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OF THE UNITED STATES

# FEDERAL REGISTER

1934

VOLUME 28 NUMBER 63

Washington, Saturday, March 30, 1963

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# Rules and Regulations

## Title 7—AGRICULTURE

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

[Orange Reg. 24]

#### PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

##### Limitation of Shipments

###### § 905.370 Orange Regulation 24.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, including Temple 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 section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of oranges, including Temple oranges, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on March 26, 1963, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been

disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of oranges, including Temple oranges, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Oranges and Tangelos (§§ 51.1140-51.1178 of this title).

(2) During the period beginning at 12:01 a.m., e.s.t., April 1, 1963, and ending at 12:01 a.m., e.s.t., May 6, 1963, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any oranges, except Temple oranges, grown in the production area, which do not grade at least U.S. No. 2 Russet; or

(ii) Any oranges, except Temple oranges, grown in the production area, which are of a size smaller than  $2\frac{1}{16}$  inches in diameter, except that a tolerance of 10 percent, by count, of oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in said United States Standards for Florida Oranges and Tangelos: *Provided*, That in determining the percentage of oranges in any lot which are smaller than  $2\frac{1}{16}$  inches in diameter, such percentage shall be based only on those oranges in such lot which are of a size  $2\frac{1}{16}$  inches in diameter or smaller.

(3) During the period beginning at 12:01 a.m., e.s.t., April 1, 1963, and ending at 12:01 a.m., e.s.t., July 31, 1963, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any Temple oranges, grown in the production area, which do not grade at least U.S. No. 2 Russet.

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

Dated: March 28, 1963.

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

[F.R. Doc. 63-3381; Filed, Mar. 29, 1963; 8:49 a.m.]

[Grapefruit Reg. 24]

#### PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

##### Limitation of Shipments

###### § 905.371 Grapefruit Regulation 24.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 905 as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of all grapefruit, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on March 26, 1963, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit, and compliance with this section will not require any special preparation on the part of the persons sub-

ject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Grapefruit (§§ 51.750-51.783 of this title).

(2) During the period beginning at 12:01 a.m., e.s.t., April 1, 1963, and ending at 12:01 a.m., e.s.t., May 6, 1963, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any grapefruit, grown in the production area, which do not grade at least U.S. No. 2 Russet;

(ii) Any seeded grapefruit, grown in the production area, which are smaller than  $3\frac{1}{16}$  inches in diameter, except that a tolerance of 10 percent, by count, of seeded grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said United States Standards for Florida Grapefruit; or

(iii) Any seedless grapefruit, grown in the production area, which are smaller than  $3\frac{3}{16}$  inches in diameter, except that a tolerance of 10 percent, by count, of seedless grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said United States Standards for Florida Grapefruit.

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

Dated: March 28, 1963.

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

[F.R. Doc. 63-3380; Filed, Mar. 29, 1963; 8:49 a.m.]

[Tangerine Reg. 12]

## PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

### Limitation of Shipments

#### § 905.372 Tangerine Regulation 12.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found and determined, in accordance with paragraph (5) of section 602 of the act, that the

continuation of regulation of shipments of tangerines, as hereinafter provided is necessary and will tend to avoid a disruption of the orderly marketing of the remainder of the current crop of such tangerines; and such continuation of regulation will be in the public interest.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of tangerines, grown in the production area, are presently subject to regulation by grades, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on March 26, 1963, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangerines; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of tangerines, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, and standard pack, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Tangerines (§§ 51.1810-51.1834 of this title).

(2) During the period beginning at 12:01 a.m., e.s.t., April 1, 1963, and ending at 12:01 a.m., e.s.t., July 31, 1963, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any tangerines, grown in the production area, that do not grade at least U.S. No. 2 Russet.

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

Dated: March 28, 1963.

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

[F.R. Doc. 63-3383; Filed, Mar. 29, 1963; 8:49 a.m.]

[Tangelo Reg. 12]

## PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

### Limitation of Shipments

#### § 905.373 Tangelo Regulation 12.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found and determined, in accordance with paragraph (5) of section 602 of the act, that the continuation of regulation of shipments of tangelos, as hereinafter provided, is necessary and will tend to avoid a disruption of the orderly marketing of the remainder of the current crop of such tangelos; and such continuation of regulation will be in the public interest.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of tangelos, grown in the production area, are presently subject to regulation by grades, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on March 26, 1963, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has

been disseminated among handlers of such tangelos; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of tangelos, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Oranges and Tangelos (§§ 51.1140-51.1178 of this title).

(2) During the period beginning at 12:01 a.m., e.s.t., April 1, 1963, and ending at 12:01 a.m., e.s.t., July 31, 1963, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any tangelos, grown in the production area, which do not grade at least U.S. No. 2 Russet.

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

Dated: March 28, 1963.

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

[F.R. Doc. 63-3382; Filed, Mar. 29, 1963; 8:49 a.m.]

[Navel Orange Reg. 33]

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

#### Limitation of Handling

§ 907.333 Navel Orange Regulation 33.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907; 27 F.R. 10087), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publica-

tion hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on March 28, 1963.

(b) *Order.* (1) The respective quantities of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., March 31, 1963, and ending at 12:01 a.m., P.s.t., April 7, 1963, are hereby fixed as follows:

- (i) District 1: Unlimited movement;
- (ii) District 2: 550,000 cartons;
- (iii) District 3: Unlimited movement;
- (iv) District 4: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same meaning as when used in said amended marketing agreement and order.

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

Dated: March 29, 1963.

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

[F.R. Doc. 63-3447; Filed, Mar. 29, 1963; 11:34 a.m.]

[Valencia Orange Reg. 40]

### PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

#### Limitation of Handling

§ 908.340 Valencia Orange Regulation 40.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and

Order No. 908, as amended (7 CFR Part 908; 27 F.R. 10089), 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. 601-674), and upon the basis of the recommendations and information submitted by the Valencia 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 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 section 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 section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on March 28, 1963.

(b) *Order.* (1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., March 31, 1963, and ending at 12:01 a.m., P.s.t., April 7, 1963, are hereby fixed as follows:

- (i) District 1: Unlimited movement;
- (ii) District 2: Unlimited movement;
- (iii) District 3: 100,000 cartons.

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

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

Dated: March 29, 1963.

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

[F.R. Doc. 63-3448; Filed, Mar. 29, 1963;  
11:34 a.m.]

[Lemon Reg. 56]

## PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

### Limitation of Handling

#### § 910.356 Lemon Regulation 56.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 27 F.R. 8346), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the afore-

said recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on March 26, 1963.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., March 31, 1963, and ending at 12:01 a.m., P.s.t., April 7, 1963, are hereby fixed as follows:

- (i) District 1: Unlimited movement;
- (ii) District 2: 232,500 cartons;
- (iii) District 3: Unlimited movement.

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

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

Dated: March 28, 1963.

PAUL A. NICHOLSON,  
Acting Director, Fruit and Veg-  
etable Division, Agricultural  
Marketing Service.

[F.R. Doc. 63-3409; Filed, Mar. 29, 1963;  
8:49 a.m.]

[Grapefruit Reg. 21]

## PART 912—GRAPEFRUIT GROWN IN INDIAN RIVER DISTRICT IN FLORIDA

### Limitation of Handling

#### § 912.321 Grapefruit Regulation 21.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 912, as amended (7 CFR Part 912; 27 F.R. 87; 28 F.R. 23), regulating the handling of grapefruit grown in the Indian River District in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Indian River Grapefruit Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Indian River grapefruit, and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Indian River grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on March 28, 1963.

(b) *Order.* (1) The quantity of grapefruit grown in the Indian River District which may be handled during the period beginning at 12:01 a.m., e.s.t., April 1, 1963, and ending at 12:01 a.m., e.s.t., April 8, 1963, is hereby fixed at 250,000 standard packed boxes.

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

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

Dated: March 29, 1963.

PAUL A. NICHOLSON,  
Deputy Director, Fruit and Veg-  
etable Division, Agricultural  
Marketing Service.

[F.R. Doc. 63-3446; Filed, Mar. 29, 1963;  
11:34 a.m.]

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

[Milk Order No. 5]

**PART 1005—MILK IN TRI-STATE MARKETING AREA**

**Order Amending Order**

**Sec.** 1005.0 Findings and determinations.

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 1005.2 Secretary.  
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 1005.4 Tri-State marketing area.  
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**MINIMUM PRICES**

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to the order regulating the handling of milk in the Tri-State 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 whole-some milk, and be in the public interest;

(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 marketing agreement upon which a hearing has been held.

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, four cents per hundredweight or such amount not to exceed four cents per hundredweight as the Secretary may prescribe, with respect to:

(i) All receipts within the month of milk from producers, including milk of such handler's own production; and

(ii) Any other source milk allocated to Class I pursuant to § 1005.46: *Provided*, That if a handler uses more than one accounting period within a month, the rate of payment with respect to the quantities of milk specified in this § 1005.85 shall be the monthly rate multiplied by the number of accounting periods within the month or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular costs of administering the additional accounting periods.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than April 1, 1963. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Assistant Secretary was issued February 5, 1963, and the decision of the Secretary containing all amendment provisions of this order, was issued March 15, 1963. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective April 1, 1963, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001-1011.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8(c) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least three-fourths of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

**ORDER RELATIVE TO HANDLING**

*It is therefore ordered*, That on and after the effective date hereof, the handling of milk in the Tri-State marketing area shall be in conformity to and in compliance with the following terms and conditions:

## DEFINITIONS

## § 1005.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

## § 1005.2 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or such other officer or employee of the United States authorized to exercise the powers or to perform the duties of the Secretary of Agriculture.

## § 1005.3 Department of Agriculture.

"Department of Agriculture" means the United States Department of Agriculture.

## § 1005.4 Tri-State marketing area.

"Tri-State marketing area", hereinafter called the marketing area, means all that territory within the districts described in paragraphs (a), (b), (c), and (d) of this section, including territory within such boundaries occupied by government (Municipal, State or Federal) reservations, installations, institutions or other similar establishments.

(a) "Pikeville-Paintsville district" of the marketing area means the territory within the counties of Floyd, Johnson, Magoffin, Martin, and Pike, all in Kentucky.

(b) "Charleston-Huntington district" of the marketing area means the territory within the counties of Boyd, Greenup, and Lawrence, in Kentucky; Lawrence County in Ohio; and the counties of Boone, Cabell, Fayette, Kanawha, Lincoln, Logan, Putnam, Raleigh, Wayne, and Wyoming, in West Virginia.

(c) "Gallipolis-Scioto district" of the marketing area means the territory within the counties of Gallia, Meigs, Scioto, and Jackson, in Ohio; the townships of Beaver, Camp Creek, Jackson, Marion, Newton, Pee Fee, Scioto, Seal, and Union in Pike County, Ohio; the counties of Jackson, Mason, and Roane in West Virginia; and the Magisterial Districts 2, 3, and 8 in Lewis County, Kentucky.

(d) "Athens district" of the marketing area means the territory within the counties of Athens and Washington, in Ohio; and Wood County in West Virginia.

## § 1005.5 Plant.

"Plant" means the land, buildings, surroundings, and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment which is maintained and operated primarily for the receiving, handling, or processing of milk or milk products.

## § 1005.6 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, milk drinks (plain or flavored), reconstituted or fortified milk or skim milk (including "dietary" products), concentrated milk, eggnog, cream (not frozen), cultured sour cream, or any mixture in fluid form of milk or skim milk and cream: *Provided*, That such fluid milk products shall not include ice cream mix, frozen dessert mix, evaporated and condensed milk or skim milk, aerated cream products, dips (mixtures with sour cream or cheese base containing nondairy ingredients) not labeled Grade A, nor products which are sterilized or packaged in hermetically sealed containers.

## § 1005.7 Route.

"Route" means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I pursuant to § 1005.41(a)(1) to a retail or wholesale outlet other than a milk plant or a distribution point.

## § 1005.8 Fluid milk plant.

"Fluid milk plant" means any plant from which a route is operated within the marketing area, except a plant which is a nonfluid milk plant pursuant to § 1005.61.

## § 1005.9 Supply plant.

Subject to the provisions of § 1005.61 "supply plant" means any plant not a fluid milk plant pursuant to § 1005.8 from which a total of 25,000 pounds or more of milk, or an amount of skim milk and butterfat from which 25,000 pounds or more of Class I milk is derived, is delivered during the month in fluid form from such plant to any plant(s) which is a fluid milk plant pursuant to § 1005.8: *Provided*, That any plant which qualified as a supply plant for at least three of the months of October through January, inclusive, may retain such status during

the months of February through September, inclusive, next following for the purposes of § 1005.44(c) without meeting the minimum delivery requirements described above in this section during the latter months.

## § 1005.10 District designation of fluid milk plants and supply plants.

(a) A fluid milk plant or supply plant located in the marketing area is a district plant for the district in which it is located.

(b) A fluid milk plant or supply plant located outside the marketing area is a district plant for the district in which the nearest place listed pursuant to § 1005.56 is located or is adjacent thereto.

## § 1005.11 Nonfluid milk plant.

"Nonfluid milk plant" means any plant which is not a fluid milk plant or supply plant and is utilized for receiving, processing or distributing milk or milk products.

## § 1005.12 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

## § 1005.13 Producer.

"Producer" means a person other than a producer-handler who produces milk under a dairy farm inspection permit or equivalent certification given by a duly constituted health authority for the production of milk for fluid consumption, which milk is:

(a) Received at a fluid milk plant or supply plant (including milk caused to be delivered to such plant by a cooperative association which is not the handler for such milk); or

(b) Diverted by a handler for his account to a nonfluid milk plant during April, May, June, or July.

## § 1005.14 Handler.

"Handler" means any person in his capacity as the operator of a fluid milk plant or supply plant.

## § 1005.15 Producer-handler.

"Producer-handler" means any person who produces milk, operates a fluid milk plant and receives no milk from other dairy farmers.

## § 1005.16 Cooperative association.

"Cooperative association" means any cooperative association of producers,

duly organized as such under the laws of any state, which the Secretary determines, after application by the association:

(a) To be qualified under the standards set forth in the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have its entire organization and all of its activities under the control of its members; and

(c) To be currently engaged in making collective sales of or marketing milk or its products for its members.

## § 1005.17 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in milk produced by one or more producers and (a) received at a fluid milk plant or supply plant directly from producers, or (b) diverted from a fluid milk plant or supply plant to a nonfluid milk plant in accordance with the conditions set forth in § 1005.13.

## § 1005.18 Other source milk.

"Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month of fluid milk products except:

(1) Receipts of such milk, or milk products from a fluid milk plant or supply plant;

(2) Inventory of fluid milk products at the beginning of the month;

(3) Producer milk; and

(b) Products other than fluid milk products from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month.

## MARKET ADMINISTRATOR

## § 1005.20 Designation.

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

## § 1005.21 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To make rules and regulations to effectuate its terms and provisions;

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and each milk product on hand at the beginning and at the end of each month.

**§ 1005.33 Retention of records.**

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15) (A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

**CLASSIFICATION**

**§ 1005.40 Skim milk and butterfat to be classified.**

All skim milk and butterfat required to be reported pursuant to § 1005.30 shall be classified by the market administrator pursuant to the provisions of §§ 1005.41 through 1005.46.

**§ 1005.41 Classes of utilization.**

Subject to the conditions set forth in §§ 1005.42 through 1005.46, the classes of utilization shall be as follows:

- (a) *Class I milk.* Class I milk shall be all skim milk and butterfat:
  - (1) Disposed of in the form of a fluid milk product except:
    - (i) Any product fortified with added milk solids shall be Class I in an amount equal only to the weight of an equal volume of a like unfortified product of the same butterfat content; and
    - (ii) Products classified pursuant to paragraph (b) (2) and (3) of this section; or
  - (2) Not specifically accounted for as Class II milk; and
  - (b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

and supply plant(s), and their respective sources;

(b) The utilization of such milk and milk products;

(c) Such other information with respect to such receipts and utilization as the market administrator may prescribe; and

(d) Each handler who submits reports on the basis of accounting periods of less than a month shall submit a summary report of the same information for the entire month.

**§ 1005.31 Other reports.**

Handlers shall submit other reports as follows:

(a) The intention to receive other source milk shall be reported by the receiving handler on or before the first day other source milk is received and the intention to discontinue such receipts shall be reported on or before the last day such milk is received;

(b) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may request;

(c) On or before the 20th day after the end of each month each handler shall submit to the market administrator such handler's producer payroll for the month, which shall show:

- (1) The total pounds of milk received from each producer and cooperative association and the total pounds of butterfat contained in such milk;
- (2) The amount of payment to each producer and cooperative association; and
- (3) The nature and the amount of any deductions and charges involved in the payments to each producer and cooperative association.

**§ 1005.32 Records and facilities.**

Each handler shall maintain, and make available to the market administrator during the usual hours of business, such accounts and records of his operations and such facilities as are necessary to verify or to establish the correct data with respect to:

- (a) The receipt and utilization, in whatever form, of all skim milk and butterfat handled;
- (b) The weights, samples, and tests for butterfat and for other content of all skim milk and butterfat handled;
- (c) Payments to producers and cooperative associations of producers; and

such information and reports as may be requested by the Secretary;

(b) Upon request, supply on or before the 25th day after the end of each month to each association of producers with respect to producers whose membership in such association has been verified by the market administrator, a record of the pounds of milk received by each handler from member producers and the class utilization of such milk. For the purpose of this report such member milk shall be prorated to each class in the proportions that the total receipts of milk from producers by such handler were classified in each class;

(1) Audit all reports and payments by each handler by inspection of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends; and

(j) Publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the prices determined for each month as follows:

- (1) On or before the 5th day of each month, the Class I price and the Class I butterfat differential for the month and the Class II price and the Class II butterfat differential for the preceding month, as computed pursuant to §§ 1005.50 through 1005.54; and
- (2) On or before the 12th day after the end of such month, the uniform prices computed pursuant to § 1005.71 and the butterfat differential computed pursuant to § 1005.82.

**REPORTS, RECORDS AND FACILITIES**

**§ 1005.30 Reports of receipts and utilization.**

On or before the 5th day after the end of each month, each handler, except a producer-handler, shall report to the market administrator for each of the plants with respect to which he is a handler for such month, and for each accounting period within the month, in the detail and on the forms prescribed by the market administrator as follows:

- (a) The quantities of skim milk and the quantities of butterfat contained in (or used in the production of, as the case may be) producer milk received at the plant or diverted therefrom, other source milk, and milk and milk products received from any other fluid milk plant(s)

(c) To receive, investigate, and report to the Secretary complaints of violations; and

(d) To recommend amendments to the Secretary.

**§ 1005.22 Duties.**

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including, but not limited to the following:

(a) Within 30 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay, out of the funds provided by § 1005.85:

- (1) The cost of his bond and of the bonds of his employees;
- (2) His own compensation; and
- (3) All other expenses, except those incurred under § 1005.84, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate the name of any person who after the date upon which he is required to perform such acts, has not made:

- (1) Reports pursuant to § 1005.30 or § 1005.31; or
- (2) Payments pursuant to §§ 1005.80 through 1005.87;
- (g) Submit his books and records to examination by the Secretary and fur-

- (1) Used to produce any product other than a fluid milk product;
- (2) In fluid milk products which have been fortified with nonfat milk solids which are not accounted for as Class I milk pursuant to paragraph (a) (1) (i) of this section.
- (3) Disposed of for livestock feed or, in the case of skim milk and buttermilk only, dumped, upon prior notice as prescribed by the market administrator;
- (4) Disposed of in bulk (other than consumer-type packages or dispenser units) to bakeries, candy or soup manufacturers, and other commercial food manufacturing establishments which do not dispose of any such receipts in the form of fluid milk products;
- (5) In inventory of fluid milk products on hand at the end of the month;
- (6) In plant shrinkage of producer milk computed pursuant to § 1005.42 (b) but not in excess of 2 percent thereof; and
- (7) In plant shrinkage of other source milk computed pursuant to § 1005.42 (b).

§ 1005.42 Shrinkage.

The market administrator shall determine the shrinkage of skim milk and butterfat, respectively, in producer milk and in other source milk in the following manner:

- (a) Compute the total shrinkage of skim milk and butterfat, respectively, by combining the shrinkage thereof for all fluid milk plants and supply plants operated by the handler, and
- (b) Prorating the total shrinkage of skim milk and butterfat, respectively, computed pursuant to paragraph (a) of this section, between producer milk and other source milk at his fluid milk plants and supply plants after deducting from the total receipts therein the receipts from fluid milk plants and supply plants of other handlers.

§ 1005.43 Responsibility of handlers and reclassification of milk.

All skim milk and butterfat shall be Class I milk, unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise. Any skim milk or butterfat classified (except that transferred to a producer-handler) in one class shall be reclassified if used or received by such handler or by another handler in another class.

§ 1005.44 Transfers.

- (a) Skim milk or butterfat transferred from a fluid milk plant (including diverted milk, in the case of movements to nonfluid milk plants under subparagraph (3) of this paragraph) as any item listed in § 1005.41 (a) shall be classified as follows:

(1) If transferred to another fluid milk plant or supply plant (except the plant of a producer-handler), it shall be classified as Class I milk unless utilization in another class is reported to the market administrator by both handlers pursuant to § 1005.30: *Provided*, That skim milk or butterfat assigned to a particular class shall be limited to the amount thereof remaining in such class in the transferee plant after the subtraction of other source milk and inventory pursuant to § 1005.46 and the classification of any transfers pursuant to paragraph (b) of this section: *And provided further*, That if either or both handlers have received other source milk, the skim milk or butterfat so transferred shall be classified so as to allocate the greatest possible Class I milk utilization to the producer milk of both handlers;

(2) If transferred to a producer-handler, it shall be Class I milk; and

(3) If transferred (including by diversion) to a nonfluid milk plant, it shall be Class I milk unless:

- (i) Other utilization is mutually indicated in writing to the market administrator by both the transferor and transferee on or before the 5th day after the end of the month within which such transfer was made;
- (ii) The transferee plant maintains books and records showing utilization of all skim milk and butterfat at his plant which are made available if requested by the market administrator for audit; and
- (iii) Such transferee plant had actually used not less than an equivalent amount of skim milk or butterfat in the use indicated in such statement:

*Provided*, That if such transferee plant had not actually used an equivalent amount of skim milk or butterfat in such indicated use, the remaining balance shall be classified in Class I milk as if the classes of utilization set forth in § 1005.41 were applicable at such transferee plant.

