# FEDERAL REGISTER

VOLUME 35 • NUMBER 116

Tuesday, June 16, 1970 • Washington, D.C.

Pages 9805–9906

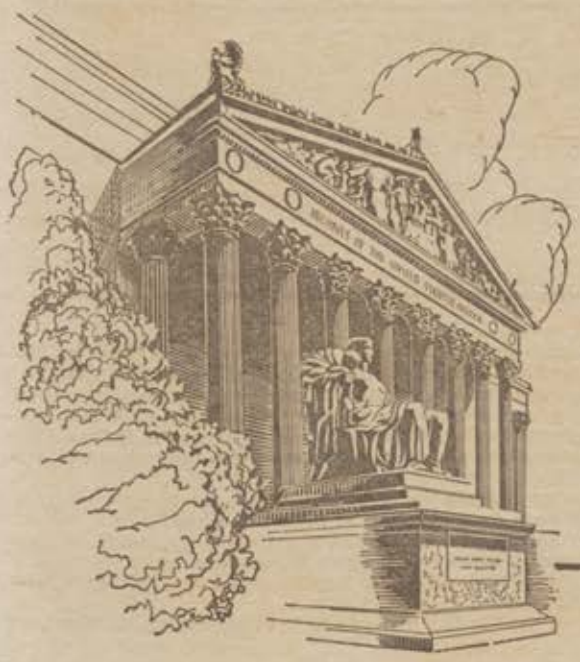
Part I

(Part II begins on page 9887)

Agencies in this issue—

The President
Agricultural Research Service
Air Force Department
Civil Aeronautics Board
Civil Service Commission
Commodity Credit Corporation
Consumer and Marketing Service
Emergency Preparedness Office
Federal Aviation Administration
Federal Communications Commission
Federal Highway Administration
Federal Maritime Commission
Federal Power Commission
Federal Reserve System
Federal Trade Commission
Fish and Wildlife Service
Food and Drug Administration
Health, Education, and Welfare Department
Internal Revenue Service
Interstate Commerce Commission
Justice Department
Land Management Bureau
Maritime Administration
Packers and Stockyards Administration
Public Health Service
Securities and Exchange Commission
Transportation Department
Veterans Administration

Detailed list of Contents appears inside.



FEDERAL REGISTER

Area Code 202 Phone 962-8626

Published daily, Tuesday through Saturday (no publication on Sundays, Mondays, or on the day after an official Federal holiday), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., Ch. 15), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $2.50 per month or $25 per year, payable in advance. The charge for individual copies is 20 cents for each issue, or 20 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended (44 U.S.C. 1510). The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER or the CODE OF FEDERAL REGULATIONS.

# Contents


## THE PRESIDENT

### EXECUTIVE ORDER

Inspection of tax returns by the Committee on the Judiciary, House of Representatives ..... 9809

## EXECUTIVE AGENCIES

### AGRICULTURAL RESEARCH SERVICE

**Rules and Regulations**

Hog cholera and other communicable swine diseases; areas quarantined ..... 9823

**Notices**

Gypsy and brown-tail moth quarantine; list of approved establishments ..... 9866

### AGRICULTURE DEPARTMENT

*See* Agricultural Research Service; Commodity Credit Corporation; Consumer and Marketing Service; Packers and Stockyards Administration.

### AIR FORCE DEPARTMENT

**Rules and Regulations**

Enlistment and discharge of AFROTC cadets ..... 9811

### CIVIL AERONAUTICS BOARD

**Rules and Regulations**

Rules of practice in economic proceedings ..... 9823

**Proposed Rule Making**

Air carriers and foreign air carriers; written notice of limitations on baggage liability; supplemental notice ..... 9860

**Notices**

International Air Transport Association; order regarding cargo rate matters ..... 9871

### CIVIL SERVICE COMMISSION

**Rules and Regulations**

Excepted service:
- Department of Health, Education, and Welfare ..... 9818
- Office of Economic Opportunity ..... 9818

**Notices**

Department of Health, Education, and Welfare; noncareer executive assignments (3 documents) ..... 9872

### COMMERCE DEPARTMENT

*See* Maritime Administration.

### COMMODITY CREDIT CORPORATION

**Rules and Regulations**

Oats; 1970 crop loan and purchase program; correction ..... 9823

### CONSUMER AND MARKETING SERVICE

**Rules and Regulations**

Avocados; importation ..... 9822
Lettuce; standards for grades ..... 9818
Oranges, Valencia, grown in Arizona and California; handling limitation ..... 9821

**Proposed Rule Making**

Hops, domestic; exemption of hops grown or used for research purposes ..... 9859
Milk handling in eastern Ohio-western Pennsylvania marketing area; recommended decision ..... 9888

### DEFENSE DEPARTMENT

*See* Air Force Department.

### EMERGENCY PREPAREDNESS OFFICE

**Notices**

Major disasters and related determinations:
- Kentucky ..... 9879
- North Dakota ..... 9880

### FEDERAL AVIATION ADMINISTRATION

**Proposed Rule Making**

Airworthiness directive; Morane Saulnier airplanes ..... 9859

### FEDERAL COMMUNICATIONS COMMISSION

**Notices**

Roberts Flying Service, Inc., and Lakeland Flying Service, Inc.; consolidated hearing ..... 9873
Use of telephone for debt collection purposes ..... 9873

### FEDERAL HIGHWAY ADMINISTRATION

**Proposed Rule Making**

Smoking on buses; oral hearing ..... 9859

### FEDERAL MARITIME COMMISSION

**Notices**

Agreements filed:
- Port of Seattle and Japan Line, Ltd., et al ..... 9865
- Port of Seattle and Pacific Molasses Co ..... 9865

Bemo Shipping Co., Inc.; revocation of independent ocean freight forwarder license ..... 9865

### FEDERAL POWER COMMISSION

**Notices**

*Hearings, etc.:*
- Colorado Interstate Gas Co ..... 9874
- Equitable Gas Co ..... 9874
- Marias River Electric Cooperative, Inc ..... 9875
- Midwestern Gas Transmission Co. (2 documents) ..... 9875
- Pennsylvania Gas and Water Co. and Manufactures Light and Heat Co ..... 9877
- Pennsylvania Gas Co ..... 9875
- Texas Gas Transmission Corp ..... 9876
- Transcontinental Gas Pipe Line Corp ..... 9876
- United Gas Pipe Line Co ..... 9877

### FEDERAL RESERVE SYSTEM

**Rules and Regulations**

Loan guarantees for defense production; maximum rate of interest ..... 9812

**Notices**

Approvals of acquisitions of bank stock by bank holding companies:
- Barnett Banks of Florida, Inc ..... 9878
- First National Bancorporation, Inc ..... 9878
- Security New York State Corp ..... 9879

Barnett Banks of Florida, Inc.; application for approval of acquisition of shares of bank ..... 9877

### FEDERAL TRADE COMMISSION

**Rules and Regulations**

Prohibited trade practices:
- Funeral Directors Institute International, Inc., and John T. Arends ..... 9851
- Textron, Inc ..... 9852
- Universe Chemicals, Inc., et al ..... 9853

### FISH AND WILDLIFE SERVICE

**Notices**

Paul W. Hawkins; loan application ..... 9865

### FOOD AND DRUG ADMINISTRATION

**Rules and Regulations**

Cottage cheese; identity standard; alternate direct acidification process ..... 9854
Food additives:
- Adhesives ..... 9855
- Status opinion letters; statement of policy ..... 9855

Food additives and antibiotic drugs; diethylstilbestrol, bacitracin methylene disalicylate ..... 9855
New animal drugs for implantation or injection; betamethasone acetate and betamethasone disodium phosphate aqueous suspension ..... 9856

**Notices**

Abbott Laboratories; opportunity for hearing regarding Dioleen suspension and Dioleen cream ..... 9867
Dr. Mayfield Laboratories et al.; withdrawal of approval of new animal drug applications for certain large roundworm tablets ..... 9868


*(Continued on next page)*

Drugs for veterinary use; efficacy study implementation:
Medicated premix containing diethylcarbamazine ... 9869
Oxytetracycline spray ... 9869
Streptomycin-sulfonamide boluses ... 9870
Sulfaquinoxaline - penicillin - streptomycin combination drug ... 9870
Food additive petitions:
Daubert Chemical Co.; withdrawal ... 9868
Hazleton Laboratories, Inc. ... 9869
Imperial Chemical Industries, Ltd ... 9869
Fort Dodge Laboratories, Inc.; opportunity for hearing regarding Ringet ... 9868

**HEALTH, EDUCATION, AND WELFARE DEPARTMENT**

*See also* Food and Drug Administration; Public Health Service.

**Notices**

Statements of organization, functions, and delegations of authority:
Health Services and Mental Health Administration ... 9871
Office of the General Counsel ... 9871

**INTERIOR DEPARTMENT**

*See* Fish and Wildlife Service; Land Management Bureau.

**INTERNAL REVENUE SERVICE**

**Notices**

Director, Personnel Division, et al.; delegation of authority ... 9863

**INTERSTATE COMMERCE COMMISSION**

**Rules and Regulations**

Car services; distribution of boxcars ... 9858

**Notices**

Fourth section application for relief ... 9880
Increased freight rates, 1970 ... 9880
Motor carrier transfer proceedings (2 documents) ... 9880, 9881

**JUSTICE DEPARTMENT**

**Rules and Regulations**

Organization; changes within units ... 9857

**LAND MANAGEMENT BUREAU**

**Rules and Regulations**

Public land orders:
California ... 9857
Michigan (2 documents) ... 9857
Montana ... 9857

**Notices**

District Managers, Montana; redelegation of authority ... 9863
Utah; classification of public lands for multiple use management ... 9863

**MARITIME ADMINISTRATION**

**Notices**

Oceanic Steamship Co.; application for approval of certain cruises ... 9867

**PACKERS AND STOCKYARDS ADMINISTRATION**

**Notices**

Central Arkansas Auction Sale, Inc., et al.; changes in names of posted stockyards ... 9866

**PUBLIC HEALTH SERVICE**

**Proposed Rule Making**

Control of electronic product radiation; performance standard for microwave ovens; extension of comment period ... 9860

**SECURITIES AND EXCHANGE COMMISSION**

**Proposed Rule Making**

Sales of redeemable securities at reduced or eliminated sales load to certain persons ... 9860

**Notices**

*Hearings, etc.:*
Dynamic Marketing Industries Corp. and Potpourri International, Inc ... 9881
Morgan Guaranty Trust Company of New York and Irving Trust Co ... 9882
Tucson Turf Club ... 9882
Visual Industries Corp ... 9883

**TRANSPORTATION DEPARTMENT**

*See also* Federal Aviation Administration; Federal Highway Administration.

**Rules and Regulations**

Delegation of authority regarding military decorations ... 9857

**TREASURY DEPARTMENT**

*See* Internal Revenue Service.

**VETERANS ADMINISTRATION**

**Rules and Regulations**

Vocational rehabilitation and education; miscellaneous amendments ... 9812


# List of CFR Parts Affected

**The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.**

**A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1970, and specifies how they are affected.**

**3 CFR**

EXECUTIVE ORDER:
11535 ... 9809

**5 CFR**

213 (2 documents) ... 9818

**7 CFR**

51 ... 9818
908 ... 9821
944 ... 9822
1421 ... 9823
PROPOSED RULES:
991 ... 9859
1036 ... 9888

**9 CFR**

76 ... 9823

**14 CFR**

302 ... 9823
PROPOSED RULES:
39 ... 9859
221 ... 9860

**16 CFR**

13 (3 documents) ... 9851–9853

**17 CFR**

PROPOSED RULES:
270 ... 9860

**21 CFR**

19 ... 9854
121 (3 documents) ... 9855
135b ... 9856
144 ... 9855

**28 CFR**

0 ... 9857

**32 CFR**

888d ... 9811

**32A CFR**

FRS (Ch. XV):
Reg. V ... 9812

**38 CFR**

21 ... 9812

**42 CFR**

PROPOSED RULES:
78 ... 9860

**43 CFR**

PUBLIC LAND ORDERS:
2618 (modified by PLO 4845) ... 9857
4842 ... 9857
4843 ... 9857
4844 ... 9857
4845 ... 9857

**49 CFR**

1 ... 9857
1033 ... 9858
PROPOSED RULES:
393 ... 9859

# Presidential Documents

## Title 3—THE PRESIDENT

### Executive Order 11535

### INSPECTION OF TAX RETURNS BY THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES

By virtue of the authority vested in me by sections 55(a) and 1604(c) of the Internal Revenue Code of 1939, as amended (26 U.S.C. (1952 Ed.) 55(a), 1604(c)), and by sections 6103(a) and 6106 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 6103(a), 6106), it is hereby ordered that any income, excess-profits, estate, gift, unemployment, or excise tax return, including all reports, documents, or other factual data relating thereto, shall, during the Ninety-first Congress, be open to inspection by the Committee on the Judiciary, House of Representatives, or any duly authorized subcommittee thereof, in connection with its consideration of House Resolution 920, a resolution impeaching William O. Douglas, Associate Justice of the Supreme Court of the United States. Whenever a return is open to inspection by such Committee or subcommittee, a copy thereof shall, upon request, be furnished to such Committee or subcommittee. Such inspection shall be in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in Treasury Decisions 6132 and 6133, relating to the inspection of returns by committees of the Congress, approved by the President on May 3, 1955.

Richard Nixon

THE WHITE HOUSE,
*June 12, 1970.*

[F.R. Doc. 70-7596; Filed, June 15, 1970; 9:01 a.m.]

# Rules and Regulations

## Title 32—NATIONAL DEFENSE

### Chapter VII—Department of the Air Force

SUBCHAPTER I—MILITARY PERSONNEL

### PART 888d—ENLISTMENT AND DISCHARGE OF AFROTC CADETS

A new Part 888d is added to read as follows:

Sec.


888d.0 Purpose.
888d.2 Definitions.
888d.4 Student obligation to enlist.
888d.6 Prerequisite for enlistment of applicant.
888d.8 Terms (years) of enlistment.
888d.10 Who may enlist applicants.
888d.12 Grade of enlistee with no prior service.
888d.14 Grade of enlistee with prior military service.
888d.16 Failure of cadet to complete training or accept commission.
888d.18 Basis for discharge.
888d.20 Reporting names to ARPC.
888d.22 Actions required of ARPC regarding discontinued cadets reported for EAD in their enlisted grade.


AUTHORITY: The provisions of this Part 888d issued under 10 U.S.C. 2101 et seq.; 10 U.S.C. 8012.

**§ 888d.0 Purpose.**

This part prescribes the enlistment requirements for students selected for membership in the College Scholarship Program (CSP) and the Professional Officer Course (POC), AFROTC, under under chapter 103, 10 U.S.C. It also prescribes the policies and procedures for enlistment in the U.S. Air Force Reserve (USAFR), for discharge from the USAFR, and for ordering certain discontinued members to extended active duty (EAD) involuntarily in their enlisted grade. It applies to major commands, AFROTC (Maxwell AFB AL), Air Reserve Personnel Center (ARPC), and AFROTC detachments.

**§ 888d.2 Definitions.**

(a) *AFROTC category agreement (AF Form 1056).* A contractual agreement jointly executed by a student and the Department of the Air Force which establishes membership in CSP or POC.

(b) *College Scholarship Program (CSP).* A program in which selected cadets of the 4-year program receive educational financial assistance to include tuition, fees, laboratory expenses, book allowances, and a monthly subsistence allowance. This program is prescribed under 10 U.S.C. 2107.

(c) *Professional Officer Course (POC).* The third and fourth years of the 4-year program of Aerospace Studies. Aerospace Studies 300 and 400 comprise the first and second years, respectively, of the 2-year program. This advanced training is prescribed under 10 U.S.C. 2104.

**§ 888d.4 Student obligation to enlist.**

Those students selected by the Commandant, AFROTC, for award of scholarships and those selected to participate in POC are required to enlist in the USAFR under this part prior to enrollment as members of POC or CSP.

**§ 888d.6 Prerequisites for enlistment of applicant.**

Applicant must meet the prerequisites for enlistment prescribed in Part 888b of this chapter and meet eligibility requirements for admission to membership in POC or CSP as contained in Part 870 of this chapter.

**§ 888d.8 Terms (years) of enlistment.**

| Rule | A<br>If applicant has— | B<br>Then years of enlistment are— |
|---|---|---|
| 1 | Enrolled in CSP | 8 |
| 2 | Less than 24 months of active or inactive military service and is enrolled in POC. | 6 |
| 3 | 24 months or more of active or inactive military service and is enrolled in POC. | 4 |

**§ 888d.10 Who may enlist applicants.**

Professors of Aerospace Studies (PAS) and other officers assigned to AFROTC may enlist eligible applicants in the USAFR.

