of Grade A milk for manufacturing use. The proposed increase in the Class II price relative to prices of manufactured dairy products is necessary to prevent undue encouragement to handlers for acquiring milk primarily for manufacturing.

A substantial proportion of the Class II milk in the Kansas City market is handled, or processed by, the cooperative associations proposing the increase in prices. It is evident that they can realize the price proposed for such milk, other handlers can be expected to experience a similar return. The proposed increase should be adopted. Some slight additional increase may occur from use of the 3.5 percent pay prices of local plants,

but this should not be sufficient to require any adjustment.

2. *Class butterfat differentials.* Butterfat differentials used to adjust for butterfat content Class I and Class II milk prices to handlers should be revised. In order that this may be done without change in the cost of Class I milk of the average butterfat content in the market, the basic butterfat test of the order should be changed from 3.8 percent to 3.5 percent and the Class I price differentials should be revised.

At present the Class I butterfat differential is equal to 0.130 times the Chicago 92-score butter price of the preceding month. The Class II butterfat differential is 0.120 times the current month butter price during September through February and 0.115 times such price in other months. It was proposed that the Class I butterfat differential factor be 0.120 and that the Class II factor be 0.115 in all months.

A Class I butterfat differential of 0.120 times the butter price will reduce the value of the butterfat component of Class I milk. At the present butterfat differential the value of butterfat in Class I milk has been overstated and the value of skim milk correspondingly understated. A butterfat differential of 0.120 times the butter price will correspond more closely with those in nearby Federal order markets.

Without corresponding changes in the basic butterfat test and Class I price differentials a reduction in the Class I butterfat differential factor would increase the cost of Class I milk to handlers at the present average test of the market. The Kansas City Class I price is presently announced at a basic test of 3.8 percent. The average butterfat test of Class I milk has averaged 3.596 during the most recent 3-year period. During this period the Chicago butter price has averaged 59.115 cents per pound, so that the proposed decrease of the butterfat differential would have resulted in an increase of 1.2 cents per hundredweight of 3.596 percent Class I milk.

Handler testimony suggested that the basic butterfat test of the order should be changed to 3.5 percent. Use of such a basic test is more general than the 3.8 percent test of the Kansas City order. A change to this basic test would, however, decrease the value of Class I milk at the average test. This is because the present order basic formula price for 3.8 percent milk is determined for most months by direct ratio conversion of a 3.5 percent condensery price. For the past three years use of a 3.8 percent Class I price adjusted to a 3.596 percent test by use of a .130 butterfat differential has resulted in a price 3.7 cents higher than would have resulted from adjusting a 3.5 percent Class I price to this test by use of a .120 butterfat differential. Use of a 3.5 percent basic test will require a compensating increase in the Class I price differential to return to producers the same amount for Class I milk of the average test of the market. Increasing the $1.45 differential effective for eight months to $1.49 and the $1.15 differential effective for four months to $1.18 will accomplish this adjustment.

It is concluded that the Class I butterfat differential factor should be .120, that the basic test should be changed to 3.5 percent and that the Class I price differential should be $1.18 for the months of April through July and $1.49 for all other months.

The seasonal variation in the Class II butterfat differential factor was included in the order when a fixed seasonal change in the Class II price was provided. Since seasonal variations in the Class II price now depend only on seasonal changes in prices to producers of manufacturing milk or in market prices of dairy products, it is appropriate that seasonality of the butterfat differential depend solely on the market price of butter. The 0.115 factor is appropriate for all months of the year.

In conformity with the conclusions relative to the Class I butterfat differential, Class II milk prices and producer prices will be announced at a 3.5 percent basic test.

3. *Shrinkage.* The order presently provides that where farm bulk tank milk is received by a cooperative association acting in the capacity as handler for such milk and is transferred to a pool plant the handler of the pool plant is permitted up to 1½ percent shrinkage allowance and the remaining one-half of one percent is retained by the cooperative association. Provisions should be made in the order to allow the full 2 percent shrinkage to the receiving pool plant handler if the handler elects to purchase such milk from the cooperative association on the basis of farm bulk tank weights determined by farm bulk tank calibrations, and notification of this option is filed with the market administrator. Under this option the cooperative association would have no need for a shrinkage allowance.

4. *Allocation of packaged sour cream.* A regulated handler under the Kansas City order proposed that sour cream manufactured from milk subject to the pricing and pooling provisions of Order No. 3 for the St. Louis, Missouri, marketing area should be allocated directly to Class I at pool plant(s) under the Kansas City order when such cream is received, handled and distributed in the same consumer packages in which it was received. Sour cream is not processed in the Kansas City plant of the proponent handler and his entire supply of sour cream is received from a handler regulated under the St. Louis order.

A similar proposal relating to packaged sour cream priced and pooled under the Chicago Order No. 41 was presented by a handler regulated under such order. This handler has been engaged in the movement of packaged sour cream from the Chicago market to a handler in the Kansas City market on a regular biweekly or weekly basis since April 1958.

Present provisions of the Kansas City order give priority of all Class I utilization to producer milk. Receipts of packaged sour cream priced and pooled under Order No. 3 and Order No. 41 are allocated to Class II to the extent possible under the Kansas City order. While all cream products under the Chicago order are classified as Class II, under the accounting and pricing system of such order this class is the equivalent of the Class I classification and pricing under the accounting system of the Kansas City order. Cream products are classified as Class I under the St. Louis order.

Inasmuch as the Class I price in the Kansas City marketing area will be generally aligned with prices under other Federal orders, there is little chance that handlers in the Chicago and St. Louis markets will achieve a substantial competitive advantage with respect to sales of packaged sour cream in this area over handlers under this order. The seasonal and daily reserves necessary to supply the exact quantities of packaged sour cream received from the St. Louis and Chicago markets are generally carried by the producers respectively identified with such markets. Yet under the current provisions of the Kansas City order any receipts of packaged sour cream from the St. Louis and Chicago markets are first assigned to Class II and an equivalent amount of Kansas City producer milk is assigned to Class I.

Receipts of sour cream priced as Class I under other orders and priced as Class II under Order No. 41 and disposed of in the same consumer or institutional size packages as received should be allocated to the Class I utilization of the receiving handler. Testimony on this issue was primarily related to shipments of packaged sour cream from Chicago and St. Louis markets. There appears, however, to be no reason to confine the provision to shipments from these Federally regulated markets only. If shipments of sour cream in consumer packages are received from other Federal order markets where such products are classified as Class I the same considerations would apply. The proponent handler regulated under the Kansas City order proposed that such allocation be provided only when sour cream is not made during the month at the pool plant of the handler. This proviso should be adopted.

Another handler regulated under the Kansas City order proposed a provision applicable to all packaged Class I products. In the recommended decision it was concluded that only sour cream received in consumer packages from plants regulated under another Federal order should be allocated to Class I at plants regulated under the Kansas City order. Although the preponderance of evidence was directed to the allocation of packaged sour cream the record indicates that packaged yogurt, a Class I product under the Kansas City order, is also moving into the Kansas City market from the same sources as the packaged sour cream product. The same considerations given in these findings for the allocation to Class I of packaged sour cream are also applicable to packaged yogurt. The order should be amended to give prior Class I allocation to both sour cream and yogurt when received in the Kansas City market according to the circumstances indicated in these findings.

Considerations for similar allocation of any packaged Class I product other than sour cream and yogurt should be deferred until such time as the product is actually moving into the Kansas City market. Full opportunity would then be provided for consideration of the matter in light of all the circumstances involved. Except for packaged sour cream and yogurt there were no instances cited of current purchases by Kansas City handlers of other packaged Class I items from other Federal order markets, nor were any specific plans for such purchases mentioned.

5. *Classification of dip specialty products.* Handlers proposed that dip specialty products be classified as Class II. These products manufactured in the Kansas City market consist of various blends of nonfat milk solids, cultured milk and cream, cheese and nondairy food ingredients such as onion, celery, bacon and horse-radish. Under the present order these specialty items are considered as fluid milk products and are classified as Class I. Similar products which have been permitted to be made from ungraded milk in other markets are now being marketed in the Kansas City market.

Existing laws for Missouri do not require the manufacture of such specialty products to be made from Grade A milk. Handlers regulated under the Kansas City order, therefore, because they must pay the Class I price for those items, are at a competitive disadvantage and may lose their market to outside suppliers.