- (b) Except as provided in paragraph (c) of this section, skim milk and butterfat transferred in the form of fluid milk

products from a supply plant to a fluid milk plant or to another supply plant shall be classified as reported to the market administrator by both handlers on or before the 5th day after the end of the month within which such transfer was made: *Provided*, That the sum of the amounts assigned as Class I milk for any month during the period October through January, inclusive, to all supply plants supplying a fluid milk plant shall not result in the classification as Class II milk of more than 10 percent of the quantity of milk received directly from producers at such fluid milk plants during the month, and if either or both handlers have received other source milk, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I milk utilization to the producer milk of both handlers.

(c) During each of the months of February through September, inclusive, a handler operating a fluid milk plant may allocate Class I milk to a supply plant (s) which transferred milk to such fluid milk plant for at least three of the months of October through January immediately preceding even though such milk is not transferred physically to such fluid milk plant during the current month: *Provided*, That the pounds to be subtracted from Class I milk and so allocated to any supply plant for the current month in the period February through September, inclusive, when added to any quantities actually transferred from such supply plant to such fluid milk plant during the current month and which are assigned to Class I milk pursuant to paragraph (b) of this section, shall not exceed the least of the following amounts:

- (1) The monthly average number of pounds allocated to Class I milk from such fluid milk plant to such supply plant during the preceding period October through January, inclusive;
- (2) An amount computed as follows: Determine the percentage which the pounds of Class I milk described under subparagraph (1) of this paragraph bears to the monthly average pounds of Class I milk at such fluid milk plant for the preceding period October through January, inclusive; and multiply the total Class I milk at such fluid milk plant for the current month by such percentage; and

(3) The pounds of milk received from producers at such supply plant during the current month.

(d) Skim milk and butterfat in the form of any item listed in § 1005.41 (a) transferred (including diverted) from a supply plant to a nonfluid milk plant shall be classified on the same terms as movements from fluid milk plants to nonfluid milk plants pursuant to paragraph (a) (3) of this section.

§ 1005.45 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and other obvious errors, the reports submitted by each handler pursuant to § 1005.30 and compute the total pounds of skim milk and butterfat, respectively, in Class I milk and Class II milk for such handler: *Provided*, That the skim milk contained in any product utilized, produced, or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all the water originally associated with such solids.

§ 1005.46 Allocation of skim milk and butterfat classified.

The classification of skim milk and butterfat in producer milk shall be determined as follows:

- (a) The pounds of skim milk remaining in each class after making the following computations shall be the pounds in such class allocated to producer milk:
- (1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk in plant shrinkage pursuant to § 1005.41 (b) (6);
- (2) 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;
- (3) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in beginning inventory in fluid milk products;
- (4) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk received, or which were allocated pursuant to § 1005.44 (c), from other fluid milk plants and supply plants assigned to such classes pursuant to § 1005.44;
- (5) Add to the remaining pounds of skim milk in Class II milk the pounds of

skim milk subtracted pursuant to subparagraph (1) of this paragraph; and (6) If the total remaining pounds of skim milk in both classes exceed the pounds of skim milk in producer milk, subtract such excess from the remaining pounds of skim milk in each class in series beginning with Class II. Any amount so subtracted shall be known as overage.

(b) Allocate classified butterfat to producer milk according to the method prescribed in paragraph (a) of this section for skim milk;

(c) Determine the weighted average butterfat test of the remaining milk in each class computed pursuant to paragraph (a) and (b) of this section.

§ 1005.47 Accounting periods. A handler may account for receipts for milk, utilization and classification of milk at his plants for periods within a month in the same manner as for a month, if he provides to the market administrator in writing not later than 24 hours prior to the end of an accounting period notification of his intention to use such accounting period.

MINIMUM PRICES

§ 1005.50 Basic formula price. The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the Department of Agriculture for the month, adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the Department of Agriculture for the month. The basic formula price shall be rounded to the nearest full cent.

§ 1005.51 Class I milk prices. Subject to the provisions of §§ 1005.53 through 1005.56, the minimum price per hundredweight on a 3.5 percent butterfat content basis to be paid by each handler for producer milk classified as Class I milk for the month, shall be the basic

formula price determined pursuant to § 1005.50 adjusted as follows:

(a) Add the following amounts for the months indicated:

Month for which price is being computed	Standard utilization percentage	
	Minimum	Maximum
January.....	103	107
February.....	103	107
March.....	99	103
April.....	95	99
May.....	93	97
June.....	87	91
July.....	77	81
August.....	68	72
September.....	64	68
October.....	79	83
November.....	79	83
December.....	94	98

(b) Add or subtract a supply-demand adjustment of not more than 38 cents computed as follows:

(1) Compute a "current Class I utilization percentage" by dividing the total gross pounds of Class I milk at all fluid milk plants (except duplications between plants) for the second and third preceding months by the total pounds of milk received from producers at such plants during the same months, multiplying the result by 100, and rounding to the nearest whole number: *Provided*, That for the first fifteen months in which this provision is effective the computations pursuant to this subparagraph shall exclude data of receipts and utilization of any fluid milk plant which was not a fluid milk plant in the month next preceding the first month in which this provision is effective, and thereafter shall be based upon receipts and utilization at all fluid milk plants regulated pursuant to this part.

(2) Compute a "net deviation percentage" equal to any amount by which the current Class I utilization percentage exceeds the maximum standard utilization percentage specified below (to be designated a "plus net deviation percentage") and any amount by which the current Class I utilization percentage is less than the minimum standard utilization percentage specified below (to be designated a "minus net deviation percentage"): *Provided*, That if the current Class I utilization percentage is neither less than the minimum standard utilization percentage nor in excess of the maximum standard utilization percentage, the net deviation percentage is zero.

(3) For a "plus net deviation percentage" the Class I price shall be increased and for a "minus net deviation percentage" the Class I price shall be decreased as follows:

(i) One-cent times each such percentage point of net deviation; plus

(ii) One-cent times the lesser of:

(a) Each such percentage point of net deviation; or

(b) Each percentage point of net deviation of like direction (plus or minus, with any net deviation percentage of opposite direction considered to be zero for purposes of computations of this subparagraph) computed pursuant to subparagraph (2) of this paragraph for the preceding month; plus

(iii) One-cent times the least of:

(a) Each such percentage point of net deviation;

(b) Each percentage point of net deviation of like direction computed pursuant to subparagraph (2) of this paragraph for the preceding month, or

(c) Each percentage point of net deviation of like direction computed pursuant to subparagraph (2) of this paragraph for the second preceding month.

§ 1005.52 Class II milk price. Subject to the provisions of §§ 1005.53 through 1005.56, the minimum price per hundredweight on a 3.5 percent butterfat content basis to be paid by each handler for producer milk classified as Class II milk for each month shall be the basic formula price computed pursuant to § 1005.50.

§ 1005.53 Butterfat test of milk. The average butterfat test of milk for the month shall be the average of the average butterfat tests of the milk from each handler for the month, computed pursuant to § 1005.47.

§ 1005.54 Use of equivalent prices. If for any reason a price quotation required by this part for computing class prices or for any other purpose is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

§ 1005.55 Prices of milk transferred by one handler to another handler. The price to be paid by a handler for milk transferred by him to another handler in any class shall be that applicable to such class of milk at the transferor handler's fluid milk plant or supply plant, pursuant to §§ 1005.51 through 1005.52: *Provided*, That any hauling charge with respect thereto chargeable to producers or to cooperative associations shall not exceed that customarily applied to deliveries of such producers or associations from their farms to the transferor handler's fluid milk plant or supply plant.

§ 1005.56 Location adjustment credits to handlers. (a) The price for Class I milk at a fluid milk plant or supply plant located outside the marketing area and more than 45 miles from the nearest of the following listed places, shall be, regardless of point of sale within or outside the marketing area, the same as the

§ 1005.53 Butterfat differentials to handlers.

If the weighted average butterfat test of producer milk which is classified in any class for any handler is more or less than 3.5 percent, there shall be added to, or subtracted from, respectively, the price for such class, for each one-tenth of one percent that such weighted average butterfat test is above or below 3.5 percent, a butterfat differential (computed to the nearest tenth of a cent) calculated by the market administrator for such class as follows:

(a) *Class I milk.* Add 1.0 cent to the butterfat differential for Class II milk for the preceding month computed pursuant to paragraph (b) of this section;

(b) *Class II milk.* Subtract 3.0 cents from the average price per pound of butter for the month as described in § 1005.50 and multiply by 0.119.

§ 1005.54 Use of equivalent prices. If for any reason a price quotation required by this part for computing class prices or for any other purpose is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

§ 1005.55 Prices of milk transferred by one handler to another handler. The price to be paid by a handler for milk transferred by him to another handler in any class shall be that applicable to such class of milk at the transferor handler's fluid milk plant or supply plant, pursuant to §§ 1005.51 through 1005.52: *Provided*, That any hauling charge with respect thereto chargeable to producers or to cooperative associations shall not exceed that customarily applied to deliveries of such producers or associations from their farms to the transferor handler's fluid milk plant or supply plant.

§ 1005.56 Location adjustment credits to handlers. (a) The price for Class I milk at a fluid milk plant or supply plant located outside the marketing area and more than 45 miles from the nearest of the following listed places, shall be, regardless of point of sale within or outside the marketing area, the same as the

§ 1005.53 Butterfat test of milk. The average butterfat test of milk for the month shall be the average of the average butterfat tests of the milk from each handler for the month, computed pursuant to § 1005.47.

§ 1005.54 Use of equivalent prices. If for any reason a price quotation required by this part for computing class prices or for any other purpose is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

§ 1005.55 Prices of milk transferred by one handler to another handler. The price to be paid by a handler for milk transferred by him to another handler in any class shall be that applicable to such class of milk at the transferor handler's fluid milk plant or supply plant, pursuant to §§ 1005.51 through 1005.52: *Provided*, That any hauling charge with respect thereto chargeable to producers or to cooperative associations shall not exceed that customarily applied to deliveries of such producers or associations from their farms to the transferor handler's fluid milk plant or supply plant.

price for Class I milk for the district of the marketing area in which such nearest listed place is located or is adjacent to, less a location adjustment computed as follows: 2 cents per hundredweight for each 10 miles, or major fraction thereof, up to 100 miles, and 1.5 cents per hundredweight for each 10 miles, or major fraction thereof, in excess of 100 miles, by the shortest hard-surfaced highway distance as determined by the market administrator, from such fluid milk plant to such nearest listed place:

City Hall, Ashland, Ky.  
 City Hall, Athens, Ohio  
 City Hall, Charleston, W. Va.  
 City Hall, Gallipolis, Ohio  
 City Hall, Hinton, W. Va.  
 City Hall, Huntington, W. Va.  
 City Hall, Jackson, Ohio  
 City Hall, Marietta, Ohio  
 City Hall, Paintsville, Ky.  
 City Hall, Pikeville, Ky.  
 City Hall, Portsmouth, Ohio  
 City Hall, Williamson, W. Va.

(b) The location price adjustment pursuant to this section shall apply also to milk diverted from the fluid milk plant or supply plant and classified as Class I milk.

#### APPLICATION OF PROVISIONS

##### § 1005.60 Producer-handlers.

Sections 1005.40 through 1005.56 and §§ 1005.70 through 1005.85 shall not apply to a producer-handler. Any handler who desires to qualify as a producer-handler shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence of his qualifications satisfactory to the market administrator, and he shall furnish similar evidence of subsequent changes in his operations that affect his qualifications. Verification by the market administrator shall be made within 5 days after the date of receipt of such evidence, and shall be effective retroactively to the date on which the applicant became so eligible, but not earlier than the first day of the month during which verification of such eligibility is made.

##### § 1005.61 Plants subject to other orders.

(a) A plant from which during the month less Class I milk is disposed of on routes in the marketing area than in another market where the plant would be subject to the price and pooling requirements of another order issued pursuant to this section shall make payment to producers as follows:

suant to the Act if not subject to the price and pooling requirements pursuant to this part, shall be a nonfluid milk plant unless the Secretary determines it to be a fluid milk plant pursuant to this part.

(b) Unless the Secretary determines otherwise, any plant which qualifies as a supply plant pursuant to § 1005.9 shall not be a supply plant pursuant to this part if during the month it qualifies as a fully regulated plant under another order issued pursuant to the Act and it disposes of less milk to plants regulated under this part than its combined disposition on routes in a marketing area where another order applies and to plants fully regulated under such other order.

(c) Any plant which is a nonfluid milk plant pursuant to this section shall submit such reports as the market administrator may request with respect to milk received and utilization thereof.

#### DETERMINATION OF UNIFORM PRICE

##### § 1005.70 Net obligation of handlers.

The net obligation of each handler for producer milk received by him (including milk diverted by him pursuant to § 1005.13) during each month shall be a sum of money computed by the market administrator as follows:

- (a) Multiply the pounds of such milk in each class by the applicable class price and add together the resulting amounts;
- (b) Add the amount computed by multiplying pounds of overage deducted from each class pursuant to § 1005.46(a) and the corresponding step of § 1005.46(b) by the applicable class price;
- (c) Add an amount equal to the difference between the value at the applicable Class I price for the current month and the value at the applicable Class II price for the preceding month with respect to skim milk and butterfat allocated to Class I pursuant to § 1005.46(a) (3) and the corresponding step in § 1005.46(b) that is not in excess of the pounds of skim milk and butterfat, respectively, in producer milk classified as Class II milk (other than as shrinkage) for the preceding month;
- (d) With respect to each hundred-weight of Class I milk allocated to a supply plant(s) pursuant to § 1005.44(c), there shall be added an amount computed by multiplying such hundred-weight of milk by the amount, if any, by

which the Class I price at the fluid milk plant exceeds the Class I price applicable at the respective supply plant.

##### § 1005.71 Computation of uniform price.

For each month the market administrator shall compute for each handler a "uniform price" per hundredweight to be paid to producers and associations of producers for milk of 3.5 percent butterfat content as follows:

(a) From the value of milk computed for such handler pursuant to § 1005.70 subtract, if the weighted average butterfat test of producer milk represented by the respective value is greater than 3.5 percent or add, if such butterfat test is less than 3.5 percent, an amount computed by: Multiplying the amount by which its weighted average butterfat test varies from 3.5 percent by the butterfat differential computed pursuant to § 1005.82, and multiplying the resulting figure by the total hundredweight of such milk;

(b) Add or subtract, as the case may be, any amounts necessary to correct errors in classification for previous months as disclosed by audit of the market administrator;

(c) Adjust the resulting amount by the sum of money used in adjusting the uniform price pursuant to paragraph (f) of this section, for the previous month, to the nearest cent;

(d) Add the amount representing the total value of location adjustments on producer milk pursuant to § 1005.83;

(e) Divide the result by the total hundredweight of producer milk represented by the value computed pursuant to § 1005.70;

(f) Adjust the resulting figure to the nearest cent; and

(g) In case of a handler who has two or more plants at which different Class I prices apply, adjust the uniform price for each plant as provided in § 1005.83.

##### § 1005.72 Notification to handlers.

On or before the 12th day after the end of each month, the market administrator shall notify each handler of:

- (a) The amount and value of his milk in each class and the totals thereof;
- (b) His uniform price at each plant; and
- (c) The amounts to be paid by such handler pursuant to §§ 1005.80, 1005.84 and 1005.85 for such month.

##### § 1005.80 Time and method of final payment.

Each handler shall make payment, subject to the provisions of §§ 1005.81 through 1005.84, for all producer milk received (including milk diverted by him pursuant to § 1005.13) during each month, as follows:

(a) Except as set forth in paragraph (b) of this section, to each producer, on or before the 18th day after such month at not less than such handler's applicable uniform price for milk of 3.5 percent butterfat;

(b) To a cooperative association on or before the 16th day after such month for milk received from producers from whom such association has received written authorization to collect payment a total amount equal to not less than the sum of the individual amounts due such producers pursuant to paragraph (a) of this section;

(c) On or before the 16th day after such month each handler shall pay to each cooperative association which operates a fluid milk plant or supply plant for skim milk and butterfat received as milk or a milk product from such cooperative association during such month, an amount of money computed by multiplying the total pounds of such skim milk and butterfat in each class by the respective class prices pursuant to §§ 1005.51 and 1005.52, adjusted by the appropriate butterfat and location differentials pursuant to §§ 1005.53 and 1005.56: *Provided*, That payment to a cooperative association for milk classified as Class I milk (but not moved) as an inter-handler transfer pursuant to § 1005.44(c) during the February-September period shall be made to such cooperative association on the basis of the difference between the Class I price and the Class II price, adjusted as provided above for butterfat test and for the location of the supply plant.

##### § 1005.81 Partial payments.

Handlers shall make partial payments to producers as follows:

- (a) On or before the last day of each month, each handler shall make payment except as set forth in paragraph (b) of this section, to each producer at not less than such handler's uniform price of the preceding month for the milk of such producer which was re-

ceived by such handler during the first 15 days of the current month, and

(b) On or before the day immediately preceding the last day of each month, each handler shall make payment to a cooperative association for milk of producers from whom such association has received written authorization to collect payment at not less than such handler's uniform price of the preceding month for all such milk which was received by such handler during the first 15 days of the current month.

**§ 1005.82 Butterfat differential.**

The applicable uniform price to be paid each producer or cooperative association pursuant to § 1005.80 shall be increased or decreased for each one-tenth of one percent which the butterfat content of the milk is above or below 3.5 percent, respectively, at the rate computed by the market administrator as follows: Multiply by 1.2 the average wholesale price per pound of 92-score butter at Chicago for the month as described in § 1005.50, divide the result by 10, and round to the nearest tenth of a cent.

**§ 1005.83 Location adjustments to producers.**

In the case of any handler who operates two or more plants at which different Class I prices apply, the uniform price to producers at each plant where a lesser than the highest of such prices applies shall be reduced by the amount that the Class I price at the plant is less than such highest Class I price.

**§ 1005.84 Marketing services.**

(a) (1) Except as set forth in paragraph (b) of this section each handler in making payments to producers (other than with respect to milk of such handler's own production) pursuant to § 1005.80 (a) shall make a deduction of 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight as the Secretary may prescribe, with respect to the following:

- (i) All milk received from producers at a plant not operated by a cooperative association;
- (ii) All milk received at a plant operated by a cooperative association from producers who are not members of such association; and
- (iii) All milk received at a plant operated by a cooperative association(s)

from producers who are members thereof but for whom any of the services set forth below in this paragraph is not being performed by such association(s), as determined by the market administrator.

(2) Such deduction shall be paid by the handler to the market administrator on or before the 15th day after the end of the month. Such moneys shall be expended by the market administrator for the verification of weights, sampling, and testing of milk received from producers and in providing for market information to producers; such services to be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of each producer (1) who is a member of, or who has given written authorization for the rendering of marketing services and the taking of deduction therefor to, a cooperative association, (2) whose milk is received at a plant not operated by such association, and (3) for whom the market administrator determines that such association is performing the services described in paragraph (a) of this section, each handler shall deduct in lieu of the deduction specified under paragraph (a) of this section from payments made pursuant to § 1005.80 (a) the amount per hundredweight of milk authorized by such producer and shall pay over, on or before the 15th day after the end of the month, such deduction to the association entitled to receive it under this paragraph (b).

**§ 1005.85 Expense of administration.**

As his pro rata share of the expense incurred pursuant to § 1005.22(d) each handler shall pay the market administrator, on or before the 15th day after the end of each month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, to be announced by the market administrator on or before the 12th day after the end of such month with respect to all receipts within the month of producer milk (including such handler's own production) and other source milk at his fluid milk plant or supply plant classified as Class I milk pursuant to § 1005.46: *Provided*, That if a handler uses more than one accounting period within a month, the rate of payment with respect to the quantities of milk specified in this section shall be the monthly rate multiplied by the number of accounting periods within the month or such lesser rate as the Secretary

may determine is demonstrated as appropriate in terms of the particular costs of administering the additional accounting periods.

**§ 1005.86 Errors in payments.**

Whenever audit by the market administrator of a handler's reports, books, records, or accounts discloses adjustments to be made, for any reason which result in moneys due the market administrator from such handler, or due such handler from the market administrator, or due any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due, and explain the basis for such adjustment; and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice.

**§ 1005.87 Overdue accounts.**

Any unpaid obligation of a handler or of the market administrator pursuant to §§ 1005.80 through 1005.87 shall be increased one-half of one percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

**§ 1005.88 Termination of obligation.**

The provisions of this section shall apply to any obligation under this part for the payment of money:

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and
- (3) If the obligation is payable to one or more producers or to a cooperative

association, the name of such producer(s) or such association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed:

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

MISCELLANEOUS PROVISIONS

**§ 1005.90 Effective time.**

The provisions of this part or any amendment of this Part 1005 shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to § 1005.91.

**§ 1005.91 Suspension or termination.**

The Secretary may suspend or terminate this part or any provision of this

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

Effective date: April 1, 1963.

Signed at Washington, D.C., on March 27, 1963.

JOHN P. DUNCAN, Jr.,  
Assistant Secretary.

[F.R. Doc. 63-3343; Filed, Mar. 29, 1963; 8:48 a.m.]

# Title 14—AERONAUTICS AND SPACE

## Chapter I—Federal Aviation Agency

SUBCHAPTER E—AIRSPACE [NEW]  
[Airspace Docket No. 62-WF-183]

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

#### Alteration and Designation of Control Zones

On February 9, 1963, a notice of proposed rule making was published in the FEDERAL REGISTER (28 F.R. 1309) stating that the Federal Aviation Agency proposed to alter the Los Angeles, Calif., control zone and designate the Hawthorne, Calif., control zone.