**§ 888d.12 Grade of enlistee with no prior service.**

| Rule | A<br>If enlistee— | B<br>Then grade authorized is— |
|---|---|---|
| 1 | Is credited with over 90 days of active duty service and was last separated in pay grade E–2 or higher. | E–2, see note. |
| 2 | Presents General Billy Mitchell Award Certificate from CAP-USAF, Maxwell AFB AL 36112, or letter from CAP unit commander showing successful completion of CAP Training Program. | |
| 3 | Has successfully completed 2 or more years of college AFROTC. | |
| 4 | Has satisfactorily completed the entire high school Junior ROTC program, is a high school graduate, and presents an official certificate of completion issued by the Armed Force conducting the program. | |
| 5 | Is a Service academy ex-cadet with over 90 days of service. | |
| 6 | Is none of the above | |

NOTE: Documents presented after enlistment is completed may not be used to change the enlistee's grade.

**§ 888d.14 Grade of enlistee with prior military service.**

| Rule | A<br>If applicant enlists— | B<br>And he last served in— | C<br>Then enlistment grade is grade in which last separated, but not higher than (see note) |
|---|---|---|---|
| 1 | Before 1st anniversary of DOS. | Air Force, including Reserve components. | SSgt (E–5). |
| 2 | | Other than Air Force. | Sgt (E–4). |
| 3 | On or after 1st anniversary of DOS, but before 2d anniversary of DOS. | Air Force, including Reserve components. | |
| 4 | | Other than Air Force. | A1C (E–3). |
| 5 | On or after 2d anniversary of DOS. | Any of the Armed Forces. | |

NOTE: Enlistment grade cannot exceed the grade in which last separated.

**§ 888d.16 Failure of cadet to complete training or accept commission.**

(a) *CSP.* A cadet who does not complete this program of instruction or who completes the program, but declines to accept a commission when offered, may be ordered to active duty to serve in his enlisted status for 4 years.

(b) *POC.* A cadet who does not complete the course of instruction or who completes the course, but declines to accept a commission when offered, may be ordered to active duty to serve in his enlisted status for 2 years.

**§ 888d.18 Basis for discharge.**

Discharge is accomplished by ARPC:

(a) Upon successful completion of the AFROTC program and upon acceptance of a commission and is:

(1) Effective the day preceding acceptance of the commission.

(2) For the convenience of the Government. Cite this paragraph as authority for discharge.

(b) Upon discontinuance of AFROTC membership for any reason unless reported for order to active duty involuntarily under § 888d.20. A request for discharge must be accompanied by DD Form 785, "Record of Disenrollment from Officer Candidate-Type Training," for permanent inclusion in the Cadet's Master Personnel Record Group. Discharge for any of the reasons cited in AFR 45–43, paragraphs 20 through 28, April 14, 1959, will be instituted when applicable. All other discharges are for the convenience of the Government; cite this paragraph as authority for the discharge.

(c) Upon termination of a scholarship when the student remains a member of the General Military Course (GMC) or has completed GMC instruction, but has not begun POC instruction. Discharge occurs the day of scholarship termination and is for the convenience of the Government. Cite this paragraph as authority for the discharge.

NOTE: Discharge under paragraph (b) or (c) of this section does not relieve the cadet from draft liability under the Military Selective Service Act of 1967.

§ 888d.20 Reporting names to ARPC.

(a) The Commandant, AFROTC, reports to ARPC at least once a week the names of AFROTC cadets or former cadets who qualify for administrative discharge under this part.

(b) The Commandant, AFROTC, may, with the approval of the Commander, Air University (AU), report the name of a discontinued cadet to ARPC for order to involuntary active duty in his enlisted grade if the cadet was discontinued for indifference to training, disciplinary reasons, breach or anticipatory breach of the terms of the category agreement, and/or declining to accept a commission. The period of involuntary active duty will be as described in § 888d.16 and restated in the cadet's AF Form 22. A DD Form 785 will also be sent to AFPC in such cases.

§ 888d.22 Actions required of ARPC regarding discontinued cadets reported for EAD in their enlisted grade.

(a) ARPC, upon receipt of notification from the Commandant, AFROTC, that a discontinued cadet has been approved for order to EAD involuntarily in his enlisted grade, will advise him that:

(1) He will be ordered to EAD involuntarily in his enlisted grade for the period prescribed by his AF Form 22, not later than 45 days after his scheduled date of obtaining his baccalaureate degree or the date he leaves school either voluntarily or involuntarily, whichever is sooner. (Exception to this policy requires approval of Hq USAF. Submit requests to USAFMPC (AFPMRED), Randolph AFB TX 78148.)

(2) He may request an earlier reporting date at any time.

(3) He must keep ARPC informed of any change in his status which may have a bearing on his availability for EAD or affect his status in the USAFR.

(b) ARPC will publish appropriate orders and dispatch the discontinued cadet's copies by registered mail, return receipt requested, within 45 to 60 days prior to his scheduled EAD date.

By order of the Secretary of the Air Force.

ALEXANDER J. PALENSCAR, Jr.,
*Colonel, U.S. Air Force, Chief, Special Activities Group, Office of The Judge Advocate General.*

[F.R. Doc. 70-7359; Filed, June 15, 1970; 8:45 a.m.]

# Title 32A—NATIONAL DEFENSE, APPENDIX

## Chapter XV—Federal Reserve System

## REG. V—LOAN GUARANTEES FOR DEFENSE PRODUCTION

### Maximum Rate of Interest

1. Effective June 4, 1970, section 7(a) of Regulation V is amended to read as follows:

Sec. 7 Supplement.

* * * * *

(a) *Maximum rate of interest.* The maximum interest rate charged a borrower by a financing institution with respect to a guaranteed loan shall not exceed 7½ percent per annum, except that the agency guaranteeing a particular loan may from time to time prescribe a higher rate if it determines the loan to be necessary for the purpose of financing any contractor, subcontractor, or other person in connection with the performance of any contract or other operation deemed by the guaranteeing agency to be necessary to expedite production and deliveries or services under Government contracts for the procurement of materials or the performance of services for the national defense.

* * * * *

2a. The purpose of this amendment is to permit the governmental agency guaranteeing a loan under the Defense Production Act of 1950, as amended, to prescribe from time to time a higher interest rate than otherwise payable on such loan if the agency determines that such higher rate is necessary in obtaining V-loan financing of a contract or other operation essential to the national defense.

b. The requirements of section 553(b) of title 5, United States Code, with respect to notice, public participation, and deferred effective date were not followed in connection with this amendment. Functions exercised under the Defense Production Act are exempt from such requirements (50 App. U.S.C. 2159). It was considered impracticable under the circumstances to consult with industry representatives.

(50 App. U.S.C. 2091(c), 2153; E.O. 10480, secs. 302(c)(2), 602(b)(1))

By order of the Board of Governors, June 4, 1970.

[SEAL] KENNETH A. KENYON,
*Deputy Secretary.*

[F.R. Doc. 70-7429; Filed, June 15, 1970; 8:45 a.m.]

# Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

## Chapter I—Veterans Administration

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

### Miscellaneous Amendments

Part 21 is amended as follows:

### Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31

1. Section 21.133 is revised to read as follows:

§ 21.133 Rates.

Subsistence allowance is payable for periods commencing on and after February 1, 1970, at the following monthly rates:

| Type of training | Monthly rate of subsistence allowance | | | |
|---|---|---|---|---|
| | No dependent | One dependent | Two dependents | For each additional dependent[1] |
| Institutional: | | | | |
| Full-time | $135 | $181 | $210 | $6 |
| ¾ time | 98 | 133 | 156 | None |
| ½ time | 67 | 91 | 102 | None |
| Institutional on-farm (IOF), apprentice or other on-job (OJT)[2] (full time only) | 118 | 153 | 181 | 6 |
| Combination (institutional and OJT) (Full time only): | | | | |
| Institutional ½ time or more | 135 | 181 | 210 | 6 |
| Institutional less than ½ time | 118 | 153 | 181 | 6 |
| Cooperative (full time only): | | | | |
| Institutional full time | 135 | 181 | 210 | 6 |
| Business/industry full time | 118 | 153 | 181 | 6 |

[1] $6 will be added for each dependent over two, except for the veteran with a disability rating of 50 percent or more (38 U.S.C. 1504(b)).

[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, exclusive of overtime, and the entrance journeyman wage for the veteran's objective.

(38 U.S.C. 1504(b))

### Subpart B—Veterans' Educational Assistance Under 38 U.S.C. Chapter 34

2. In § 21.1021, paragraph (e) is added to read as follows:

§ 21.1021 Definitions.

* * * * *

(e) "Unit" means not less than one hundred and twenty 60-minute hours or their equivalent of study in any high school subject in 1 academic year (38 U.S.C. 1684; Public Law 91-219, 84 Stat. 76).

3. Immediately following § 21.1021(e), a cross reference is added to read as follows:

CROSS REFERENCE: *Measurement of courses.* See § 21.4270(b).

4. In § 21.1040(e), subparagraph (2) is amended and subparagraph (3) is added so that the amended and added material reads as follows:

§ 21.1040 Basic eligibility.

* * * * *

(e) *Persons on active duty.* Educational assistance may be afforded a person while on active duty if he:

* * * * *

(2) Meets the requirements of paragraphs (a) and (b) of this section, and has served a total of 2 or more years (730 days or more) on active duty, any part of which occurred on or after February 1, 1955, excluding periods of time specified in § 3.15 of this chapter. Educational assistance otherwise payable may be provided under this subparagraph so long as he continues on active duty, or

(3) Has completed 181 consecutive days or more of active duty, any part of which was on or after February 1, 1955, but such assistance shall be limited to that provided by § 21.4235(a)(1). (38 U.S.C. 1695(b))

5. In § 21.1041, paragraphs (a)(4) and (d)(2) are amended to read as follows:

§ 21.1041 Periods of entitlement.

(a) *General.* * * *

(4) The 36-month limitation may be exceeded where an extension is authorized under paragraph (d) of this section, or where no charge against entitlement is made based on a course or courses pursued at a secondary school level, as provided in § 21.1045(a) or pursued by a veteran under the Program of Special Assistance for the Educationally Disadvantaged or by a serviceman under the Prediscbarge Education Program.

* * * * *

(d) *Extension.* The period of entitlement, including the 36-month period, may be extended, but not beyond the 8-year delimiting date specified in § 21.1042:

* * * * *

(2) To the end of the course or for 12 weeks, whichever is less, in all other schools, when the period of entitlement ends after more than half of the course has been completed. In a course consisting exclusively of flight training and in a course pursued exclusively by correspondence, the period of entitlement will be extended to the end of the course or for the total additional amount of instruction that $490 will provide, whichever is less. (38 U.S.C. 1661)

* * * * *

6. In § 21.1045, paragraphs (a), (b), and (d) are amended to read as follows:

§ 21.1045 Entitlement charges.

(a) *Residence courses—(1) High school courses; chapter 34.* No charge will be made against a veteran's entitlement based on a course pursued on or after June 1, 1966, at a secondary school level under the circumstances outlined in § 21.4235. Any charge made against such veteran's entitlement because of pursuit of a course at a secondary school level between June 1, 1966, and September 30, 1967, both dates inclusive, will be restored. (38 U.S.C. 1696(c); Public Law 91-219, 84 Stat. 76)

(2) *Flight training courses; chapter 34.* A charge against the period of entitlement for a program consisting exclusively of flight training will be made on the basis of 1 month for each $175 which is paid to the veteran as an educational assistance allowance for such course. Where the computation results in a period of time other than a full month, or other than exactly three-quarters, one-half, or one-quarter fractional part of a month, the figure will be reduced to the next lower quarter. (38 U.S.C. 1677(b))

(3) *Other courses; chapter 34.* Except as provided in subparagraphs (1) and (2) of this paragraph, and except where the courses are pursued under the program of Special Assistance for the Educationally Disadvantaged or the Prediscbarge Education Program, charges against a period of entitlement will be made in terms of full months and fractions of a month for periods during which the veteran is enrolled in an approved course. Where a program of education is pursued on a full-time basis the total elapsed time will be charged. Where a program is pursued on a three-fourths, one-half time, or less than half-time basis, a proportionate rate of the elapsed time will be charged. Where the computation results in a period of time other than a full month, or other than exactly three-quarters, one-half, or one-quarter fractional part of a month, the figure will be reduced to the next lower quarter fraction of a month.

(4) *Chapter 35.* Charges against a period of entitlement will be made in terms of full months and fractions of a month for periods during which the eligible person is enrolled in an approved course. Where a program of education is pursued on a full-time basis the total elapsed time will be charged. Where a program is pursued on a three-fourths, one-half time, or less than half-time basis, a proportionate rate of the elapsed time will be charged. Where the computation results in a period of time other than a full month, or other than exactly three-fourths, one-half, or one-fourth fractional part of a month, the figure will be reduced to the next lower quarter fraction of a month.

(b) *Correspondence courses; chapter 34—(1) High school courses.* The provisions of paragraph (a)(1) of this section are applicable, except to servicemen on active duty, to correspondence courses at a secondary school level.

(2) *Other courses.* Except as provided in subparagraph (1) of this paragraph, the period of entitlement of any eligible veteran who is pursuing a program of education exclusively by correspondence will be charged with 1 month for each $175 paid to the veteran as an educational assistance allowance for such course. Where the computation results in a period of time other than a full month, or other than exactly three-fourths, one-half, or one-fourth fractional part of a month, the figure will be reduced to the next lower quarter. (38 U.S.C. 1682(c)(2); Public Law 91-219, 84 Stat. 76)

* * * * *

(d) *Active duty.* A charge against the period of entitlement for a program of education pursued by a veteran or serviceman on active duty will be made on the basis of the credit hours for which enrolled or clock hours of attendance, except that no charge against entitlement will be made where the courses are pursued under the program of Special Assistance for the Educationally Disadvantaged or the Prediscbarge Education Program. See § 21.4270.

* * * * *

## Subpart C—War Orphans' Educational Assistance Under 38 U.S.C. Chapter 35

7. In § 21.3041(d), subparagraph (1) is amended to read as follows:

§ 21.3041 Periods of eligibility; child.

* * * * *

(d) *Modified ending date.* * * *

(1) Effective date of permanent total rating of veteran-parent or the date of notification to him of such rating, whichever is the more advantageous to the eligible person. (38 U.S.C. 1712; Public Law 91-219, 84 Stat. 76)

* * * * *

8. In § 21.3042, paragraph (a) is amended to read as follows:

§ 21.3042 Service with Armed Forces.

(a) No educational assistance under chapter 35 may be provided an otherwise eligible person during any period he is on duty with the Armed Forces. See § 21.3021 (c) and (d). This does not apply to brief periods of active duty for training. See § 21.4135(n). (38 U.S.C. 1701(d)). For chapter 34 benefits see § 21.4235.

* * * * *

9. Section 21.3046 is revised to read as follows:

§ 21.3046 Periods of eligibility; wives and widows.

The period of eligibility cannot exceed 8 years and can be extended only as provided in paragraph (c) of this section. The period of eligibility of a wife computed under the provisions of paragraph (a) of this section, however, will be recomputed under the provisions of paragraph (b) of this section if her status changes to that of widow.

(a) *Wives.* (1) If the permanent total rating is effective before December 1, 1968, the beginning date of the 8-year period of eligibility is December 1, 1968.

(2) If the permanent total rating is effective on or after December 1, 1968, or the notification to the veteran of such rating was on or after that date, the beginning date of the 8-year period of eligibility is the effective date of the rating or the date of notification, whichever is more advantageous to the wife.

(b) *Widows.* (1) If the veteran's death occurred before December 1, 1968, the beginning date of the 8-year period is December 1, 1968.

(2) If the veteran's death occurred on or after December 1, 1968, the beginning date of the 8-year period is the date of death.

(c) *Extension to ending date.* Wife is enrolled and eligibility ceases for a reason specified in subparagraph (1) or (2) of this paragraph: Extended to end of quarter or semester for schools operating on quarter or semester system, or for schools not operating on quarter or semester system, to end of course or for 9 weeks, whichever is earlier, but not to exceed maximum entitlement or beyond the 8-year delimiting date specified in paragraph (a) of this section. Extension is authorized without regard to whether the midpoint of the quarter, semester or term has been reached.

(1) Veteran is no longer rated permanently and totally disabled.