It was proposed that the classification of such specialty items in Class II be limited to those products containing not more than 15 percent butterfat and not less than 3 percent cheese and other nondairy food ingredients. One manufacturer of dip specialty products opposed the percentage limitations contained in the proposal since this handler is presently selling such products in the Kansas City market, that contain over 15 percent butterfat. There is no evidence in the record to support the need for establishing any limit with respect to butterfat content of such specialty products. It is important, however, that fluid milk products to which have been added only small amounts of seasoning are not included under the category subject to classification in Class II. Onion, celery, garlic or such other food items when added in lesser amounts than 3 percent of the finished product are considered to be primarily for purposes of seasoning, and sour cream products to which is added less than 3 percent of cheese and/or other nondairy food ingredients should be classified as Class I. In view of these considerations it is therefore concluded that "dip specialty products" consisting of cultured sour mixtures of cream and milk or skim milk to which cheese or any food substance other than a milk product has been added in an amount equal to 3 percent or more of the finished product should be classified and priced under the Kansas City order as Class II milk.

6. *Unfair methods of competition.* Proponent cooperative associations representing a majority of the producers supplying the Kansas City Grade A market proposed the addition of a new provision in the order to the effect that handlers shall refrain from acts which constitute unfair methods of competition through the transportation of milk for, or the supplying of goods and services to, producers from whom milk is received, which tend to defeat the purpose and intent of the Act. The principal evidence in the record relating to unfair competitive practices in the Kansas City market is that concerning a handler alleged to have subsidized the hauling on one bulk tank route. Proponents contend that hauling subsidies as premiums constitute an unfair basis of payments to producers in that such payments to certain producers should be uniformly paid to all producers supplying any such handler.

Proponents further cited provisions of the Act as justification for order provisions relating to unfair methods of competition, and that a provision identical with that proposed is included in Order No. 3 for the St. Louis marketing area.

The Act authorizes the Secretary to fix minimum prices that handlers must pay to producers. This is accomplished by present order language. A handler may, if he desires, pay more than such minimum price. This he may do in money, free transportation, goods, or services so long as he pays the minimum prices fixed by the order. Regulation of premiums which might be paid above order minimum prices is not a function of Federal milk orders and proponent cooperative associations failed to show in the record how premium payments to some producers in the form of hauling subsidies and services impair the system of minimum pricing.

The provision as proposed is identical to language presently contained in the St. Louis order; no such language is included in any other order established under the Act. This language in the St. Louis order is of a residual nature in that the provision and a related provision were incorporated in the order in 1936 when the St. Louis milk license under the Agricultural Adjustment Act of 1933 was replaced by the milk order. The related provision was deleted from the St. Louis order in 1953 and only that portion of such provisions as is presently proposed by the proponents has carried over to the present. There has been no change in this language since 1936 and no application of this provision since its inclusion in the order. The language of the proposed provision is too vague to provide feasible administration and would add no restraint to unfair competitive practices in the market that is not already incorporated in the order.

7. *Administrative changes.* A number of changes should be made to clarify order language and to increase conformity between various sections of the order.

Definitions of "producer milk" and "other source milk" should be revised to clarify the status of bulk tank milk for which a cooperative association is the handler. In view of the extent to which bulk handling by a cooperative may result in some operators of pool plants receiving their entire supply from another handler, changes have been made in the allocation and inventory accounting provisions to accommodate this situation as it affects shrinkage and inventory reclassifications. Advance payment to cooperatives for such milk, at the same rate as to individual producers should be required for milk delivered during the first 15 days of each month.

Provisions should be made for including in the producer settlement fund potential receipts from the administrator of the Neosho Valley order. Payments collected under that order from Kansas City handlers will then be returnable for distribution to Kansas City producers.

Compensatory payment provisions should be clarified to insure that such payments are not assessed with respect to inventory reclassification of milk priced as Class I under another order, and that the location of the plant from which such milk was received is used in determining the rate of payment.

Language of the supply-demand provision should be made consistent with the amendment already in effect with respect to the months whose receipts and sales determine adjustment.

Producers proposed the inclusion of an "approved milk" definition as a conforming change to their other proposals for change in shrinkage and pool plant qualification provisions of the order. The recommended amendment to the shrinkage provisions does not require this definition and a decision with respect to amendment of the pool plant definition is being deferred to a later date.

In the recommended decision the "approved plant" definition was to have been modified so as to delete the limitation of an approved plant to that portion with health approval. In view of exceptions filed, however, it is decided to defer decision on this issue so that a simultaneous decision may be made with respect to both this issue and the issue concerning amendment of the "pool plant" definition which has also been deferred to a later date.

For simplicity, class prices at basic test should be rounded to the nearest cent rather than one-tenth cent.

No change should be made with respect to interest on over due accounts. This is presently added (one-half percent per month) beginning with the first of the month following the due date. It was proposed that this be the day following the due date. The principal late payments cited were to producers and cooperative associations. The market administrators would not be in position to establish that interest should be added on this basis before payments were made to such persons. For this reason the proposal should be denied.

*Rulings on proposed findings and conclusions.* Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and con-

clusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

*General findings.* The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforsaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to Section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

*Rulings on exceptions.* In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Exceptions were filed to the recommended decision modifying the basic butterfat test from 3.8 to 3.5 percent. The exceptors allege that the hearing notice did not contain a specific proposal with respect to such change. Modification of the basic butterfat test from 3.8 to 3.5 percent was thoroughly explored at the hearing in connection with Proposal No. 7 of the notice which proposed a change in the butterfat differentials used to adjust the Class I and Class II milk prices for butterfat content. Because the Act does not require literal identity between a proposal and the order provision as issued, and for other reasons stated in this decision, the exceptions are overruled.

*Marketing agreement and order.* Annexed hereto and made a part hereof are two documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the Greater Kansas City Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Greater Kansas City Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

*It is hereby ordered,* That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

*Determination of representative period.* The month of January 1961 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order amending the order regulating the handling of milk in the Greater Kansas City marketing area, is approved or favored by producers, as defined under the terms of the order as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Issued at Washington, D.C., March 22, 1961.

ORVILLE L. FREEMAN,
*Secretary.*

*Order [1] Amending the Order Regulating the Handling of Milk in the Greater Kansas City Marketing Area*

**§ 913.0 Findings and determinations.**

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Greater Kansas City marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

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

(2) The parity prices of milk as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketng agreement upon which a hearing has been held.

*Order relative to handling.* It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Greater Kansas City marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

1. Delete § 913.13 and substitute the following:

**§ 913.13 Producer milk.**

"Producer milk" means only that skim milk or butterfat contained in milk (a) received at a pool plant directly from producers; (b) received by a cooperative association in its capacity as a handler pursuant to § 913.11 (c) or (d); or (c) diverted from a pool plant to a nonpool plant in accordance with the conditions set forth in § 913.7.

**§ 913.14 [Amendment]**

2. Delete § 913.14(a) and substitute therefor the following:

(a) Receipts during the delivery period of fluid milk products except:
(1) Fluid milk products received from other pool plants and cooperative associations acting in the capacity of handler pursuant to § 913.11 (c) and (d), or
(2) Producer milk; and

3. Delete § 913.18 and substitute therefor the following:

**§ 913.18 Fluid milk product.**

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, fortified milk or skim milk, reconstituted milk or skim milk, sweet or sour cream and any mixture of such cream and milk or skim milk (including such mixtures containing less than the required butterfat standard for cream but not including any cultured sour mixtures to which cheese or any food substance other than a milk product has been added in an amount not less than 3 percent by weight of the finished product) and concentrated (frozen or fresh) milk, flavored milk, or flavored milk drinks which are neither sterilized nor in hermetically sealed cans.