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

The substance of the proposed amendments having been published and for the reasons stated in the notice, § 71.171 (27 F.R. 220-91, November 10, 1962) is amended as follows:

1. The Los Angeles, Calif., control zone is amended to read:

Los Angeles, Calif. (Los Angeles International Airport)  
Within a 5-mile radius of the Los Angeles International Airport (latitude 33°56'25" N., longitude 118°24'10" W.); within a 3-mile radius of the Hawthorne Municipal Airport, Los Angeles, Calif. (latitude 33°55'20" N.,

[Milk Order 47]

### PART 1047—MILK IN FORT WAYNE, IND., MARKETING AREA

#### Order Suspending Certain Provisions

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Fort Wayne, Indiana, marketing area (7 CFR Part 1047), it is hereby found and determined that:

- (a) The following provision of the order no longer tends to effectuate the declared policy of the Act: In paragraph (a) of § 1047.51, the words "Through March 31, 1963".
- (b) Notice of proposed rule making, public procedure thereon, and 30 days notice of effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

- (1) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date.
- (2) This suspension order is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area.
- (3) This suspension will provide for continuation of the Class I price provision of the Fort Wayne order which would otherwise expire March 31, 1963. Evidence on proposed amendments to the Class I price was received at a hearing held in Fort Wayne, Indiana, on March 5, 1963. At the hearing, producers requested that the limit on the Class I price provision be suspended if amendments resulting from the hearing could not be made effective before April 1, 1963. The period from the close of the hearing through March 15, 1963, was allowed for filing of briefs. No briefs were filed in opposition to the suspension request.

- (4) This suspension action is necessary since there is not sufficient time to amend the order prior to the expiration date of the Class I pricing provision. Therefore, good cause exists for making this order effective April 1, 1963.

#### § 1005.93 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part, the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

#### § 1005.94 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this Part 1005.

#### § 1005.95 Separability of provisions.

If any provision of this part, or the application thereof to any person or circumstances, is held invalid the remainder of this part and the application of such provision to other persons or circumstances, shall not be affected thereby.

Effective date: April 1, 1963.  
Signed at Washington, D.C., on March 26, 1963.

JOHN P. DUNCAN, Jr.,  
Assistant Secretary.

[F.R. Doc. 63-3327; Filed, Mar. 29, 1963; 8:50 a.m.]

part whenever he finds that this part or any provision of this part obstructs, or does not tend to effectuate, the declared policy of the Act. This part shall terminate, in any event, whenever the provisions of the Act authorizing it cease to be in effect.

#### § 1005.92 Continuing power and duty of the market administrator.

(a) If, upon the suspension or termination of any or all provisions of this part, there are any obligations arising under this part the final accrual or ascertainment of which requires further acts by any handler, the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, or agency, as the Secretary may designate:

- (b) The market administrator, or such other person as the Secretary may designate, shall:

- (1) Continue in such capacity until removed by the Secretary.
- (2) From time to time account for all receipts and disbursements, and, when so directed by the Secretary, deliver all funds or property on hand, together with the books and records of the market administrator, to such person as the Secretary may direct, and

- (3) If so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant to this part.

longitude 118°20'05" W.); within 2 miles on each side of the Los Angeles ILS localizer E course extending from the Los Angeles 5-mile radius zone to the OM; within 2 miles on each side of the Los Angeles VOR 096° radial extending from the Hawthorne 3-mile radius zone to 4 miles E. of the lift-off end of Hawthorne Municipal Airport Runway 7, excluding the portion N. of a line drawn between the points of INT of the Los Angeles 5-mile radius zone and the Santa Monica, Calif., 3-mile radius control zone, and excluding the portion within the Hawthorne Municipal Airport control zone.

2. The following control zone is added: Los Angeles, Calif. (Hawthorne Municipal Airport)

Within a 3-mile radius of the Hawthorne Municipal Airport (latitude 33°55'20" N., longitude 118°20'05" W.), and within 2 miles on each side of the Los Angeles VOR 096° radial extending from the 3-mile radius zone to 4 miles E. of the lift-off end of Runway 7, excluding the portion N. of latitude 33°55'30" N. and W. of longitude 118°21'40" W., effective from 0700 to 2300 hours, local time, daily.

These amendments shall become effective upon the date of publication in the FEDERAL REGISTER.

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

Issued in Washington, D.C., on March 26, 1963.

CLIFFORD P. BURTON,  
Chief, Airspace Utilization Division.

[F.R. Doc. 63-3325; Filed, Mar. 29, 1963; 8:45 a.m.]

## Title 15—COMMERCE AND FOREIGN TRADE

### Chapter III—Bureau of International Commerce, Department of Commerce

#### SUBCHAPTER B—EXPORT REGULATIONS

[9th Gen. Rev. of Export Regs., Amdt. 62]

#### PART 370—SCOPE OF EXPORT CONTROL BY DEPARTMENT OF COMMERCE

#### PART 372—PROVISIONS FOR INDIVIDUAL AND OTHER VALIDATED LICENSES

#### PART 373—LICENSING POLICIES AND RELATED SPECIAL PROVISIONS

#### PART 374—PROJECT LICENSES

#### PART 379—EXPORT CLEARANCE AND DESTINATION CONTROL

#### PART 381—ENFORCEMENT PROVISIONS

#### PART 382—DENIAL OF EXPORT PRIVILEGES

#### PART 384—GENERAL ORDERS

#### PART 385—EXPORTATION OF TECHNICAL DATA

#### Miscellaneous Amendments

1. Section 370.1(c) (1) is amended to read as follows:

(1) "Export Control Law" means Export Control Act of 1949, as amended.

2. Item 13 of Note 2 Preparation of Form FC-419 following § 372.5(a) is amended to read as follows:

Item 13. Enter additional information pertinent to the transaction or required by the Export Regulations such as special certifications, name of parties in interest not disclosed elsewhere, explanation of documents attached, etc. If this application represents a transaction previously considered by the Office of Export Control, and returned without action or rejected, give prior case number (application number), and indicate prior action by the Office of Export Control.

3. Section 372.6 License applications for in-transit shipments is amended to read as follows:

§ 372.6 License applications for in-transit shipments.

(a) Information required on application—(1) Additional information. A license application for commodities moving in transit through the United States which may not be exported under General License GIT, shall include the "additional information" item of the Form FC-419, Application for Export License, or on an attachment thereto, the following:

(i) The name and address of the foreign consignor who shipped the goods to the United States;

(ii) A statement that the shipment is wholly of foreign origin; and

(iii) The notation "In-Transit Shipment."

(2) Evidence of foreign government approval. In addition, the applicant should submit any evidence available showing the approval or acquiescence of the exporting country (or the country of which the exporter is a resident) with respect to the proposed ultimate destination of the shipment. Such evidence may be submitted in the form of a Transit Authorization Certificate or other document.

(b) Applicability of special provisions. Except for a shipment originating in Canada, the applicant must comply, where applicable, with the provisions of § 373.2 of this chapter with respect to confirmation of country of ultimate destination and verification of actual delivery (IC/DV); § 373.65 of this chapter with respect to required consignee/purchaser statements; § 373.67 of this chapter with respect to Swiss Blue Import Certificate; and § 373.70 of this chapter with respect to Yugoslav End Use Certificate.

(c) Nature of exportations covered by provisions of this section. A license issued under this section will be valid for only the exportation of an in-transit shipment wholly of foreign origin and for which a Transportation and Exportation (T. & E.) customs entry or an Immediate Exportation (I. E.) customs entry is outstanding covering the shipment. In clearing an in-transit shipment under a validated license, the Collector of Customs may, at his discretion, require the licensee to submit a copy of the Transportation and Exportation (T.

& E.) customs entry or an Immediate Exportation (I. E.) customs entry covering such shipment.

(d) Destination Control Statement. An exportation made under a validated export license for a shipment of foreign origin moving in transit through the United States must comply with the destination control provisions (§ 379.10 of this chapter). Under these provisions all copies of the in-transit Shipper's Export Declaration presented to the Collector at the port of exit must contain the destination control statement. In addition, the destination control statement must be shown on all bills of lading and commercial invoices in the possession of, or sent to the ultimate consignee or purchaser by, the shipper, exporter, carrier, and agent in the United States.

4. Section 372.12(c) Request for authority to reexport after exportation from the United States is amended by adding the country "Burundi, Kingdom of" to the list of countries in subparagraph (2) (ii), and substituting the country "Rwanda, Republic of" for "Ruanda-Urundi" in the same list.

5. Section 373.4(i) Extension of validity period is amended by revising the text of subparagraph (1) Form FC-143 preceding the form of certification, and subdivision (i) of subparagraph (2) Form FC-243 to read as follows:

(1) Form FC-143. (f) In lieu of a new Form FC-143, a request for extension of the validity period of a previously approved Form FC-143 will be considered for approval by the Office of Export Control if there are no changes in the facts, intentions, or responsibilities set forth in the form previously approved. The request for extension shall be submitted by the United States exporter by means of a letter, in six copies, which shall include the certification shown below. If the request for extension is approved, two copies of the exporter's letter will be returned to him imprinted with the seal of the Department of Commerce. If the request for extension is not approved, the exporter will be advised by letter.

(2) Form FC-243. (i) If there are no changes in the facts, intentions, or responsibilities of the United States exporter with respect to his previously approved Form FC-143, in lieu of submitting a new related Form FC-243, the coverage period of the currently valid Form FC-243 on file in the Office of Export Control may be similarly extended by the submission to the Office of Export Control of (a) a certification completed by the customer and (b) a copy of the distributor's letter to his customer requesting the completion of such certification. Such certification and letter shall meet, as a minimum, the requirements described below and shall be submitted in six copies. If the request for extension is approved, two copies of the certification will be returned to the United States exporter imprinted with the seal of the Department of Commerce. If the request for extension is not approved, the exporter will be advised by letter. One copy of either the approval or rejection letter shall be retained by the exporter

<sup>1</sup> For in-transit shipments under General License GIT, see § 371.9 of this chapter; and for special clearance procedures applicable to in-transit shipments, see § 379.4(d) of this chapter.

at his United States office and one copy shall be sent to the foreign office from which the distribution is controlled.

6. Section 373.65(d) (1) is amended by deleting the following words: "or by a certification extending the coverage period of a Multiple Transactions Statement."

7. Section 373.70 *Yugoslavia* is amended by deleting paragraph (f) *Submission of Delivery Verification*.

8. Section 374.5(a) (1) is amended by revising subdivision (ii) *License number* to read as follows:

(ii) *License number*. Immediately below the validation stamp the license number assigned to the project will be indicated. This license number will be a four-digit number prefixed by the letters DL and suffixed by a one letter code indicating the Office of Export Control product division to which the project was assigned, that is: "C" for Capital Goods Division; "P" for Production Materials and Consumer Products Division, and "S" for Scientific and Electronic Equipment Division.

9. Section 379.3(a) *Definition of Shipper's Export Declaration* is amended by adding the following note at the end thereof:

NOTE: Commerce Form 7513, "Shipper's Export Declaration for Intransit Goods," is required by the provisions of § 379.3(a) (1), for certain shipments. However, in accordance with an alternate procedure under the Customs Regulations, and when a validated license is not required, air cargo shipments in bond transiting the United States for exportation either from the airport of arrival or from another airport may be cleared without the presentation of Form 7513.

Complete details of the alternate procedure are set forth in §§ 6.17 through 6.24 of the Customs Regulations (19 CFR 6.17-6.24), or may be obtained from any Collector or the Bureau of Customs, Washington 25, D.C.

10. Section 379.4(f) *Forwarding agent* is amended to read as follows:

(f) *Forwarding agent*—(1) *Definition of "forwarding agent."* For the purpose of this part, a "forwarding agent" is defined as a person authorized by a named exporter to perform for the exporter actual services which facilitate exportation of the commodities or technical data described in the Declaration. These services include preparing the Declaration, attending to clearance of the shipment by submission of documents to the Collector or export control officers, securing cargo space, or delivering the commodities or technical data to the exporting carrier, obtaining bills of lading in connection with the exportation, and attending to the formalities of consular invoices, certificates of origin, and other like documents. A "forwarding agent" need not be a person regularly engaged in the freight forwarding business.

(2) *Forwarding agent as true agent*. (i) Unless the exporter shall otherwise state in writing in the power of attorney set forth in the Declaration, or in a general power of attorney, or other written form, subscribed and sworn to by a duly authorized officer or employee, filed

with the Collector, the forwarding agent named by the exporter in said power of attorney or other written form shall be deemed to be the true agent of the exporter for export control and customs purposes. However, it is not intended that the power of attorney or other authorization designating a forwarding agent should constitute such agent the sole and exclusive forwarding agent of the exporter for all exportations. Exporters may execute powers of attorney or other authorization for any and all of the forwarding agents whom they employ.

(ii) Where a forwarding agent is suggested by the foreign buyer in a transaction (rather than by the seller in the United States) a form of designation on the Declaration which limits the authority granted to the particular transaction involved would be appropriate, or the seller may insist that the agent for the foreign buyer apply for the license. (See § 372.4(a) (1) (iv) of this chapter.)

(3) *Form of powers of attorney*. (i) The Office of Export Control form, "Power of Attorney—Designation of Forwarding Agent" is designed to fix responsibility of the exporter for exportations made through a freight forwarder or other forwarding agent. The form while not mandatory, is suggested since it conforms to usual business practice in establishing agency relationship. However, flexibility in the form is permitted and the exporter may use any written form of the designation, provided it is subscribed and sworn to before a notary public or other person authorized to administer oaths, by a duly authorized officer or employee of the licensed exporter. Such authorization shall clearly indicate that the firm or person named is authorized to represent the licensed exporter for export control and customs purposes. The extent of the authority, as in the power of attorney, may be restricted, however, with respect to time, country, commodity, specific license, or other matter. It is also intended to permit the use of such documents to designate one or more employees, or other persons, such as an export manager or agent, to, in turn, appoint as many freight forwarders or other forwarding agents as may be required.

(ii) It is necessary to file the original documents in one port only. Photo copies thereof, certified by the Collector of such port, may be transmitted by the forwarding agent to other ports where needed unless the authorization is otherwise specifically limited by the exporter.

(4) *Redelegation of agent's authority*. (i) A forwarding agent need not have an office at every port of exportation. If a forwarding agent signs and swears to a declaration which is intended for clearance of an exportation through a port where he has no office, he shall furnish to the Collector at such port his power of attorney or other authorization from the exporter. He shall also furnish to the person who will arrange physically to present the Declaration to the Collector, an authorization in writing for that purpose. He may also redelegate to another forwarding agent his authority

to sign and swear to Declarations and to present Declarations for authentication at such port: *Provided*, That the power of attorney or other authorization from the exporter permits such redelegation or there is presented to the Collector written evidence of consent of the exporter to such redelegation.

(ii) Proof of the authority of any such person signing a power of attorney or other authorization may be required. In general, however, such proof will be required only when there is some reason to doubt the authority of the persons involved.

11. Section 379.10(a) *Definition of bill of lading* is amended to read as follows:

(a) *Definition of bill of lading*. As used in this section, "Bill of Lading" means the contract of carriage and receipt for commodities or technical data issued by the carrier. The term "Bill of Lading" includes an Air Waybill, but does not include an Inland Bill of Lading covering movement to port.

12. Section 379.11(a) (2) is amended to read as follows:

(2) The Office of Export Control or any United States Collector of Customs, where there are reasonable grounds for believing that a violation of the Export Regulations has occurred or will occur with respect to a particular exportation from the United States, may order any person in possession or control of such shipments, including any exporting carrier carrying such shipment, to return or unload the shipment. Such person shall as ordered either (i) return such shipment to the United States or cause it to be so returned, or (ii) unload such shipment at a port of call and take steps to assure that such shipment is placed in custody under bond or other guaranty not to enter the commerce of any foreign country without prior approval of the Office of Export Control. For the purpose of this section, the furnishing of a copy of the order to any person included within the definition of exporting carrier shall be sufficient notice of the order to the exporting carrier.

13. Section 381.1 *Sanctions* is amended to read as follows:

#### § 381.1 Sanctions.

(a) *Criminal*—(1) *Violation of Export Control Act*. Any person who violates the Export Control Law or any order, regulation, or license issued thereunder is punishable for each violation by a fine of not more than \$10,000 or by imprisonment for not more than one year, or both. For a second or subsequent offense, the violator is punishable by a fine of not more than three times the value of the exports involved or \$20,000, whichever is greater, or by imprisonment for not more than five years, or both. In addition, a person who willfully exports any commodities or technical data contrary to any provision of the law or any regulation, order, or license issued thereunder, with the knowledge that such exports will be used for the benefit of any Communist-dominated nation, is punishable by a fine of not more than five times the value of the

exports involved or \$20,000, whichever is greater, or by imprisonment for not more than five years, or both.

(2) *Violations of False Statements Act.* The submission of false or misleading information or the concealment of material facts, whether in connection with license applications, Shipper's Export Declarations, investigations, compliance proceedings, appeals, or otherwise, is punishable also under other laws by fines of not more than \$10,000, or by imprisonment for not more than five years, or both, for each violation.

(b) *Administrative*—(1) *Denial of export privileges.* A violator of any law, order, regulation, or license relating to export controls is subject also to administrative action which may result in suspension, revocation, and denial of export privileges under the Export Control Law, and to exclusion from practice before the Office of Export Control.<sup>1</sup>

(2) *Seizure.* In addition, commodities or technical data attempted to be, or being, or intended to be, or which have been, exported or shipped from or taken out of the United States in violation of the Export Control Law or of any proclamation, order, rule, regulation, or license issued thereunder are subject to seizure and forfeiture, as are the vessels, vehicles, and aircraft carrying such commodities or technical data.

14. Section 381.4 *Acting with knowledge of a violation* is amended to read as follows:

§ 381.4 *Acting with knowledge of a violation.*

No person may order, buy, receive, conceal, store, use, sell, dispose of, transport, finance, forward or otherwise service, in whole or in part any commodity or technical data exported or to be exported from the United States, or which is otherwise subject to the Export Regulations with knowledge that a violation of the Export Control Law or any proclamation, order, rule, regulation or license has occurred, is about to, or is intended to occur with respect to the whole or any part of such transaction.

15. Section 381.10(a) *Prohibited activities* is amended by substituting, in clause (2), the words "transaction which may involve" for the words "exportation or reexportation of".

16. Section 382.1 *Denial of export privileges* is amended to read as follows:

§ 382.1 *Denial of export privileges.*

(a) *Administrative sanctions.*<sup>2</sup> Any person (respondent) who contravenes or violates any law, order, regulation, license, or other reexportation authorization relating to export control is subject to the following administrative actions:

(1) Any or all outstanding validated export licenses concerned with or affecting any transaction in which such re-

spondent may have any interest, direct or indirect, may be revoked and ordered returned forthwith to the Office of Export Control.

(2) Such respondent may be denied the privileges of participating, directly or indirectly in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or which are otherwise subject to the Export Regulations. Without limitation of the generality of such denial of export privileges, participation prohibited in any such transaction either in the United States or abroad may be deemed to include:

(i) Participation as a party or as a representative of a party to any validated export license application.

(ii) Participation in the preparation or filing of any export license application or reexportation authorization, or document to be submitted therewith.

(iii) Participation in the obtaining or using of any validated or general export license or other export control documents.

(iv) Participation in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data; and

(v) Participation in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

(3) Such respondent may be excluded from practice before the Office of Export Control.

(b) *Applicability to related persons.* Any order denying export privileges or excluding persons from practice before the Office of Export Control may be made applicable not only to persons named therein but also, to the extent necessary to prevent evasion, to other persons with whom said named persons may then or thereafter be related by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or related services. In addition, the order may contain the substance of § 381.10 of this chapter.

(c) *Definition of law or regulation relating to export control.* Any statute, proclamation, executive order, regulation, rule, license, or order applicable to any conduct involving an export transaction shall be deemed to be a "law or regulation relating to export control."

NOTE: This procedure in no way restricts the present practice of referring appropriate cases to the Department of Justice for criminal prosecution. Violations of Export Regulations not only may result in denial of export privileges but also are punishable by a fine or imprisonment as described in § 381.1 of this chapter. Violations may result also in seizure and forfeiture of property under Title 22, U.S.C.A. 401.

17. Section 382.7(a) is amended by revising the third sentence to read: "If an answer has been duly filed and an oral hearing has been demanded, the Compliance Commissioner shall set the case for such hearing, and due notice thereof shall be given to the respondent or his attorney."

18. Section 382.9 *Disposition of proceeding* is amended by substituting a comma for the period at the end of the last sentence, and adding the words "or upon his attorney."

19. Section 382.10 *Consent orders* is amended by adding the words "or his attorney" after the words "notify the respondent" in the third sentence.

20. Section 382.11(c) (1) *Motions to vacate or modify* is amended by adding the words "or his attorney" at the end of the last sentence.

21. Section 382.13(d) *Effect of appeals* is amended by adding the words "or his attorney" at the end of the last sentence.

22. Section 384.2(b) *Former employees* is amended to read as follows:

(b) *Employees and former employees.* Persons who are or at any time have been employed on a full-time or part-time, compensated or uncompensated, basis by the United States Government are subject to the provisions of Title 18 U.S. Code §§ 203, 205 and 207 (Public Law 87-849, 87th Congress) in connection with representing a private party or interest before the Department of Commerce in connection with any export control matter.

23. Section 385.2 *General licenses GTDP, GTDU, and GTDS* is amended in the following respects:

a. The section is retitled *General licenses*, paragraphs (a), (b) and (c) are redesignated respectively as paragraphs (b), (c) and (d), and a new paragraph (a) is added to read as follows:

(a) *Which general license may be used*—(1) *Scientific and educational technical data.* Unclassified scientific or educational technical data, as described in paragraph (d) of this section, may be exported under the provisions of General License GTDS in either published or unpublished form. At the discretion of the exporter, scientific or educational data may be exported under General License GTDP or GTDU if the specified provisions of either of these general licenses are met (see paragraphs (b) and (c) of this section).

(2) *Other types of technical data.* Unclassified technical data which does not fall within the definition of "scientific" or "educational" as defined in paragraph (d) of this section, may be exported as follows:

(i) Under the provisions of General License GTDP if it is generally available in published form (see paragraph (b) of this section).

(ii) Under the provisions of General License GTDU if it is not generally available in published form (see paragraph (c) of this section).

A validated export license is required if the technical data are not exportable under the provisions of General License GTDS, GTDP or GTDU.

b. Subparagraph (1) of redesignated paragraph (c) *General license GTDU* is amended to read as follows:

(1) A general license designated GTDU is hereby established authorizing the exportation of unclassified technical data, either unpublished or not generally available in published form (that is,

<sup>1</sup> See Part 382 of this chapter, "Denial of Export Privileges," and § 384.2(a) of this chapter, "Activities of Persons Appearing Before the Office of Export Control in Connection with Export Control Matters."