(2) Wife is divorced from veteran without fault on her part. (38 U.S.C. 1711(b), 1712(b))

10. Section 21.3333 is revised to read as follows:

**§ 21.3333 Rates.**

(a) *Rates.* Special training allowance is payable at the following monthly rate except as provided in paragraph (c) of this section.

| Course | Monthly rate | Accelerated charges |
|---|---|---|
| Special restorative training. | $175 | If costs for tuition and fees average in excess of $55 per month rate may be increased by such amount in excess of $55. |

(b) *Accelerated charges.* The additional monthly rate may be paid if the parent or guardian concurs in having the eligible person's period of entitlement reduced by 1 day for each $6.80 that the special training allowance exceeds the basic monthly rate of $175. Fractions of more than one-half day will be charged as 1 day; fractions of one-half or less will be disregarded. Charges will be recorded when the eligible person is entered into training. (38 U.S.C. 1742)

(c) *Payments in Philippine pesos.* Special training allowance will be payable at a rate in Philippine pesos equivalent to $0.50 for each dollar authorized in those instances in which:

(1) Entitlement is based on the service of a veteran in the Philippine Commonwealth Army, or as a Philippine Scout as defined in § 3.8 (b), (c), or (d) of this chapter; or

(2) The training is pursued at an institution located in the Republic of the Philippines. (38 U.S.C. 1732, 1742, 1765; Public Law 91-219, 84 Stat. 76)

## Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

11. Section 21.4025 is revised and cross references are added to read as follows:

**§ 21.4025 Nonduplication; Federal programs.**

(a) *Chapter. 35.* Payment of educational assistance allowance and special training allowance are prohibited to an otherwise eligible person:

(1) Who is on active duty; or

(2) Who is employed by the United States and whose full salary is being paid to him while attending a course of education or training which is paid for by the United States under the Government Employees' Training Act.

(b) *Chapter 34.* Payment of educational assistance allowance is prohibited to an otherwise eligible veteran:

(1) Who is on active duty and is pursuing a course of education which is being paid for by the Armed Forces; or

(2) Who is on active duty in the Public Health Service and is pursuing a course of education which is being paid for by the Department of Health, Education, and Welfare; or

(3) Who is employed by the United States and whose full salary is being paid to him while attending a course of education or training which is paid for by the United States under the Government Employees' Training Act. (38 U.S.C. 1701(d), 1781; Public Law 91-219, 84 Stat. 76)

CROSS REFERENCES: See §§ 21.1025, 21.3024, and 21.3025.

12. In § 21.4135(e), subparagraph (1) is amended to read as follows:

**§ 21.4135 Discontinuance dates.**

* * * * *

(e) *Course discontinued; course interrupted; intervals between terms.* (1) Last day of attendance, or at institutions of higher learning the official date of change in status under the practices of the institution, or if enrollment certified for ordinary school year and veteran or eligible person has completed one or more terms, but does not return for the next term, discontinuance will be effective the end of the term completed.

* * * * *

13. In § 21.4136, paragraphs (a) and (c) are amended and paragraph (h) is added so that the added and amended material reads as follows:

**§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.**

(a) *Rates.* Educational assistance allowance is payable for periods commencing on or after February 1, 1970, at the following monthly rates.

| Type of courses | Monthly rate: No dependent | One dependent | Two dependents | Additional for each additional dependent |
|---|---|---|---|---|
| Institutional: | | | | |
| Full time | $175 | $205 | $230 | $13 |
| ¾ time | 128 | 152 | 177 | 10 |
| ½ time | 81 | 100 | 114 | 7 |
| Less than ½, but more than ¼ time | [1] 81 | | | |
| ¼ time or less | [1] 41 | | | |
| Cooperative, other than farm cooperative (full time only) | 141 | 167 | 192 | 10 |
| Apprentice or on-job (full time only) payment designated training assistance allowance: | | | | |
| 1st 6 months | 108 | 120 | 133 | None |
| 2d 6 months | 81 | 92 | 105 | None |
| 3d 6 months | 54 | 66 | 79 | None |
| 4th 6 months and succeeding periods | 27 | 39 | 52 | None |
| Correspondence | Established charge for number of lessons completed by veteran and serviced by school [2]—Allowance paid quarterly. | | | |
| Flight training | 90 per centum of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay—Allowance paid monthly based on actual flight training received. | | | |
| Farm cooperative: | | | | |
| Full time | 141 | 165 | 190 | 10 |
| ¾ time | 101 | 119 | 138 | 7 |
| ½ time | 67 | 79 | 92 | 4 |

[1] See paragraph (b) of this section.

[2] Established charge means the established charge before addition of interest or the actual cost to the veteran, whichever is lesser.

(38 U.S.C. 1677, 1682, 1683; Public Law 91-219, 84 Stat. 76)

* * * * *

(c) *Active duty.* The monthly rate for an individual who is pursuing a program of education while on active duty may not exceed the monthly rate of the cost of the course as specified in paragraph (b) of this section. For the purpose of a course pursued under the provisions of § 21.4235(a)(1), "cost of the course" shall include the cost of books and supplies peculiar to the course which the institution requires similarly circumstanced nonveterans enrolled in the same or a similar course to have. Subject to these limitations, the rate will be:

| Measurement: | Rate |
|---|---|
| Full time | $175 |
| ¾ time | 128 |
| ½ time | 81 |
| Less than ½ but more than ¼ time | 81 |
| ¼ time or less | 41 |

(38 U.S.C. 1682; Public Law 91-219, 84 Stat. 76)

* * * * *

(h) *Payment.* Educational assistance allowance at the rates specified in paragraphs (b) and (c) of this section will be paid to or on behalf of the trainee enrolled in an institution operating on

a term, quarter, or semester basis in a lump sum for the entire quarter, semester, or term. These payments will be made during the month immediately following the month in which certification is received from the educational institution that the veteran has enrolled in and is pursuing a program at the institution.

14. In § 21.4137, paragraphs (a), (b), and (d) are amended to read as follows:

**§ 21.4137 Rates; educational assistance allowance; 38 U.S.C. chapter 35.**

(a) *Rates.* Effective February 1, 1970, educational assistance allowance is payable at the following monthly rates except as provided in paragraphs (b) and (d) of this section.

Type of courses:

| | Monthly rate |
|---|---|
| Institutional: | |
| Full time | $175 |
| ¾ time | 128 |
| ½ time | 81 |
| Less than ½, but more than ¼ time | 81 |
| ¼ time or less | 41 |
| Cooperative (full time only) | 141 |

(38 U.S.C. 1732)

(b) *Less than half time.* The monthly rate for an individual who is pursuing an institutional course on less than one-half time basis may not exceed the monthly rate of the cost of the course, computed on the total cost for tuition and fees which the school requires similarly circumstanced individuals enrolled in the same course to pay. "Cost of the course" does not include the cost of books or supplies which the student is required to purchase at his own expense. (38 U.S.C. 1732(a)(2))

* * * * *

(d) *Payments in Philippine pesos.* Educational assistance allowance will be payable at a rate in Philippine pesos equivalent to $0.50 for each dollar authorized in those instances in which:

(1) Entitlement is based on the service of a veteran in the Philippine Commonwealth Army, or as a Philippine Scout as defined in § 3.8 (b), (c), or (d) of this chapter; or

(2) The program of education is pursued at an institution located in the Republic of the Philippines.

15. Section 21.4138 is revised and a cross reference is added to read as follows:

**§ 21.4138 Certifications.**

Educational assistance allowance will be paid to or on behalf of a veteran or eligible person under chapter 34 or 35 on the basis of a certification as required in §§ 21.4203, 21.4204, and 21.4205 concerning enrollment in or the pursuit of a course during the reporting period.

(a) *Chapter 34; courses not leading to a standard college degree.* (1) Where a course is pursued in an institution operating on a term, quarter, or semester basis on a less than half-time basis or while on active duty, a certification by the institution that the eligible individual has enrolled in and is pursuing a program of education will be sufficient for release of a lump-sum payment to or on behalf of the individual computed for the entire quarter, semester, or term.

(2) Where a course is pursued by an eligible veteran not on active duty and on a half time or greater basis, a certification by the institution that the veteran has enrolled will be sufficient to release payment of educational assistance allowance representing the initial payment of an enrollment period, not to exceed one full month. Subsequent payments will be made only after the Veterans Administration has received a report from the veteran and the school which shows that the veteran has been pursuing his course.

(b) *Chapter 35; courses not leading to a standard college degree.* The educational assistance allowance will be paid only after the Veterans Administration has received a report from the eligible person and the school which shows that the eligible person has been pursuing his course. (See §§ 21.4203, 21.4204, and 21.4205 on certifications of enrollment, periodic certifications and absences.)

CROSS REFERENCE: *Payments.* See § 21.4136 (h).

16. In § 21.4150, paragraph (e) is added to read as follows:

**§ 21.4150 Designation.**

* * * * *

(e) The Administrator shall act as State approving agency for programs of apprenticeship, the standards for which have been approved by the Secretary of Labor pursuant to section 50a of title 29, United States Code as a national apprenticeship program for operation in more than one State and the training establishment is a carrier directly engaged in interstate commerce which provides such training in more than one State. (38 U.S.C. 1772(c))

17. In § 21.4200, paragraphs (a) and (b)(1) are amended to read as follows:

**§ 21.4200 Definitions.**

(a) *School, educational institution, institution.* (1) For chapter 34 these terms mean any public or private elementary school, secondary school, vocational school, correspondence school, business school, junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution, or other institution furnishing education for adults. It also includes training establishments as defined in paragraph (c) of this section. (38 U.S.C. 1652)

(2) For chapter 35 these terms mean any public or private secondary school, vocational school, business school, junior college, teachers' college, college, normal school, professional school, university or scientific or technical institution or any other institution if it furnishes education at the secondary school level or above. They include institutions which provide specialized vocational courses for the mentally or physically handicapped generally recognized as on the secondary school level or above. (38 U.S.C. 1701 (a)(6))

(b) *Divisions of the school year.* (1) "Ordinary school year" is generally a period of two semesters or three quarters which is not less than 30 nor more than 39 weeks in total length, but the ordinary school year may include a summer session where such session is designated as a third semester or fourth quarter and the intervals between all semesters or all quarters are approximately the same.

* * * * *

18. In § 21.4203, paragraphs (b)(1), (c), (d), and (f)(1) are amended to read as follows:

**§ 21.4203 Reports by schools; requirements.**

* * * * *

(b) *Entrance or reentrance.* * * *

(1) Schools organized on a term, quarter or semester basis may generally report enrollment for the term, quarter, or semester, or for the ordinary school year. Certifications for the ordinary school year may include a summer session where such session is designated as a third semester or fourth quarter and the intervals between quarters or semesters are about the same length as during the regular school year. Enrollment certifications for the ordinary school year are encouraged, except where the student is a veteran pursuing a program on a less than half-time basis or is a serviceman. For these students a separate enrollment certification will be required for each term, quarter, or semester.

* * * * *

(c) *Course changes.* Any changes in the number of credit hours or the clock hours of attendance or instruction or any other modification in the course as certified at enrollment must be reported promptly to the Veterans Administration. In institutions of higher learning this reporting requirement will be satisfied if the official date of the change of status is reported in accordance with the practices of the institution.

(d) *Interruptions and terminations.* When a veteran or eligible person interrupts or terminates his training for whatever reason, including unsatisfactory conduct or progress, this fact must be reported promptly to the Veterans Administration.

(1) Where the school is required to submit monthly certifications, the information required by this paragraph and paragraph (c) of this section should be included in the endorsement to the veteran's or eligible person's certification.

(2) In other cases the school will initiate the certification. Information regarding any changes or an interruption or termination of training must be reported during or immediately after the end of the month in which the event occurred. In institutions of higher learning this reporting requirement will be satisfied if the official date of change of status or interruption or termination is reported in accordance with the practices of the institution.

* * * * *

(f) *Monthly certification*—(1) *Courses not leading to a standard college*

*degree.* A certification must be submitted monthly, except for those courses pursued by servicemen while on active duty or on less than one-half time basis, and except as provided in paragraphs (e) and (g) of this section, for each veteran and eligible person enrolled in a course which does not lead to a standard college degree (see § 21.4204). The report will consist of a certification containing the information required for release of payment, signed by the veteran or eligible person and the school on or after the final date of the reporting period. The date on which each person signed must be clearly shown. The only exception to the requirement of two signatures is a certification of interruption of training when the veteran or eligible person is not available for signature.

* * * * *

19. In § 21.4204, paragraphs (a) and (c)(1) are amended to read as follows:

**§ 21.4204 Periodic certifications.**

* * * * *

(a) *Reports by schools, veterans and eligible persons.* A veteran or eligible person enrolled in a course which leads to a standard college degree, excepting those on active duty and veterans pursuing the course on a less than half-time basis, must submit a report as required by the Veterans Administration, certifying as to continued enrollment in and pursuit of his course for the entire enrollment period. The report shall be completed and signed by the veteran or eligible person, except that in the case of a veteran or eligible person who completed, interrupted or terminated his course, any communication from an authorized official of the school notifying the Veterans Administration of the veteran's or eligible person's completion of course as scheduled or earlier termination date, will be accepted to release and terminate payments accordingly. Reports by other veterans and eligible persons will be submitted in accordance with § 21.4203 (e), (f), or (g).

* * * * *

(c) *Term, quarter, or semester.* For a course which does not lead to a standard college degree, if a school organized on a term, quarter, or semester basis has reported enrollment:

(1) For the ordinary school year, the periodic certification will show the intervals between terms, quarters, or semesters as absences.

* * * * *

20. In § 21.4230, the introductory portion preceding paragraph (a) and paragraph (c) are amended to read as follows:

**§ 21.4230 Requirements.**

A program of education will consist of a combination of subjects or unit courses pursued at a school which is generally acceptable to meet requirements for a predetermined educational, professional or vocational objective. Under chapter 34 it may also consist of such subjects or courses which are generally acceptable to meet requirements for more than one such objective if all the objectives pursued are generally recognized as being related to a single career field. (38 U.S.C. 1670, 1691(a); Public Law 91-219, 84 Stat. 76)

* * * * *

(c) *Selection; chapter 34.* A program of education under chapter 34 selected by an eligible veteran will be approved if it meets the requirements of paragraph (a) or (b) of this section and the veteran is not already qualified for the objective for which the program of education is offered. A course or courses at the secondary school level for persons who have previously received a secondary school diploma or an equivalency certificate and deficiency courses needed or required to qualify for an educational or training program may be authorized under the provisions of § 21.4235.

* * * * *

21. Section 21.4235 is revised to read as follows:

**§ 21.4235 Predischarge Education Program (PREP) and Special Assistance for Educationally Disadvantaged Veterans; chapter 34.**

(a) *Enrollment.* Enrollment of a veteran may be approved in any elementary, secondary, preparatory, refresher, remedial, deficiency, or special educational assistance course not otherwise prohibited, regardless of his previous educational experience:

(1) While he is on active duty and meets the eligibility requirements of § 21.1040(e)(3), if such course or courses (but not including correspondence courses) are required to receive a secondary school diploma, of if such course or courses are required for or preparatory to the pursuit of an appropriate course or training program in an approved educational institution or training establishment; or

(2) After discharge or release from active duty without receipt therein of a secondary school diploma or equivalency certificate, if such course or courses (but not enrollment in adult evening secondary school courses in excess of half-time) are required to receive a secondary school diploma; or

(3) After discharge or release from active duty, if such course or courses (but not enrollment in adult evening secondary school courses in excess of half-time) are necessary to the pursuit of a program of education for which he would be eligible but for that lack.

(b) *Measurement.* Courses will be measured as provided in §21.4270 et seq.

(c) *Educational assistance allowance.* Educational assistance allowance will be at the monthly rates specified in § 21.4136.

(d) *Entitlement charge.* No charge will be made against the period of the veteran's entitlement because of enrollment in courses under the provisions of this section. (38 U.S.C. 1690, 1691, 1693, 1695, 1696; Public Law 91-219, 84 Stat. 76)

(e) *Certifications.* Certifications to course requirements under paragraph (a) (1), (2), and (3) of this section are to be made by the educational institution administering the course, or to which the student has made application for admission.

22. Section 21.4236 is added to read as follows:

**§ 21.4236 Special supplemental assistance (tutorial); chapter 34.**

(a) *Enrollment.* A veteran pursuing a postsecondary educational program on a half-time or more basis at an educational institution who has a marked deficiency in a subject which is indispensable to the satisfactory pursuit of an approved program of education may receive special supplemental monetary assistance to provide tutorial services.