**§ 913.41 [Amendment]**

4. Delete § 913.41(b)(6) and substitute therefor the following:

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(6) In shrinkage allocated to receipts specified in § 913.42(b)(1) but not to exceed the following:

(i) 2 percent of receipts of skim milk and butterfat in milk received from producers, including that which is received by a cooperative association in its capacity as a handler pursuant to § 913.11 (c) or (d) but not including producer milk diverted in cans to a nonpool plant(s) pursuant to § 913.7; plus

(ii) 1.5 percent of skim milk and butterfat, respectively, received in bulk tank lots from other pool plants; plus

(iii) 1.5 percent of skim milk and butterfat, respectively, received directly from a cooperative association which is a handler pursuant to § 913.11(c) except that if the handler operating the pool plant files with the market administrator notice that the purchase of such milk is on the basis of farm weights determined by farm bulk tank calibrations, the applicable percentage shall be 2 percent; less

(iv) 1.5 percent of skim milk and butterfat, respectively, disposed of in bulk tank lots from pool plants to other milk plants; and less

(v) 1.5 percent of skim milk and butterfat, respectively, disposed of to plants by a cooperative association which is the handler pursuant to § 913.11(c) unless the exception provided in (iii) of this § 913.41(b)(6) applies in which case the applicable percentage shall be 2 percent; and

**§ 913.42 [Amendment]**

5. In § 913.42(b)(1) change "§ 913.11 (c)" to read "§ 913.11 (c) and (d)".

**§ 913.46 [Amendment]**

6. Delete § 913.46(a)(3) and substitute therefor the following:

(3) Subtract the pounds of skim milk in other source milk received from a plant(s) fully regulated under another order issued pursuant to the Act, as specified:

(i) If such product was not processed or packaged in the pool plant during the month, subtract from the pounds of skim milk in Class I milk the pounds of skim milk in sour cream or yogurt packaged in consumer or institutional size packages, classified and priced either as Class I milk pursuant to another order issued pursuant to the Act or as Class II milk pursuant to Order No. 41, regulating the handling of milk in the Chicago, Illinois, marketing area (Part 941 of this chapter), and disposed of in the same packages as received;

(ii) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in other source milk, other than that subtracted pursuant to (i) of this subparagraph, received from such a plant(s), and classified and priced as Class I milk under such other order(s).

7. In § 913.46(a) redesignate subparagraphs "(5)" and "(6)" as "(6)" and "(5)", respectively.

**§ 913.50 [Amendment]**

8. In § 913.50(a) delete the words "divided by 3.5 and multiplied by 3.8".

9. In §§ 913.50(b)(1); 913.51(b)(1); 913.52; 913.71 (d) and (f); 913.72 (d), (e), (f) and (i); 913.80(b)(2); and 913.82 delete "3.8" wherever it appears and substitute therefor "3.5".

**§ 913.51 [Amendment]**

10. In the language preceding paragraph (a) delete the words "one-tenth of a".

11. In the portion of § 913.51(a) preceding § 913.51(a)(1) delete "$1.15" and "$1.45" and substitute therefor "$1.18" and "$1.49" respectively.

12. Delete § 913.51(a)(1) and substitute therefor the following:

(1) Divide the total receipts of producer milk in the second and third months preceding by the total gross volume of Class I milk at pool plants (excluding interhandler transfers) for the same months, multiply the result by 100 and round to the nearest whole number. The result shall be known as the "current utilization percentage".

13. In § 913.51(b)(1) delete the phrase "plus 15 cents" and substitute therefor "plus 19 cents".

14. In § 913.51(b)(2)(i) delete "4.60" and substitute therefor "4.24".

15. In § 913.51(b)(2)(iii) delete the phrase "subtract 78 cents" and substitute therefor "subtract 74 cents".

**§ 913.52 [Amendment]**

16. (a) In § 913.52(a) delete "1.3" and substitute therefor "1.2".

(b) Delete § 913.52(b) and substitute therefor the following:

(b) For Class II milk, multiply the butter price specified in § 913.50(b)(1) by 1.15, divide the result by 10, and round to the nearest one-tenth of a cent.

**§ 913.70 [Amendment]**

17. Delete § 913.70 (c) and (d) and substitute therefor the following:

(c) Add an amount computed by multiplying the hundredweight of skim milk and butterfat pursuant to subparagraph (1) or (2) of this paragraph, whichever is less, by a rate equal to the difference between the Class II price for the preceding delivery period and the Class I price for the current delivery period: (1) that remaining in Class II after the computations pursuant to § 913.46(a)(4) and the corresponding step of § 913.46(b) for the preceding delivery period, or (2) that subtracted from Class I milk pursuant to § 913.46 (a)(4) and (b); and

(d) Add an amount computed by multiplying the hundredweight of skim milk and butterfat specified in subparagraphs (1) and (2) of this paragraph by a rate computed at the difference between the Class II price and the Class I price applicable at the location of the nearest nonpool plant(s) from which an equivalent volume of such other source milk was received: *Provided,* That such calculation shall not apply if the total receipts of producer milk at pool plants during the delivery period are not more than 120 percent of the total Class I utilization of such plants for the delivery period.

(1) That subtracted from Class I pursuant to § 913.46 (a)(2) and (b); and

(2) That subtracted from Class I pursuant to § 913.46 (a)(4) and (b), which is in excess of the sum of (i) skim milk and butterfat applied pursuant to paragraph (c) of this section; and (ii) the skim milk and butterfat subtracted from Class II pursuant to § 913.46 (a)(3)(ii), and (b) in the preceding month.

**§ 913.80 [Amendment]**

18. Delete § 913.80(d) and substitute therefor the following:

(d) To a cooperative association with respect to milk for which such association is acting in the capacity of a handler pursuant to § 913.11 (c) and/or (d):

(1) On or before the 20th day of the delivery period an amount equal to the rate specified in paragraph (b) times the volume received during the first 15 days of the delivery period; and

(2) On or before the 14th day after the end of each delivery period an amount equal to not less than the value of such milk as classified pursuant to § 913.44(a) at the applicable respective class price(s) less payment made pursuant to paragraph (d)(1) of this section.

19. Delete § 913.83 and substitute therefor the following:

**§ 913.83 Producer-settlement fund.**

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all funds received pursuant to paragraph (a) and (b) of this section and out of which he shall make all payments required pursuant to paragraph (c) of this section.

(a) Payments made by handlers pursuant to § 913.61 (a)(1) and (b)(1), and §§ 913.84 and 913.86.

(b) Payments received from the administrator of another order issued pursuant to the Act which have been required under such order with respect to milk distributed in the marketing area regulated by such other order from pool plants regulated by this order.

(c) Payments due handlers pursuant to §§ 913.85 and 913.86: *Provided,* That payments due any handler shall be offset by payments due from such handler pursuant to §§ 913.61, 913.84, 913.86, 913.87 and 913.88.

[F.R. Doc. 61-2680; Filed, Mar. 27, 1961; 8:48 a.m.]

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## Agricultural Research Service

## [ 9 CFR Part 74 ]

## SCABIES IN SHEEP

### Notice of Proposed Rule Making

Notice is hereby given in accordance with section 4 of the Administrative Procedure Act (5 U.S.C. 1003) that, pursuant to the provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, and the Act of March 3, 1905, as amended (21 U.S.C. 111–113, 115, 117, 120, 123, 125), it is proposed to amend the regulations in 9 CFR Part 74, as amended, restricting the interstate movement of sheep because of scabies, a contagious, infectious, and communicable

disease, by amending § 74.3(a) of said Part 74 to read as follows:

**§ 74.3 Designation of eradication and quarantine areas.**

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

(1) Arkansas, Nebraska, New York, North Dakota, and Tennessee;

(2) That portion of South Dakota, east of the Missouri River; and

(3) The following Counties in New Mexico: Bernalillo, Chaves, Eddy, and San Miguel.

The proposed amendment would add the States of Arkansas, Nebraska, North Dakota, and Tennessee to the eradication areas since the cooperative sheep scabies eradication program is now being conducted in such States. These States are presently included in the infected areas as sheep scabies is known to exist in such States.

Any person who wishes to submit written data, views, or arguments concerning the proposed amendment may do so by filing them with the Director, Animal Disease Eradication Division, Agricultural Research Service, United States Department of Agriculture, Washington 25, D.C., within 30 days after publication of this Notice in the FEDERAL REGISTER.

Done at Washington, D.C., this 23d day of March 1961.

M. R. CLARKSON,
*Acting Administrator,*
*Agricultural Research Service.*

[F.R. Doc. 61-2722; Filed, Mar. 27, 1961; 8:55 a.m.]