<sup>2</sup> See § 370.4 of this chapter regarding the unauthorized disposition of foreign excess personal property purchased from the United States Armed Forces in foreign countries.

technical data not exportable under the provisions of paragraph (b) of this section), subject to the limitations set forth in subparagraphs (2), (3), and (4) of this paragraph.

This amendment shall become effective April 1, 1963.

(Sec. 3, 63 Stat. 7; 50 U.S.C. App. 2023; E.O. 10945, 26 F.R. 4487; E.O. 11038, 27 F.R. 7003)

FORREST D. HOCKERSMITH,  
Director,  
Office of Export Control.

[F.R. Doc. 63-3332; Filed, Mar. 29, 1963;  
8:46 a.m.]

## Title 46—SHIPPING

### Chapter IV—Federal Maritime Commission

#### SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES

[Gen. Order 5, Amdt. 2]

#### PART 511—REPORTS BY COMMON CARRIERS BY WATER IN THE DOMESTIC OFFSHORE TRADES

##### Miscellaneous Amendments

On February 19, 1963, notice of proposed rulemaking regarding the filing of financial reports by common carriers by water in the domestic offshore trades was published in the FEDERAL REGISTER (28 F.R. 1560-61). After consideration of all such relevant matter presented by interested parties regarding the proposed regulations, the regulations as so published and set forth below are hereby adopted without change:

##### § 511.5 Form number designations.

The joint report referred to in § 511.2 as Maritime Administration Form MA-172 and Interstate Commerce Commission Form M and the report referred to in § 511.3 as Interstate Commerce Commission Form K-A shall henceforth bear the additional notations, "Federal Maritime Commission Form FMC-64" and "Federal Maritime Commission Form FMC-63" respectively.

##### § 511.6 Acceptance of alternate data.

The Commission upon application and a showing of good cause, or when it finds it unnecessary to require full compliance with this part to carry out its regulatory functions, may relieve a carrier from full compliance with this part, and may require such carrier to submit such other data as the Commission deems necessary.

##### § 511.7 Waiver for carriers with less than \$25,000 gross revenue.

The Commission upon an application and showing that any carrier subject to this part has earned less than \$25,000 gross revenue for any one reporting period as provided in this part, may relieve such carrier from filing any report for such reporting period.

\* \* \* \* \*

*Effective date.* This amendment relieves restrictions and is within the exception of 4(c) of the Administrative Procedure Act as to effective date requirements. The amendment shall, therefore, be effective upon publication of this notice in the FEDERAL REGISTER.

By the Commission, March 26, 1963.

THOMAS LISI,  
Secretary.

[F.R. Doc. 63-3336; Filed, Mar. 29, 1963;  
8:46 a.m.]

# Notices

## DEPARTMENT OF THE TREASURY

### Foreign Assets Control

#### IMPORTATION OF PEPPERMINT OIL DIRECTLY FROM TAIWAN (FORMOSA)

#### Available Certification by Government of the Republic of China

Notice is hereby given that certificates of origin issued by the Ministry of Economic Affairs of the Republic of China under procedures agreed upon between that Government and the Foreign Assets Control are now available with respect to the importation into the United States directly, or on a through bill of lading, from Taiwan (Formosa) of the following additional commodity: Peppermint oil.

[SEAL] MARGARET W. SCHWARTZ,  
*Director, Foreign Assets Control.*

[F.R. Doc. 63-3334; Filed, Mar. 29, 1963;  
8:46 a.m.]

## DEPARTMENT OF COMMERCE

### Maritime Administration

#### LIST OF FREE WORLD AND POLISH FLAG VESSELS ARRIVING IN CUBA SINCE JANUARY 1, 1963

Pursuant to the National Security Action Memorandum No. 220, dated February 5, 1963, addressed to The Secretary of State; The Secretary of Defense; The Secretary of Agriculture; The Secretary of Commerce; The Administrator, Agency for International Development; and The Administrator, General Services Administration, concerning United States Government shipments by foreign-flag vessels in the Cuban trade, the Maritime Administration is making available to the appropriate Departments the following list of vessels which have arrived in Cuba since January 1, 1963, based on information received through March 22, 1963:

#### FLAG OF REGISTRY

#### NAME OF SHIP

#### British:

Arlington Court.  
Athelduke (Tanker).  
Athelsultan (Tanker).  
London Confidence (Tanker).  
London Independence (Tanker).  
London Majesty (Tanker).  
London Pride (Tanker).  
London Splendour (Tanker).  
Overseas Explorer (Tanker).  
Overseas Pioneer (Tanker).  
Pampas.  
Shienfoon.  
Tulse Hill.

#### Greek:

Apollon.  
Capetan Petros.  
Gloria.  
King Theseus.  
Kyra Hariklia.  
Mastro-Stelios II.

North Empress.  
Pamit.  
Pantanassa.  
Perseus (Tanker).  
Redestos.  
Seirios.  
Stylios N. Vlassopoulos.

#### Norwegian:

Benny Viking.  
Kingsgaard (Tanker).  
Ole Bratt.  
Polyclipper (Tanker).

#### Polish:

Baltyk.  
Bialystok.  
Bytom.  
Piast.

#### Italian:

Cannaregio.  
Linda Giovanna (Tanker).  
San Nicola (Tanker).

#### Yugoslav:

Bar.  
Cavtat.

#### Danish: Himmerland.

Japanese: Meishun Maru.

Lebanese: Mousse.

Spanish: Castillo Ampudia.

Additions to and deletions from the foregoing list will be published when practicable.

Dated: March 27, 1963.

DONALD W. ALEXANDER,  
*Maritime Administrator.*

[F.R. Doc. 63-3354; Filed, Mar. 29, 1963;  
8:49 a.m.]

### Office of the Secretary

#### GEORGE E. HARDING

#### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER, during the past six months:

- A. Deletions: no change.
- B. Additions: no change.

This statement is made as of March 19, 1963.

GEORGE E. HARDING.

MARCH 19, 1963.

[F.R. Doc. 63-3335; Filed, Mar. 29, 1963;  
8:46 a.m.]

### UNDER SECRETARY OF COMMERCE FOR TRANSPORTATION AND ADMINISTRATOR, FEDERAL AVIATION AGENCY

#### Memorandum of Understanding Concerning Implementation of Executive Orders 10999 and 11003 as They Pertain to Particular Types of Civil Aircraft

Executive Order 10999, dated February 16, 1962, directs the Secretary of

Commerce to develop plans for a national program to utilize the air carrier civil air transportation capacity and equipment, both domestically and internationally, in a national emergency, including the allocation of air carrier aircraft to meet the needs of the Department of Defense for military operations and the Civil Aeronautics Board for essential civilian needs. Under Department of Commerce Order No. 128, dated March 29, 1962, this responsibility has been assigned by the Secretary of Commerce to the Under Secretary of Commerce for Transportation.

Executive Order 11003, dated February 16, 1962, directs the Administrator of the Federal Aviation Agency to prepare national emergency plans and develop preparedness programs covering the emergency management of civil airports, civil aviation operating facilities, civil aviation services, and civil aircraft other than air carrier aircraft.

Having in mind the statements of authority set forth above, it is deemed necessary to delineate the responsibility of the Under Secretary of Commerce for Transportation and the Administrator of the Federal Aviation Agency for planning and programming for the use of particular types of civil aircraft in a national emergency.

Therefore, it is hereby mutually understood and agreed as follows:

A. The term "air carrier aircraft" as used in Executive Order 10999 shall be construed to include the following:

(1) All aircraft, both fixed and rotary wing, under the operational control of international and domestic scheduled and supplemental air carriers operating under the economic authority of the Civil Aeronautics Board.

(2) Fixed-wing aircraft of four-engine category not falling under Item (1) above.

(3) Fixed-wing aircraft over 12,500 lbs. takeoff weight, powered by turbo-jet or turbo-prop engines, not included under Items (1) and (2) above.

B. The term "other than air carrier aircraft" as used in Executive Order 11003, shall be construed to include all civil aircraft other than those covered by Items A (1), (2), and (3) above.

CLARENCE D. MARTIN, JR.,  
*Under Secretary of  
Commerce for Transportation.*

FEBRUARY 4, 1963.

HAROLD W. GRANT,  
*Acting Administrator,  
Federal Aviation Agency.*

FEBRUARY 12, 1963.

[F.R. Doc. 63-3328; Filed, Mar. 29, 1963;  
8:45 a.m.]

## BUREAU OF THE BUDGET

### CERTAIN LANDS IN NORTH CAROLINA

#### Transfer From Department of Agriculture to Tennessee Valley Authority

By virtue of the authority vested in the President of the United States by section 7(b) of the Tennessee Valley Authority Act of 1933 (48 Stat. 63; 16 U.S.C. 831f(b)), and delegated to the Director of the Bureau of the Budget by section 1(i) of Executive Order No. 10530 of May 10, 1954, the use, possession, and control of lands hereinafter described are hereby transferred from the Department of Agriculture to the Tennessee Valley Authority, such transfer being deemed necessary and proper for the purposes of the Authority as stated in the Tennessee Valley Authority Act of 1933, as amended:

All that part of tracts FBR 301 and FBR 302 in the Hiwassee Reservoir Area, Cherokee County, State of North Carolina, lying east of the centerline of U.S. Highway No. 64, more particularly described as follows:

Beginning at TVA concrete monument marked 302-1;

From the initial corner, N. 82°17' W., approximately 375 feet to center line of U.S. Highway No. 64; northeasterly approximately 1,200 feet along highway centerline to intersection with north boundary line of tract FBR 301; S. 82°58' E., approximately 1,000 feet along north boundary of said tract FBR 301 to a TVA concrete monument marked 301-2; S. 4°02' E., 285 feet to a TVA concrete monument marked 301-1 S. 8°16' W., 696 feet to a TVA concrete monument marked 302-2; N. 82°17' W., 1,257 feet to TVA monument marked 302-1, the point of beginning.

The area as described contains 27 acres, more or less.

Dated: March 23, 1963.

ELMER B. STAATS,  
Acting Director,  
Bureau of the Budget.

[F.R. Doc. 63-3333; Filed, Mar. 29, 1963; 8:46 a.m.]

## CIVIL AERONAUTICS BOARD

[Docket No. 14214; Order No. E-19417]

### ALLEGHENY AIRLINES, INC.; "USE IT OR LOSE IT" INVESTIGATION

#### Order Expanding Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 27th day of March 1963.

On December 17, 1962, by Order E-19104, the Board instituted the Allegheny Airlines, Inc. "Use It or Lose It" investigation to determine the need for continued air service at Salisbury, Md. The order also directed Allegheny Airlines, Inc. (Allegheny) to submit to the Board, within 15 days, its on-segment passenger origination and deplanement data for Wilmington, Delaware, which is served on both segments 3 and 8 of Allegheny's

Route 97. On January 2, 1963, Allegheny furnished the on-and-off traffic data at Wilmington, by segment, for the 12 months ended November 30, 1962 (Appendix A<sup>1</sup>). At the request of the Airport Manager for the Greater Wilmington Airport, Allegheny, on January 29, 1963, resubmitted the data on a monthly basis, including the month of December, 1962 (Appendix B),<sup>2</sup> and schedule information for the months of August and November, 1962.

We have examined the traffic results at Wilmington and find, on the basis of the material submitted by Allegheny and the data contained in the attached appendices, that Wilmington has originated fewer than five passengers daily on segment 3;<sup>3</sup> and that the investigation in Docket 14214 should include, in addition to those issues contained in our order of investigation, the issue of whether Wilmington should continue to receive air service as an intermediate point on Allegheny's segment 3, or should be deleted therefrom. We are unable to find such unusual or compelling circumstances with respect to service at Wilmington on segment 3 as to preclude its inclusion in this investigation at this time.

Accordingly, it is ordered,

1. That the investigation in Docket 14214 be expanded to determine whether the public convenience and necessity require:

a. The suspension of Allegheny's certificate insofar as it authorizes the carrier to serve Wilmington on segment 3; or

b. The alteration, amendment or modification of Allegheny's certificate in such a manner as to delete Wilmington on segment 3;

2. That a copy of this order shall be served on all persons made parties to this proceeding by Order E-19104;

3. That a copy of this order shall be served on the City of Wilmington, Delaware, and the State Aviation Commission of Delaware, who are hereby made parties to this proceeding; and

4. That a copy of this order be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,  
Secretary.

[F.R. Doc. 63-3339; Filed, Mar. 29, 1963; 8:47 a.m.]

<sup>1</sup> Filed as part of the original document.

<sup>2</sup> We note that in both instances the traffic figures submitted by Allegheny reflect enplaned passengers at Wilmington rather than originated passengers. Passenger origination data, as defined in Part 241 of the Economic Regulations, rather than enplaned passenger data are used in "use it or lose it" proceedings. However, we will not require Allegheny to resubmit traffic figures in this instance, inasmuch as the data available to us at this time indicate that the issues herein would not be changed by the substitution of passenger originations for the figures already submitted.

<sup>3</sup> 3.1 enplaned passengers per day on segment 3 for the 1962 calendar year. On segment 8, Allegheny has enplaned 6.0 passengers per day at Wilmington, which meets the Board's "use it or lose it" origination standard. We recognize that the attainment of

[Docket No. 13777; Order No. E-19412]

## AGREEMENT OF JOINT CONFERENCE OF INTERNATIONAL AIR TRANSPORT ASSOCIATION

### Specific Commodity Rates

MARCH 26, 1963.

An agreement adopted by Joint Conference 3-1 of the International Air Transport Association relating to specific commodity rates; Docket No. 13777, Agreement C.A.B. 17004, R-2.

There has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, an agreement between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of Joint Conference 3-1 of the International Air Transport Association (IATA), and adopted pursuant to the provisions of Resolution 590—Commodity Rates Board.

The agreement, adopted pursuant to unprotested notices to the carriers, names an additional specific commodity rate, as follows:

Item 6502—Veterinary Pharmaceuticals. Rate 114 cents per pound, minimum weight 4,400 pounds, from West Coast to Sidney.

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, does not find the above-described agreement to be adverse to the public interest or in violation of the Act, provided that approval thereof is conditioned as hereinafter ordered:

Accordingly, it is ordered:

1. That Agreement C.A.B. 17004, R-2, is approved, provided that such approval shall not constitute approval of the specific commodity description contained therein for purposes of tariff publication; and

2. That any air carrier party to the agreement, or any interested person, may, within 15 days from the date of service of this order, submit statements in writing containing reasons deemed appropriate, together with supporting data, in support of or in opposition to the Board's action herein. An original and nineteen copies of the statements should be filed with the Board's Docket Section. The Board may, upon consideration of any such statements filed, modify or rescind its action herein by subsequent order.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,  
Secretary.

[F.R. Doc. 63-3340; Filed, Mar. 29, 1963; 8:47 a.m.]

the standard is attributed in large measure to the substantial passenger enplanements during the last 2 months of 1962. However, the heavy volume of Wilmington's deplaning passengers on segment 8 during the entire year adequately compensates for the marginal performance during the first 10 months of the year.

[Docket No. 13777; Order No. E-19415]

**AGREEMENT OF TRAFFIC CONFERENCE OF INTERNATIONAL AIR TRANSPORT ASSOCIATION**

**Fares**

MARCH 27, 1963.

An agreement adopted by Traffic Conference 2 of the International Air Transport Association relating to fares; Docket 13777, Agreement C.A.B. 17008, R-1 through R-8.

There has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, an agreement between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of Traffic Conference 2 of the International Air Transport Association (IATA). The agreement was adopted at meetings held in Rome, Italy, on February 20-22, 1963, and has been assigned the above-designated C.A.B. Agreement number.

The agreement relates to fares between Europe and Africa/Middle East, Africa and the Middle East, within Africa and within the Middle East. It provides for maintaining normal one-way fares generally at present levels and for the introduction of promotional fares. The resolutions preclude the combination of promotional fares in question with fares to and from the United States. We are, therefore, disclaiming jurisdiction over the promotional fares.

The Board acting pursuant to sections 102, 204(a), and 412 of the Act makes the following findings:

1. The Board does not find the following resolutions to be adverse to the public interest or in violation of the Act:

CAB No.	IATA No.	
17008		
R-1.....	230/001b	Special effectiveness resolution. First class conditions of service—Revalidating and amending.
R-2.....	230/050	
R-3.....	230/060	Economy class conditions of service—Revalidating and amending.
R-4.....	230/052	Conference 2 first class fares. Conference 2 tourist/economy class fares.
R-5.....	230/062	

2. The Board finds that, on the basis of all facts presently known, the following resolutions do not affect air transportation within the meaning of the Act:

CAB No.	IATA No.	
17008		
R-6.....	230/080	Special fares for inclusive tours from Europe and the Middle East to Africa.
R-7.....	230/080r	Economy class excursion fares—Africa-Europe/Middle East.
R-8.....	230/084b	Creative fares.

Accordingly, it is ordered, That:

1. The portion of Agreement C.A.B. 17008 as set forth in finding paragraph 1 is approved; and

2. Jurisdiction is disclaimed with respect to that portion of Agreement C.A.B. 17008 as set forth in finding paragraph 2.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON, Secretary.

[F.R. Doc. 63-3341; Filed, Mar. 29, 1963; 8:47 a.m.]

[Docket No. 14399; Order No. E-19416]

**AGREEMENT OF AIR TRAFFIC CONFERENCE OF AMERICA**

**Tariff Filings on 45 Days' Notice**

MARCH 27, 1963.

In the matter of an agreement adopted by the Air Traffic Conference of America relating to tariff filings on 45 days' notice; Docket 14399, Agreement C.A.B. 16871.

There has been filed with the Board pursuant to section 412 of the Federal Aviation Act of 1958, an agreement between various air carriers embodied in the resolution of the Air Traffic Conference of America, adopted by mail vote. The agreement has been assigned the above-designated C.A.B. Agreement number.

The agreement in question relates to the filing of certain types of tariffs on 45 days' notice. It provides that no member will file a passenger tariff proposal for air transportation wholly within the continental United States less than 45 days before its effective date with respect to any of the following matters:

- (a) A change of fare;
- (b) The establishment of a new class of service; and
- (c) An extension of the tariff expiration date applicable to any reduced passenger fare or class of service which has been in effect for one year or less.

The agreement also provides that the 45-day notice requirement will not apply if the tariff filing is made in response to a filing by a carrier not bound by the resolution, if the tariff filing is intended only to correct clerical or typographical errors, if the tariff filing is merely technical in nature, or in situations where the Board specifically permits filing on less than 45 days' notice. The agreement is to become effective only if, and remain in effect only so long as, (1) it is approved by the Board, and (2) the Board maintains a policy of making public its intent to suspend tariffs filed on 45 days' notice and bearing a posting date, at least 15 days prior to the effective date.<sup>1</sup>

The subject agreement, though not inclusive of all types of tariffs which, it appears, might well be filed on 45 days' notice, nevertheless is consistent with the Board's recent adoption of § 399.40 of Part 399 of the Board's Policy Statements, and it appears to be in the public interest and not in violation of the Act. However, the agreement fails

<sup>1</sup> It is noted that the list of tariffs to be filed on 45 days' notice is not all-inclusive, either from the standpoint of types of tariffs, or in terms of geographic areas of applicability within the United States.

to make appropriate provision that the tariffs to be filed on 45 days' notice bear a posting as contemplated in § 399.40. The presence of a posting date on a tariff is essential if the carriers desire Board action on suspension 15 days before effectiveness as set forth in that section.<sup>2</sup>

Therefore, the Board, acting pursuant to sections 102, 204(a), and 412 of the Act does not find the above-described agreement to be adverse to the public interest or in violation of the Act, and the agreement will be approved.

It is ordered, That:

1. Agreement C.A.B. 16871 is approved, effective sixty (60) days after the date of this order, May 26, 1963.

2. Any air carrier party to the agreement, or any interested person, may, within 15 days from the date of this order, submit statements in writing containing reasons deemed appropriate, together with supporting data, in support of or in opposition to the Board's action herein. An original and 19 copies of the statements and data should be filed with the Board's Docket Section. The Board may, upon consideration of any such statement, modify or rescind its action herein by subsequent action.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON, Secretary.

[F.R. Doc. 63-3342; Filed, Mar. 29, 1963; 8:47 a.m.]

**FEDERAL COMMUNICATIONS COMMISSION**

[Docket No. 15020]

**SHARON K. FLIPPEN**

**Order To Show Cause**

In the matter of Sharon K. Flippen, Norwalk, California, Docket No. 15020; order to show cause why there should not be revoked the license for Radio Station KEJ-0426 in the Citizens Radio Service.

The Commission, by the Chief, Safety and Special Radio Services Bureau, under delegated authority, having under consideration the matter of certain alleged violations of the Commission's rules in connection with the operation of the above-captioned station;

It appearing, that, pursuant to § 1.76 of the Commission's rules, written notice of violation of the Commission's rules was served upon the above-named licensee at her address of record as follows: Letter dated November 28, 1962, alleging violation of § 19.33 of the Commission's rules.

<sup>2</sup> The Air Traffic Conference, by letter dated December 3, 1962, has requested, for administrative reasons, that any Board approval be effective sixty (60) days after issuance of the order. Such request will be granted, and approval of the agreement will be effective sixty (60) days from the date of this order.

It further appearing that said licensee did not reply to such communication or to a follow-up letter dated February 18, 1963, also mailed to the licensee at her address of record; and

It further appearing, that, in view of the foregoing, the licensee has repeatedly violated § 1.76 of the Commission's rules;

*It is ordered*, This 26th day of March 1963, pursuant to section 312 (a) (4) and (c) of the Communications Act of 1934, as amended, and § 0.291(b) (8) of Part 0 of the Commission's rules, that the said licensee show cause why the license for the above-captioned radio station should not be revoked, and appear and give evidence in respect thereto at a hearing to be held at a time and place to be specified by subsequent order; and

*It is further ordered*, That the Acting Secretary send a copy of this Order by Certified Mail—Return Receipt Requested to the said licensee at her last known address of 11612 Alburdis Street, Norwalk, California.

Released: March 27, 1963.

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

[F.R. Doc. 63-3346; Filed, Mar. 29, 1963;  
8:48 a.m.]