(b) *Certification.* Approval will be granted upon certification by the educational institution:

(1) That individualized tutorial assistance is essential to correct a marked deficiency in a specified subject or subjects required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of an approved program of education;

(2) That the tutor selected is qualified; and

(3) That the charges for such assistance do not exceed the customary charges for such tutorial assistance. Approval will not be given unless it is established that the assistance to be furnished is on an individualized basis.

(c) *Educational assistance allowance.* In addition to payment of educational assistance allowance at the monthly rates specified in § 21.4136 the cost of such tutorial assistance in an amount not to exceed $50 per month will be authorized.

(d) *Entitlement charge.* No charge will be made against the period of the veteran's entitlement as computed under § 21.1041. Special supplemental assistance provided under this section will not be authorized for a period or periods exceeding a total of 9 months. A payment of special supplemental assistance in any amount for a calendar month or for a fraction of a calendar month constitutes the use of a month of entitlement to special supplemental assistance. (38 U.S.C. 1690, 1692, 1693; Public Law 91-219, 84 Stat. 76)

23. In § 21.4250(c), subparagraph (6) is added to read as follows:

**§ 21.4250 Approval of courses.**

* * * * *

(c) *Veterans Administration approval.* * * *

(6) Any program of apprenticeship the standards for which have been approved by the Secretary of Labor pursuant to section 50a of title 29, United States Code as a national apprenticeship program for operation in more than one State and for which the training establishment is a carrier directly engaged in interstate commerce and providing training in more than one State. (38 U.S.C. 1772(c); Public Law 91-219, 84 Stat. 76)

24. Immediately following § 21.4250, a cross reference is added to read as follows:

CROSS REFERENCE: *State approving agencies.* See § 21.4150(e).

25. In § 21.4252, paragraphs (a) and (b)(2) are amended and paragraph (h) is added so that the amended and added material reads as follows:

**§ 21.4252 Courses precluded.**

(a) *Bartending and personality development.* Enrollment will not be approved in any bartending or personality development course.

(b) *Avocational and recreational.* Enrollment will not be approved in any course which is avocational or recreational in character. The courses identified in subparagraphs (1), (2), and (3) of this paragraph are presumed to be avocational or recreational in character and require justification for their pursuit.

* * * * *

(2) Any music course, instrumental or vocal, public speaking course, or course in dancing, sports or athletics, such as horseback riding, swimming, fishing, skiing, golf, baseball, tennis, bowling, sports officiating, or other sport or athletic courses, except courses of applied music, physical education, or public speaking which are offered by institutions of higher learning for credit as an integral part of a program leading to an educational objective, or

* * * * *

(h) *Sales and sales management courses; chapters 34 and 35.* Enrollment in such courses which do not provide specialized training within a specific vocational field will not be approved unless the veteran or eligible person, or the institution offering such course, establishes that at least one-half of the persons completing such course over the preceding 2-year period have been employed in the sales or sales management field. (38 U.S.C. 1673(a), 1723(a); Public Law 91-219, 84 Stat. 76)

26. In § 21.4262(c), subparagraph (1) is amended to read as follows:

**§ 21.4262 Other training on-the-job courses; 38 U.S.C. chapter 34.**

* * * * *

(c) *Approval criteria.* * * *

(1) The job which is the objective of the training is one in which progression and appointment to the next higher classification are based upon skills learned through organized and supervised training on-the-job and not on such factors as length of service and normal turnover;

* * * * *

27. In § 21.4263, paragraph (a) is amended to read as follows:

**§ 21.4263 Flight training; 38 U.S.C. chapter 34.**

(a) *General.* Flight training courses are courses generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation or as ancillary to the pursuit of a vocational objective other than aviation. Enrollment under this section in a program which does not lead to a standard college degree will be approved only if the veteran holds a private pilot's license or higher rating and meets the medical requirements necessary for a commercial pilot's license (38 U.S.C. 1677(a); Public Law 91-219, 84 Stat. 75).

28. Section 21.4270 is revised to read as follows:

**§ 21.4270 Measurement of courses.**

Clock hours and class sessions mentioned in this table mean clock hours and class sessions per week.

| Courses | | Full time | ¾ time | ½ time | Less than ½, more than ¼ time | ¼ time or less |
|---|---|---|---|---|---|---|
| Kind of school | Kind of course | | | | | |
| (a) Trade or technical (Includes college courses not leading to a standard degree). | Shop practice an integral part of course. | 30 clock hours attendance with not more than 2½ hours rest period allowance. | 22 to 30 clock hours attendance with not more than 2 hours rest period allowance. | 15 to 22 clock hours attendance with not more than 1¼ hours rest period allowance. | 8 to 15 clock hours attendance with not more than ¾ hour period allowance. | Less than 8 clock hours attendance. |
| | Theory and class instruction predominates.[1] | 25 clock hours net instruction. | 18 to 25 clock hours net instruction. | 12 to 18 clock hours net instruction. | 7 to 12 clock hours net instruction. | Less than 7 clock hours net instruction. |
| (b) High school. | High school diploma or equivalent. | 25 clock hours net of instructions or 4 units per year or equivalent.[2] | 18 to 25 clock hours net of instruction or 3 units per year or equivalent. | 12 to 18 clock hours net of instruction or 2 units per year or equivalent. | 7 to 12 clock hours net of instruction or 1 unit per year or equivalent. | Do. |
| (c) Collegiate undergraduate. | Standard collegiate courses including cooperative. | 14 semester hours or equivalent.[3] | 10 to 14 semester hours or equvalent. | 7 to 10 semester hours or equivalent. | 4 to 7 semester hours or equivalent. | Less than 4 semester hours or equivalent. |
| (d) Collegiate graduate. | Standard collegiate graduate courses including law. | As in paragraph (c) of this section or as certified by responsible official of school. | As in paragraph (c) of this section or as certified by responsible official of school. | As in paragraph (c) of this section or as certified by responsible official of school. | As in paragraph (c) of this section or as certified by responsible official of school. | As in paragraph (c) of this section or as certified by responsible official of school. |
| (e) Professional (nonaccredited). | Law only.[4] | 12 class sessions per week. | 9 to 12 class sessions per week. | 6 to 9 class sessions per week. | 4 to 6 class sessions per week. | Less than 4 class sessions per week. |
| (f) Professional (accredited and equivalent). | Internships and residencies: Medical, dental, osteopathic. | As established by accrediting association. | Full time only. | Full time only. | Full time only. | Full time only. |
| | Nursing, X-ray medical technology, medical records librarian, physical therapy. | 25 clock hours or 14 semester hours, as appropriate. | 18 to 25 clock hours or 10 to 14 semester hours, as appropriate. | 12 to 18 clock hours or 7 to 10 semester hours, as appropriate. | 7 to 12 clock hours or 4 to 7 semester hours, as appropriate. | Less than 7 clock hours or less than 4 semester hours, as appropriate. |
| (g) Training establishment. | Apprentice or other on-the-job.[5] | Standard workweek. | Full time only. | Full time only. | Full time only. | Full time only. |
| (h) Agricultural. | Farm cooperative.[3] | 12 clock hours net instruction in institutional training scheduled within 44 weeks of the year plus agricultural employment. | 9 clock hours net instruction in institutional training scheduled within 44 weeks of the year plus agricultural employment. | 6 clock hours net instruction in institutional training scheduled within 44 weeks of the year plus agricultural employment. | No provision. | No provision. |
| (i) Elementary school. | High school preparatory. | 25 clock hours net instruction. | 18 to 25 clock hours net instruction. | 12 to 18 clock hours net instruction. | 7 to 12 clock hours net instruction. | Less than 7 clock hours net instruction. |

[1] In measuring net instruction there will be included customary intervals not to exceed 10 minutes between classes. Shop practice, except for supervised instruction periods in school's shop in farm cooperative programs, and rest periods are excluded.

[2] Diploma course or equivalent based on completion of 16 instruction units. High school diploma courses or equivalent available only under chapter 34.

[3] Cooperative courses may be pursued on full-time basis only. Where the institution certifies that all undergraduate students enrolled for a minimum of 12 or 13 semester hours or the equivalent are (1) charged full-time tuition, or (2) considered full-time for other administrative purposes, such minimum hours will establish the criteria for full-time measurement. The minimum for full-time in either instance is 12 such hours. Such criteria is for full-time only and does not affect the measurement of less than full-time under § 21.4270(c).

Upon request of a beneficiary, an increase in rates warranted under this criteria may be authorized to him effective March 26, 1970, if he was enrolled prior to that date and effective the date of enrollment if he was enrolled on or after March 26, 1970. The request of the beneficiary will not be required for other payments under this criteria.

To meet criteria for full-time measurement under 38 U.S.C. ch. 34 in standard collegiate courses which included required noncredit deficiency courses, the credit hour equivalent of such noncredit courses may not exceed one-half the number of required hours. In the absence of a certification under § 21.4272(f) noncredit deficiency courses may be converted to credit hour equivalent on the basis of the applicable measurement criteria, that is, 25 or 30 clock hours, 4 "Carnegie Units", or 14 semester hours equals full-time.

[4] Class sessions measured on basis of not less than 50 minutes of classroom instruction. Supervised study periods, class breaks and rest periods are excluded.

[5] Full-time training will consist of the number of hours which constitute the standard workweek of the training establishment, but not less than 35 hours, unless a lesser number of hours is established as the standard workweek for the particular establishment through bona fide collective bargaining between employers and employees.

29. In § 21.4271, paragraph (c) is amended to read as follows:

§ 21.4271 Trade or technical; high schools.

* * * * *

(c) *High schools; chapter 34.* Courses offered at the secondary school level which lead to a high school diploma or the equivalent will be measured on the basis of clock hours of instruction per week, or on the number of units required per year. Enrollment in adult evening secondary school courses will be measured as not more than half-time. Enrollment in courses at a secondary school level leading to a high school diploma will not be approved for eligible persons under chapter 35.

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

These VA regulations are effective March 26, 1970, except §§ 21.133, 21.1041 (d)(2), 21.1045 (a)(2) and (b)(2), 21.3333 (a) and (b), 21.4136 (a) and (c), and 21.4137 (a) and (b) which are effective February 1, 1970.

Approved: June 2, 1970.

By direction of the Administrator.

[SEAL] RUFUS H. WILSON,
*Associate Deputy Administrator.*

[F.R. Doc. 70-7344; Filed, June 15, 1970; 8:45 a.m.]

# Title 5—ADMINISTRATIVE PERSONNEL

## Chapter I—Civil Service Commission

## PART 213—EXCEPTED SERVICE

### Department of Health, Education, and Welfare

Section 213.3316 is amended to show that the position of Assistant to the Commissioner (Public Affairs) excepted under Schedule C has been abolished. Effective on publication in the FEDERAL REGISTER, paragraph (c)(2) is revoked.

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954-58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[F.R. Doc. 70-7459; Filed, June 15, 1970; 8:47 a.m.]

## PART 213—EXCEPTED SERVICE

### Office of Economic Opportunity

Section 213.3373 is amended to show that one position of Deputy Assistant Director for Special Programs and Special Assistant to the Director is excepted under Schedule C; the Schedule C position of Executive Adviser (Programs) has been retitled Special Assistant to the Director; and the title of the Executive Adviser's Confidential Assistant has been changed to correspond. Effective on publication in the FEDERAL REGISTER, subparagraph (3) is amended, subparagraph (9) is revoked under paragraph (a) and subparagraph (6) is added to paragraph (d) of § 213.3373 as set out below.

§ 213.3373 Office of Economic Opportunity.

(a) *Office of the Director.* * * *

(3) One Special Assistant to the Director and one Confidential Assistant to this Special Assistant.

* * * * *

(9) [Revoked]

* * * * *

(d) *Office of the Assistant Director for Special Programs.* * * *

(6) Deputy Assistant Director for Special Programs and Special Assistant to the Director.

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954-58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[F.R. Doc. 70-7460; Filed, June 15, 1970; 8:47 a.m.]

# Title 7—AGRICULTURE

## Chapter I—Consumer and Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

## PART 51—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS (INSPECTION, CERTIFICATION AND STANDARDS)

### Subpart—U.S. Standards for Grades of Lettuce [1]

On April 3, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 5552) regarding the revision of United States Standards for Grades of Lettuce (7 CFR 51.2510-51.2531). These grade standards are issued under authority of the Agricultural Marketing Act of 1946 (60 Stat. 1087, as amended; 7 U.S.C. 1621-1627), which provides for the issuance of official U.S. grades to designate different levels of quality for the voluntary use of producers, buyers and consumers. Official grading services are also provided under this act upon request of any financially interested party and upon payment of a fee to cover the cost of such services.

*Statement of considerations leading to the revision of the grade standards.* Following publication of the proposal in the FEDERAL REGISTER copies were distributed to industry organizations and individuals for comment.

The few letters of comment received in response to the proposal were about equally divided. Western lettuce growers and shippers supported the proposal. Receivers and receiver organizations opposed it. The principal argument advanced by the latter was that addition of the U.S. Commercial grade would confuse rather than clarify the purchasing of lettuce.

Further study of the proposal shows that the U.S. Commercial grade could permit a total of 20 percent condition defects en route or at destination. The PACA Good Delivery Standards would permit an additional 3 percent condition defects or a total of 23 percent when purchased on the basis of U.S. Commercial, if no permanent defects were present. If the lettuce was purchased with no grade specified the PACA Good Delivery Standards would permit only 15 percent condition defects at destination.

In order to correct this inequity the U.S. Commercial grade is changed to restrict the percentage of condition defects en route or at destination to 12 percent. The tolerance for serious damage is increased to 6 percent at shipping point with corresponding increases en route or at destination.

After consideration of all relevant matters presented by interested persons, the revision as so proposed is hereby adopted, subject to changes in § 51.2512.

It is hereby found that good cause exists for not postponing the effective date of this revision beyond the date of publication hereof in the FEDERAL REGISTER, in that: (1) The 1970 shipping season for lettuce is well underway and it is in the interest of the public and the industry that this revision be placed in effect at the earliest possible date; and (2) no special preparation is required for compliance with this revision on the part of members of the lettuce industry or of others.

Accordingly, this revision shall become effective upon publication in the FEDERAL REGISTER.

Dated: June 11, 1970.

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

GRADES

Sec.
51.2510 U.S. Fancy.
51.2511 U.S. No. 1.
51.2512 U.S. Commercial.
51.2513 U.S. No. 2.

APPLICATION OF TOLERANCES

51.2514 Application of tolerances.

TEMPERATURE

51.2515 Temperature.

STANDARD PACK

51.2516 Standard pack.

SOLIDITY CLASSIFICATION

51.2517 Solidity classification.

DEFINITIONS

51.2518 Similar varietal characteristics.
51.2519 Fresh.
51.2520 Green.
51.2521 Overgrown.
51.2522 Burst.
51.2523 Ribby.
51.2524 Doubles.
51.2525 Injury.
51.2526 Damage.
51.2527 Fairly well trimmed.
51.2528 Closely trimmed.
51.2529 Permanent defects.
51.2530 Condition defects.
51.2531 Serious damage.

See footnotes at end of document.

AUTHORITY: The provisions of this subpart issued under secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624.

GRADES

§ 51.2510 U.S. Fancy.

"U.S. Fancy" consists of heads of lettuce of similar varietal characteristics which are fresh and green, which are not soft, overgrown, burst or ribby, which are free from decay, russet spotting and doubles, and free from injury caused by tipburn, downy mildew, freezing, and discoloration, and from damage caused by opening, seedstems, broken midribs, dirt, disease, insects, or mechanical or other means. Each head shall be fairly well trimmed unless specified as closely trimmed. In any lot of Iceberg type lettuce the percentages of hard and firm heads or the combined percentage of hard and firm heads shall be specified in connection with the grade.

(a) When lettuce is specified as U.S. Fancy in the producing area the following information shall be reported as evidence that the lettuce had a core temperature of 35° F. or less when loaded into a refrigerated conveyance or storage and was so loaded within 6 hours from the time cutting was started:

(1) Time cutting was started;

(2) If precooled, time cooling was completed;

(3) Time loading was completed; and,

(4) Core temperature at time of loading.

(b) Tolerances: In order to allow for variations incident to proper grading and handling the following tolerances, by count, shall be permitted in any lot:

(1) *At shipping point.*[2] 8 percent for heads of lettuce which fail to meet the requirements of this grade: *Provided*, That included in this amount not more than 4 percent shall be allowed for defects causing serious damage, including in this latter amount not more than 1 percent for heads which are affected by decay on any portion of the head exclusive of the wrapper leaves.