## Commodity Stabilization Service

### [ 7 CFR Part 728 ]

### WHEAT

### Notice of Formulation of Proposed Wheat Marketing Quota Regulations for 1961 and Subsequent Crop Years

Pursuant to the authority contained in the applicable provisions of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1301, 1331–1338, 1340, 1362–1368, 1372–1375, 1376, 1813, 1824, 1836, 1846), to become effective with the 1961 crop of wheat, the Department is preparing to formulate and issue the wheat marketing quota regulations. These proposed regulations contain the same provisions as contained in the regulations approved April 14, 1958, and published in the FEDERAL REGISTER on April 18, 1958 (23 F.R. 2549; §§ 728.850 to 728.895), as amended, except for certain changes which cover (1) deletion of certain provisions with respect to the measurement of farms and definitions of certain terms, since such provisions are now included in Part 718—Determination of Acreage and Performance (24 F.R. 4223), and amendments thereto, and Part 719—Reconstitution of Farms, Farm Allotments, and Farm History and Soil Bank Base Acreages (23 F.R. 6731), and amendments thereto; (2) delegation of certain administrative functions to the county office manager that were previously assigned to the county committee; (3) delegation of certain administrative functions to the State administrative officer that were previously assigned to the State committee; (4) assignment of specific functions relating to the handling of marketing quota penalties to the county office manager instead of to the treasurer of the county committee; (5) deletion of certain language with respect to the sale of wheat obtained by redemption of soil bank delivery orders (CCC Form 382 or CCC Form 103); (6) deletion of the provisions requiring the intermediate buyer to return the original and copy of Form MQ–95 to the county office if the wheat has not been sold within 15 days from date of purchase; (7) providing that in order for a producer to receive a penalty refund of three dollars or less he must request it; (8) acceptance of warehouse receipts for deposit in escrow from unlicensed warehouses under certain conditions; (9) language added to clarify that in connection with the release of stored excess wheat by underplanting or underproduction, no acreage will be considered as diverted from the production of wheat under an expired conservation reserve contract or an expired great plains conservation program contract; and (10) miscellaneous changes in language for the purpose of clarification and to obtain uniformity between the wheat marketing quota regulations and marketing quota regulations applicable to other basic commodities.

Prior to the issuance of such wheat marketing quota regulations, consideration will be given to any data, views, or recommendations pertaining thereto which are submitted in writing to the Director, Grain Division, CSS, U.S. Department of Agriculture, Washington 25, D.C. All submissions must be postmarked not later than seven days from the date of publication of this notice in the FEDERAL REGISTER in order to be considered.

Issued this 22d day of March 1961.

H. D. GODFREY,
*Administrator,*
*Commodity Stabilization Service.*

[F.R. Doc. 61-2723; Filed, Mar. 27, 1961; 8:55 a.m.]

# DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## Food and Drug Administration

### [ 21 CFR Part 120 ]

### TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

### Notice of Filing of Petition for Establishment of Tolerances for Residues of 1,2-Dibromo-3-Chloropropane

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a (d)(1)), the following notice is issued:

A petition has been filed jointly by Shell Chemical Company, Division of Shell Oil Company, 110 West 51st Street, New York 20, New York, and Dow Chemical Company, Midland, Michigan, proposing the establishment of tolerances for residues of inorganic bromides (calculated as Br) from soil treatment with 1,2-dibromo-3-chloropropane as follows:

130 parts per million in or on endive (escarole), field corn fodder, lettuce, popcorn fodder, sweet corn fodder.

100 parts per million in or on bananas.

75 parts per million in or on beans (dry and succulent), carrots, celery, figs, okra, parsnips, peas (dry and succulent), radishes, soybeans (dry and succulent), turnips.

50 parts per million in or on broccoli; brussels sprouts; cabbage; cauliflower; eggplants; melons, including cantaloup, honeydew melons, muskmelons, watermelons; peanuts; peppers; pineapples; pumpkins; tomatoes; winter squash.

25 parts per million in or on blackberries, boysenberries, cottonseed, cucumbers, dewberries, grapes, loganberries, raspberries, summer squash, sweet corn (green ears in husks).

10 parts per million in or on strawberries, walnuts (English).

5 parts per million in or on apricots; citrus, including citrus citron, grapefruit, lemons, oranges, tangerines; field corn kernels; nectarines; peaches; popcorn kernels; sweet corn kernels.

The analytical method proposed in the petition for determining residues of 1,2-dibromo-3-chloropropane is a modification of the method of D. A. Mapes and S. A. Shrader published in the Journal of the Association of Official Agricultural Chemists, Volume 40, page 189 (1957).

Dated: March 16, 1961.

[SEAL] ROBERT S. ROE,
*Director, Bureau of*
*Biological and Physical Sciences.*

[F.R. Doc. 61-2693; Filed, Mar. 27, 1961; 8:52 a.m.]

### [ 21 CFR Part 120 ]

### TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

### Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a (d)(1)), notice is given that a petition has been filed by Chemagro Corporation, Post Office Box 4913, Kansas City, Missouri, proposing the establishment of a tolerance of 1.0 part per million for residues of *O,O*-diethyl *O*-3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl phosphorothioate in or on meat of cattle, goats, horses, poultry, sheep, and swine.

The analytical method proposed in the petition for determining residues of *O,O*-diethyl *O*-3-chloro-4-methyl-2-oxo-2*H*-1-benzopyram-7-yl phosphorothioate is the method published in Agricultural and

Food Chemistry, Volume 7, pages 256–259 (1959).

Dated: March 20, 1961.

[SEAL] ROBERT S. ROE,
*Director, Bureau of Biological and Physical Sciences.*

[F.R. Doc. 61–2694; Filed, Mar. 27, 1961; 8:52 a.m.]

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## [ 21 CFR Part 121 ]

## FOOD ADDITIVES

### Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition has been filed by Atlas Powder Company, Wilmington 99, Delaware, proposing the amendment of §§ 121.1008 and 121.1009 of the regulations to provide for the safe use of polysorbate 80 and polyoxyethylene (20) sorbitan tristearate as emulsifiers in nonstandardized frozen desserts provided that the total amount of these emulsifiers, alone or in combination, does not exceed 1000 parts per million (0.1 percent) of the finished frozen dessert.

Dated: March 17, 1961.

[SEAL] J. K. KIRK,
*Assistant to the Commissioner of Food and Drugs.*

[F.R. Doc. 61–2695; Filed, Mar. 27, 1961; 8:52 a.m.]

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## [ 21 CFR Part 121 ]

## FOOD ADDITIVES

### Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition has been filed by Kordite Company, Division of National Distillers and Chemical Corporation, Macedon, New York, proposing the issuance of a regulation to provide for the safe use of a heat-sealing coating for polyolefin food packaging. The heat-sealing substance consists of a copolymer of vinyl acetate and crotonic acid, colloidal silica, and Japan wax.

Dated: March 17, 1961.

[SEAL] J. K. KIRK,
*Assistant to the Commissioner of Food and Drugs.*

[F.R. Doc. 61–2696; Filed, Mar. 27, 1961; 8:52 a.m.]

# Notices

## DEPARTMENT OF COMMERCE

### Federal Maritime Board

[Docket No. 919]

### NEW ENGLAND FORWARDING CO., INC., AND SEA-LAND OF PUERTO RICO

### Investigation of Certain Equalization and Tariff Practices; Notice of Order To Dismiss Proceeding

On March 13, 1961, the Federal Maritime Board entered the following Order:

It appearing that there has been filed with the Federal Maritime Board on August 19, 1960 by the New England Forwarding Company, Inc., a new tariff naming local and proportional commodity rates between the ports of Baltimore, Md., New York, N.Y., and Philadelphia, Pa., on the one hand and ports in Puerto Rico on the other hand, and providing pickup and delivery rates in Baltimore, Md., and points in Puerto Rico, designated as follows: Freight Tariff No. 1, F.M.B.-F. No. 1; and

It further appearing that the Federal Maritime Board by Order dated October 21, 1960, instituted a proceeding of inquiry and investigation into and concerning the lawfulness of the above tariff filing and/or practices of New England Forwarding Company, Inc., and/or Sea-Land of Puerto Rico, Division of Sea-Land Service, Inc., to determine whether said tariff filing may be in violation of the Shipping Act, 1916, as amended, and/or the Intercoastal Shipping Act, 1933, as amended; and

It further appearing that on December 2, 1960, the United States District Court for the District of Maryland issued a temporary restraining order against New England Forwarding and Sea-Land Services restraining and enjoining them from soliciting, accepting or transporting cargo or otherwise acting under New England Forwarding Company Tariff F.M.B.-F. No. 1, such injunction to remain in effect until the Board enters its order in this proceeding or six months from the date of the court order, whichever first occurs; and

It further appearing that on February 15, 1961, New England Forwarding Company cancelled its Freight Tariff No. 1, F.M.B.-F. No. 1, in its entirety leaving no rates or other provisions in effect;

*Now therefore, it is ordered,* That this proceeding be, and it is hereby dismissed; and

*It is further ordered,* That copies of the order shall be filed with said tariff schedules in the Office of Regulations of the Federal Maritime Board; and

*It is further ordered,* That a copy of this order shall be forthwith served upon all respondents and protestants herein; and that this Order be published in the FEDERAL REGISTER.