[Docket No. 15019]

### ROSEMARY E. THOMPSON

#### Order To Show Cause

In the matter of Rosemary E. Thompson, El Paso, Texas, Docket No. 15019; order to show cause why there should not be revoked the license for Radio Station 10W3878 in the Citizens Radio Service.

The Commission, by the Chief, Safety and Special Radio Services Bureau, under delegated authority, having under consideration the matter of certain alleged violations of the Commission's rules in connection with the operation of the above-captioned station;

It appearing, that, pursuant to § 1.76 of the Commission's rules, written notice of violation of the Commission's rules was served upon the above-named licensee at her address of record as follows: Official Notice of Violation dated September 20, 1962, alleging violation of § 19.61(f) of the Commission's rules.

It further appearing that said licensee did not reply to such communication or to a follow-up letter dated January 16, 1963, also mailed to the licensee at her address of record; and

It further appearing, that, in view of the foregoing, the licensee has repeatedly violated § 1.76 of the Commission's rules;

*It is ordered*, This 25th day of March 1963, pursuant to section 312 (a) (4) and (c) of the Communications Act of 1934, as amended, and § 0.291(b) (8) of Part 0 of the Commission's rules, that the said licensee show cause why the license for the above-captioned radio station should not be revoked, and appear and give evidence in respect thereto at a hearing to be held at a time and place to be specified by subsequent order; and

*It is further ordered*, That the Acting Secretary send a copy of this Order by Certified Mail—Return Receipt Requested to the said licensee at her last known address of 7720 A.N. Loop Road, El Paso, Texas.

Released: March 27, 1963.

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

[F.R. Doc. 63-3351; Filed, Mar. 29, 1963;  
8:48 a.m.]

[Docket Nos. 14617-14621; FCC 63M-390]

### MARTIN R. KARIG ET AL.

#### Order Continuing Hearing

In the matter of revocation of construction permit of Martin R. Karig, for Standard Broadcast Station WIZR, Johnstown, New York, Docket No. 14617; in re application of SPA Broadcasters, Inc. (WSPN), Saratoga Springs, New York, Docket No. 14618, File No. BR-2958, for renewal of license for Standard Broadcast Station WSPN, Saratoga Springs, New York; in re applications of Radio Station WRSA, Inc., Troy, New York, Docket No. 14619, File No. BP-13827, SPA Broadcasters, Inc. (WSPN), Saratoga Springs, New York, Docket No. 14620, File No. BP-13828, and Genkar, Incorporated, Gouverneur, New York, Docket No. 14621, File No. BP-13899, for construction permits.

On March 25, 1963, counsel for the Broadcast Bureau filed a request to change the date of hearing because of conflicting commitments. Counsel for the other parties have no objection to the request.

*Accordingly, it is ordered*, This 25th day of March 1963, that the request is granted, and the hearing is rescheduled from April 11 to April 18, 1963, at 10 a.m. in the offices of the Commission, Washington, D.C.

Released: March 26, 1963.

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

[F.R. Doc. 63-3347; Filed, Mar. 29, 1963;  
8:48 a.m.]

[Docket No. 15017, 15018; FCC 63M-387]

### MARSHALL BROADCASTING CO. AND WRIGHT BROADCASTING CO.

#### Order Scheduling Hearing

In re applications of Marshall Broadcasting Company, Marshall, Michigan, Docket No. 15017, File No. BP-14083; Wright Broadcasting Company, East Lansing, Michigan, Docket No. 15018, File No. BP-15044; for construction permits.

*It is ordered*, This 25th day of March 1963, that Arthur A. Gladstone will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on June 20, 1963, in Washington, D.C.: *And it is further ordered*, That a prehearing conference in the

proceeding will be convened by the presiding officer at 9:00 a.m., April 15, 1963.

Released: March 26, 1963.

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

[F.R. Doc. 63-3348; Filed, Mar. 29, 1963;  
8:48 a.m.]

[Docket No. 14390; FCC 63M-391]

### RISDEN ALLEN LYON

#### Order Continuing Hearing

In re application of Risden Allen Lyon, Charlotte, North Carolina, Docket No. 14390, File No. BP-14661; for construction permit.

The Hearing Examiner having under consideration a motion filed March 25, 1963, by Risden Allen Lyon requesting that the hearing in the above-entitled proceeding now scheduled to be held on March 26, 1963, be continued to May 14, 1963; and

It appearing that the reason for the requested continuance is the inability of a principal witness to appear in Washington due to a continuing illness; and

It further appearing that counsel for the Chief, Broadcast Bureau has no objection to a grant of this petition and to a waiver of the provisions of § 1.43 of the Commission's rules in order to permit immediate consideration thereof, and good cause for the requested extension having been shown;

*It is ordered*, This the 25th day of March 1963, that the motion for continuance is granted and the hearing in the above-entitled proceeding is continued from March 26, 1963 to May 14, 1963.

Released: March 26, 1963.

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

[F.R. Doc. 63-3349; Filed, Mar. 29, 1963;  
8:48 a.m.]

[Docket Nos. 14909, 14910; FCC 63M-392]

### SOUTHERN RADIO AND TELEVISION CO. AND ROBERT HECKSHER

#### Order Continuing Hearing

In re applications of Southern Radio and Television Co., Lehigh Acres, Florida, Docket No. 14909, File No. BP-14297; Robert Hecksher, Fort Myers, Florida, Docket No. 14910, File No. BP-14378; for construction permits.

On March 25, 1963, counsel for Southern Radio and Television Co. filed a petition for extension of time, on the ground additional time is needed to analyze measurements and make corresponding changes in engineering exhibits. Counsel for the other parties have no objection.

*Accordingly, it is ordered*, This 25th day of March 1963, that the petition is granted, and procedural dates are extended as follows:

Informal exchange of written direct cases of applicants: From March 25 to April 8, 1963.

Formal exchange: From April 5 to April 19, 1963.

Receipt of notification of witnesses desired for cross-examination: From April 11 to April 25, 1963.

Hearing: From April 25 to April 30, 1963 at 10 a.m., in the offices of the Commission, Washington, D.C.

Released: March 26, 1963.

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

[F.R. Doc. 63-3350; Filed, Mar. 29, 1963;  
8:48 a.m.]

[Docket Nos. 14775-14778; FCC 63M-384]

**L. B. WILSON, INC., ET AL.**

**Order Continuing Hearing**

In re applications of L. B. Wilson, Incorporated, Miami, Florida, Docket No. 14775, File No. BRCT-509, for renewal of license of Television Station WLBW-TV (including TV STL Station KIS-77 and TV Pickup Station KE-7759); Civic Television, Inc., Miami, Florida, Docket No. 14776, File No. BPCT-3041; South Florida Television Corporation, Miami, Florida, Docket No. 14777, File No. BPCT-3042; Miami Television Corporation, Miami, Florida, Docket No. 14778, File No. BPCT-3044, for construction permits for new television broadcast stations (Channel 10).

The Hearing Examiner having under consideration a motion for continuance filed on March 21, 1963, by Civic Television, Inc.;

It appearing that counsel for Civic Television has a conflict in hearing obligations and that another case in which he is engaged is under a mandate from the Commission to be expedited; and

It further appearing that in view of the circumstances, other counsel have agreed "with reluctance" to a grant of this request with the understanding that the hearing will be continued from its scheduled date of April 22 to May 15, 1963, or, if circumstances require, to a date not later than May 20, 1963; and

It further appearing that the circumstances presented make a showing of good cause in this instance;

It is ordered, This 22d day of March 1963, that the motion of Civic Television for continuance is granted and that the hearing is continued from April 22 to May 15, 1963.

Released: March 26, 1963.

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

[F.R. Doc. 63-3352; Filed, Mar. 29, 1963;  
8:48 a.m.]

[Docket No. 15016; FCC 63M-388]

**BEARDSTOWN BROADCASTING CO.,  
INC. (WRMS)**

**Order Scheduling Hearing**

In re application of Beardstown Broadcasting Co., Inc. (WRMS) Beardstown,

Illinois, Docket No. 15016, File No. BP-13733; for construction permit.

It is ordered, This 25th day of March 1963, that Thomas H. Donahue will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on May 22, 1963, in Washington, D.C.; And it is further ordered, That a prehearing conference in the proceeding will be convened by the presiding officer at 9:00 a.m., April 19, 1963.

Released: March 26, 1963.

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

[F.R. Doc. 63-3353; Filed, Mar. 29, 1963;  
8:49 a.m.]

**FEDERAL MARITIME COMMISSION**

**MEMBER LINES OF BRAZIL/UNITED STATES-CANADA FREIGHT CONFERENCE**

**Notice of Agreement Filed for Approval**

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement 5450-30, between the member lines of the Brazil/United States-Canada Freight Conference, modifies the approved agreement of that conference (Agreement 5450, as amended) in the trade from Brazilian ports, south of and including Victoria, to U.S. Atlantic and Gulf ports, and ports in Eastern Canada, and on the St. Lawrence River and Tributaries not west of Montreal. This modification provides for the appointment of committees by the conference from its membership, to deal with specific matters as may be deemed advisable, with such authority as may be delegated by vote of the conference.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., or may inspect a copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington 25, D.C., 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 26, 1963.

By order of the Federal Maritime Commission.

THOMAS LISI,  
Secretary.

[F.R. Doc. 63-3337; Filed, Mar. 29, 1963;  
8:47 a.m.]

**AMERICAN GREAT LAKES-MEDITERRANEAN EASTBOUND FREIGHT CONFERENCE**

**Filing of Agreement for Approval**

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement 9000, between American Export Lines, Inc., Compagnie de Navigation Fraissinet et Cyprien Fabre (Fabre Line), Hellenic Lines Limited, Kulukundis Maritime Industries, Inc., Kulukundis Lines, Ltd., Orient Mid-East Great Lakes Service, Britain Steamship Company Limited (Watts Watts, Line), Zim Israel Navigation Co., Ltd., and the carriers comprising the Concordia Line-Great Lakes Service, Montship-Capo Great Lakes Service, Nedlloyd Line and Niagara Line joint services, is the new agreement of The American Great Lakes-Mediterranean Eastbound Conference, covering commerce from United States ports on the Great Lakes and the St. Lawrence River, either direct or by transhipment, to Atlantic Coast ports on the Iberian Peninsula, European, Asian and African ports on the Mediterranean Sea (including ports on the Black Sea), and Atlantic Coast ports of Africa, including, but not south of, Casablanca. This New Conference agreement has been filed to supersede and cancel the present approved agreement of the conference (Agreement 8250, as amended), upon approval by the Commission.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., or may inspect a copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington 25, D.C., 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 26, 1963.

By order of the Federal Maritime Commission.

THOMAS LISI,  
Secretary.

[F.R. Doc. 63-3338; Filed, Mar. 29, 1963;  
8:47 a.m.]

[Docket No. 1099]

**GREEN HIDE SHIPMENTS**

**General Investigation of Weighing Practices; Order and Notice of Hearing**

It appears from information in the possession of the Commission that some of the exporters or shippers of green hides in the foreign commerce of the

United States, presently furnish to the carriers of their shipments estimated weights of the hides shipped, which weights are less than the actual scale weights of such shipments as shown on the exporter's records and which are apparently less than actual gross weight at the time the shipments are tendered to the carrier.

There is further indication that certain freight forwarders, common carriers by water and conferences of such carriers may have encouraged and acquiesced in the use of weights less than actual gross weights at the time of delivery to the carrier. In addition there appears to be a lack of uniformity regarding said practices as between carriers or conferences and exporters or forwarders which may result in an inequality of treatment between exporters or shippers.

Therefore, it is ordered, Pursuant to sections 22 and 43 of the Shipping Act, 1916, that a general investigation is hereby instituted to determine whether the weighing practices regarding the export movement of green hides are a just and reasonable practice for the handling, receiving or delivering of property within the meaning of section 17 and whether the Commission shall promulgate appropriate rules, regulations or orders governing the practices to be employed in the weighing and certification of weights and the billed weights of green hides exported in the foreign commerce of the United States; and

It is further ordered, That any person who desires to actively participate in this proceeding and to present documentary or oral testimony may file with the Secretary, Federal Maritime Commission, Washington 25, D.C., within 15 days of publication of this order a notice of appearance.

It is further ordered, That this proceeding be heard by an examiner of the Commission's Office of Hearing Examiners to be assigned by the Chief Examiner, and that this order be published in the FEDERAL REGISTER.

By order of the Commission, March 28, 1963.

THOMAS LISI,  
Secretary.

[F.R. Doc. 63-3378; Filed, Mar. 29, 1963;  
8:49 a.m.]

[Docket No. 1099]

### GREEN HIDE SHIPMENTS

#### General Investigation of Weighing Practices; Notice of Assignment of Presiding Officer and of Hearing

Hearing in this proceeding pursuant to the order (F.R. Doc. 63-3378) herein published on this day will be held in San Francisco, California, on April 30, 1963, beginning at 10:00 a.m. Local Time, before Examiner Benjamin A. Theeman, who is hereby assigned to hear this proceeding. Notice of location of hearing room in San Francisco will be announced later.

Consideration is being given to scheduling later hearings in New York City,

New York at a time and place to be announced.

All communications regarding this proceeding should be addressed to the Commission attention of Examiner Theeman.

Dated: March 28, 1963.

G. O. BASHAM,  
Chief Examiner,  
Office of Hearing Examiners.

[F.R. Doc. 63-3408; Filed, Mar. 29, 1963;  
8:49 a.m.]

## HOUSING AND HOME FINANCE AGENCY

Office of the Administrator

### ACTING REGIONAL DIRECTOR OF ADMINISTRATION, REGION IV (CHICAGO)

#### Designation

Robert W. Notti, Special Assistant to the Regional Administrator, Region IV (Chicago), is hereby designated to serve as Acting Regional Director of Administration, Region IV (Chicago), during the present vacancy in the position of Regional Director of Administration, Region IV, with all the powers, functions, and duties delegated or assigned to the Regional Director of Administration.

In the absence of Robert W. Notti, the officers appointed to the following positions are hereby designated to serve as Acting Regional Director of Administration, Region IV, with all the powers, functions, and duties delegated or assigned to the Regional Director of Administration, Region IV, provided that no officer is authorized to serve as Acting Regional Director of Administration unless all other officers whose titles precede his in this designation are unable to act by reason of absence:

1. Director, Administrative Branch.
2. Supervisory Operating Accountant.

(62 Stat. 1283 (1948), as amended by 64 Stat. 80 (1950), 12 U.S.C. 1701c)

Effective as of the 9th day of December 1962.

[SEAL] ROBERT C. WEAVER,  
Housing and Home  
Finance Administrator.

[F.R. Doc. 63-3344; Filed, Mar. 29, 1963;  
8:48 a.m.]

### ACTING REGIONAL DIRECTOR OF ADMINISTRATION, REGION IV (CHICAGO)

#### Designation

Robert W. Notti, Special Assistant to the Regional Administrator, Region IV (Chicago), is hereby designated to serve as Acting Regional Director of Administration, Region IV (Chicago), during the present vacancy in the position of Regional Director of Administration, Region IV, with all the powers, functions, and duties delegated or assigned to the Regional Director of Administration.

In the absence of Robert W. Notti, the officers appointed to the following positions are hereby designated to serve as Acting Regional Director of Administration, Region IV, with all the powers, functions, and duties delegated or assigned to the Regional Director of Administration, Region IV, provided that no officer is authorized to serve as Acting Regional Director of Administration unless all other officers whose titles precede his in this designation are unable to act by reason of absence:

1. Special Assistant to the Regional Director of Administration.
  2. Supervisory Operating Accountant.
- This designation supersedes the designation effective December 9, 1962 (28 F.R. 3130; March 30, 1963).

(62 Stat. 1283 (1948), as amended by 64 Stat. 80 (1950), 12 U.S.C. 1701c)

Effective as of the 24th day of January 1963.

[SEAL] ROBERT C. WEAVER,  
Housing and Home  
Finance Administrator.

[F.R. Doc. 63-3345; Filed, Mar. 29, 1963;  
8:48 a.m.]

## SECURITIES AND EXCHANGE COMMISSION

[File No. 812-1542]

### MIDWEST TECHNICAL DEVELOPMENT CORP. ET AL.

#### Notice of and Order for Hearing on Application

MARCH 26, 1963.

Notice is hereby given that Midwest Technical Development Corporation ("Midwest"), 2615 First National Bank Building, Minneapolis 2, Minnesota, a Minnesota corporation and a registered closed-end, non-diversified management investment company, and Electra Scientific Corporation ("Electra"), 1431 West Ash Avenue, Fullerton, California, and William H. Evans ("Evans"), 1414 Union Commerce Building, Cleveland 14, Ohio, sometimes hereinafter referred to collectively as the "Applicants", have filed an application and amendments thereto pursuant to section 6(c) and 17(b) of the Investment Company Act of 1940 ("Act") for an order exempting from the provisions of section 17(a) of the Act certain proposed transactions hereinafter described. Applicants have also requested that the Commission issue an order pursuant to section 6(c) of the Act exempting from the provisions of section 17(a) of the Act transactions referred to in the application as "Past Transactions" to the extent that it may appear necessary to do so. The application states that Midwest was organized for the primary purpose of seeking out and acting upon investment opportunities in young or new companies believed by its management to be working on the technological frontier and that Electra was organized to engage in the design, development, manufacture and sale of electronic ceramics, accelerometers,

transistorized amplifiers and mechanical commutating switches for use in military and industrial systems.

All interested persons are referred to the application, which has been filed with the Commission for a full statement of the Applicant's representations which are summarized below.

*Past transactions.* The Past Transactions for which exemption to the extent noted hereinabove is sought pursuant to section 6(c) of the Act are summarized as follows:

On August 30, 1960, Midwest and Electra entered into a written agreement ("Loan Agreement") providing for the issuance and sale by Electra and the purchase by Midwest for a total consideration of \$500,000 of (a) \$500,000 principal amount of 6½ percent debentures of Electra, and (b) warrants entitling Midwest for a period of 10 years to purchase 25,000 shares of Electra stock at \$20 a share.

Under said agreement, Electra agreed that on or before the first loan was made thereunder it would use its best efforts to elect to Electra's board of directors consisting of nine members two persons acceptable to Midwest; and to continue two such members on Electra's board of directors; and to appoint at least one such person as a member of Electra's executive committee.

In accordance with the terms of the Loan Agreement, Midwest purchased from Electra on September 1, 1960, and February 15, 1961, respectively, \$200,000 and \$300,000 principal amount of Electra's 6½ percent debentures maturing in 10 years from the date of issue. In connection therewith, as provided in the Loan Agreement, Midwest received warrants for the purchase of 25,000 shares of Electra stock at \$20 a share.

Under the Loan Agreement, Electra obtained a commitment of Midwest to purchase from Electra for the period September 1, 1962 through September 1, 1964, an additional \$200,000 of Electra's 6½ percent debentures and warrants for the purchase of 4,000 shares of Electra common stock exercisable at \$50 a share for a consideration equal to the principal amount of the debentures.

On May 10, 1961, Midwest, which owned a \$100,000 6½ percent five-year debenture of San Diego Scientific Corporation, sold such debenture to Electra in exchange for 2,000 shares of Electra's common stock. Simultaneously, in order to assist Electra in acquiring an interest in San Diego Scientific Corporation, Midwest agreed to exercise warrants for the purchase of 10,000 shares of Electra's common stock, and through the exercise of warrants, purchased 2,500 shares of Electra common stock at \$20 a share. Thus on May 10, 1961, Midwest owned 4,500 shares of Electra common stock.

On May 10, 1961, Midwest also acquired from an unnamed source 61,800 shares or 15 percent of San Diego Scientific Corporation's outstanding common stock for a consideration of 15¢ a share or an aggregate price of \$9,270. On the same day, Electra assumed payment of the obligations of San Diego Scientific Corporation to pay Midwest short-term advances totalling \$40,000, which ad-

vances were subsequently paid by Electra. During May 1961, Electra acquired 80 percent of the outstanding capital stock of San Diego Scientific Corporation, whose name was thereafter changed to Electra Systems Corporation ("Systems").

On June 9, 1961, Midwest increased its holdings of Electra common stock to 12,000 shares through the acquisition of an additional 7,500 shares of Electra common stock through the exercise of warrants and payment of \$150,000 or \$20 a share. (While the application as originally filed states that Midwest owns 12,000 shares of Electra stock, an amendment states that it has been determined that a wholly-owned subsidiary of Midwest, Technical Management Services, Inc. ("TMSI"), is the beneficial owner of 500 additional shares of Electra common stock which was purchased in the name of Arthur Smith, a director of Midwest.)

On January 19, 1962, Midwest entered into a written agreement with Electra whereby Midwest agreed to subordinate its holdings of \$500,000 principal amount of Electra debentures to the prior payment of short-term bank loans not in excess of \$300,000 which Electra then contemplated obtaining, such subordination to continue for the period that the payment of such bank loans were guaranteed by William Evans, a director of Electra who owns 4,600 shares or approximately 10 percent of the outstanding common stock of Electra. Under the agreement, Midwest also consented to the issuance by Electra to Evans of a warrant to purchase 2,500 shares of Electra common stock at \$20 a share in consideration of Evans' guarantee of \$300,000 of bank loans. Such warrant was to be exercisable during the continuance of Evans' guarantee but not later than March 31, 1964. This agreement was subsequently modified on January 23, 1962, to extend the expiration date of the warrant to December 31, 1966.

In June 1962, Evans guaranteed further bank loans of Electra for an additional \$300,000 in consideration of which Electra agreed to issue to him warrants for the purchase of 7,500 shares of its common stock at \$20 per share.

The application states that by virtue of Midwest's acquisitions of additional shares of Electra common stock on May 10, 1961, and June 9, 1961, Electra and Midwest became affiliated persons of each other as defined in section 2(a)(3) of the Act, that Evans is an affiliated person of Electra, and consequently, that Evans is an affiliated person of an affiliated person of Midwest, a registered investment company.

*Proposed transactions.* The proposed transactions for which exemption is sought pursuant to sections 6(c) and 17(b) of the Act are summarized below.