(2) *En route or at destination.* 12 percent for heads of lettuce which fail to meet the requirements of this grade: *Provided*, That included in this amount not more than the following percentages shall be allowed for defects listed:

(i) 8 percent for heads having permanent defects; or,

(ii) 6 percent for heads which are seriously damaged, including therein not more than 4 percent for heads which are seriously damaged by permanent defects and not more than 3 percent for heads which are affected by decay on any portion of the head exclusive of the wrapper leaves. (See § 51.2514.)

§ 51.2511 U.S. No. 1.

"U.S. No. 1" consists of heads of lettuce of similar varietal characteristics which are fresh and green, which are not soft or burst, and which are free from decay and doubles and from damage caused by tipburn, downy mildew, opening, seedstems, broken midribs, freezing, discoloration, dirt, disease, insects, or mechanical or other means. Each head shall be fairly well trimmed unless specified as closely trimmed. In any lot of Iceberg type lettuce the percentages of hard and firm heads or the combined percentage of hard and firm heads shall be specified in connection with the grade.

(a) *Tolerances.* In order to allow for variations incident to proper grading and handling the following tolerances, by count, shall be permitted in any lot:

(1) *At shipping point.*[2] 8 percent for heads of lettuce which fail to meet the requirements of this grade: *Provided*, That included in this amount not more than 4 percent shall be allowed for defects causing serious damage, including in this latter amount not more than 1 percent for heads which are affected by decay on any portion of the head exclusive of the wrapper leaves.

(2) *En route or at destination.* 12 percent for heads of lettuce which fail to meet the requirements of this grade: *Provided*, That included in this amount not more than the following percentages shall be allowed for defects listed:

(i) 8 percent for heads having permanent defects; or,

(ii) 6 percent for heads which are seriously damaged, including therein not more than 4 percent for heads which are seriously damaged by permanent defects and not more than 3 percent for heads which are affected by decay on any portion of the head exclusive of the wrapper leaves. (See § 51.2514.)

§ 51.2512 U.S. Commercial.

"U.S. Commercial" consists of heads of lettuce which meet the requirements of U.S. No. 1 grade except for the increased tolerances for defects specified in paragraph (a) of this section.

(a) *Tolerances.* In order to allow for variations incident to proper grading and handling for the following tolerances, by count, shall be permitted in any lot:

(1) *At shipping point.*[2] 16 percent for heads of lettuce which fail to meet the requirements of this grade: *Provided*, That included in this amount not more than 6 percent shall be allowed for defects causing serious damage, including in this latter amount not more than 1 percent for heads which are affected by decay on any portion of the head exclusive of the wrapper leaves.

(2) *En route or at destination.* 20 percent for heads of lettuce which fail to meet the requirements of this grade: *Provided*, That included in this amount not more than the following percentages shall be allowed for defects listed:

(i) 16 percent for heads having permanent defects;

(ii) 12 percent for heads having condition defects; or

(iii) 8 percent for heads which are seriously damaged, including therein not more than 6 percent for heads which are seriously damaged by permanent defects and not more than 3 percent for heads which are affected by decay on any portion of the head exclusive of the wrapper leaves. (See § 51.2514).

§ 51.2513 U.S. No. 2.

"U.S. No. 2" consists of heads of lettuce of similar varietal characteristics which are not burst and which are free from decay, and from serious damage caused by wilting, tipburn, downy mildew, seedstems, freezing, discoloration, disease, insects, or mechanical or other means. There are no solidity requirements in this grade but heads of Iceberg type lettuce which are distinctly open and leafy with practically no head formation shall not be permitted.

(a) *Tolerances.* In order to allow for variations incident to proper grading and handling the following tolerances, by count, shall be permitted in any lot:

(1) *At shipping point.*[2] 8 percent for heads of lettuce which fail to meet the requirements of this grade: *Provided*, That included in this amount not more than 3 percent shall be allowed for heads which are affected by decay on any portion of the head exclusive of the wrapper leaves.

(2) *En route or at destination.* 12 percent for heads of lettuce which fail to meet the requirements of this grade: *Provided*, That included in this amount not more than the following percentages shall be allowed for defects listed:

(i) 8 percent for heads having permanent defects; or,

(ii) 5 percent for heads which are affected by decay on any portion of the head exclusive of the wrapper leaves. (See § 51.2514.)

APPLICATION OF TOLERANCES

§ 51.2514 Application of tolerances.

(a) In order to meet the requirements of a specified grade the average percentage of defective specimens in the lot, based on sample inspection, shall be within the tolerance specified, and the number of defective specimens in individual packages in the lot shall be within the limitations set forth in the following table:

TABLE I

| Lot tolerance, percent | Maximum number of defective heads permitted in any package | | | |
|---|---|---|---|---|
| | Total number of heads in package | | | |
| | 24 | 18 or 20 | 30 | Over 30 |
| 1 | 1 | 1 | 2 | 2 |
| 3 | 3 | 2 | 3 | 4 |
| 4 | 3 | 3 | 4 | 4 |
| 5 | 3 | 3 | 4 | 5 |
| 6 | 4 | 3 | 5 | 6 |
| 8 | 5 | 4 | 6 | 7 |
| 12 | 6 | 5 | 7 | 9 |
| 16 | 8 | 7 | 9 | 11 |
| 20 | 9 | 8 | 11 | 13 |

TEMPERATURE

§ 51.2515 Temperature.

Temperature of head lettuce reported shall be the temperature taken near the center of the head with a thermometer which has previously been cooled to the approximate temperature of the lettuce.

STANDARD PACK

§ 51.2516 Standard pack.

(a) Heads of lettuce shall be fairly uniform in size and tightly but not excessively tightly packed in uniform

See footnotes at end of document.

layers in the containers according to the approved and recognized methods, except that in standard fiberboard containers a "bridge" of six heads may be used in a 2½-dozen pack; and in standard wooden crates a "bridge" may be used with sizes smaller than 5-dozen count.

(1) Fairly uniform in size means that not more than 10 percent, by count, of the heads in any container may vary appreciably in size from the standard size head for the count pack.

(i) The standard size head for a 2-dozen pack is that size head, having four wrapper leaves, which will pack tightly but not excessively tightly three rows with four heads of uniform size in each row in a layer in a standard fiberboard container. Heads having lesser or greater numbers of wrapper leaves which can be packed as specified herein are considered equivalent in size to a standard size head with four wrapper leaves.

(2) Excessively tightly packed means that heads are packed so tightly as to cause distortion or crushing of the heads or breaking of the midribs. The packing of 24 heads of 18 size in a standard fiberboard lettuce container would result in an excessively tight pack.

(3) Lettuce packed in standard fiberboard lettuce containers shall have a net weight of not less than 40 pounds and not more than 48 pounds.

(b) In order to allow for variations incident to proper packing, not more than a total of 10 percent of the containers in any lot may fail to meet the requirements for standard pack.

SOLIDITY CLASSIFICATION

§ 51.2517 Solidity classification.

(a) The following terms shall be used in describing the solidity of lettuce:

(1) *Hard.* "Hard" means that the head is compact and solid. This term represents the highest degree of solidity.

(2) *Firm.* "Firm" means that the head is compact, but may yield slightly to moderate pressure.

(3) *Fairly firm.* "Fairly firm" means that although the head is not firm, it is not soft and spongy, and has good head formation and edible content.

(4) *Soft.* "Soft" means that the head is easily compressed or spongy.

DEFINITIONS

§ 51.2518 Similar varietal characteristics.

"Similar varietal characteristics" means that the heads in any container have the same characteristic leaf growth. For example, lettuce of the Iceberg and Big Boston types shall not be mixed.

§ 51.2519 Fresh.

"Fresh" means that the head as a whole has normal succulence and the wrapper leaves and the outermost head leaves are not more than slightly wilted.

§ 51.2520 Green.

"Green" means that one-half or more of the exterior surface of the head, exclusive of the wrapper leaves, has at least a light green color.[3]

§ 51.2521 Overgrown.

"Overgrown" means that heads of lettuce are no longer young and succulent, are excessively hard, past the most desirable edible stage, and are readily subject to, but not necessarily affected by russet spotting, pink rib and other discoloration associated with aging.

§ 51.2522 Burst.

"Burst" means that the head is split or broken open.

§ 51.2523 Ribby.

"Ribby" means that the midribs of the head leaves are so prominent that they materially detract from the appearance of the head.

§ 51.2524 Doubles.

"Doubles" means two heads on the same stem.

§ 51.2525 Injury.

"Injury" means any specific defect described in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which noticeably detracts from the appearance, or the edible or shipping quality of the lettuce. The following specific defects shall be considered as injury:

(a) Tipburn when more than two spots of tipburn occur anywhere in the compact portion of the head, or:

(1) At shipping point when the aggregate area of discernible tipburn regardless of color exceeds that of a rectangle 1 inch in length and one-fourth inch in width; and,

(2) En route or at destination when the aggregate area of tipburn of a light buff[4] or darker color exceeds that of a rectangle 1 inch in length and one-fourth inch in width.

(b) Downy mildew:

(1) At shipping point[5] when apparent on any head leaf or wrapper leaf; and,

(2) En route or at destination when readily apparent on any head leaf or when discoloration associated with mildew is readily apparent on more than two wrapper leaves.

(c) Freezing when feathering, peeling, or other injury resulting from freezing, except discoloration, is readily apparent on any outer head leaf.

(d) Discoloration of any one of the following types or a combination of two or more types the seriousness of which exceeds the maximum allowed for any one type:

(1) Yellow or brown discoloration from any cause, affecting any portion of the leaf, when materially detracting from the appearance of the wrapper leaves;

(2) Yellow or brown discoloration from any cause when readily apparent on the compact portion of the head;

(3) Reddish discoloration following bruising when noticeably detracting from the appearance of more than two outer head leaves;

(4) Pink rib:

(i) At shipping point[5] when any pink rib is present on head leaves; and,

(ii) En route or at destination when the midribs of more than two head leaves show noticeable areas of pink color as viewed on the outer surface of the leaf, or when causing any head leaf to be excessively papery and tough.

(5) Rib discoloration:

(i) At shipping point[5] when any rib discoloration is present on head leaves; and,

(ii) En route or at destination when distinct brown or black spots of rib discoloration are present on the outer surface of any head leaf.

§ 51.2526 Damage.

"Damage" means any specific defect described in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or shipping quality of the lettuce. The following specific defects shall be considered as damage:

(a) Tipburn:

(1) At shipping point[5] when the aggregate area of discernible tipburn regardless of color occurring anywhere in the compact portion of the head exceeds that of a rectangle 1 inch in length and one-half inch in width; and,

(2) En route or at destination when the aggregate area of tipburn of a light buff[4] or darker color occurring anywhere in the compact portion of the head exceeds that of a rectangle 1 inch in length and one-half inch in width.

(b) Downy mildew:

(1) At shipping point[5] when readily apparent on any head leaf; when mildew not accompanied by discoloration is readily apparent on more than two wrapper leaves, or when discoloration associated with mildew is readily apparent on any wrapper leaf; and,

(2) En route or at destination when materially detracting from the appearance of any head leaf or when seriously detracting from the appearance of more than two wrapper leaves.

(c) Opening in a hard or firm head when one-fourth or more of the head is separated from the remainder, or any degree of opening in a fairly firm head;

(d) Seedstems when excessively long, excessively curved, tough or fibrous;

(e) Broken midribs when more than two head leaves have midribs broken in two due to abnormal growth;

(f) Freezing when feathering, peeling, or other injury resulting from freezing, except discoloration, materially detracts from the appearance or the edible quality of more than two outer head leaves;

(g) Discoloration of any one of the following types or a combination of two or more types the seriousness of which exceeds the maximum allowed for any one type;

(1) Yellow or brown discoloration from any cause, affecting any portion of the leaf, when seriously detracting from the appearance of the wrapper leaves;

(2) Yellow or brown discoloration from any cause when materially detracting from the appearance of the head exclusive of the wrapper leaves;

(3) Reddish discoloration following bruising when materially detracting from the appearance of more than two outer head leaves;

See footnotes at end of document.

(4) Russet spotting:

(i) At shipping point [2] when any russet spotting is present; and,

(ii) En route or at destination, when present in any degree on more than two outer head leaves, or when the number, size, and color of the spots materially detracts from the appearance of any head leaf;

(5) Pink rib when the midribs of more than two head leaves show areas of deep pink color more than 2 inches in length as viewed on the outer surface of the leaf, or when causing more than two head leaves to be excessively papery and tough; and,

(6) Rib discoloration when the aggregate length of brown or black spots of rib discoloration on the outer surface of any head leaf exceeds 1 inch;

(h) Dirt when the compact portion of the head is smeared with mud, when the wrapper leaves are badly smeared with mud, or when the basal portion of the head is caked with mud or dry dirt; and,

(i) Insects when the compact portion of the head is infested, or the wrapper leaves are badly infested with aphids or other insects, or when there is insect feeding injury on the compact portion of the head.

**§ 51.2527 Fairly well trimmed.**

"Fairly well trimmed" means that the butt is trimmed off closely below the point of attachment of the outer leaves, and that on a head of Iceberg type lettuce, wrapper leaves do not exceed six in number, not more than four of which may be excessively large and coarse.

(a) "Wrapper leaves" means all leaves which do not fairly closely enfold the compact portion of the head.

**§ 51.2528 Closely trimmed.**

"Closely trimmed" means that the butt is trimmed off closely below the point of attachment of the outer leaves and that, on a head of Iceberg type lettuce, wrapper leaves do not exceed three in number, none of which may be excessively large and coarse.

**§ 51.2529 Permanent defects.**

"Permanent defects" means defects which are not subject to change during shipment or storage, including but not limited to soft, burst, open or poorly trimmed heads, seedstems or dirt.

**§ 51.2530 Condition defects.**

"Condition defects" means defects which are subject to change during shipment or storage, including but not limited to decay, tipburn, russet spotting, pink rib, rib discoloration, and freezing injury.

**§ 51.2531 Serious damage.**

"Serious damage" means any specific defect described in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or shipping quality of the lettuce. The following specific defects shall be considered as serious damage:

(a) Tipburn:

(1) At shipping point [2] when the aggregate area of discernible tipburn regardless of color occurring anywhere in the compact portion of the head exceeds that of a rectangle 3 inches in length and 1 inch in width; and,

(2) En route or at destination when the aggregate area of tipburn of a light buff [4] or darker color occurring anywhere in the compact portion of the head exceeds that of a rectangle 3 inches in length and 1 inch in width.

(b) Downy mildew:

(1) At shipping point [2] when materially detracting from the appearance or shipping quality of any head leaf; when mildew not accompanied by discoloration is readily apparent on more than three wrapper leaves, or when discoloration associated with mildew is readily apparent on more than two wrapper leaves; and,

(2) En route or at destination when materially detracting from the appearance of more than two head leaves or when seriously detracting from the appearance of the wrapper leaves.

(c) Seedstems when causing the head to split or when protruding through the outer head leaves;

(d) Freezing when feathering, peeling, or other injury resulting from freezing, except discoloration," seriously detracts from the appearance or edible quality of more than two outer head leaves;

(e) Discoloration of any one of the following types, or a combination of two or more types the seriousness of which exceeds the maximum allowed for any type;

(1) Yellow or brown discoloration from any cause, affecting any portion of the leaf, when very seriously detracting from the appearance of the wrapper leaves;

(2) Yellow or brown discoloration from any cause when seriously detracting from the appearance of the head exclusive of the wrapper leaves;

(3) Reddish discoloration following bruising when seriously detracting from the appearance of more than two outer head leaves;

(4) Russet spotting:

(i) At shipping point [2] when any russet spotting is present; and,

(ii) En route or at destination when the number, size, and color of the spots seriously detracts from the appearance of two or more head leaves.

(5) Pink rib when areas of deep pink color, as viewed on the outer surface of the leaf, seriously detract from the appearance or the edible quality of more than two head leaves; and,

(6) Rib discoloration when seriously detracting from the appearance or the edible quality of more than two head leaves.

(f) Decay affecting any portion of the head including wrapper leaves.

[F.R. Doc. 70-7495; Filed, June 15, 1970; 8:50 a.m.]

[1] Packing of the product in conformity with the requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act or with applicable State laws and regulations.

[2] Shipping point, as used in these standards, means the point of origin of the shipment in the producing area or at port of loading for ship stores or overseas shipment, or, in the case of shipments from outside the continental United States, the port of entry into the United States.