Dated: March 22, 1961.

By order of the Federal Maritime Board.

THOMAS LISI,
*Secretary.*

[F.R. Doc. 61-2662; Filed, Mar. 27, 1961; 8:45 a.m.]

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[Docket No. 922]

### UNITED STATES ATLANTIC & GULF-PUERTO RICO CONFERENCE

### Proportional Commodity Rates Through Baltimore to Puerto Rico; Notice of Order To Dismiss Proceeding

On March 13, 1961, the Federal Maritime Board entered the following order:

It appearing, that there has been filed with the Federal Maritime Board on November 9, 1960 by the United States Atlantic & Gulf-Puerto Rico Conference, a tariff setting forth new reduced proportional rates on certain designated commodities from U.S. Atlantic ports to ports in the Commonwealth of Puerto Rico designated as follows: United States Atlantic & Gulf-Puerto Rico Proportional Freight Tariff No. 1, F.M.B.-F. No. 16; and

It further appearing that the Federal Maritime Board by Order dated November 14, 1960, suspended the operation of the above designated schedule and deferred the use thereof to and including April 10, 1961, unless otherwise authorized by the Board; and

It further appearing that on February 15, 1961, the United States Atlantic & Gulf-Puerto Rico Conference cancelled its Proportional Freight Tariff No. 1, F.M.B-F. No. 16, in its entirety;

*Now therefore, it is ordered,* That this proceeding be, and it is hereby dismissed; and

*It is further ordered,* That copies of the order shall be filed with said tariff schedules in the Office of Regulations of the Federal Maritime Board; and

*It is further ordered,* That a copy of this order shall be forthwith served upon all respondents and protestants herein; and that this order be published in the FEDERAL REGISTER.

Dated: March 22, 1961.

By order of the Federal Maritime Board.

THOMAS LISI,
*Secretary.*

[F.R. Doc. 61-2663; Filed, Mar. 27, 1961; 8:45 a.m.]

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[Docket No. 933]

### PUGET SOUND-ALASKA VAN LINES, INC.

### Investigation of Increased Rates on Blasting Caps and Household Goods; Notice of Order To Dismiss Proceeding

On March 10, 1961, the Federal Maritime Board entered the following Order:

It appearing, that there have been filed with the Federal Maritime Board by Puget Sound-Alaska Van Lines, Inc., consecutively numbered revised pages to Freight Tariffs F.M.B.-F. No. 1 and F.M.B.-F. No. 4, setting forth increased rates on certain designated commodities between ports in the States of California and Washington and ports in the State of Alaska designated as follows:

(1) *Tariff No. 1, F.M.B.-F. No. 1.*
2d and 3d Revised Pages No. 13.
1st and 2d Revised Pages No. 15.
1st and 2d Revised Pages No. 38.
(2) *Tariff No. 4, F.M.B.-F. No. 4.*
1st and 2d Revised Pages No. 11.
1st and 2d Revised Pages No. 13.
1st and 2d Revised Pages No. 34.

It further appearing that the Federal Maritime Board by Order dated February 9, 1961, suspended the operation of the above designated schedules and deferred the use thereof to and including June 9, 1961, unless otherwise authorized by the Board; and

It further appearing that the Board having found good cause therefor has on February 23, 1961, granted Puget Sound-Alaska Van Lines, Inc., special permission to cancel such schedules on not less than one day's notice under Special Permission No. 3915;

*Now therefore, it is ordered,* That this proceeding be, and it is hereby dismissed; and

*It is further ordered,* That copies of this order shall be filed with said tariff schedules in the Office of Regulations, Federal Maritime Board; and

*It is further ordered,* That a copy of this order shall be forthwith served upon all respondents and protestants herein; and that this order be published in the FEDERAL REGISTER.

Dated: March 22, 1961.

By order of the Federal Maritime Board.

THOMAS LISI,
*Secretary.*

[F.R. Doc. 61-2664; Filed, Mar. 27, 1961; 8:45 a.m.]

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### ORANJE LIJN AND FJELL LINE JOINT SERVICE

### Agreement Filed for Approval

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, U.S.C. 814):

Agreement No. 8067-3, between Oranje Lijn (Maatschappij Zeetransport) N.V. and the carriers comprising the Fjell Line joint service, modifies the approved agreement of the parties, Agreement No. 8067, as amended, covering a pooling and sailing arrangement in the trade between ports of the Great Lakes of the United States and Canada, the St. Lawrence River and Seaway, Newfoundland and the Canadian Maritimes, on the one hand, and ports in the United Kingdom

and in the Bordeaux/Hamburg Range, Scandinavian and Baltic ports and ports in the Mediterranean and adjacent seas, on the other hand. The purpose of the modification is to include a provision that, in case of any trades within the scope of the agreement where the rates, charges and practices are not established by an approved conference or other agreement to which the parties to Agreement No. 8067, as amended, are members or parties, said parties may establish their own rates, etc., which shall be filed with the Board.

Interested parties may inspect this agreement and obtain copies thereof at the Office of Regulations, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to this agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: March 22, 1961.

By order of the Federal Maritime Board.

THOMAS LISI,
*Secretary.*

[F.R. Doc. 61-2665; Filed, Mar. 27, 1961; 8:45 a.m.]

## MONTSHIP LINES, LTD., AND GESTIONI ESERCIZIO NAVI G.E.N.

### Agreement Filed for Approval

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, U.S.C. 814):

Agreement No. 8575, between Montship Lines Limited and Gestioni Esercizio Navi G.E.N., provides for the establishment and maintenance of a joint cargo service under the trade name "Montship-Capo Great Lakes Service," in the trade between Canadian Atlantic Coast ports and ports of the Great Lakes of the United States and Canada, on the one hand, and ports in the Mediterranean Sea, Iberian Peninsula and North Africa, on the other hand, and in trades between, not including transportation within the purview of the coastwise laws of the United States. Agreement No. 8575, upon approval, will supersede and cancel approved joint service Agreement No. 8361, of the parties covering the trade between ports on the Great Lakes of the United States, on the one hand, and ports in the Mediterranean Sea, Iberian Peninsula and North Africa, on the other hand.

Interested parties may inspect this agreement and obtain copies thereof at the Office of Regulations, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: March 22, 1961.

By order of the Federal Maritime Board.

THOMAS LISI,
*Secretary.*

[F.R. Doc. 61-2666; Filed, Mar. 27, 1961; 8:46 a.m.]

## A. H. BULL STEAMSHIP CO. ET AL.

### Agreements Filed for Approval

Notice is hereby given that the following described agreements have been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

Agreement No. 8587, between A. H. Bull Steamship Co. and United States Lines Company, covers a through billing arrangement in the trade from the United Kingdom of Great Britain, Northern Ireland, the Irish Free State, and the Vigo/Hamburg Range of Continental Europe to Puerto Rico, with transshipment at New York, Baltimore or Philadelphia. Agreement No. 8587, upon approval, will supersede and cancel approved Agreement No. 8509, between Bull Insular Line, Inc. and United States Lines Company in the same trade.

Agreement No. 8509, between A. H. Bull Steamship Co. and "Mexican Line" Transportation Maritima Mexicana S.A., covers a through billing arrangement in the trade from Mexico to Puerto Rico, with transshipment at New York, Baltimore or Philadelphia. Agreement No. 8588, upon approval, will supersede and cancel approved Agreement No. 8547, between Bull Insular Line, Inc. and "Mexican Line" in the same trade.

Interested parties may inspect these agreements and obtain copies thereof at the Office of Regulations, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to these agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: March 22, 1961.

By order of the Federal Maritime Board.

THOMAS LISI,
*Secretary.*

[F.R. Doc. 61-2667; Filed, Mar. 27, 1961; 8:46 a.m.]

# DEPARTMENT OF THE INTERIOR

### Office of the Secretary

[Order No. 2851]

## DIRECTOR, BUREAU OF LAND MANAGEMENT

### Delegation of Authority to Negotiate Contracts for Professional Photogrammetric Engineering Services

MARCH 15, 1961.

SECTION 1. *Delegation.* The Director, Bureau of Land Management, is authorized, subject to the provisions of section 2 of this order, to exercise the authority delegated by the Administrator of General Services to the Secretary of the Interior (24 F.R. 1921) to negotiate, without advertising, under section 302(c)(4) of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 252 et seq.), contracts for professional architect-engineering services for photogrammetric engineering projects during the remainder of fiscal year 1961 and the first half of fiscal year 1962 in connection with the State Selection survey program in Alaska.