Evans proposes to purchase from Midwest, and Midwest proposes to sell to Evans the following securities:

(a) \$100,000 principal amount of 6½ percent debentures of Electra issued February 15, 1961, and maturing 10 years from such date for the sum of \$100,000;

(b) Warrants for the purchase of 12,500 shares of Electra common stock exercisable at \$20 a share for a consideration of \$4 a warrant or an aggregate consideration of \$50,000; and

(c) 10,000 shares of Electra common stock for the sum of \$150,000.

Concurrently with, and as a condition to, the consummation of the foregoing transactions, it is further proposed that the Loan Agreement, as amended, between Midwest and Electra (and to the extent applicable, the debentures issued thereunder) be modified so as to:

(a) Eliminate the commitment of Midwest to purchase an additional \$200,000 of Electra debentures (with warrants for the purchase of 4,000 shares of Electra common stock at \$50 a share);

(b) Eliminate the requirement for payment by Electra of a premium in the event it should prepay the debentures held by Midwest;

(c) Reduce the amount of the "Cumulative Projected Minimum Operating Profit" which Electra is now required to achieve in order to avoid being in technical default on its outstanding debentures;

(d) Eliminate the right now conferred on Midwest to designate the successor to the present president of Electra;

(e) Provide for the subordination of the Electra debentures held by Midwest to all bank loans and to give Electra rights to incur such bank loans;

(f) Reduce the number of Electra directors to be designated by Midwest from two to one, and to eliminate the requirement that a director of Electra designated by Midwest be a member of Electra's Executive Committee; and

(g) Reduce the remaining life of Electra's debentures held by Midwest by the scheduling of payments thereon as set forth in the application.

In addition, Midwest proposes to sell to Electra 61,800 shares of Systems common stock for \$927.

Section 6(c) of the Act empowers the Commission to exempt conditionally or unconditionally any person, security or transaction from any provision or provisions of the Act or from any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Act.

Section 17(a) of the Act, as here pertinent, prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling to, or purchasing from, such registered company or any company controlled by such registered company securities or property or to borrow money or other property from a registered investment company or from any company controlled by such registered company unless the borrower is controlled by the lender, unless the Commission upon application pursuant to section 17(b), grants an exemption from section 17(a) upon a finding that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned,

that the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act, and is consistent with the general purposes of the Act. Transactions which are consummated are not within the purview of section 17(b).

Section 17(d) of the Act and Rule 17d-1 thereunder, taken together provide, among other things, that it shall be unlawful, with certain exceptions not applicable here, for an affiliated person of a registered investment company or any affiliated person of such a person, acting as principal, to participate in, or effect any transaction in connection with any joint enterprise or arrangement in which any such registered company, or a company controlled by such registered company, is a participant unless an application regarding such arrangement has been granted by the Commission, and that, in passing upon such an application, the Commission will consider whether the participation of such registered company or controlled company in such arrangement is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. A joint enterprise or arrangement as used in Rule 17d-1 is defined as any written or oral plan, contract, authorization or arrangement, or any practice or understanding concerning an enterprise or undertaking whereby a registered investment company or a controlled company thereof and any affiliated person of or a principal underwriter for such registered company, or any affiliated person of such person or principal underwriter, have a joint or a joint and several participation, or share in the profits of such enterprise or undertaking.

The application asserts that the Past Transactions meet the requirements of section 6(c) of the Act and that the proposed transactions meet the requirements of section 6(c) and 17(b) of the Act.

It appearing to the Commission that it is appropriate in the public interest and in the interest of investors that a hearing be held with respect to the application;

*It is ordered*, Pursuant to section 40(a) of said Act, that a hearing on the aforesaid application under the applicable provisions of the Act and of the rules of the Commission thereunder be held on the 9th day of April 1963, at 10:00 a.m. in the office of the Securities and Exchange Commission, 425 Second Street NW., Washington 25, D.C. At such time, the Hearing Room Clerk will advise as to the room in which such hearing will be held. Any person desiring to be heard or otherwise wishing to participate in this proceeding is directed to file with the Secretary of the Commission his application as provided by Rule 9(c) of the Commission's rules of practice, on or before the date provided in the rule, setting forth any issues of law or fact which he desires to controvert or any additional issues which he deems raised by this notice and order or by

such application. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the above stated addresses. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) should be filed contemporaneously with the request.

*It is further ordered*, That Sidney Gross, or any officer or officers of the Commission designated by it for that purpose, shall preside at said hearing. The officer so designated is hereby authorized to exercise all the powers granted to the Commission under sections 41 and 42(b) of the Investment Company Act of 1940 and to a hearing officer under the Commission's rules of practice.

The Division of Corporate Regulation having advised the Commission that it has made a preliminary examination of the application and that upon the basis thereof the following matters and questions are presented for consideration without prejudice to its specifying additional matters and questions upon further examination:

(1) Whether the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned.

(2) Whether the proposed transactions are consistent with the policy of Midwest as recited in its registration statement and reports filed under the Act.

(3) Whether the proposed transactions are consistent with the general purposes of the Act.

(4) Whether exemption, pursuant to section 6(c) of the Act, of the Past Transactions specified in the application, as amended, 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, and whether in that connection the terms of said transactions, including the consideration paid or received, were fair and reasonable and did not involve overreaching on the part of any person concerned and were consistent with the general provisions of the Act.

(5) Whether any of the transactions specified in the application, as amended, are or were subject to the requirements of section 17(d) of the Act and Rule 17d-1 thereunder and, if so, whether the Commission should grant an order under such section of the Act and Rule with respect to any such proposed transactions; and as respects any such transaction which has been consummated, whether exemption pursuant to section 6(c) of the Act 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.

(6) Whether prior to the acquisitions by Midwest of Electra common stock on May 10, 1961 and June 9, 1961 Electra became an affiliated person of Midwest as a result of the execution of the Loan Agreement or for any other reasons.

*It is further ordered*, That at the aforesaid hearing attention be given to the foregoing matters and questions.

*It is further ordered*, That the Secretary of the Commission shall give notice of the aforesaid hearing by mailing a copy of this notice and order for hearing by registered mail to Midwest Technical Development Corporation, Electra Scientific Corporation, and William H. Evans at the above stated addresses, and to Edward B. McMenemy and Ellen T. McMenemy, c/o Samuel H. Hertogs, First National Bank Building, Hastings, Minnesota; and that notice to all other persons shall be given by publication of this notice and order for hearing in the FEDERAL REGISTER; and that a general release of this Commission in respect to this notice and order for hearing be distributed to the press and mailed to the mailing list for releases.

By the Commission.

[SEAL] ORVAL L. DUBOIS,  
Secretary.

[F.R. Doc. 63-3326; Filed, Mar. 29, 1963;  
8:45 a.m.]

## INTERSTATE COMMERCE COMMISSION

### FOURTH SECTION APPLICATIONS FOR RELIEF

MARCH 27, 1963.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

#### LONG-AND-SHORT HAUL

FSA No. 38236: *Commodity rates—Sea-Land Service*. Filed by Sea-Land Service, Inc. (No. 44), for itself and interested carriers. Rates on conduit fittings, iron or die mold zinc, with or without attachments, in truckloads, loaded in highway trailers over the highways and loaded in containerships to move via water, in intercoastal service, from Los Angeles, Calif., to Pittsburgh, Pa.

Grounds for relief: All-rail competition.

Tariff—Supplement 15 to Sea-Land Service, Inc., tariff I.C.C. 15.

FSA No. 38237: *Sand from Dickason Pit, Ind., to Reilly, Ill.* Filed by Illinois Freight Association, Agent (No. 201), for interested rail carriers. Rates on sand, as described in the application, in carloads, from Dickason Pit, Ind., to Reilly, Ill.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 29 to Chicago & Eastern Illinois Railroad Company tariff I.C.C. 330.

By the Commission.

[SEAL] HAROLD D. MCCOY,  
Secretary.

[F.R. Doc. 63-3329; Filed, Mar. 29, 1963  
8:45 a.m.]

[Notice No. 775]

**MOTOR CARRIER TRANSFER PROCEEDINGS**

MARCH 27, 1963.

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 65538. By order of March 21, 1963, the Transfer Board approved the transfer to Thomas Connor, doing business as North Shore Vans and Little Neck Moving & Storage, White-stone, N.Y., of Certificate No. MC 19625, issued August 11, 1954, to James V. Horace, doing business as The Bonded Moving & Storage Co., Astoria, N.Y., authorizing the transportation of: Household goods, between New York, N.Y., on the one hand, and, on the other, points in Connecticut, New York, Massachusetts, New Jersey, Pennsylvania, Maryland, West Virginia, Delaware, Rhode Island, Ohio, and the District of Columbia; and, Beauty parlor and barber shop equipment from New York, N.Y., to points in New York, New Jersey, Pennsylvania, Connecticut, Rhode Island, Massachusetts, Delaware, Maryland, West Virginia, and the District of Columbia. David Brodsky, 1776 Broadway, New York, N.Y., attorney for applicants.

No. MC-FC 65553. By order of March 21, 1963, the Transfer Board approved the transfer to Orvan Tjeerdsma, Avon, S. Dak., of Certificates Nos. MC 14716 and MC 14716 Sub-2, issued November 10, 1955, and November 3, 1960, respectively, to Owen J. Schmoll, and acquired by Donald L. Williams, Springfield, S. Dak., in No. MC-FC 64591, authorizing the transportation of: Livestock, farm products, farm implements and machinery, millfeed, tankage, livestock and poultry feed, in sacks and in bulk, prefabricated chimneys, soil pipe, fibre pipe, carlon-D pipe, and lumber, from, to, or between specified points in Iowa, Nebraska, and South Dakota. Don A. Bierle, 308 Walnut Street, Yankton, S. Dak., attorney for applicants.

No. MC-FC 65688. By order of March 20, 1963, the Transfer Board approved the transfer to Herman Lozowick Trucking Co., a Corporation, Elizabeth, N.J.,

of Permits Nos. MC 29660, MC 29660 Sub-3, MC 29660 Sub-4, MC 29660 Sub-7 and MC 29660 Sub-11, issued May 2, 1951, May 2, 1951, May 2, 1951, March 21, 1958, and June 18, 1962, to Herman Lozowick, Kenneth Lozowick, Frank Lozowick, and Jack Lozowick, doing business as Herman Lozowick Trucking Co., Elizabeth, N.J., and Permit No. MC 29660 Sub-12, issued February 18, 1963, to Herman Lozowick (Jack Lozowick and Frank Lozowick, Executors), Kenneth Lozowick, Frank Lozowick, and Jack Lozowick, doing business as Herman Lozowick Trucking Co., Elizabeth, N.J., authorizing the transportation, over irregular routes, of: Various specified commodities, between certain named points in New York, New Jersey, and Connecticut. Morton E. Kiel, 140 Cedar Street, New York 6, N.Y., attorney for applicants.

No. MC-FC 65732. By order of March 21, 1963, the Transfer Board approved the transfer to George Kress and Kenneth P. Kress, a partnership, doing business as Pittsburgh-Verona-Oakmont Express, Verona, Pa., of the operating rights in Certificate No. MC 16832, issued by the Commission April 14, 1941, to Paul Kress, doing business as Pittsburgh, Verona & Oakmont Express, Verona, Pa., authorizing the transportation of general commodities, excluding household goods, commodities in bulk, and other specified commodities, between Pittsburgh, Pa., and Universal, Pa. Edward M. Larkin, 1221 Grant Building, Pittsburgh 19, Pa., attorney for applicants.

No. MC-FC 65738. By order of March 21, 1963, the Transfer Board approved the transfer to Merritt E. Cagwin, Lockport, Ill., of the operating rights in Certificate No. MC 40817, issued by the Commission December 9, 1955, to Floyd Schwarm, Sr., Floyd Schwarm, Jr., Paul W. Schwarm, and Gerald L. Schwarm, a partnership, doing business as Schwarm Service, Ohlman, Ill., authorizing the transportation, over irregular routes, of livestock, broom corn and supplies for the manufacture of brooms, machinery used in the manufacture of brooms and machine parts, farm machinery, new furniture, fertilizer, clay products, coal, agricultural commodities, grain and grain products, feed, household goods, concentrates, and minerals used in the manufacture of animal and poultry feeds, and animal and poultry feed ingredients, from, to and between specified points in Illinois, Indiana, Missouri, Kentucky, Ohio, and Wisconsin, varying with the commodities transported. Edw. G. Bazelon, 39 South LaSalle Street, Chicago 3, Ill., attorney for applicants.

No. MC-FC 65744. By order of March 20, 1963, the Transfer Board approved the transfer to MacDonald's Medford Express, Inc., 108 Riverside Avenue, Med-

ford 55, Mass., of the operating rights in Certificate No. MC 78681, issued by the Commission June 28, 1941, to James J. MacDonald, doing business as MacDonald's Medford Express, 108 Riverside Avenue, Medford 55, Mass., authorizing the transportation, over irregular routes, of household goods, between Medford, Mass., and points in Massachusetts within 15 miles of Medford, on the one hand, and, on the other, points in Massachusetts, New Hampshire, Maine, Vermont, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania, and paper displays, between Boston, Mass., on the one hand, and, on the other, points in Massachusetts, New Hampshire, Maine, Vermont, and Rhode Island.

[SEAL] HAROLD D. McCoy,  
Secretary.

[F.R. Doc. 63-3330; Filed, Mar. 29, 1963;  
8:45 a.m.]

[Notice No. 775-A]

**MOTOR CARRIER TRANSFER PROCEEDINGS**

MARCH 27, 1963.

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 general rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 30 days from the date of service of the order. 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 65016. By order of March 22, 1963, Division 3, acting as an Appellate Division, approved the transfer to J. M. Jennings Meredith, Leon J. Meredith, and John A. Meredith, a partnership, doing business as Meredith Bros., Marlton, N.J., of Certificate No. MC 100430, issued March 18, 1940, to William P. Gleason, Moorestown, N.J., authorizing the transportation, over irregular routes, of: Passengers and their baggage, in charter operations, from specified points in New Jersey, to named points in Pennsylvania, and a portion of Maryland, and points in Delaware, and return. Charles A. Allendorf, 328 Market Street, Camden 2, N.J., attorney for applicants.

[SEAL] HAROLD D. McCoy,  
Secretary.

[F.R. Doc. 63-3331; Filed, Mar. 29, 1963;  
8:46 a.m.]

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## Income Tax Regulations

●—————●

### Proposed Disallowance of Certain Entertainment, Etc., Expenses

# DEPARTMENT OF THE TREASURY

Internal Revenue Service

[ 26 CFR Part 1 ]

## INCOME TAX

### Proposed Disallowance of Certain Entertainment, etc., Expenses

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] MORTIMER M. CAPLIN,  
Commissioner of Internal Revenue.

The Income Tax Regulations (26 CFR Part 1) are hereby amended to reflect the provisions of section 274 (other than subsection (d) thereof) of the Internal Revenue Code of 1954, added by section 4(a) of the Revenue Act of 1962 (76 Stat. 974), relating to the disallowance of certain entertainment, etc., expenses.

PARAGRAPH 1. There are inserted immediately after § 1.274 (relating to statutory provisions; disallowance of certain entertainment, etc., expenses) the following new sections:

#### § 1.274-1 Disallowance of certain entertainment, gift and travel expenses.

Section 274 disallows in whole, or in part, certain expenditures for entertainment, gifts and travel which would otherwise be allowable under chapter 1 of the Code. The requirements imposed by section 274 are in addition to the requirements for deductibility imposed by other provisions of the Code. If a deduction is claimed for an expenditure for entertainment, gifts, or travel, the taxpayer must first establish that it constitutes an ordinary and necessary expense within the meaning of section 162 or 212 before the provisions of section 274 become applicable. The taxpayer should then substantiate such an expenditure in accordance with the rules under section 274(d). See § 1.274-5. Section 274 is a disallowance provision exclusively, and does not make deductible

any expense which is disallowed under any other provision of the Code. Similarly, section 274 does not affect the includability of an item in, or the excludability of an item from, the gross income of any taxpayer. For specific provisions with respect to the deductibility of (a) expenditures for an activity of a type generally considered to constitute entertainment, amusement, or recreation, and for a facility used in connection with such an activity, see § 1.274-2, (b) expenses for gifts, see § 1.274-3, (c) expenses for travel, see § 1.274-4, (d) expenditures deductible without regard to business activity, see § 1.274-6, and (e) treatment of personal portion of entertainment facility, see § 1.274-7.

#### § 1.274-2 Disallowance of deductions for certain expenses for entertainment, amusement, or recreation.

(a) *General rules*—(1) *Entertainment activity*. Except as provided in this section, no deduction otherwise allowable under chapter 1 of the Code shall be allowed for any expenditure with respect to entertainment unless the taxpayer establishes—

(i) That the expenditure was directly related to the active conduct of the taxpayer's trade or business, or

(ii) In the case of an expenditure directly preceding or following a substantial and bona fide business discussion (including business meetings at a convention or otherwise), that the expenditure was associated with the active conduct of the taxpayer's trade or business.

Such deduction shall not exceed the portion of the expenditure directly related to (or in the case of an expenditure described in subdivision (ii) above, the portion of the expenditure associated with) the active conduct of the taxpayer's trade or business.

(2) *Entertainment facilities*. Except as provided in this section, no deduction otherwise allowable under chapter 1 of the Code shall be allowed for any expenditure with respect to a facility used in connection with entertainment unless the taxpayer establishes—

(i) That the facility was used primarily for the furtherance of the taxpayer's trade or business, and

(ii) That the expenditure was directly related to the active conduct of such trade or business.

Such deduction shall not exceed the portion of the expenditure directly related to the active conduct of the taxpayer's trade or business.

(3) *Cross references*. For definition of the term "entertainment", see paragraph (b) (1) of this section. For rules and definitions with respect to—

(i) "Directly related entertainment", see paragraph (c) of this section,

(ii) "Associated entertainment", see paragraph (d) of this section.

(iii) "Expenditures with respect to entertainment facilities", see paragraph (e) of this section.

(iv) "Specific exceptions" to the disallowance rules of this section, see paragraph (f) of this section.

(b) *Definitions*—(1) *Entertainment defined*—(i) *In general*. For purposes

of this section, the term "entertainment" means any activity which is of a type generally considered to constitute entertainment, amusement, or recreation, such as entertaining at night clubs, cocktail lounges, theaters, country clubs, golf and athletic clubs, sporting events, and on hunting, fishing, vacation and similar trips, including such activity relating solely to the taxpayer or the taxpayer's family. The term "entertainment" generally includes any expenditure incurred in satisfying the personal, living, or family needs of any individual which is claimed as a business expense by the taxpayer, such as expenditures for furnishing, to a business customer or the customer's family, food and beverages, a hotel suite, or an automobile. However, the term "entertainment" does not include expenses which, although satisfying personal, living, or family needs of an individual, are clearly not regarded as constituting entertainment, such as (a) supper money furnished by an employer to his employee working overtime, (b) a hotel room maintained by an employer and furnished to his employees for lodging while in business travel status, or (c) an automobile used in the active conduct of trade or business even though incidentally used for commuting to and from work. On the other hand, the furnishing of a hotel room or an automobile by an employer to his employee who is on vacation would constitute entertainment of the employee.

(ii) *Objective test*. An objective test shall be used to determine whether an activity is of a type generally considered to constitute entertainment. If an activity is generally considered to be entertainment, it will constitute entertainment for purposes of this section and section 274(a) regardless of whether the expenditure can also be described otherwise, and even though the expenditure relates to the taxpayer alone. This objective test precludes arguments such as that "entertainment" means only entertainment of others or that an expenditure for entertainment should be characterized as an expenditure for advertising or public relations. However, in applying this test the taxpayer's trade or business shall be considered. Thus, although attending a theatrical performance would generally be considered entertainment, it would not be so considered in the case of a professional theater critic, attending in his professional capacity. Similarly, if a manufacturer of dresses conducts a fashion show to introduce his products to a group of store buyers, the show would not be generally considered to constitute entertainment. However, if an appliance distributor conducts a fashion show for the wives of his retailers, the fashion show would be generally considered to constitute entertainment.

(iii) *Special definitional rules*—(a) *In general*. Except as otherwise provided in subdivision (b) and (c) hereof, any expenditures which might generally be considered either for a gift of entertainment, or considered either for travel or entertainment, shall be considered an expenditure for entertainment rather than for a gift or travel.

(b) *Expenditures deemed gifts.* The following expenditures shall be deemed for gifts to which this section does not apply:

(1) Any expenditures for packaged food and beverages transferred directly or indirectly to another person intended for consumption at a later time.

(2) Any expenditure for tickets of admission to a place of entertainment transferred to another person if the taxpayer or his representative does not accompany the recipient to the entertainment unless the taxpayer treats the expenditure as entertainment.

(3) Such other specific classes of expenditures generally considered to constitute gifts as the Commissioner, in his discretion, may prescribe.

(c) *Expenditures deemed travel.* The following expenditures shall be deemed expenses of travel to which this section does not apply:

(1) Any expenditure with respect to any transportation type facility, such as an automobile or an airplane (even though used in connection with an activity of a type generally considered to constitute entertainment), to the extent the facility is used in pursuit of a trade or business for purposes of transportation not in connection with entertainment.

(2) Such other specific classes of expenditures generally considered to be for travel as the Commissioner, in his discretion, may prescribe.

(2) *Other definitions.*—(i) *Expenditure.* The term "expenditure" as used in this section shall include expenses for goods, services, facilities, and items (including items such as losses and depreciation).

(ii) *Expenses for production of income.* For purposes of this section, any reference to "trade or business" shall include any activity described in section 212.

(iii) *Business associate.* The term "business associate" as used in this section means a person with whom the taxpayer or his representative could reasonably expect to engage or deal with in the active conduct of the taxpayer's trade or business.

(c) *Directly related entertainment.*

(1) *In general.* Except as otherwise provided in paragraph (d) of this section (relating to associated entertainment) or under paragraph (f) of this section (relating to business meals and other specific exceptions), no deduction shall be allowed for any expenditure for entertainment unless the taxpayer establishes that the expenditure was directly related to the active conduct of his trade or business within the meaning of this paragraph.

(2) *Directly related entertainment defined.* Any expenditure for entertainment, if it is an expenditure which is ordinary and necessary within the meaning of section 162 or 212, shall be considered directly related to the active conduct of the taxpayer's trade or business if it meets the requirements of either subparagraphs (3), (4), (5), or (6) of this paragraph.