[3] The color referred to is illustrated by plate 5 GY 8/6 in the Munsell Book of Color. Individual plates of the above color may be purchased from the Munsell Color Co., 2441 North Calvert Street, Baltimore, Md. 21218.

[4] The color referred to is illustrated by plate 10 YR 8/4 in the Munsell Book of Color. Individual plates of the above color may be purchased from the Munsell Color Co., 2441 North Calvert Street, Baltimore, Md. 21218.

See footnotes at end of document.

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

[Valencia Orange Reg. 316, Amdt. 1]

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

### Limitation of Handling

*Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), 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 recommendation 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 amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Valencia oranges grown in Arizona and designated part of California.

*Order, as amended.* The provisions in paragraph (b)(1) (i), (ii), and (iii) of § 908.616 (Valencia Orange Reg. 316, 35 F.R. 8652) are hereby amended to read as follows:

**§ 908.616 Valencia Orange Regulation 316.**

* * * * *

(b) *Order.* (1) * * *

(i) District 1: 280,000 cartons;

(ii) District 2: 336,000 cartons;
(iii) District 3: 184,000 cartons;

* * * * *

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

Dated: June 11, 1970.

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

[F.R. Doc. 70-7449; Filed, June 15, 1970; 8:47 a.m.]

[Avocado Reg. 18]

## PART 944—FRUIT; IMPORT REGULATIONS

### Avocados

**§ 944.10 Avocado Regulation 18.**

(a) On and after the effective time of this section, the importation into the United States of any avocados is prohibited unless such avocados are inspected and meet the following requirements:

(1) All avocados imported during the period June 22, 1970, through April 30, 1971, shall grade not less than U.S. No. 3.

(2) Avocados of the Pollock variety shall not be imported (i) prior to July 6, 1970; (ii) from July 6, 1970, through July 13, 1970, unless the individual fruit in each lot of such avocados weighs at least 18 ounces or measures at least 3 11/16 inches in diameter; and (iii) from July 14, 1970, through July 27, 1970, unless the individual fruit in each lot of such avocados weighs at least 16 ounces or measures at least 3 7/16 inches in diameter.

(3) Avocados of the Catalina variety shall not be imported (i) prior to September 14, 1970; (ii) from September 14, 1970, through September 21, 1970, unless the individual fruit in each lot of such avocados weighs at least 24 ounces; and (iii) from September 22, 1970, through October 5, 1970, unless the individual fruit in each such lot of such avocados weighs at least 22 ounces.

(4) Avocados of the Trapp variety shall not be imported (i) prior to August 10, 1970; (ii) from August 10, 1970, through August 24, 1970, unless the individual fruit in each lot of such avocados weighs at least 14 ounces or measures at least 3 10/16 inches in diameter; and (iii) from August 25, 1970, through September 7, 1970, unless the individual fruit in each lot of such avocados weighs at least 12 ounces or measures at least 3 7/16 inches in diameter.

(5) Avocados of any variety other than Pollock, Catalina, and Trapp varieties, of the West Indian type including unidentified West Indian varieties, and West Indian varieties not listed elsewhere in this section, shall not be imported (i) prior to July 6, 1970; (ii) from July 6, 1970, through July 12, 1970, unless the individual fruit in each lot of such avocados weighs at least 18 ounces; (iii) from July 13, 1970, through August 2, 1970, unless the individual fruit in each lot of such avocados weighs at least 16 ounces; (iv) from August 3, 1970, through August 30, 1970, unless the individual fruit in each lot of such avocados weighs at least 14 ounces; and (v) from August 31, 1970, through September 20, 1970, unless the individual fruit in each lot of such avocados weighs at least 12 ounces: *Provided*, That any lot of such avocados may be imported without regard to the minimum weight requirements of this paragraph if such avocados, when mature, normally change color to any shade of red or purple and any portion of the skin of the individual fruit has changed to the color normal for that fruit when mature.

(6) Avocados of any variety of the Guatemalan type, including hybrid type seedlings, unidentified Guatemalan and hybrid varieties, and Guatemalan and hybrid varieties not listed elsewhere in this section shall not be imported (i) prior to September 21, 1970; (ii) from September 21, 1970, through October 18, 1970, unless the individual fruit in each lot of such avocados weighs at least 15 ounces; and (iii) from October 19, 1970, through December 20, 1970, unless the individual fruit in each lot of such avocados weights at least 13 ounces.

(7) Notwithstanding the provisions of subparagraphs (2) through (6) of this paragraph regarding the minimum weight or diameter for individual fruit, not to exceed 10 percent, by count, of the individual fruit, contained in each lot may weigh less than the minimum specified weight and be less than the minimum specified diameter: *Provided*, That such avocados weigh not over 2 ounces less than the applicable specified weight for the particular variety specified in such subparagraphs. Such tolerances shall be on a lot basis, but not to exceed double such tolerances shall be permitted for an individual container in a lot.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture, is hereby designated as the governmental inspection service for the purpose of certifying the grade, size, quality, and maturity of avocados that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with appropriate evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of avocados, is required on all imports of avocados. Such inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (Part 51 of this title) but since inspectors are not located in the immediate vicinity of some of the small ports of entry, such as those in southern California, importers of avocados should make arrangements for inspection, through the applicable one of the following offices, at least the specified number of days prior to the time when the avocados will be imported:

| Ports | Office | Advance notice |
|---|---|---|
| All Texas points.. | L. M. Denbo, 506 South Nebraska St., San Juan, Tex. (Phone—512-ST7-4091). | 1 day. |
| | or | |
| | A. D. Mitchell, Room 516, U.S. Courthouse, El Paso, Tex. 79901 (Phone—915-533-6351, Ext. 5340). | Do. |
| All New York points. | Edward J. Beller, Hunt's Point Market, Room 28A, Bronx, N.Y. 10474 (Phone—212-991-7665, 7666). | Do. |
| All Arizona points. | B. O. Morgan, 225 Terrace Ave., Post Office Box 1646, Nogales, Ariz. 85612 (Phone—602-287-2902). | Do. |
| All Florida points. | Hubert S. Flynt, 775 Warner St., Post Office Box 6697, Orlando, Fla. 32803 (Phone—305-841-2141). | Do. |
| | or | |
| | Lloyd W. Boney, 1350 Northwest 12th Ave., Room 538, Miami, Fla. 33136 (Phone—305-371-2517). | Do. |
| All California points. | D. P. Thompson, 784 South Central Ave., Room 294, Los Angeles, Calif. 90021 (Phone—213-622-8756). | 3 days. |
| All other points.. | D. S. Matheson, Fruit and Vegetable Division—Consumer and Marketing Service, Washington, D.C. 20250 (Phone—202-388-5870 and 4560). | Do. |

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

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

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

(1) The date and place of inspection;

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

(3) The commodity inspected;

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

(5) The principal identifying marks on the container;

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

(7) The following statement, if the facts warrant: "Meets U.S. import requirements under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended."

(f) Notwithstanding any other provisions of this section, any importation of avocados which, in the aggregate, does not exceed 55 pounds may be imported without regard to the restrictions specified herein.

(g) It is hereby determined, on the basis of the information currently available, that the maturity requirements set forth in this section are comparable to the maturity regulations applicable, during the effective time hereof, to shipments of avocados grown in south Florida.

(h) No provisions of this section shall supersede the restrictions or prohibitions on avocados under the Plant Quarantine Act of 1912.

(i) Nothing contained in this section shall be deemed to preclude any importer from reconditioning, prior to importation, any shipment of avocados for the purpose of making it eligible for importation.

(j) The terms relating to grade and diameter, as used herein, shall have the same meaning as when used in the U.S. Standards for Florida Avocados (§§ 51.3050–51.3069 of this title). Importation means release from custody of the U.S. Bureau of Customs.

It is hereby found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective time of this regulation beyond that hereinafter specified (5 U.S.C. 553) in that (a) the requirements of this import regulation are imposed pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), which makes such regulation mandatory; (b) such regulation imposes the same grade and comparable maturity requirements on imports of avocados as are being made applicable to the shipment of avocados grown in Florida under Avocado Regulation 12 which becomes effective June 15, 1970; (c) such domestic and import restrictions should become effective at as near the same time as is reasonably practicable; (d) compliance with this import regulation will not require any special preparation which cannot be completed by the effective time hereof; (e) notice hereof in excess of 3 days, the minimum prescribed by said section 8e, is given with respect to this import regulation; and (f) such notice is hereby determined, under the circumstances, to be reasonable.

Dated, June 10, 1970, to become effective June 22, 1970.

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

[F.R. Doc. 70-7494; Filed, June 15, 1970; 8:50 a.m.]

## Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regs., 1970 Crop Oat Supp.]

## PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

### Subpart—1970 Crop Oat Loan and Purchase Program

*Correction*

In F.R. Doc. 70-6668 appearing at page 8539 in the issue for Wednesday, June 3, 1970, in § 1421.274(a) the support rate for all counties in Alabama, now reading "$4.74", should read "$0.74".

# Title 9—ANIMALS AND ANIMAL PRODUCTS

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

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

## PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

### Areas Quarantined

Pursuant to provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f), Part 76, Title 9, Code of Federal Regulations, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases, is hereby amended in the following respects:

1. In § 76.2, in paragraph (e)(6) relating to the State of Massachusetts, a new subdivision (iii) relating to Worcester County is added to read:

(6) *Massachusetts.* * * *

(iii) That portion of Worcester County comprised of Boylston, Holden, West Boylston, and Worcester Townships.

2. In § 76.2, in paragraph (e)(17) relating to the State of Virginia, a new subdivision (xv) relating to Sussex and Dinwiddie Counties is added to read:

(17) *Virginia.* * * *

(xv) The adjacent portions of Sussex and Dinwiddie Counties bounded by a line beginning at the junction of U.S. Highway 40 and Secondary Highway 681; thence, following Secondary Highway 681 in a southwesterly direction to Secondary Highway 630; thence, following Secondary Highway 630 in a southerly direction to Secondary Highway 649; thence, following Secondary Highway 649 in a northwesterly direction to Secondary Highway 681; thence, following Secondary Highway 681 in a westerly direction to Secondary Highway 619; thence, following Secondary Highway 619 in a northwesterly direction to Secondary Highway 665; thence, following Secondary Highway 665 in a northeasterly direction to U.S. Highway 40; thence, following U.S. Highway 40 in an easterly direction to its junction with Secondary Highway 681.

3. In § 76.2, in paragraph (e)(9) relating to the State of Missouri, subdivision (i) relating to Butler County is deleted.

(Secs. 4–7, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791–792, as amended, secs. 1–4, 33 Stat. 1264, 1265, as amended, sec. 1, 75 Stat. 481, secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111, 112, 113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 29 F.R. 16210, as amended)

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

The amendments quarantine a portion of Worcester County, Mass., and portions of Sussex and Dinwiddie Counties in Virginia because of the existence of hog cholera. This action is deemed necessary to prevent further spread of the disease. The restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will apply to such counties.

The amendments also exclude a portion of Butler County, Mo., from the areas heretofore quarantined because of hog cholera. Therefore, the restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will not apply to the excluded area, but will continue to apply to the quarantined areas described in § 76.2. Further, the restrictions pertaining to the interstate movement from nonquarantined areas contained in said Part 76 will apply to the area excluded from quarantine.

Insofar as the amendments impose certain further restrictions necessary to prevent the interstate spread of hog cholera they must be made effective immediately to accomplish their purpose in the public interest. Insofar as they relieve restrictions, they should be made effective promptly in order to be of maximum benefit to affected persons.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 11th day of June 1970.

GEORGE W. IRVING, Jr.,
*Administrator, Agricultural Research Service.*

[F.R. Doc. 70-7493; Filed, June 15, 1970; 8:50 a.m.]

# Title 14—AERONAUTICS AND SPACE

## Chapter II—Civil Aeronautics Board

SUBCHAPTER B—PROCEDURAL REGULATIONS

[Reg. PR-112]

## PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Because of the number of outstanding amendments to Part 302 there follows a reissuance of Part 302 incorporating all amendments thereto which were in effect on June 10, 1970. The reissuance incorporates minor editorial amendments primarily to reflect changes in statutory references. This action is taken pursuant to authority delegated to the General Counsel in § 385.19 of the Board's Organization Regulations, and shall become effective 20 days after publication in the FEDERAL REGISTER. Procedures for review by the Board are set forth in Subpart C of Part 385.

Effective date: July 3, 1970.

By the Civil Aeronautics Board.

[SEAL] R. TENNEY JOHNSON,
*General Counsel.*


Sec.
302.1 Applicability and description of part.
302.2 Reference to part and method of citing rules.

**Subpart A—Rules of General Applicability**

302.3 Filing of documents.
302.4 General requirements as to documents.
302.5 Amendment of documents and dismissal.
302.6 Responsive documents.
302.7 Retention of documents by the Board.
302.8 Service of documents.
302.9 Parties.
302.10 Substitution of parties.
302.11 Appearances; rights of witnesses.
302.12 Consolidation of proceedings.
302.13 Joinder of complaints or complainants.
302.14 Participation in hearing cases by persons not parties.
302.15 Formal intervention in hearing cases.
302.16 Computation of time.
302.17 Continuances and extensions of time.
302.18 Motions.
302.19 Subpenas.
302.20 Depositions.
302.21 Attendance fees and mileage.
302.22 Examiners.
302.23 Prehearing conference.
302.24 Hearings.
302.25 Argument before the examiner.
302.26 Proposed findings and conclusions before the examiner or the Board.
302.27 Delegation to examiners and action by examiners after hearing.
302.28 Petitions for discretionary review of initial decisions; review proceedings.
302.29 Tentative decision of the Board.
302.30 Exceptions to recommended decisions of examiners or tentative decisions of the Board.
302.31 Briefs before the Board.
302.32 Oral argument before the Board.
302.33 Waiver of procedural steps after hearing.
302.35 Shortened procedure.
302.36 Final decision of the Board.
302.37 Petitions for reconsideration.
302.38 Petitions for rule making.
302.39 Objections to public disclosure of information.
302.40 Saving clause.

**Subpart B—Rules Applicable to Economic Enforcement Proceedings**

302.200 Applicability of this subpart.
302.201 Formal complaints.
302.202 Subscription and verification.
302.203 Insufficiency of formal complaint.
302.204 Third-party complaints.
302.205 Procedure when no enforcement proceeding is instituted.
302.206 Docketing of petition for enforcement.
302.207 Answer.
302.208 Default.
302.209 Reply.
302.210 Parties.
302.211 Prehearing conference.
302.212 Admissions as to facts and documents.
302.213 Hearing.
302.214 Appearances by persons not parties.
302.215 Offers of settlement.
302.216 Evidence of previous violations.
302.217 Motions for immediate suspension of operating authority pendente lite.

**Subpart C—Rules Applicable to Mail Rate Proceedings**

Sec.
302.300 Applicability of this subpart.
302.301 Parties to the proceeding.

FINAL MAIL RATE PROCEEDINGS

302.302 Participation by persons other than parties.
302.303 Institution of proceedings.

PROCEDURE WHEN AN ORDER TO SHOW CAUSE IS ISSUED

302.304 Order to show cause.
302.305 Objections and answer to order to show cause.
302.306 Effect of failure to file notice or answer.
302.307 Procedure after answer.
302.308 Evidence.

PROCEDURE WHEN NO ORDER TO SHOW CAUSE IS ISSUED

302.309 Hearing to be ordered.

TEMPORARY RATE PROCEEDINGS

302.310 Procedure for fixing temporary service and subsidy mail rates.

INFORMAL MAIL RATE CONFERENCE PROCEDURE

302.311 Invocation of procedure.
302.312 Scope of conferences.
302.313 Participants in conferences.
302.314 Conditions upon participation.
302.315 Information to be requested from carrier.
302.316 Staff analysis of data for submission of answers thereto.
302.317 Availability of data to Post Office Department.
302.318 Post-conference procedure.
302.319 Effect of conference agreements.
302.320 Waiver of §§ 302.313 and 302.314.
302.321 Time of commencing and terminating conference.

**Subpart D—Rules Applicable to Exemption Proceedings**

302.400 Applicability of this subpart.
302.401 Filing of application.
302.402 Contents of application.
302.403 Service of application.
302.404 Posting of application.
302.405 Dismissal of incomplete application.
302.406 Answers to applications for exemptions.
302.407 Reply.
302.408 Request for hearing.
302.409 Exemptions on the Board's initiative.
302.410 Emergency exemptions.