SEC. 2. *Exercise of authority.* The authority delegated by section 1 of this order shall be exercised in accordance with the applicable limitations in the Federal Property and Administrative Services Act of 1949, as amended, and in accordance with applicable policies, procedures and controls prescribed by the General Services Administration and the Department of the Interior. The authority delegated by this order does not include authority to make advance payments under section 305 of the act.

SEC. 3. *Redelegation.* The Director, Bureau of Land Management may, in writing, redelegate or authorize redelegation of the authority granted in section 1 of this order to a subordinate official or employee. The redelegation of this authority shall be published in the FEDERAL REGISTER.

STEWART L. UDALL,
*Secretary of the Interior.*

[F.R. Doc. 61-2676; Filed, Mar. 27, 1961; 8:48 a.m.]

# FEDERAL AVIATION AGENCY

[OE Docket No. 61-KC-15]

## CONSTRUCTION OF TV ANTENNA TOWER

### Notice of No Airspace Objection

The Federal Aviation Agency has circularized the following proposal to the aviation industry for comment and has conducted an aeronautical study to determine its effect upon the utilization of airspace:

Carroll Area Television, Inc., proposes to erect a broadcast antenna structure near Carroll, Iowa, at latitude 42°02'54" north, longitude 94°51'28" west. The overall height of the structure would be 1630 feet above mean sea level (350 feet above ground level).

No substantial aeronautical objections were received as a result of the circularization. The aeronautical study by the Agency disclosed that the proposed structure would penetrate the outer conical surface of the "Joint Industry/Government Tall Structures Committee Final Report" criteria as applied to the Carroll Municipal Airport, Carroll, Iowa, by 38 feet. This factor is not in itself disqualifying but indicates a requirement for an aeronautical study. In this instance, the study revealed that there would be no substantial adverse effect upon aeronautical operations, procedures or minimum flight altitudes.

Therefore, I find that this proposed structure at the location and mean sea

level elevations specified herein would have no substantial adverse effect upon aeronautical operations, procedures or minimum flight altitudes and conclude that no objection thereto from an airspace utilization standpoint be interposed by the Agency, providing that the structure will be obstruction marked and lighted in accordance with applicable rules and standards.

Issued in Washington, D.C., on March 21, 1961.

This finding will be effective upon the date of its publication in the FEDERAL REGISTER.

D. D. THOMAS,
*Director, Bureau of Air Traffic Management.*

[F.R. Doc. 61–2669; Filed, Mar. 27, 1961; 8:46 a.m.]

# FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 13989, 13990; FCC 61M–480]

## BAR NONE, INC., AND INDEPENDENT BROADCASTING CORP.

### Order Scheduling Hearing

In re applications of Bar None, Inc., Dishman, Washington, Docket No. 13989, File No. BP–12909; Independent Broadcasting Corporation, Spokane, Washington, Docket No. 13990, File No. BP–13243; for construction permits.

*It is ordered,* This 21st day of March 1961, that Basil P. Cooper will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on May 15, 1961, in Washington, D.C.

Released: March 22, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
*Acting Secretary.*

[F.R. Doc. 61–2703; Filed, Mar. 27, 1961; 8:53 a.m.]

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[Docket Nos. 13848, 13849; FCC 61M–477]

## MARTIN THEATRES OF GEORGIA, INC. (WTVM) AND COLUMBUS BROADCASTING CO., INC. (WRBL–TV)

### Order Continuing Hearing

In re applications of Martin Theatres of Georgia, Inc. (WTVM), Columbus, Georgia, Docket No. 13848, File No. BMPCT–5490; Columbus Broadcasting Company, Inc. (WRBL–TV), Columbus, Georgia, Docket No. 13849, File No. BMPCT–5491; for modification of construction permits.

The Hearing Examiner having under consideration a joint petition filed March 17, 1961, by the above applicants requesting that the hearing in the above-entitled proceeding now scheduled to begin on March 22, 1961, be continued to April 19, 1961; and

It appearing that the reason for the requested continuance is to give the Federal Aviation Agency time within which to complete action on a modified proposal of the applicants which has been referred to the Federal Aviation Agency for approval; and

It further appearing that all counsel have agreed to the immediate favorable consideration of the joint petition for continuance and good cause for granting the petition having been shown;

*It is ordered,* This the 21st day of March 1961, that the petition for continuance is granted and the hearing now scheduled to begin on March 22, 1961, is continued to April 19, 1961.

Released: March 22, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
*Acting Secretary.*

[F.R. Doc. 61–2704; Filed, Mar. 27, 1961; 8:53 a.m.]

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[Docket Nos. 13991, 13992; FCC 61M–481]

## BEN S. McGLASHAN (KGFJ) AND SUN STATE BROADCASTING SYSTEM, INC.

### Order Scheduling Hearing

In re applications of Ben S. McGlashan (KGFJ), Los Angeles, California, Docket No. 13991, File No. BP–13123; Sun State Broadcasting System, Inc., San Fernando, California, Docket No. 13992, File No. BP–14056; for construction permits.

*It is ordered,* This 21st day of March 1961, that David I. Kraushaar will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on May 10, 1961, in Washington, D.C.

Released: March 22, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
*Acting Secretary.*

[F.R. Doc. 61–2705; Filed, Mar. 27, 1961; 8:54 a.m.]

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[Docket Nos. 13998, 13999; FCC 61M–484]

## LORENZO W. MILAM AND EASTSIDE BROADCASTING CO.

### Order Scheduling Hearing

In re applications of Lorenzo W. Milam, Seattle, Washington, Docket No. 13998, File No. BPH–3004; L. N. Ostrander and G. A. Wilson, d/b as Eastside Broadcasting Company, Seattle, Washington, Docket No. 13999, File No. BPH–3263; for construction permits.

*It is ordered,* This 21st day of March 1961, that Asher H. Ende will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on May 8, 1961, in Washington, D.C.

Released: March 22, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
*Acting Secretary.*

[F.R. Doc. 61–2706; Filed, Mar. 27, 1961; 8:54 a.m.]

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[Docket Nos. 13958, 13959; FCC 61M–490]

## ROBERT F. NEATHERY AND RADIO COMPANY OF TEXAS COUNTY

### Order Following Prehearing Conference

In re applications of Robert F. Neathery, Houston, Missouri, Docket No. 13958, File No. BP–12913; W. R. McKnight, Nolan Hutcheson, Raymond E. Duff, S. E. Ferguson, Maurice W. Covert, Wm. H. Duff, A. W. Roffe, Chester S. Sieloff, d/b as Radio Company of Texas County, Houston, Missouri, Docket No. 13959, File No. BP–14108; for construction permits.

A prehearing conference in the above-entitled proceeding having been held on March 21, 1961, and it appearing that certain agreements were reached therein which should be formalized and published in an Order;

*Accordingly, it is ordered,* This 22d day of March 1961, as follows:

(1) The direct cases of the applicants shall be presented in written, sworn exhibits.

(2) Copies of the proposed exhibits of the applicants shall be exchanged, and also supplied to Bureau counsel and the Hearing Examiner, by April 25, 1961.[1]

(3) Notification as to those witnesses for the applicants whose attendance at the hearing for cross-examination is required by parties requesting same, shall be given to the counsel concerned by May 8, 1961.

(4) The hearing heretofore scheduled to commence on April 17, 1961, is postponed to May 15, 1961, at 10:00 a.m., and will be held in the offices of the Commission at Washington, D.C.

Released: March 22, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
*Acting Secretary.*

[F.R. Doc. 61–2707; Filed, Mar. 27, 1961; 8:54 a.m.]

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[Docket Nos. 13985, 13986; FCC 61M–486]

## E. G. ROBINSON, JR.

### Order Scheduling Hearing

In re applications of E. G. Robinson, Jr., tr/as Palmetto Broadcasting Com-

[1] It was indicated at the prehearing conference that respondent Springfield Broadcasting Co., licensee of Station KGBX, will not participate in the hearing. Therefore, the Examiner ruled that the other parties herein would not be required to serve the party respondent with copies of the proposed exhibits or pleadings filed herein.

pany (WDKD), Kingstree, South Carolina, Docket No. 13985, File No. BR–2320; Docket No. 13986, File No. BL–7852; for renewal of license and for license to cover CP.

*It is ordered,* This 21st day of March 1961, that Thomas H. Donahue will preside at the hearing in the above-entitled proceeding which is hereby scheduled to be held in Kingstree, South Carolina, commencing May 9, 1961.