(3) *Directly related in general.* Except as provided in subparagraph (7), an expenditure for entertainment shall

be considered directly related to the active conduct of the taxpayer's trade or business if it is established that it meets all of the requirements of subdivisions (i), (ii), (iii), and (iv) of this subparagraph.

(i) At the time the taxpayer made the entertainment expenditure (or committed himself to make the expenditure), the taxpayer had more than a general expectation of deriving some income at some indefinite future time from the making of the expenditure. Generally, this means that the taxpayer must show that he would not have incurred the expenditure but for the fact that he had an expectation of deriving income or other specific trade or business benefit (other than goodwill) immediately or at a definite or readily determinable future time from his expenditure. A taxpayer, however, shall not be required to show that income or other business benefit actually resulted from each and every expenditure for which a deduction is claimed.

(ii) During the entertainment period to which the expenditure related, the taxpayer (or his representative) actively engaged in a meeting, negotiation, discussion or other bona fide business transaction for the purpose of obtaining such income or other specific trade or business benefit other than goodwill (or that, at the time the taxpayer incurred the expenditure or committed himself to the expenditure, it was reasonable for the taxpayer to expect that he would have done so, although such was not the case solely for reasons beyond the taxpayer's control).

(iii) In light of all the facts and circumstances of the case, the principal character or aspect of the combined business and entertainment to which the expenditure related was the active conduct of the taxpayer's trade or business (or that, at the time the taxpayer incurred the expenditure or committed himself to the expenditure, it was reasonable for the taxpayer to expect that the active conduct of trade or business would have been the principal character or aspect of the entertainment, although such was not the case solely for reasons beyond the taxpayer's control).

(iv) That the expenditure was allocable to a person with whom the taxpayer engaged in the active conduct of trade or business during the entertainment or to a person with whom the taxpayer establishes that he would have engaged in such active conduct of trade or business if it were not for circumstances beyond the taxpayer's control.

(4) *Expenditures in clear business setting.* An expenditure for entertainment shall be considered directly related to the active conduct of the taxpayer's trade or business if it is established that the expenditure was for entertainment occurring in a clear business setting directly in furtherance of the taxpayer's trade or business. Generally, entertainment shall not be considered to have occurred in a clear business setting unless the taxpayer clearly establishes that any recipient of the entertainment would have reasonably known that the taxpayer had no motive, in incurring the expenditure, other than directly further-

ing his trade or business. Objective rather than subjective standards will be determinative. For example, expenditures incurred for the furtherance of a taxpayer's trade or business in providing a "hospitality room" at a convention (described in paragraph (d) (3) (i) (b) of this section) at which goodwill is created through display or discussion of the taxpayer's products, will be treated as directly related. On the other hand, entertainment which occurred under any circumstances described in subparagraph (7) of this paragraph ordinarily would not be considered a clear business setting. However, entertainment of a clear business nature which occurred under circumstances where there was no meaningful personal or social relationship between the taxpayer and the recipients of the entertainment may be considered to have occurred in a clear business setting. For example, entertainment of business representatives and civic leaders at the opening of a new hotel or theatrical production, where the clear purpose of the taxpayer is to obtain business publicity rather than to create or maintain the goodwill of the recipients of the entertainment, would generally be considered to be in a clear business setting. In addition, entertainment which has the principal effect of a price rebate in connection with the sale of the taxpayer's products generally will be considered to have occurred in a clear business setting. Such would be the case, for example, if a taxpayer owning a hotel were to provide occasional free dinners at the hotel for a customer who patronized the hotel extensively.

(5) *Expenditures for services performed.* An expenditure shall be considered directly related to the active conduct of the taxpayer's trade or business if it is established that the expenditure was incurred directly or indirectly by the taxpayer for the benefit of an individual (other than an employee), and if such expenditure was compensation for services rendered or was paid as a prize or award which is required to be included in gross income under section 74 and the regulations thereunder. For example, if a manufacturer of products provides a vacation trip for retailers of his products who exceed sales quotas, and under the circumstances the trip was compensation for services rendered, the expenditure will be considered directly related to the active conduct of the taxpayer's trade or business. The filing of Form 1099, if required by section 6041 and the regulations thereunder, will ordinarily establish that the expenditure was compensation.

(6) *Club dues allocable to business meals.* That the expenditure was for dues or fees paid to any social, athletic, or sporting club or organization used primarily by the taxpayer for the furnishing of food or beverages under circumstances described in paragraph (f) (2) (i) of this section (relating to business meals and similar expenditures), but only to the extent allocable to the furnishing of such food or beverages.

(7) *Expenditures generally considered not directly related.* Expenditures for

entertainment, even if connected with the taxpayer's trade or business, will generally be considered not directly related to the active conduct of the taxpayer's trade or business, if the entertainment occurred under circumstances where there was little or no possibility of engaging in the active conduct of trade or business. The following circumstances will generally be considered circumstances where there was little or no possibility of engaging in the active conduct of a trade or business:

(i) The taxpayer (or his representative) was not present;

(ii) The distractions were substantial, such as—

(a) A meeting or discussion at night clubs, theaters, and sporting events, or during essentially social gatherings such as cocktail parties, or

(b) A meeting or discussion at places such as cocktail lounges, country clubs, golf and athletic clubs, or at vacation resorts if the taxpayer meets with a group which includes persons other than business associates; or

(iii) A meeting or discussion on hunting or fishing trips, or on yachts.

An expenditure for entertainment in such a case is considered not to be directly related to the active conduct of the taxpayer's trade or business unless the taxpayer clearly establishes to the contrary.

(d) *Associated entertainment*—(1) *In general.* Except as provided in paragraph (f) of this section (relating to business meals and other specific exceptions), any expenditure for entertainment which is not directly related to the active conduct of the taxpayer's trade or business will not be allowable as a deduction unless—

(i) It was associated with the active conduct of trade or business as defined in subparagraph (2) of this paragraph, and

(ii) The entertainment directly preceded or followed a substantial and bona fide business discussion as defined in subparagraph (3) of this paragraph.

Although deductions for entertainment expenditures are restricted under this paragraph, such expenditures will not be disallowed because they were incurred for the purpose of generating business goodwill. However, where the goodwill is vague or where the possibility of the expenditure resulting in the production of income is remote, no deduction will be permitted under this paragraph.

(2) *Associated entertainment defined*—(i) *In general.* Except as provided in subdivisions (ii) and (iii) of this subparagraph, any expenditure for entertainment shall be considered associated with the active conduct of the taxpayer's trade or business if the taxpayer establishes that he had a clear business purpose in incurring the expenditure, such as to obtain new business or to encourage the continuation of an existing business relationship.

(ii) *Ordinary and necessary expenditures.* Any expenditure, or portion thereof, which is not ordinary and necessary within the meaning of section 162 or 212 shall not be considered asso-

ciated with the active conduct of trade or business.

(iii) *Allocation of expenditure.* Any portion of an expenditure allocable to a person who was not closely connected with the persons who engaged in the substantial and bona fide business discussion (as defined in subparagraph (3) (i) of this paragraph), shall not be considered associated with the active conduct of the taxpayer's trade or business. The spouse of the person who engaged in the discussion generally will be considered associated with the active conduct of the taxpayer's trade or business.

(3) *Directly preceding or following a substantial and bona fide business discussion defined*—(i) *Substantial and bona fide business discussion*—(a) *In general.* Whether any meeting, negotiation or discussion constitutes a "substantial and bona fide business discussion" within the meaning of this section depends upon the facts and circumstances of each case. It must be established, however, that the taxpayer (or his representative) actively engaged in a meeting, negotiation, discussion or other bona fide business transaction for the purpose of obtaining income or other specific trade or business benefit (other than goodwill) immediately or at a definite or readily determinable future time. In addition, it must be established that the principal character or aspect of the combined entertainment and business time spent together by the taxpayer and the person or persons entertained was the active conduct of business. This requirement is not met if the business activities were incidental in relation to the entertainment.

(b) *Meetings at conventions.* Any meeting officially scheduled as part of a program at a convention or similar general assembly shall be considered to constitute a substantial and bona fide business discussion within the meaning of this section provided—

(1) *Expenses necessary to taxpayer's attendance.* The expenses necessary to the attendance of the taxpayer (or his representative) at the convention or similar general assembly were ordinary and necessary within the meaning of section 162 or 212;

(2) *Convention program.* The organization which sponsored the convention or similar general assembly had scheduled a program of business activities (including presentation of lectures, panel discussions, display of products, or other similar activities), and that such program was the principal activity of the convention or other similar general assembly.

(ii) *Directly preceding or following.* Generally, entertainment which does not occur on the same day as a substantial and bona fide business discussion (as defined in subdivision (i) of this subparagraph) will not be considered to directly precede or follow such discussion. However, the facts and circumstances of each case are to be considered, including the place, date and duration of the business discussion, whether the taxpayer's business associates are from out of town, and, if so, the date of their arrival and de-

parture, and the reasons the entertainment did not take place on the day of the business discussion. For example, if a group of business associates comes from out of town to the taxpayer's place of business to hold a substantial business discussion, the entertainment of such business guests and their wives on the evening prior to, or on the evening of the day following, the business discussion would generally be regarded as directly preceding or following such discussion.

(e) *Expenditures with respect to entertainment facilities*—(1) *In general.* Any expenditure with respect to a facility used in connection with entertainment shall not be allowed as a deduction except to the extent it meets the requirements of paragraph (a) (2) of this section.

(2) *Facilities used in connection with entertainment*—(1) *In general.* Any item of personal or real property owned, rented, or used by a taxpayer shall (unless otherwise provided under the rules of subdivision (ii) of this subparagraph) be considered to constitute a facility used in connection with entertainment if it is used during the taxable year for, or in connection with, entertainment (as defined in paragraph (b) (1) of this section). Examples of facilities which might be used for, or in connection with, entertainment include yachts, hunting lodges, fishing camps, swimming pools, tennis courts, bowling alleys, automobiles, airplanes, apartments, hotel suites, and homes in vacation resorts.

(ii) *Facilities used incidentally for entertainment.* A facility used only incidentally during a taxable year in connection with entertainment, if such use is insubstantial, will not be considered a "facility used in connection with entertainment" for purposes of this section or for purposes of the record keeping requirements of section 274(d). See § 1.274-5(c) (6) (iii).

(3) *Expenditures with respect to a facility used in connection with entertainment*—(i) *In general.* The phrase "expenditures with respect to a facility used in connection with entertainment" includes depreciation and operating costs, such as rent and utility charges (for example, water or electricity), expenses for the maintenance, preservation or protection of a facility (for example, repairs, painting, insurance charges), and salaries or expenses for subsistence paid to caretakers or watchmen. In addition, the phrase includes losses realized on the sale or other disposition of a facility.

(ii) *Club dues.* Dues or fees paid to any social, athletic, or sporting club or organization are considered expenditures with respect to a facility used in connection with entertainment. For purposes of this section, in general the phrase "social, athletic, or sporting club or organization" has the same meaning as it has in part II of chapter 33 of the Code, and the regulations thereunder, relating to tax on club dues. Clubs used solely for business lunches are not social clubs.

(iii) *Expenditures not with respect to a facility.* The following expenditures shall not be considered to constitute ex-

penditures with respect to a facility used in connection with entertainment—

(a) *Out of pocket expenditures.* Expenses (other than operating costs referred to in subdivision (i) of this subparagraph) incurred at the time of an entertainment activity, even though in connection with the use of facility for entertainment purposes, such as expenses for food and beverages, or expenses for catering, or expenses for gasoline and fishing bait consumed on a fishing trip;

(b) *Non-entertainment expenditures.* Expenses or items attributable to the use of a facility for other than entertainment purposes such as expenses for an automobile when not used for entertainment; and

(c) *Expenditures otherwise deductible.* Expenses allowable as a deduction without regard to their connection with a taxpayer's trade or business such as taxes, interest, and casualty losses. The provisions of this subdivision shall be applied in the case of a taxpayer which is not an individual as if it were an individual.

(iv) *Cross reference.* For other rules with respect to treatment of certain expenditures for entertainment-type facilities, see § 1.274-7.

(4) *Determination of primary use—*

(i) *In general.* A facility used in connection with entertainment shall be considered as used primarily for the furtherance of the taxpayer's trade or business only if it is established that the primary use of the facility during the taxable year was for purposes considered ordinary and necessary within the meaning of sections 162 and 212 and the regulations thereunder. All of the facts and circumstances of each case shall be considered in determining the primary use of a facility. Generally, it is the actual use of the facility which establishes the deductibility of expenditures with respect to the facility; not its availability for use and not the taxpayer's principal purpose in acquiring the facility. Objective rather than subjective standards will be determinative. If membership entitles the member's entire family to use of a facility, such as a country club, their use will be considered in determining whether business use of the facility exceeds personal use. The factors to be considered include the nature of each use, the frequency and duration of use for business purposes as compared with other purposes, and the amount of expenditures incurred during use for business compared with amount of expenditures incurred during use for other purposes. No single standard of comparison, or quantitative measurement, as to the significance of any such factor, however, is necessarily appropriate for all classes or types of facilities. For example, an appropriate standard for determining the primary use of a country club during a taxable year will not necessarily be appropriate for determining the primary use of an airplane. However, a taxpayer shall be deemed to have established that a facility was used primarily for the furtherance of his trade or business if he establishes such primary use in accordance with subdivision (ii) or (iii) of this subparagraph. Subdivi-

sions (ii) and (iii) of this subparagraph shall not preclude a taxpayer from otherwise establishing the primary use of a facility under the general provisions of this subdivision.

(ii) *Certain transportation facilities.* A taxpayer shall be deemed to have established that a facility of a type described in this subdivision was used primarily for the furtherance of his trade or business if—

(a) *Automobiles.* In the case of an automobile, the taxpayer establishes that more than 50 percent of mileage driven during the taxable year was in connection with travel considered to be ordinary and necessary within the meaning of section 162 or 212 and the regulations thereunder.

(b) *Airplanes.* In the case of an airplane, the taxpayer establishes that more than 50 percent of hours flown during the taxable year was in connection with travel considered to be ordinary and necessary within the meaning of section 162 or 212 and the regulations thereunder.

(iii) *Entertainment facilities in general.* A taxpayer shall be deemed to have established that—

(a) A facility used in connection with entertainment, such as a yacht, hunting lodge, fishing camp, summer home or vacation cottage, hotel suite, country club, golf club or similar social, athletic, or sporting club or organization, bowling alley, tennis court, or swimming pool, or,

(b) A facility for employees not falling within the scope of section 274(e) (2) or (5)

was used primarily for the furtherance of his trade or business if he establishes that more than 50 percent of the total calendar days of use of the facility by, or under authority of, the taxpayer during the taxable year were days of business use. Any use of a facility (of a type described in this subdivision) during one calendar day shall be considered to constitute a "day of business use" if the primary use of the facility on such day was ordinary and necessary within the meaning of section 162 or 212 and the regulations thereunder. For the purposes of this subdivision, a facility shall be deemed to have been primarily used for such purposes on any one calendar day if the facility was used for the conduct of a substantial and bona fide business discussion (as defined in paragraph (d) (3) (i) of this section) notwithstanding that the facility may also have been used on the same day for personal or family use by the taxpayer or any member of the taxpayer's family not involving entertainment of others by, or under the authority of, the taxpayer.

(f) *Specific exceptions to application of this section—*(1) *In general.* The provisions of paragraphs (a) through (e) of this section (imposing limitations on deductions for entertainment expenses) are not applicable in the case of expenditures set forth in subparagraph (2) of this paragraph. Such expenditures are deductible to the extent allowable under section 162 or 212 and the regulations thereunder. This paragraph shall not be construed to affect the allowability or nonallowability of a

deduction under section 162 or 212 and the regulations thereunder. The fact that an expenditure is not covered by a specific exception provided for in this paragraph shall not be determinative of the allowability or nonallowability of the expenditure under paragraphs (a) through (e) of this section. Expenditures described in subparagraph (2) of this paragraph are subject to the substantiation requirements of section 274(d) to the extent provided in § 1.274-5.

(2) *Exceptions.* The expenditures referred to in subparagraph (1) of this paragraph are set forth in subdivisions (i) through (ix) of this subparagraph.

(i) *Business meals and similar expenditures—*(a) *In general.* Any expenditure for food or beverages furnished to an individual under circumstances of a type generally considered conducive to business discussion (taking into account the surroundings in which furnished, the taxpayer's trade, business, or income-producing activity, and the relationship to such trade, business or activity of the persons to whom the food or beverages are furnished) is not subject to the limitations on allowability of deductions provided for in paragraphs (a) through (e) of this section. Where it is established that the circumstances are conducive to a business discussion it is not essential that business actually be discussed for this exception to apply.

(b) *Surroundings.* The surroundings in which the food or beverages are furnished must be such as would permit business discussion without major distraction. Generally, a night club or other place where entertainment is a major attraction would not be considered a suitable environment for a business discussion. Thus, this exception applies primarily to expenditures for meals and beverages served during the course of a lunch or dinner meeting of the taxpayer and his business associates at a restaurant, hotel dining room, eating club or similar place not involving distracting influences such as a floor show. This exception also applies to expenditures for beverages served apart from meals if the expenditure is incurred in surroundings similarly conducive to business discussion, such as an expenditure for beverages served during the meeting of the taxpayer and his business associates or customers at a cocktail lounge or hotel bar not involving distracting influences such as a floor show. This subdivision is not applicable to any expenditure for meals or beverages furnished under circumstances where there was little or no possibility of engaging in the active conduct of trade or business as defined in paragraph (c) (7) of this section.

(c) *Taxpayer's trade or business and relationship of persons entertained.* The taxpayer's trade, business, or income-producing activity and the relationship of the persons to whom the food or beverages are served to such trade, business or activity must be such as will reasonably indicate that the food or beverages were furnished for the primary purpose of furthering the taxpayer's trade or business and did not merely

serve a social or personal purpose. Such a purpose would be indicated, for example, if a salesman employed by an airplane parts manufacturing company met for lunch during a normal business day with a purchasing agent for an aircraft manufacturer. Similarly, such a purpose would be indicated if an attorney met for lunch during a normal business day with a client with whom he has a continuing business relationship.

(d) *Business programs.* Expenditures for business luncheons or dinners which are part of a business program, including luncheons or banquets sponsored by business or professional associations, will be regarded as expenditures to which the exception of this subdivision (i) applies. In the case of such a business luncheon or dinner it is not always necessary that the taxpayer attend the luncheon or dinner himself. For example, if a dental equipment supplier purchased a table at a dental association banquet for dentists who are actual or prospective customers for his equipment, the cost of the table would not be disallowed under this section.

(ii) *Food and beverages for employees.* Any expenditure by a taxpayer for food and beverages (or for use of a facility in connection therewith) furnished on the taxpayer's business premises primarily for his employees is not subject to the limitations on allowability of deductions provided for in paragraphs (a) through (e) of this section. This exception applies not only to expenditures for food or beverages furnished in a typical company cafeteria or an executive dining room, but also to expenditures with respect to the operation of such facilities. This exception applies even though guests are occasionally served in the cafeteria or dining room.

(iii) *Certain entertainment expenses treated as compensation.* Any expenditure by a taxpayer for entertainment (or for use of a facility in connection therewith), if an employee is the recipient of the entertainment, is not subject to the limitations on allowability of deductions provided for in paragraphs (a) through (e) of this section to the extent that such expenditure is treated by the taxpayer—

(a) On his income tax return as originally filed, as compensation paid to the employee, and

(b) As wages to the employee for purposes of withholding under chapter 24 (relating to collection of income tax at source on wages).

For example, if an employer rewards the employee (and the employee's wife) with an expense paid vacation trip, such an expense is deductible by the employer (if allowable under section 162 and the regulations thereunder) to the extent the employer so treats the expenses as compensation and as wages. On the other hand, if a taxpayer owns a yacht which he uses for the entertainment of business customers, the portion of salary paid to employee members of the crew which is allocable to use of the yacht for entertainment purposes (even though treated on the taxpayer's tax return as compensation and treated as wages for withholding tax purposes)

would not come within this exception since the members of the crew were not recipients of the entertainment. If an expenditure of a type described in this subdivision properly constitutes a dividend paid to a shareholder or if it constitutes unreasonable compensation paid to an employee, nothing in this exception prevents disallowance of the expenditure to the taxpayer under other provisions of the Code.

(iv) *Reimbursed entertainment expenses—(a) Introductory.* In the case of any expenditure for entertainment incurred by one person in connection with the performance by him of services for another person (whether or not such other person is an employer) under a reimbursement or other expense allowance arrangement, the limitation on deductions provided for in paragraphs (a) through (e) of this section shall generally be applied only once, either (1) to the person who incurs the expenditure or (2) to the person who actually bears the expense, but not to both. For purposes of this subdivision (iv), the term "reimbursement or other expense allowance arrangement" has the same meaning as it has in section 62(2)(A), but without regard to whether the taxpayer is the employee of a person for whom services are performed.

(b) *Reimbursement arrangements between employee and employer.* In the case of an expenditure for entertainment paid or incurred by an employee under a reimbursement or other expense allowance arrangement with his employer, the limitations on deductions provided for in paragraphs (a) through (e) of this section shall not apply—

(1) *Employees.* To the employees except to the extent his employer has treated the expenditure on the employer's income tax return as originally filed as compensation paid to the employee and as wages to such employee for purposes of withholding under chapter 24 (relating to collection of income tax at source on wages).

(2) *Employers.* To the employer to the extent he has treated the expenditure as compensation and wages paid to an employee in the manner provided in subdivision (1) above.

(c) *Reimbursement arrangements between independent contractors and clients or customers.* In the case of an expenditure for entertainment paid or incurred by one person (hereinafter termed "independent contractor") under a reimbursement or other expense allowance arrangement with another person other than an employer (hereinafter termed "client or customer"), the limitations on deductions provided for in paragraphs (a) through (e) of this section shall not apply—

(1) *Independent contractors.* To the independent contractor to the extent he accounts to his client or customer within the meaning of section 274(d) and the regulations thereunder. See § 1.274-5.

(2) *Clients or customers.* To the client or customer if the expenditure is disallowed to the independent contractor under paragraphs (a) through (e) of this section.