**Subpart E—Rules Applicable to Proceedings With Respect to Rates, Fares and Charges**

302.500 Applicability of this subpart.
302.501 Institution of proceedings.
302.502 Contents of petition or complaint.
302.503 Dismissal of petition or complaint.
302.504 Order of investigation.
302.505 Complaints requesting suspension of tariffs—answers to such complaints.
302.506 Burden of going forward with the evidence.
302.507 Requests to prevent foreign air carrier tariffs from taking effect.
302.508 Computing time for filing complaints.

**Subpart F—Rules Applicable to Proceedings for Leave To Conduct Charter Trips or Special Services**

302.600 Applicability of this subpart.
302.601 Petitions to conduct charter trips or special services into areas protected by § 207.8 of this chapter.

**Subpart G—Rules Applicable to Adequacy of Service Petitions**

Sec.
302.700 Applicability of this subpart.
302.701 Institution of proceedings.
302.702 Contents of petition.
302.703 Parties to the proceeding.
302.704 Action on petition or complaint.
302.705 Hearing.

**Subpart H—Rules Applicable to Compromise of Civil Penalties and Seizure of Aircraft**

302.800 Applicability of this subpart.
302.801 Initial proposal to compromise.
302.802 Contents of notice of alleged violation.
302.803 Answer to notice of alleged violation.
302.804 Contents and suscription of answer.
302.805 Action upon receipt of answer.
302.806 Contents of notice of willingness to compromise.
302.807 Acceptance of an offer to compromise.
302.808 Seizure of aircraft.

**Subpart I—Rules Applicable to Route Proceedings Under Sections 401 and 402 of the Act**

GENERAL PROVISIONS

302.901 Applicability.

APPLICATIONS FOR ROUTE AUTHORITY

302.909 Renewal of fixed-term route authorizations granted by exemption.
302.911 Dismissal of certain stale applications filed under section 401.

INITIATION OF ROUTE PROCEEDINGS

302.915 Initiation of route proceedings by Board order.

CONDUCT OF ROUTE PROCEEDINGS

302.930 Evidence in route proceedings.

**Subpart J—Rules Applicable to Proceedings Involving Supplemental Air Carriers**

302.1001 Applicability.
302.1002 Definition.

IMMEDIATE SUSPENSION OF OPERATING AUTHORITY

302.1011 Rules governing proceedings.
302.1012 Order of suspension.
302.1013 Answer of carrier.
302.1014 Motions.
302.1015 Additional suspension.
302.1016 Accelerated hearing.
302.1017 Final decision.

SPECIAL OPERATING AUTHORIZATIONS

302.1020 Application for special operating authorization.
302.1021 Filing and service of application.
302.1022 Answer.
302.1023 Memoranda of interested persons.
302.1024 Oral argument.
302.1025 Issuance of special authorization.
302.1026 Issuance of special authorization on the Board's initiative.
302.1027 Extension of authorization.

**Subpart K—Standardized Method for Costing Proposed Changes in the Authorized Operations of Local Service Carriers**

302.1101 Applicability.
302.1102 Prescribed cost estimates.
302.1103 Total annual expense involved in proposed operation changes.
302.1104 Aircraft operating expense.
302.1105 Servicing expense.
302.1106 Aircraft depreciation expense.
302.1107 Return on investment and tax allowance.
302.1108 Form of estimate.
302.1109 Compilation.

Subpart L—Procedure for the Processing of Undocketed Section 412 Contracts and Agreements [1]

Sec.
302.1201 Applicability.
302.1202 Public file.
302.1203 Notice to the public.
302.1204 General requirements.
302.1205 Service requirements.
302.1206 Filing of comments.
302.1207 Procedure for docketing.
302.1208 Staff action.
302.1209 Board action.

Subpart M—Expedited Procedure for Modifying or Removing Certain Limitations on Nonstop Operations Contained in Certificates of Public Convenience and Necessity of Local Service Carriers

302.1301 Applicability.
302.1302 Subpart A governs.
302.1303 Filing of application and publication of notice.
302.1304 Contents of application.
302.1305 Preliminary procedures; summary dismissal of application; stay of proceedings.
302.1306 Answers to application.
302.1307 Service of application and answer.
302.1308 Intervention.
302.1309 Motions to consolidate.
302.1310 Reply to answers.
302.1311 Procedures after filing of answers and reply.
302.1312 Hearing.
302.1313 Briefs to the examiner.
302.1314 Examiner's initial decision.
302.1315 Subsequent procedures.

Subpart N—Expedited Procedures for Modifying or Removing Nonstop and Long-Haul Restrictions Contained in Certificates of Public Convenience and Necessity of Trunkline Air Carriers

302.1401 Applicability.
302.1402 Subpart A governs.
302.1403 Filing of application.
302.1404 Contents of application.
302.1405 Preliminary procedures; summary dimissal of application.
302.1406 Answers to application.
302.1407 Service of application and answer.
302.1408 Intervention.
302.1409 Motions to consolidate.
302.1410 Reply to answers.
320.1411 Procedures after filing of answers and reply.
302.1412 Hearing.
302.1413 Briefs to the examiners.
302.1414 Examiner's initial decision.
302.1415 Subsequent procedures.

AUTHORITY: The provisions of this Part 302 issued under secs. 101, 204, 401, 403, 406, 416, 1001, 1002 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 758, 763, 771, 788; 49 U.S.C. 1301, 1324, 1371, 1373, 1376, 1386, 1481, 1482. Also, 80 Stat. 383 384, 385, 386, 387, 388, 81 Stat. 54; 5 U.S.C. 552, 553, 554, 555, 556, 557, 558; and Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 F.R. 5989.

### § 302.1 Applicability and description of part.

(a) *Applicability.* This part governs the conduct of all economic proceedings before the Board whether instituted by order of the Board or by the filing with the Board of an application, complaint, petition, or a section 412 contract or agreement. This part also contains the Board's delegation to hearing examiners pursuant to Reorganization Plan No. 3 of 1961 of the Board's function to render the agency decision in certain cases, subject to discretionary review by the Board. The provisions of Part 263 of this chapter of the Economic Regulations are applicable to participation of air carrier associations in proceedings under this part. Proceedings involving "Alaskan air carriers" are governed by the rules in this part, except as modified by Part 292 of this chapter.

(b) *Description.* Subpart A of this part sets forth general rules applicable to all types of proceedings. Each of the other subparts of this part sets forth special rules applicable to the type of proceedings described in the title of the subpart. Therefore, for information as to applicable rules, reference should be made to Subpart A and to the rules in the subpart relating to the particular type of proceeding, if any. In addition, reference should be made to the Federal Aviation Act, the Board's Principles of Practice (Part 300 of this subchapter), and to the substantive rules, regulations and orders of the Board relating to the proceeding.[2] Wherever there is any conflict between one of the general rules in Subpart A and a special rule in another subpart applicable to a particular type of proceeding, the special rule will govern.

### § 302.2 Reference to part and method of citing rules.

This part shall be referred to as the "Rules of Practice". Each section, and any paragraph or subparagraph thereof, shall be referred to as a "Rule". The number of each rule shall include only the numbers and letters at the right of the decimal point. For example, "302.8 *Service of documents*", shall be referred to as "Rule 8". Subparagraph (2) of paragraph (a) of that rule, relating to service of documents by the parties, shall be referred to as "Rule 8(a)(2)".

## Subpart A—Rules of General Applicability

### § 302.3 Filing of documents.

(a) *Filing address, date of filing, hours.* Documents required by any section of this part to be filed with the Board shall be filed with the Docket Section of the Civil Aeronautics Board, Washington, D.C. 20428. Such documents shall be deemed to be filed on the date on which they are actually received by the Board. The hours of the Board are from 8:30 a.m. to 5:00 p.m., eastern standard or daylight saving time, whichever is in effect in the District of Columbia at the time, Monday to Friday, inclusive, except on legal holidays for the Board.

(b) *Formal specifications of documents*—(1) *Typewritten documents.* All typewritten documents, except briefs before the Board, filed under this part shall be on strong, durable paper not larger than 8½ by 14 inches, except that tables, charts and other documents may be larger if folded to the size of the document to which they are physically attached. Typewritten briefs before the Board shall be on paper not larger than 8½ by 11 inches except that tables, charts, and maps physically attached to the brief may be on paper not larger than 8½ by 14 inches and folded to the size of the brief. Requirements as to contents and style of briefs are contained in § 302.31. Text shall be double-spaced, except for footnotes and long quotations which may be single-spaced. Type not smaller than elite shall be used. The left margin shall be at least 1½ inches; all other margins shall be at least 1 inch. If the document is bound, it shall be bound on the left side.

(2) *Printed documents.* Printed (typeset) documents that are limited as to number of pages under these rules shall be on paper not larger than 6⅛ inches by 9¼ inches, with all margins of at least 1 inch. The text, footnotes, and all physical attachments to any printed document shall be printed in clear and readable type, not smaller than 11 point, adequately leaded.

(3) *Reproduction of documents.* Papers may be reproduced by any duplicating process, provided all copies are clear and legible. Appropriate notes or other indications shall be used, so that the existence of any matters shown in color on the original will be accurately indicated on all copies.

(c) *Number of copies.* Unless otherwise specified, an executed original and nineteen (19) true copies of each document required or permitted to be filed under these rules shall be filed with the Docket Section. The copies need not be signed but the name of the person signing the document, as distinguished from the firm or organization he represents, shall also be typed or printed on all copies below the space provided for signature.

(d) *Table of contents.* All documents filed under this part consisting of twenty or more pages must contain a subject-index of the matter in such document, with page references.

### § 302.4 General requirements as to documents.

(a) *Contents.* In case there is no rule, regulation, or order of the Board which prescribes the contents of a formal application, petition, complaint, motion or other authorized or required document, such document shall contain a proper identification of the parties concerned, and a concise but complete statement of the facts relied upon and the relief sought.

(b) *Subscription.* Every application, petition, complaint, motion or other authorized or required document shall be signed by the party filing the same, or by a duly authorized officer or the attorney-at-law of record of such party, or by any other person; *Provided*, That, if signed by such other person, the reason

[1] Certain section 412 contracts and agreements are docketed immediately upon receipt by the Board, e.g., IATA rate conference agreements and amendments thereto.

[2] The Federal Aviation Act of 1958 may be found at 72 Stat. 731, and at 49 U.S.C. 1301 et seq. The Board's substantive rules may be found in its Economic Regulations and Special Regulations (Subchapters A and D of this chapter, respectively).

therefor must be stated and the power of attorney or other authority authorizing such other person to subscribe the document must be filed with the document. The signature of the person signing the document constitutes a certification that he has read the document; that to the best of his knowledge, information and belief every statement contained in the instrument is true and no such statements are misleading; and that it is not interposed for delay.

(c) *Designation of person to receive service.* The initial document filed by any person shall state on the first page thereof the name and post office address of the person or persons who may be served with any documents filed in the proceeding.

(d) *Prohibition of certain documents.* No document which is subject to the general requirements of this subpart concerning form, filing, subscription, service or similar matters shall be filed with the Board or an examiner unless:

(1) Such document and its filing by the person submitting it has been expressly authorized or required in the Federal Aviation Act of 1958, any other law, this part, other Board regulations, or any order or other document issued by the Board, the chief examiner or an examiner assigned to the proceeding, and

(2) Such document complies with each of the requirements of §§ 302.3 and 302.8, and is submitted as a formal application, complaint, petition, motion, answer, pleading, or similar paper rather than as a letter, telegram, or other informal written communication: *Provided, however,* That for good cause shown, pleadings of any public body or civic organization may be submitted in the form of a letter: *Provided further,* That comments concerning section 412 agreements, which have not been docketed, may be submitted in the form of a letter.[3]

(e) *Documents improperly filed.* A document which is filed in violation of the prohibition imposed by paragraph (d) of this section, or in violation of a requirement imposed by any other provision of this part, will not be accepted for filing by the Board and will not be physically incorporated in the docket of the proceeding. The sender of such document and all persons who have been served therewith will be notified informally of the Board's action thereon.

(f) *Motions for leave to file otherwise unauthorized documents.* (1) The Board will accept otherwise unauthorized documents for filing only if leave has previously been obtained, from the examiner or the Board, on written motion and for good cause shown.

(2) After the assignment of an examiner to a proceeding and before the issuance of a recommended or initial decision, or the certification of the record to the Board, these motions shall be addressed to the examiner. At all other times, such motions shall be addressed to the Board. The examiner or the Board will promptly pass upon such motions.

(3) Such motions shall be filed within seven days after service of any document or order or ruling to which the proposed filing is responsive, and shall be served on all parties to the proceeding. Answers thereto may not be filed.

(4) Such motions shall contain a concise statement of the matters relied upon as good cause and there shall be attached thereto the pleading or other document for which leave to file is sought.

### § 302.5 Amendment of documents and dismissal.

If any document initiating, or filed in, a proceeding is not in substantial conformity with the applicable rules or regulations of the Board as to the contents thereof, or is otherwise insufficient but not subject to rejection under § 302.4(e), the Board, on its own initiative, or on motion of any party, may strike or dismiss such document, or require its amendment. An application may be amended prior to the filing of answers thereto, or, if no answer is filed, prior to its designation for hearing. Thereafter, applications may be amended only if leave is granted by the Board or an examiner pursuant to the procedures set forth in § 302.18. If properly amended, a document shall be made effective as of the date of original filing but the time prescribed for the filing of an answer or any further responsive document directed towards the amended document shall be computed from the date of the filing of the amendment.

### § 302.6 Responsive documents.

(a) Answers to applications, complaints, petitions, motions or other documents or orders instituting proceedings may be filed by any party to such proceedings or any person who has a petition for intervention pending. Except as otherwise provided, answers are not required. Protests or memoranda of opposition or support, permitted by statute, shall be filed in lieu of answers or shall be combined with answers.

NOTE: The Board does not grant formal intervention in nonhearing matters, such as applications for exemption or temporary suspension of service under section 416(b) or 401(j) of the Act, and any interested person may file documents authorized under this part without first obtaining leave.

(b) Further responsive documents: Except as otherwise provided, no reply to an answer, reply to a reply, or any further responsive document shall be filed. Where a reply to an answer or any further responsive document is not fileable, all new matter contained in such answer shall be deemed controverted. A party to a proceeding whose application has been the subject of a protest or memorandum of opposition or support, permitted by statute, may respond thereto before the close of the hearing in the case to which such documents relate, orally, in writing, or by introducing evidence, subject to appropriate rulings by the examiner. Once such response has been made, such party may also discuss the protest or memorandum in his brief to the examiner or the Board or in his oral argument.

(c) Time for filing: Except as otherwise provided, an answer or any further responsive document shall be filed within seven days after service of the document to which such responsive filing is directed. Protests or memoranda of opposition or support, permitted by statute, shall be filed before the close of the hearing in the case to which they relate.

### § 302.7 Retention of documents by the Board.

All documents filed with or presented to the Board may be retained in the files of the Board. However, the Board may permit the withdrawal of original documents upon the submission of properly authenticated copies to replace such documents.

### § 302.8 Service of documents.

(a) *Who makes service*—(1) *The Board.* Formal complaints, notices, orders to show cause, other orders, and similar documents issued by the Board will be served by the Board upon all parties to the proceeding.

(2) *The parties.* Answers, petitions, motions, briefs, exceptions, notices, protests or memoranda, or any other documents filed by any party or other person with the Board or an examiner shall be served upon all parties to the proceeding in which it is filed: *Provided,* That motions to expedite filed in any proceeding conducted pursuant to sections 401 and 402 of the Act, shall, in addition, be served on all persons who have petitioned for intervention in, or consolidation of applications with, such proceeding. Proof of service shall accompany all documents when they are tendered for filing.

(b) *How service may be made.* Service may be made by regular mail, by registered mail, or by personal delivery. In the case of mailing to or from persons located in the territories or west of the Mississippi River to or from persons located in other territories or east of the said river mailing shall be by air mail. The means of service selected must be such as to permit compliance with section 1005 (c) of the act, which provides for service of notices, processes, orders, rules, and regulations by personal service or registered or certified mail.

(c) *Who may be served.* Service upon a party or person may be made upon an individual, or upon a member of a partnership, or firm to be served, or upon the president or other officer of the corporation, company, firm, or association to be served, or upon the assignee or legal successor of any of the foregoing, or upon any attorney of record for the party, or upon the agent designated by an air carrier under section 1005 (b) of the act, but it shall be served upon a person designated by a party to receive service of documents in a particular proceeding in accordance with § 302.4 (c) once a proceeding has been commenced.

[3] See Subpart L, § 302.1206 providing for the filing of comments with respect to undocketed section 412 agreements.