Released: March 22, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
*Acting Secretary.*

[F.R. Doc. 61–2709; Filed, Mar. 27, 1961; 8:54 a.m.]

[Docket Nos. 13987, 13988; FCC 61M–479]

## OLEAN BROADCASTING CORP. AND WIRY, INC.

### Order Scheduling Hearing

In re applications of Olean Broadcasting Corporation, Plattsburg, New York, Docket No. 13987, File No. BP–13091; WIRY, Inc., Lake Placid, New York, Docket No. 13988, File No. BP–13345; for construction permits.

*It is ordered,* This 21st day of March 1961, that Asher H. Ende will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on May 1, 1961, in Washington, D.C.

Released: March 22, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
*Acting Secretary.*

[F.R. Doc. 61–2708; Filed, Mar. 27, 1961; 8:54 a.m.]

[Docket No. 14001; FCC 61M–485]

## MARIANO RICHEY

### Order Scheduling Hearing

In the matter of Mariano Richey, Baltimore, Maryland, Docket No. 14001; order to show cause why there should not be revoked the license for Radio Station 4W1408 in the Citizens Radio Service.

*It is ordered,* This 21st day of March 1961, that H. Gifford Irion will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on May 8, 1961, in Washington, D.C.

Released: March 22, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
*Acting Secretary.*

[F.R. Doc. 61–2710; Filed, Mar. 27, 1961; 8:54 a.m.]

[Docket Nos. 13916, 13917; FCC 61M–488]

## MARSHALL ROSENE AND COURT HOUSE BROADCASTING CO. (WCHI)

### Order Continuing Hearing

In re applications of Marshall Rosene, Celina, Ohio, Docket No. 13916, File No. BP–13305; The Court House Broadcasting Co. (WCHI), Chillicothe, Ohio, Docket No. 13917, File No. BP–14047, for construction permits.

*It is ordered,* This 21st day of March 1961, on the Examiner's own motion, that the hearing in the above-entitled proceeding now scheduled for March 28, 1961, is continued to a date to be determined at a pre-hearing conference to be held at 10:00 a.m., on March 28, 1961.

Released: March 22, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
*Acting Secretary.*

[F.R. Doc. 61–2711; Filed, Mar. 27, 1961; 8:54 a.m.]

[Docket No. 13982; FCC 61M–492]

## SEVEN HILLS BROADCASTING CORP. (WOIO)

### Order Scheduling Prehearing Conference

In re application of Seven Hills Broadcasting Corporation (WOIO), Cincinnati, Ohio, Docket No. 13982, File No. BPH–3015; for construction permit.

*It is ordered,* This 22d day of March 1961, on the Hearing Examiner's own motion that, pursuant to 47 CFR 1.111, the parties or their counsel in the above-entitled proceeding are directed to appear for a prehearing conference at the offices of the Commission, Washington, D.C., at 9:00 a.m., on April 10, 1961.

Released: March 22, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
*Acting Secretary.*

[F.R. Doc. 61–2712; Filed, Mar. 27, 1961; 8:54 a.m.]

[Docket No. 13993; FCC 61M–482]

## GEORGE SHANE

### Order Scheduling Hearing

In re application of George Shane, Victorville, California, Docket No. 13993, File No. BP–13276; for construction permit.

*It is ordered,* This 21st day of March 1961, that Isadore A. Honig will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on May 15, 1961, in Washington, D.C.

Released: March 22, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
*Acting Secretary.*

[F.R. Doc. 61–2713; Filed, Mar. 27, 1961; 8:54 a.m.]

[Docket No. 13984; FCC 61M–478]

## ROGER S. UNDERHILL

### Order Scheduling Hearing

In the matter of revocation of license of Roger S. Underhill for Standard Broadcast Station WIOS, Tawas City-East Tawas, Michigan, Docket No. 13984.

*It is ordered,* This 21st day of March 1961, that David I. Kraushaar will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on May 22, 1961, in Washington, D.C.

Released: March 22, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
*Acting Secretary.*

[F.R. Doc. 61–2714; Filed, Mar. 27, 1961; 8:54 a.m.]

[Docket Nos. 13994–13997; FCC 61M–483]

## WAGNER BROADCASTING CO. ET AL.

### Order Scheduling Hearing

In re applications of John Andrew Wagner, John Russell Wagner, Carrie Helen Wagner, d/b as Wagner Broadcasting Company, Woodland, California, Docket No. 13994, File No. BP–8555; Elbert H. Dean and Richard E. Newman, Clovis, California, Docket No. 13995, File No. BP–12728; Reid W. Dennis tr/as Dennis Broadcasting, Reno, Nevada, Docket No. 13996, File No. BP–13548; Charles W. Jobbins, Grass Valley, California, Docket No. 13997, File No. BP–13964; for construction permits.

*It is ordered,* This 21st day of March 1961, that Charles J. Frederick will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on May 31, 1961, in Washington, D.C.

Released: March 22, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
*Acting Secretary.*

[F.R. Doc. 61–2705; Filed, Mar. 27, 1961; 8:54 a.m.]

[Docket No. 13972; FCC 61M-491]

## WIRELINE RADIO, INC.

### Order Scheduling Prehearing Conference

In re application of Wireline Radio, Inc., Lewisburg, Pennsylvania, Docket No. 13972, File No. BR-3511; for renewal of license of Station WITT, Lewisburg, Pennsylvania.

*It is ordered*, This 22d day of March 1961, on the Hearing Examiner's own motion that, pursuant to 47 CFR 1.111, the parties or their counsel in the above-entitled proceeding are directed to appear for a prehearing conference at the offices of the Commission, Washington, D.C., at 9:30 a.m., on April 4, 1961.

Released: March 22, 1961.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
*Acting Secretary.*

[F.R. Doc. 61-2716; Filed, Mar. 27, 1961; 8:54 a.m.]

# SECURITIES AND EXCHANGE COMMISSION

[File No. 812-1219]

## EQUITY ANNUITY LIFE INSURANCE CO.

### Notice of Application to Permit Loans and Advances to Certain Persons

MARCH 21, 1961.

In the matter of Equity Annuity Life Insurance Company (Washington, D.C.), File No. 812-1219.

Notice is hereby given that Equity Annuity Life Insurance Company ("Ealic"), an open-end investment company registered under the Investment Company Act of 1940 ("Act") has filed, pursuant to section 6(c) of the Act, an application requesting an exemption from section 17(a)(3) of the Act to permit it to make loans to general agents on the terms and conditions hereinafter described.

Ealic proposes to make loans to its general agents to permit them to annualize first year sales commissions to their special agents, and to allow draws to their special agents. It is also proposed to make loans to general agents to assist them in expanding their business. The application states that all general agents will be treated on a uniform basis in connection with such loans and advances. No draws or advances will be permitted to part time special agents and no loans will be made to any officer or director.

According to the application, the general agent appoints special agents and enters into a contract with them whereby he agrees to pay them a certain portion of the commission he receives from Ealic. Although the special agents contracts are made with the general agent and not with Ealic, the latter reserves the right to disapprove a contract made with a special agent. All Ealic general agency contracts provide for a first year commission of 35 percent to the general agent on periodic payment deferred variable annuity contracts of which the special agent receives 25 percent and the remaining 10 percent is retained by the general agent. The special agent and the general agent each receive 3 percent of the gross payments for the next succeeding nine years. In a monthly payment contract with annual payments totaling $1,000 the special agent would be entitled to receive the first year commission of $250 over the year. The general agent may arrange to advance the special agent the bulk of his annual commission as soon as the policy is sold. This procedure is known as annualization of commissions. It is proposed that Ealic make loans to its general agents to permit them to annualize up to 75 percent of their special agents' first year's commissions.

It is also proposed that Ealic make loans to general agents to finance drawing accounts of their special agents. In order to continue with the draw system, a special agent is required to produce a stipulated amount of new premiums per month. This production of new business is known as validation. The specific amount of validation required to continue a draw by the special agent is a matter to be determined between the general agent and the special agent. However, under the proposed arrangement with Ealic the general agent would be required to validate 33⅓ percent of the amount of the total draws of his special agents in new purchase payment business in any given month. New premium business subject to annualization will not be counted in reckoning the validation of the general agent. As a further limitation it is proposed that the indebtedness of any special agent to the general agent shall not exceed $10,000. No special agent will be eligible to receive both a draw and the annualization of commissions.