(v) *Recreational expenses for employees generally.* Any expenditure by a taxpayer for a recreational, social, or similar activity (or for use of a facility in connection therewith), primarily for the benefit of his employees generally, is not subject to the limitations on allowability of deductions provided for in paragraphs (a) through (e) of this section. This exception applies only to expenditures made primarily for the benefit of employees of the taxpayer other than employees who are officers, shareholders or other owners who own a 10 percent or greater interest in the business, or other highly compensated employees. For purposes of the preceding sentence, an employee shall be treated as owning any interest owned by a member of his family (within the meaning of section 267(c)(4) and the regulations thereunder). Ordinarily, this exception applies to usual employee benefit programs such as expenses of a taxpayer (a) in holding Christmas parties, annual picnics, or summer outings, for his employees generally, or (b) of maintaining a swimming pool, baseball diamond, bowling alley, or golf course available to his employees generally. Any expenditures for an activity which is incurred under circumstances which discriminate in favor of employees who are officers, shareholders or other owners, or highly compensated employees shall not be considered incurred primarily for the benefit of employees generally. On the other hand, an expenditure for an activity will not be considered outside of this exception merely because, due to the large number of employees involved, the activity is intended to benefit only a limited number of such employees at one time, provided the activity does not discriminate in favor of officers, shareholders, other owners, or highly compensated employees.

(vi) *Employee, stockholder, etc., business meetings.* Any expenditure by a taxpayer for entertainment which is directly related to bona fide business meetings of the taxpayer's employees, stockholders, agents, or directors held principally for discussion of trade or business is not subject to the limitations on allowability of deductions provided for in paragraphs (a) through (e) of this section. For purposes of this exception, a member of a partnership is to be considered a taxpayer. For example, an expenditure by a taxpayer to furnish refreshments to his employees at a bona fide meeting, sponsored by the taxpayer for the principal purpose of instructing them with respect to a new procedure for conducting his business, would be within the provisions of this exception. A similar expenditure incurred at a bona fide meeting of stockholders of the taxpayer for the election of directors and discussion of corporate affairs would also be within the provisions of this exception. While this exception will apply to bona fide business meetings even though some social activities are provided, it will not apply to meetings which are primarily for social or nonbusiness purposes rather than for the transaction of the taxpayer's business. A meeting under circumstances where there was

little or no possibility of engaging in the active conduct of trade or business (as described in paragraph (c) (7) of this section) generally will not be considered a business meeting for purposes of this subdivision. This exception will not apply to a meeting or convention of employees or agents, or similar meeting for directors, partners or others for the principal purpose of rewarding them for their services to the taxpayer.

(vii) *Meetings of business leagues, etc.* Any expenditure for entertainment directly related and necessary to attendance at bona fide business meetings or conventions of organizations exempt from taxation under section 501(c) (6) of the Code, such as business leagues, chambers of commerce, real estate boards, boards of trade, and certain professional associations, it is not subject to the limitations on allowability of deductions provided in paragraphs (a) through (e) of this section.

(viii) *Items available to the public.* Any expenditure by a taxpayer for entertainment (or for a facility in connection therewith) to the extent the entertainment is made available to the general public is not subject to the limitations on allowability of deductions provided for in paragraphs (a) through (e) of this section. Expenditures for entertainment of the general public by means of television, radio, newspapers and the like, will come within this exception, as will expenditures for distributing samples to the general public. Similarly, expenditures for maintaining private parks, golf courses and similar facilities, to the extent that they are available for public use, will come within this exception. For example, if a corporation maintains a swimming pool which it makes available for a period of time each week to children participating in a local public recreational program, the portion of the expense relating to such public use of the pool will come within this exception.

(ix) *Entertainment sold to customers.* Any expenditure by a taxpayer for entertainment (or for use of a facility in connection therewith) to the extent the entertainment is sold to customers in a bona fide transaction for an adequate and full consideration in money or money's worth is not subject to the limitation on allowability of deductions provided for in paragraphs (a) through (e) of this section. Thus, the cost of producing night club entertainment (such as salaries paid to employees of night clubs and amounts paid to performers) for sale to customers or the cost of operating a pleasure cruise ship as a business will come within this exception.

#### § 1.274-3 Disallowance of deduction for gifts.

(a) *In general.* No deduction shall be allowed under section 162 or 212 for any expense for gifts made directly or indirectly by a taxpayer to any individual to the extent that such expense, when added to prior expenses of the taxpayer for gifts made to such individual during the taxpayer's taxable year, exceeds \$25.

(b) *Gift defined*—(1) *In general.* Except as provided in subparagraph (2)

of this paragraph the term "gift," for purposes of this section, means any item excludable from the gross income of the recipient under section 102 which is not excludable from his gross income under any other provision of chapter 1 of the Code. Thus, a payment by an employer to a deceased employee's widow is not a gift, for purposes of this section, to the extent the payment constitutes an employee's death benefit excludable by the recipient under section 101(b). Similarly, a scholarship which is excludable from a recipient's gross income under section 117, and a prize or award which is excludable from a recipient's gross income under section 74(b), are not subject to the provisions of this section.

(2) *Items not treated as gifts.* The term "gift", for purposes of this section, does not include the following:

(i) An item having a cost to the taxpayer not in excess of \$4.00 on which the name of the taxpayer is clearly and permanently imprinted and which is one of a number of identical items distributed generally by such taxpayer,

(ii) A sign, display rack, or other promotional material to be used on the business premises of the recipient, or

(iii) An item of tangible personal property having a cost to the taxpayer not in excess of \$100 which is awarded to an employee by reason of length of service or for safety achievement.

The deductibility of the expense of any of the items described in this subparagraph is not governed by this section and the taxpayer need not take such items into account in determining whether the \$25 limitation on gifts to any individual has been exceeded. The fact that such items are excepted from the applicability of this section has no effect in determining whether the value of such items is includable in the gross income of the recipient.

(c) *Expense for a gift.* For purposes of this section, the term "expense for a gift" means the cost of the gift to the taxpayer, other than incidental costs such as packaging, insurance, and mailing or other delivery. A related cost will be considered "incidental" only if it does not add substantial value to the gift. Although the cost of customary gift wrapping will be considered an incidental cost, the purchase of an ornamental basket for packaging fruit will not be considered an incidental cost of packaging if the basket has a value which is substantial in relation to the value of the fruit.

(d) *Gifts made indirectly to an individual*—(1) *Gift to spouse or member of family.* If a taxpayer makes a gift to the wife of a man who has a business connection with the taxpayer, the gift generally will be considered as made indirectly to the husband. However, if the wife has a bona fide business connection with the taxpayer independently of her relationship to her husband, a gift to her generally will not be considered as made indirectly to her husband unless the gift is intended for his eventual use or benefit. Thus, if a taxpayer makes a gift to a wife who is engaged with her husband in the active conduct of a part-

nership business, the gift to the wife will not be considered an indirect gift to her husband unless it is intended for his eventual use or benefit. The same rules apply to gifts to any other member of the family of an individual who has a business connection with the taxpayer.

(2) *Gift to corporation or other business entity.* If a taxpayer makes a gift to a corporation or other business entity intended for the eventual use or benefit of an individual who is an employee, stockholder, or other owner of the corporation or business entity, the gift generally will be considered as made indirectly to such individual. Thus, if a taxpayer provides theater tickets to a closely held corporation for eventual use by any one of the stockholders of the corporation, and if such tickets are gifts, the gifts will be considered as made indirectly to the individual who eventually uses such ticket. However, a gift for the eventual use or benefit of some undesignated member of a large group of individuals generally will not be considered as made indirectly to the individual who eventually uses, or benefits from, such gifts unless, under the circumstances of the case, it is reasonably practicable for the taxpayer to ascertain the ultimate recipient of the gift. Thus, of a taxpayer provides several baseball tickets to a corporation for the eventual use by any one of a large number of employees or customers of the corporation, and if such tickets are gifts, the gifts generally will not be treated as made indirectly to the individuals who use such tickets.

(e) *Special rules*—(1) *Partnership.* In the case of a gift by a partnership, the \$25 annual limitation contained in paragraph (a) of this section shall apply to the partnership as well as to each member of the partnership. Thus, in the case of a gift made by a partner with respect to the business of the partnership, the \$25 limitation will be applied at the partnership level as well as at the level of the individual partner. Consequently, deductions for gifts made with respect to partnership business will not exceed \$25 annually for each recipient, regardless of the number of partners.

(2) *Husband and wife.* For purposes of applying the \$25 annual limitation contained in paragraph (a) of this section, a husband and wife shall be treated as one taxpayer. Thus, in the case of gifts to an individual by a husband and wife, the spouses will be treated as one donor; and they are limited to a deduction of \$25 annually for each recipient. This rule applies regardless of whether the husband and wife file a joint return or whether the husband and wife make separate gifts to an individual with respect to separate businesses. Since the term "taxpayer" in paragraph (a) (1) of this section refers only to the donor of a gift, this special rule does not apply to treat a husband and wife as one individual where each is a recipient of a gift. See paragraph (b) (1) of this section.

(f) *Cross reference.* For rules with respect to whether this section or § 1.274-2 applies, see § 1.274-2(b) (1) (iii) (b).

**§ 1.274-4 Disallowance of certain travel expenses.**

(a) *Introductory.* Section 274(c) and this section impose certain restrictions on the deductibility of travel expenses incurred in the case of an individual who, while traveling away from home in the pursuit of trade or business (hereinafter termed "business activity"), engages in substantial personal activity not attributable to such trade or business (hereinafter termed "nonbusiness activity"). Section 274(c) and this section are limited in their application to individuals (whether or not an employee or other person traveling under a reimbursement or other expense allowance arrangement) who engage in nonbusiness activity while traveling, and do not impose restrictions on the deductibility of travel expenses incurred by an employer or client under an advance, reimbursement, or other arrangement with the individual who engages in nonbusiness activity. For purposes of this section, any reference to "trade or business" or "business activity" shall include any activity described in section 212. For rules governing the disallowance of travel expense to which this section applies, see paragraph (e) of this section.

(b) *Limitations on application of section.* The restrictions on deductibility of travel expenses contained in paragraph (e) of this section are applicable only if—

(1) The travel expense is otherwise deductible under section 162 or 212 and the regulations thereunder,

(2) The travel expense is for travel away from home which exceeds one week as determined under paragraph (c) of this section, and

(3) The time away from home attributable to nonbusiness activity, as determined under paragraph (d) of this section, constitutes 25 percent or more of the total time away from home on such travel.

(c) *Travel in excess of one week.* This section does not apply to an expense of travel unless the expense is for travel away from home which exceeds one week. For purposes of this section, one week means seven consecutive days. The day of departure shall not be considered, but the day of return shall be considered, in determining whether a taxpayer is away from home for more than seven consecutive days. For example, if a taxpayer departs on a trip on a Wednesday morning and returns the following Wednesday evening, he shall be considered as being away from home only seven consecutive days. In such a case, this section would not apply because the taxpayer was not away from home for more than seven consecutive days. However, if the taxpayer is away from home for more than seven consecutive days, both the day of departure and the day of return shall be considered a "business day" or a "nonbusiness day," as the case may be, for purposes of determining whether nonbusiness activity constituted 25 percent or more of travel time under paragraph (d) of this section and for purposes of allocating expenses under paragraph (e) of this section.

(d) *Nonbusiness activity constituting 25 percent or more of travel time—(1) In general.* This section does not apply to any expense of travel away from home unless the portion of time away from home attributable to nonbusiness activity constitutes 25 percent or more of the total time away from home on such travel.

(2) *Allocation on per day basis.* The total time traveling away from home will be allocated on a day-by-day basis to (i) days of business activity or (ii) days of nonbusiness activity (hereinafter termed "business days" or "nonbusiness days" respectively) unless the taxpayer establishes that a different method of allocation more clearly reflects the portion of time away from home which is attributable to nonbusiness activity. For purposes of this section, a day shall be deemed entirely a business day even though spent only in part on business activity if the taxpayer establishes—

(i) *Transportation days.* That on such day the taxpayer was traveling to or returning from a destination to which he traveled in the pursuit of trade or business. However, if for purposes of engaging in nonbusiness activity, the taxpayer does not travel by a reasonably direct route, only that number of days shall be considered business days as would be required for the taxpayer, using the same mode of transportation, to travel to or return from the same destination by a reasonably direct route. Also if, while en route, the taxpayer interrupts the normal course of travel by engaging in substantial diversions for nonbusiness reasons of his own choosing, only that number of days shall be considered business days as equals the number of days required for the taxpayer, using the same mode of transportation, to travel to or return from the same destination without engaging in such diversion. For example, if a taxpayer residing in New York departs on an evening by airplane for a business meeting to be held in Chicago the next morning, for purposes of determining whether nonbusiness activity constituted 25 percent or more of his travel time, the entire day of his departure shall be considered a business day. On the other hand, if a taxpayer travels by automobile from New York to Chicago to attend a business meeting and while en route spends two days in Philadelphia and one day in Pittsburgh on nonbusiness activities of his personal choice, only that number of days shall be considered business days as would have been required for the taxpayer to drive by a reasonably direct route to Chicago, taking into account normal periods for rest and meals.

(ii) *Presence required.* That on such day his presence away from home was required at a particular place for a specific and bona fide business purpose. For example, if a taxpayer is instructed by his employer to attend a specific business meeting, the day of the meeting shall be considered a business day even though, because of the scheduled length of the meeting, the taxpayer spends more time during normal working hours of the day on nonbusiness activity than on business activity.

(iii) *Days primarily business.* That during hours normally considered to be appropriate for business activity, his principal activity on such day was the pursuit of trade or business.

(iv) *Circumstances beyond control.* That on such day he was prevented from engaging in the conduct of trade or business as his principal activity due to circumstances beyond his control.

(v) *Weekends, holidays, etc.* That such day was a Saturday, Sunday, legal holiday, or other reasonably necessary stand-by day which intervened during the course of the taxpayer's trade or business while away from home which the taxpayer endeavored to conduct with reasonable dispatch. For example, if a taxpayer travels from New York to Chicago to take part in business negotiations beginning on a Wednesday and concluding on the following Tuesday, the intervening Saturday and Sunday shall be considered business days whether or not business is conducted on either of such days. Similarly, if in the above case the meetings which concluded on Tuesday evening were followed by business meetings with another business group in Chicago on the immediately succeeding Thursday and Friday, the intervening Wednesday will be deemed a business day. However, if at the conclusion of the business meeting on Friday, the taxpayer stays in Chicago for an additional week for personal purposes, the Saturday and Sunday following the conclusion of the business meeting will not be considered business days.

(e) *Application of disallowance rules—(1) In general.* In the case of expense for travel away from home by an individual to which this section applies, except as otherwise provided in subparagraphs (4) or (5) of this paragraph, no deduction shall be allowed for that amount of travel expense specified in subparagraphs (2) or (3) of this paragraph (whichever is applicable) which is obtained by multiplying the total of such travel expense by a fraction—

(i) The numerator of which is the number of nonbusiness days during such travel, and

(ii) The denominator of which is the total number of business days and nonbusiness days during such travel.

For determination of "business days" and "nonbusiness days," see paragraph (d) (2) of this section.

(2) *Nonbusiness activity at, near, or beyond business destination.* If the place at which the individual engages in nonbusiness activity (hereinafter termed "nonbusiness destination") is at, near, or beyond the place to which he travels in the pursuit of a trade or business (hereinafter termed "business destination"), the amount of travel expense referred to in subparagraph (1) of this paragraph shall be the amount of travel expense, otherwise allowable as a deduction under section 162 or section 212, which would have been incurred in traveling from the place of departure to the business destination, and returning. Thus, if the individual travels from New York to London on business, and

then takes a vacation in Paris before returning to New York, the amount of the travel expense subject to allocation is the expense which would have been incurred in traveling from New York to London and returning.

(3) *Nonbusiness activity on the route to or from business destination.* If the nonbusiness destination is on the route to or from the business destination, the amount of the travel expense referred to in subparagraph (1) of this paragraph shall be the amount of travel expense, otherwise allowable as a deduction under section 162 or 212, which would have been incurred in traveling from the place of departure to the nonbusiness destination and returning. Thus, if the individual travels from San Francisco to New York on business and while enroute he takes a vacation in Denver, the amount of travel expense subject to allocation is the expense which would have been incurred in traveling from San Francisco to Denver and returning.

(4) *Other allocation method.* If a taxpayer establishes that a method other than allocation on a day-by-day basis (as determined under paragraph (d) (2) of this section) more clearly reflects the portion of time away from home which is attributable to nonbusiness activity, the amount of travel expense for which no deduction shall be allowed shall be determined by such other method.

(5) *Travel expense deemed entirely allocable to business activity.* Expenses of travel shall be considered allocable in full to business activity, and no portion of such expense shall be subject to disallowance under this section, if incurred under circumstances provided for in subdivision (i) or (ii) of this subparagraph.

(i) *Lack of control over travel.* Expenses of travel otherwise deductible under section 162 or 212 shall be considered fully allocable to business activity if, considering all the facts and circumstances, the individual incurring such expenses did not have substantial control over the arranging of the business trip. A person who is required to travel to a business destination will not be considered to have substantial control over the arranging of the business trip merely because he has control over the timing of the trip. Any individual who travels on behalf of his employer under a reimbursement or other expense account allowance arrangement shall be considered not to have had substantial control over the arranging of his business trip, provided the employee is not—

(a) A managing executive of the business firm for which he is traveling, or

(b) Related to his employer within the meaning of section 267(b) but for this purpose the percentage referred to in section 267(b) (2) shall be 10 percent.

(ii) *Lack of major consideration to obtain a vacation.* Any expense of travel, which qualifies for deduction under section 162 or 212, shall be considered fully allocable to business activity if the individual incurring such

expenses can establish that, considering all the facts and circumstances, a major consideration in determining to make the trip was not to obtain an opportunity to enjoy a personal vacation or holiday. If such a major consideration were present, the provisions of subparagraphs (1) through (4) of this paragraph shall apply. However, if the trip were primarily personal in nature, the traveling expenses to and from the destination are not deductible even though the taxpayer engages in business activities while at such destination. See § 1.162-2(b) (1).

(f) *Examples.* The application of this section may be illustrated by the following examples:

*Example (1).* Individual A flew from New York to Paris where he conducted business for 1 day. He spent the next 2 days sight-seeing in Paris and then flew back to New York. The entire trip, including 2 days for travel enroute, took 5 days. Since the trip did not exceed 1 week, the disallowance rules of this section do not apply.

*Example (2).* Individual B flew from New York to Brussels where he spent 14 days on business and 5 days on personal matters and then flew back to New York. The entire trip, including 2 days for travel enroute, took 21 days. Although the trip exceeded a week, the time away from home attributable to nonbusiness activities (5 days out of 21) was less than 25 percent of the total time away from home during the trip. Therefore, the disallowance rules of this section do not apply.

*Example (3).* C, an employee of Y Company (who is neither a managing executive officer nor a shareholder of Y), traveled away from home on behalf of his employer and was reimbursed by Y for his traveling expense to and from the business destination. The trip took more than a week and C took advantage of the opportunity to enjoy a personal vacation which exceeded 25 percent of the total time on the trip. Since C, traveling under a reimbursement arrangement, is not an executive officer or shareholder of Y Company, he is not considered to have control over the arranging of the business trip, and the travel expenses shall be considered fully allocable to business activity.

*Example (4).* D, a managing executive and principal shareholder of X Company, travels from New York to Chicago to attend a series of business meetings. At the conclusion of the series of meetings, which last one week, D spends one week on a personal vacation in Chicago. If D establishes either that he did not have substantial control over the arranging of the trip or that a major consideration in his determining to make the trip was not to provide an opportunity for taking a personal vacation, the entire travel expense to and from Chicago shall be considered fully allocable to business activity.

*Example (5).* E, a professional man, flew from New York to Copenhagen, Denmark, to attend a convention sponsored by a professional society. The trip lasted three weeks, of which two weeks were spent on vacation in Europe. E generally would be regarded as having substantial control over arranging this business trip. Unless E can establish that obtaining a vacation was not a major consideration in determining to make the trip, the disallowance rules of this section apply.

*Example (6).* Taxpayer G flew from New York to San Francisco where he conducted business for 2 days. G then flew to Seattle for a 9 day vacation after which he flew

back to New York from Seattle. The entire trip, including 2 days for travel en route, took 13 days. G would not have made the trip except for the business he had to conduct in San Francisco. The travel away from home exceeded a week and the time devoted to nonbusiness activities was not less than 25 percent of the total time away from home. If G is unable to establish either that he did not have substantial control over the arranging of the business trip or that a major consideration in his determining to make the trip was not to provide an opportunity for taking a personal vacation,  $\frac{9}{13}$ ths (9 days devoted to nonbusiness activities out of a total of 13 days away from home on the trip) of the expenses attributable to transportation and food to and from San Francisco will be disallowed (unless G establishes that a different method of allocation more clearly reflects the portion of time away from home which is attributable to nonbusiness activity).

(g) *Cross reference.* For rules with respect to whether this section or § 1.274-2 applies, see § 1.274-2 (b) (1) (iii), (c).

PAR. 2. There are inserted immediately after § 1.274-5 (relating to substantiation requirements) the following new sections:

**§ 1.274-6 Expenditures deductible without regard to trade or business or other income producing activity.**

The provisions of §§ 1.274-1 through 1.274-5, inclusive, do not apply to any deduction allowable to the taxpayer without regard to its connection with the taxpayer's trade or business or other income producing activity. Examples of such items are interest, taxes such as real property taxes, and casualty losses. Thus, if a taxpayer owned a fishing camp, he could still deduct mortgage interest and real property taxes in full even if its use was not primarily for the furtherance of the taxpayer's trade or business. In the case of a taxpayer which is not an individual, the provisions of this section shall be applied as if it were an individual. Thus, if a corporation sustains a casualty loss on an entertainment facility used in its trade or business, it could deduct the loss even though the facility was not used primarily in furtherance of the corporation's trade or business.

**§ 1.274-7 Treatment of certain expenditures with respect to entertainment-type facilities.**

If deductions are disallowed under § 1.274-2 with respect to any portion of a facility, such portion shall be treated as an asset which is used for personal, living, and family purposes (and not as an asset used in a trade or business). Thus, the basis of such a facility will be adjusted for purposes of computing depreciation deductions and determining gain or loss on the sale of such facility in the same manner as other property (for example, a residence) which is regarded as used partly for business and partly for personal purposes.

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