Loans to general agents not related to productivity may also be made but are limited to a maximum of $5,000 per general agent. The general agent and his special agents are only authorized to collect the first premium on any policy, all subsequent payments are made directly to the home office and no further authority with respect to the contracts is vested in the general agent. The contract between Ealic and the general agent provides that Ealic may deduct any indebtedness of the general agent from any commission due to him. Ealic has the contractural right to have a demand promissory note from the general agent at any time for the full amount of the indebtedness plus interest.

Under the Life Insurance Act of the District of Columbia, Ealic is required at all times to maintain paid-up surplus equal to 50 percent of the par value of its common stock, and loans and advances can be made only from "free surplus" in excess of the required surplus. Ealic states that it will not make any loan to any general agent if, as a result of the making of the proposed loan, the balance of loans outstanding at that time would exceed 50 percent of free surplus; such computation of free surplus being made for this purpose without deduction from surplus of loans outstanding. As of December 31, 1960, Ealic's free surplus was approximately $83,400.

The Commission's Opinion and Order of February 25, 1960 (Investment Company Act Release No. 2975), exempted Ealic from certain requirements of the Act but denied Ealic's request relating to loans and advances without prejudice to renewal on amended terms and conditions appropriate for the protection of Ealic's security holders. In the foregoing opinion, the Commission found that since loans and advances would be made only out of free surplus, the interests of the variable annuity contract holders may be considered to be reasonably protected; the Commission pointed out, however, that since loans and advances have the immediate effect of diminishing the capital stock equity, the interests of Ealic's stockholders would not be adequately protected without appropriate conditions with respect to transactions with underwriters and affiliated persons.

Ealic points out that since the Commission's order of February 25, 1960, the Life Insurance Act of the District of Columbia was amended to provide for the establishing of separate accounts in connection with the issuance of variable annuity contracts. Among other things, the new law provides that "the assets of any such separate account shall not be chargeable with liabilities arising out of any other business the company may conduct." Ealic states that the new law reinforces the Commission's previous conclusion that variable annuity contract owners will not be adversely affected by the making of loans and advances as requested herein.

Section 17(a)(3) of the Act prohibits an affiliated person or principal underwriter of a registered investment company, or an affiliated person of such person from borrowing money or other property from such company. The general agents through whom variable annuity contracts are distributed fall within the definition of a principal underwriter, as that term is defined in section 2(a)(28) of the Act.

Section 6(c) of the Act authorizes the Commission by order upon application to exempt, conditionally or unconditionally, any transaction from any provision of the Act or of any rule or regulation thereunder, if and to the extent that the Commission finds that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than April 4, 1961, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by the statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At

any time after said date, as provided by Rule O–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 61–2677; Filed, Mar. 27, 1961; 8:48 a.m.]

# NATIONAL LABOR RELATIONS BOARD

## DESCRIPTION OF ORGANIZATION [1]

### Public Information Places; Miscellaneous Amendments

Pursuant to the provisions of section 3(a) (1) of the Administrative Procedure Act, 5 U.S.C. 1001, the National Labor Relations Board hereby separately states and concurrently publishes in the Notices section of the FEDERAL REGISTER the following amendments to its description of organization in the field in respect to the places at which the public may secure information or make submittals or requests.

The Board has established a Regional Office at Albuquerque, New Mexico, designated as the Twenty-eighth Regional Office, effective March 29, 1961. The Albuquerque region will have jurisdiction over cases in the States of Arizona and New Mexico, and El Paso, Culberson and Hudspeth counties in the State of Texas.

The State of Arizona is removed from the jurisdiction of the Twenty-first Region, Los Angeles, California.

The following counties in the State of Texas remain under the jurisdiction of the Sixteenth Region, Fort Worth, Texas: Andrews, Borden, Brewster, Crane, Dawson, Ector, Gaines, Jeff Davis, Loving, Lynn, Martin, Midland, Pecos, Presidio, Reeves, Terrell, Terry, Upton, Ward, Winkler, and Yoakum.

The Board's Twenty-seventh Regional Office at Denver, Colorado, has been expanded to include the State of Utah, formerly under the jurisdiction of the Twentieth Region, San Francisco, California, effective March 29, 1961.

The addresses of the Regional and Subregional offices appearing at 25 F.R. 2559 are amended by adding thereto the following words "Twenty-eighth Region—Albuquerque, New Mexico, 1015 Tijeras Avenue," and by removing therefrom the following words "Thirty-third Subregion—El Paso, Texas, 405 E. Franklin Street."

[1] This amends Description of Organization which appeared at 13 F.R. 3090, with amendments appearing at 13 F.R. 6266, 15 F.R. 973, 16 F.R. 1969, 19 F.R. 1259, 21 F.R. 9914, 22 F.R. 6881, 7216, 24 F.R. 7560, 25 F.R. 2559, 25 F.R. 3534 and 25 F.R. 10520.

(Sec. 6, 49 Stat. 452, as amended; 29 U.S.C. 156)

Dated: Washington, D.C., March 23, 1961.

By direction of the Board.

[SEAL] OGDEN W. FIELDS, *Executive Secretary.*

[F.R. Doc. 61–2701; Filed, Mar. 27, 1961; 8:53 a.m.]

# THE RENEGOTIATION BOARD

## STATEMENT OF ORGANIZATION

### Miscellaneous Amendments

The Statement of Organization published in the issue of September 28, 1956 (F.R. Doc. 56–7859; 21 F.R. 7467), as amended in the issue of July 23, 1957 (F.R. Doc. 57–6008; 22 F.R. 5848), is hereby further amended as follows:

1. Section 3 is amended by deleting the last sentence of paragraph (a) and inserting in lieu therof the following: "The principal office of the Board is located at 1910 K Street NW., Washington, D.C."

2. Section 4 is amended by adding at the end of paragraph (b) the following new sentence: "By amendment approved September 6, 1958, the National Aeronautics and Space Administration was added as a Department under the act."

Dated: March 23, 1961.

THOMAS COGGES HALL, *Chairman.*

[F.R. Doc. 61–2702; Filed, Mar. 27, 1961; 8:53 a.m.]

# INTERSTATE COMMERCE COMMISSION

## FOURTH SECTION APPLICATIONS FOR RELIEF

MARCH 23, 1961.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 36982: *Class rates—Sea-Land Service, Inc.* Filed by Sea-Land Service, Inc. (No. 27), for itself and interested carriers. Rates on various commodities moving on less-than-truckload class rates loaded in trailers and transported over water, joint motor-water, water-motor, and motor-water-motor routes of applicant motor carriers and Sea-Land Service, Inc., between specified points in Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, including ports served by Sea-Land Service, Inc., on the one hand, and specified points in Florida, including ports served by Sea-Land Service, Inc., on the other.

Grounds for relief: Rail competition.

FSA No. 36983: *Synthetic plastics—Orange, Tex., to Port Newark, N.J.* Filed by Sea-Land Service, Inc. (No. 28), for itself and interested carriers. Rates on synthetic plastics, minimum 70,000 pounds, from Orange, Tex., to Port Newark, N.J.

Grounds for relief: Equalization with rate of Seatrain Lines.

Tariff: 10th Revised Page 179–F to Sea-Land Service, Inc., tariff I.C.C. 281.

FSA No. 36984: *Fresh meats to trunk-line and New England territories.* Filed by Traffic Executive Association-Eastern Railroads, Agent (CTR No. 2455), for interested rail carriers. Rates on fresh meats and packing house products, as described in the application, in carloads, from specified points in Illinois, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, and Wisconsin, to specified points in trunk-line territory east of trunk-line arbitrary territory east of Pittsburgh, Pa., and New England territory.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 160 to Traffic Executive Association-Eastern Railroads tariff I.C.C. C–17.

By the Commission.

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

[F.R. Doc. 61–2698; Filed, Mar. 27, 1961; 8:53 a.m.]

[Notice 471]

## MOTOR CARRIER TRANSFER PROCEEDINGS

MARCH 23, 1961.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC–FC 63946. By order of March 20, 1961, the Transfer Board approved the transfer to C & R Trucking Co., a corporation, Tulsa, Okla., of Certificate in No. MC 52694, issued October 8, 1957, to Oilfield Trucking, Inc., Winfield, Okla., authorizing the transportation of: Machinery, materials, supplies, and equipment, incidental to, or used in, the construction, development, operation, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum, between points in Oklahoma, Kansas, and Texas. Rufus H. Lawson, P.O. Box 7342, Oklahoma City, Okla., attorney for applicants.

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

[F.R. Doc. 61–2699; Filed, Mar. 27, 1961; 8:53 a.m.]

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