(d) *Where service may be made.* Personal service may be made on any of the persons described in paragraph (c) of this section wherever they may be found, except that an agent designated by an air carrier under section 1005 (b) of the act may be served only at his office or usual place of residence. Service by regular or registered or certified mail shall be made at the principal place of business of the party to be served, or at his usual residence if he is an individual, or at the office of the party's attorney of record, or at the office or usual residence of the agent designated by an air carrier under section 1005 (b) of the act, or at the post office address stated for a person designated to receive service pursuant to § 302.4(c).

(e) *Proof of service.* Proof of service of any document shall consist of one of the following:

(1) A certificate of mailing executed by the person mailing the document.

(2) An acknowledgment of service signed by a person receiving service personally, or a certificate of the person making personal service.

(f) *Date of service.* Whenever proof of service by mail is made, the date of mailing shall be the date of service. Whenever proof of service by personal delivery is made, the date of such delivery shall be the date of service.

**§ 302.9 Parties.**

The term "party" wherever used in this part shall include any individual, firm, co-partnership, corporation, company, association, joint stock association, or body politic, and any trustee, receiver, assignee or legal successor thereof, and shall include Bureau Counsel and the Enforcement Attorney in any proceeding.

**§ 302.10 Substitution of parties.**

Upon motion and for good cause shown, the Board may order a substitution of parties, except that in case of death of a party, substitution may be ordered without the filing of a motion.

**§ 302.11 Appearances; rights of witnesses.**

(a) Any party to a proceeding may appear and be heard in person or by attorney. No register of persons who may practice before the Board is maintained and no application for admission to practice is required. Any person practicing or desiring to practice before the Board may, upon hearing and good cause shown, be suspended or barred from practicing.

(b) Any person appearing in person in any proceeding governed by this part, whether in response to a subpena or by request or permission of the Board, may be accompanied, represented and advised by counsel and may be examined by his own counsel after other questioning.

(c) Any person who submits data or evidence in a proceeding governed by this part, whether in response to a subpena or by request or permission of the Board, may retain or, on payment of lawfully prescribed costs, procure a copy of any document submitted by him or a copy of any transcript made of his testimony.

**§ 302.12 Consolidation of proceedings.**

(a) *Initiation of consolidations.* The Board, upon its own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings which involve substantially the same parties, or issues which are the same or closely related, if it finds that such consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. Although the Board may, in any particular case, consolidate or contemporaneously consider two or more proceedings on its own motion, the burden of seeking consolidation or contemporaneous consideration of a particular application shall rest upon the applicant and the Board will not undertake to search its docket for all applications which might be consolidated or contemporaneously considered.

(b) *Time for filing.* Unless the Board has provided otherwise in a particular proceeding, a motion to consolidate or contemporaneously consider an application with any other application shall be filed not later than the prehearing conference in the proceeding with which consolidation or contemporaneous consideration is requested. If made at such conference, the motion may be oral. All motions for consolidation or considerations of issues which enlarge, expand and change the nature of the proceeding shall be addressed to the Board, unless made orally at the prehearing conference, in which event the presiding examiner shall present such motion to the Board for its decision. A motion which is not filed at or prior to the prehearing conference, or within the time prescribed by the Board in a particular proceeding, as the case may be, shall be dismissed unless the movant shall clearly show good cause for his failure to file such motion on time. A motion which does not relate to an application pending at the time of the prehearing conference in the proceeding with which consolidation or contemporaneous consideraton is requested, or on the date specifically prescribed by the Board in a particular proceeding for filing of motions for consolidation or contemporaneous consideration, shall likewise be dismissed unless the movant shall clearly show good cause for his failure to file the application within the prescribed period.

(c) *Answer.* If a motion to consolidate two or more proceedings is filed with the Board, any party to any of such proceedings, or any person who has a petition for intervention pending, may file an answer to such motion within such period as the Board may permit. The examiner may require that answers to such motions be stated orally at the prehearing conference in the proceeding with which the consolidation is proposed.

(d) *Dismissal of remaining portions of applications partially designated for hearing or consolidated hearing.* When the Board severs parts of applications filed under section 401 of the act and designates them for hearing or for consolidated hearing in a proceeding, it will dismiss without prejudice the remaining portions of such applications.

(e) *Dismissal of applications denied consolidation.* When the Board denies, in its entirety, consolidation of an application filed under section 401 of the Act, the Board will dismiss without prejudice such application if the application was filed after commencement of the proceeding into which the application was sought to be consolidated. For purposes of this paragraph, a proceeding shall be deemed to commence upon the issuance of a Board order of investigation, or an order or notice setting an application for hearing.

**§ 302.13 Joinder of complaints or complainants.**

Two or more grounds of complaints involving substantially the same purposes, subject or state of facts may be included in one complaint even though they involve more than one respondent. Two or more complainants may join in one complaint if their respective causes of complaint are against the same party or parties and involve substantially the same purposes, subject or state of facts. The Board may separate or split complaints if it finds that the joinder of complaints, complainants, or respondents will not be conducive to the proper dispatch of its business or the ends of justice.

**§ 302.14 Participation in hearing cases by persons not parties.**

(a) *Requests for expedition.* In any case to which the Board's principles of practice, Part 300, are applicable, any interested person, including any State, subdivision thereof, State aviation commission, or other public body, may by motion request expedition of such case or file an answer in support of or in opposition to such motions. Such motions and answers shall be served as provided in § 302.8 hereof.

(b) *Participation in hearings.* Any person, including any State, subdivision thereof, State aviation commission, or other public body, may appear at any hearing, other than in an enforcement proceeding, and present any evidence which is relevant to the issues. With the consent of the examiner or the Board, if the hearing is held by the Board, such person may also cross-examine witnesses directly. Such persons may also present to the examiner a written statement on the issues involved in the proceeding. Such written statements, or protests or memoranda in opposition or support where permitted by statute, shall be filed and served on all parties prior to the close of the hearing.

**§ 302.15 Formal intervention in hearing cases.**

(a) *Who may intervene.* Petitions for leave to intervene as a party will be entertained only in those cases that are to be decided upon an evidentiary record after notice and hearing. Any person

who has a statutory right to be made a party to such proceeding shall be permitted to intervene. Any person whose intervention will be conducive to the ends of justice and will not unduly delay the conduct of such proceeding may be permitted to intervene. The Board does not grant formal intervention, as such, in nonhearing matters, and any interested person may file documents authorized under this part without first obtaining leave.

(b) *Considerations relevant to determination of petition to intervene.* In passing upon a petition to intervene, the following factors, among other things, will be considered: (1) The nature of the petitioner's right under the statute to be made a party to the proceeding; (2) the nature and extent of the property, financial or other interest of the petitioner; (3) the effect of the order which may be entered in the proceeding on petitioner's interest; (4) the availability of other means whereby the petitioner's interest may be protected; (5) the extent to which petitioner's interest will be represented by existing parties; (6) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record; and (7) the extent to which participation of the petitioner will broaden the issue or delay the proceeding.

(c) *Petition to intervene*—(1) *Contents.* Any person desiring to intervene in a proceeding shall file a petition in conformity with this part setting forth the facts and reasons why he thinks he should be permitted to intervene. The petition should make specific reference to the factors set forth in paragraph (b) of this section.

(2) *Time for filing.* Unless otherwise ordered by the Board, any petition for leave to intervene shall be filed within the following time limits:

(i) In a proceeding where the Board issues a show cause order proposing fair and reasonable mail rates, such petition shall be filed within the time specified for filing notice of objection.

(ii) In all other proceedings, including mail rate proceedings where no show cause order is issued, the petition shall be filed with the Board prior to the first prehearing conference, or, in the event that no such conference is to be held, not later than fifteen (15) days prior to the hearing.

(iii) A petition to intervene in any Board proceeding filed by a city, other public body, or a chamber of commerce shall be filed with the Board not later than the last day prior to the beginning of the hearing thereon.

A petition for leave to intervene which is not timely filed shall be dismissed unless the petitioner shall clearly show good cause for his failure to file such petition on time.

(3) *Answer.* Any party to a proceeding may file an answer to a petition to intervene, making specific reference to the factors set forth in paragraph (b) of this section, within seven (7) days after the petition is filed.

(4) *Disposition.* The decision granting, denying or otherwise ruling on any petition to intervene may be issued without receiving testimony or oral argument either from the petitioner or other parties to the proceeding.

(d) *Effect of granting intervention.* A person permitted to intervene in a proceeding thereby becomes a party to the proceeding. However, interventions provided for in this section are for administrative purposes only, and no decision granting leave to intervene shall be deemed to constitute an expression by the Board that the intervening party has such a substantial interest in the order that is to be entered in the proceeding as will entitle it to judicial review of such order.

### § 302.16 Computation of time.

In computing any period of time prescribed or allowed by this part, by notice, order or regulation of the Board, the chief examiner, or an examiner, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday for the Board, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. When the period of time prescribed is seven (7) days or less, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

### § 302.17 Continuances and extensions of time.

Whenever a party has the right or is required to take action within a period prescribed by this part, by a notice given thereunder, or by an order or regulation, the Board, the chief examiner or the examiner assigned to the proceeding may (a) before the expiration of the prescribed period, with or without notice, extend such period; or (b) upon motion, permit the act to be done after the expiration of the specified period, where the failure to act is clearly shown to have been the result of excusable neglect.

### § 302.18 Motions.

(a) *Generally.* An application to the Board or an examiner for an order or ruling not otherwise specifically provided for in this part shall be by motion. After the assignment of an examiner to a proceeding and before the issuance of a recommended or initial decision, or the certification of the record to the Board, all motions shall be addressed to the examiner. At all other times motions shall be addressed to the Board. All motions shall be made at an appropriate time depending upon the nature thereof and the relief requested therein.

NOTE: This paragraph is not construed as authorizing motions in the nature of petitions for reconsideration.

(a-1) *Motions to disqualify Board Member in review of hearing matters.* In cases to be determined upon an evidentiary record after notice and hearing, a party desiring that a Member disqualify himself from participating in the Board decision shall file a motion supported by an affidavit setting forth the grounds for such disqualification within the periods hereinafter prescribed Where review of the examiner's decision can be obtained only upon the filing of a petition for discretionary review, such motions shall be filed on or before the date answers are due pursuant to § 302.28. In cases where exceptions are filed to recommended or tentative decisions or where the Board orders review of an initial decision on its own initiative, such motions shall be filed on or before the date briefs are due pursuant to § 302.31. Failure to file a timely motion shall be deemed a waiver of disqualification. Applications for leave to file an untimely motion seeking disqualification of a Board Member shall be accompanied by an affidavit setting forth in detail why the facts relied upon as grounds for disqualification were not known and could not have been discovered with reasonable diligence within the prescribed time.

(a-2) *Motions to expedite route applications.* (1) Motions for expedited hearing on applications for new or modified certificated route authority shall, be accompanied by a statement of economic data or other matters which the movant desires the Board to officially notice, and by affidavits establishing such other facts as it desires the Board to rely upon. Motions of air carriers for expedited hearing shall contain at least the following economic and operating data on an annual basis:

(i) Present and proposed schedules, by type of aircraft;

(ii) Number of departures, plane-miles, passengers and passenger-miles;

(iii) Estimate of self-diversion or diversion from other carriers, if applicable;

(iv) Anticipated operating revenues; and

(v) Estimate of impact of proposal on operating expenses which, in the case of local service carriers, should be computed in accordance with Subpart K of this part.

In addition, for local service carriers, the following:

(vi) Estimate of allowance for return on investment and taxes, computed according to Subpart K of this part; and

(vii) Increase or decrease in subsidy requirements.

(2) The motion shall contain the names of the parties served and a notice to such parties that they may, within 7 days of the date the motion is served (excluding Saturdays, Sundays, and holidays) file and serve an answer in support of, or in opposition to the motion.

(b) *Form and contents.* Unless made during a hearing, motions shall be made in writing in conformity with §§ 302.3 and 302.4, shall state with particularity the grounds therefor and the relief or order sought, and shall be accompanied by any affidavits or other evidence desired to be relied upon. Motions made during hearings, answers thereto, and

rulings thereon, may be made orally on the record unless the examiner directs otherwise. Written motions shall be filed as separate documents, and shall not be incorporated in any other documents, except (1) where incorporation of a motion in another document is specifically authorized by a rule or order of the Board, or (2) where a document is filed which requests alternative forms of relief and one of these alternative requests is properly to be made by motion. In these instances the document filed shall be appropriately entitled and identified to indicate that it incorporates a motion, otherwise the motion will be disregarded.

(c) *Answers to motions.* Within seven days after a motion is served, or such other period as the Board or examiner may fix, any party to the proceeding may file an answer in support of or in opposition to the motion, accompanied by such affidavits or other evidence as it desires to rely upon. Unless the Board or the examiner provides otherwise, no reply to an answer, reply to a reply, or any further responsive document shall be filed. Where a reply to an answer or any other responsive document is not fileable, all new matter contained in such answer shall be deemed controverted.

(d) *Oral arguments; briefs.* No oral argument will be heard on motions unless the Board or the examiner otherwise directs. Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the position taken.

(e) *Disposition of motions.* The examiner shall pass upon all motions properly addressed to him, except that, if he finds that a prompt decision by the Board on a motion is essential to the proper conduct of the proceeding, he may refer such motion to the Board for decision. The Board shall pass upon all motions properly submitted to it for decision.

(f) *Appeals to the Board from rulings of examiners.* Rulings of examiners on motions may not be appealed to the Board prior to its consideration of the entire proceeding except in extraordinary circumstances and with the consent of the examiner. An appeal shall be disallowed unless the examiner finds, either on the record or in writing, that the allowance of such an appeal is necessary to prevent substantial detriment to the public interest or undue prejudice to any party. If an appeal is allowed, any party may file a brief with the Board within such period as the examiner directs. No oral argument will be heard unless the Board directs otherwise. The rulings of the examiner on motion may be reviewed by the Board in connection with its final action in the proceeding irrespective of the filing of an appeal or any action taken on it.

(g) *Effect of pendency of motions.* The filing or pendency of a motion shall not automatically alter or extend the time fixed by this part (or any extension granted thereunder) to take action.

§ 302.19 Subpenas.

(a) An application for a subpena requiring the attendance of a witness or the production of documentary evidence at a hearing may be made without notice by any party to the examiner designated to preside at the reception of evidence or, in the event that an examiner has not been assigned to a proceeding or the examiner is not available, to the chief examiner, for action by himself or by a member of the Board.

(b) A subpena for the attendance of a witness shall be issued on oral application at any time.

(c) An application for a subpena for documentary or tangible evidence shall be in duplicate except that if it is made during the course of a hearing, it may be made orally on the record with the consent of the examiner. All such applications, whether written or oral, shall contain a statement or showing of general relevance and reasonable scope of the evidence sought, and shall be accompanied by two copies of a draft of the subpena sought which shall describe the documentary or tangible evidence to be subpenaed with as much particularity as is feasible.

(d) The examiner or member of the Board considering any application for a subpena shall issue the subpena requested if the application complies with this section. No attempt shall be made to determine the admissibility of evidence in passing upon an application for a subpena, and no detailed or burdensome showing shall be required as a condition to the issuance of a subpena. It is the purpose of this section, on the one hand, to make subpenas readily available to parties, and, on the other hand, to prevent the improvident issuance of subpenas to secure evidence which is unrelated to the issues of the proceeding or wholly unreasonable in its scope.

(e) Where it appears at a hearing that the testimony of a witness or documentary evidence is relevant to the issues in a proceeding, the examiner or chief examiner may issue on his own motion a subpena requiring such witness to attend and testify or requiring the production of such documentary evidence.

(f) Subpenas issued under this section shall be served upon the person to whom directed in accordance with § 302.8 (b). Any person upon whom a subpena is served may within seven (7) days after service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify the subpena with the examiner designated to preside at the reception of evidence or, in the event an examiner has not been assigned to a proceeding or the examiner is not available, to the chief examiner for action by himself or by a member of the Board. If the person to whom the motion to modify or quash the subpena has been addressed or directed, has not acted upon such a motion by the return date, such date shall be stayed pending his final action thereon. The Board may at any time review, upon its own initiative, the ruling of an examiner or the chief examiner or a member of the Board denying a motion to quash a subpena. In such cases, the Board may at any time order that the return date of a subpena which it has elected to review be stayed pending Board action thereon.

(g) The provisions of this section are not applicable to the attendance of Board members, officers or employees or the production of documentary evidence in the custody thereof at a hearing. Applications therefor shall be addressed to the examiner in writing and shall set forth the need of the moving party for such evidence and the relevancy to the issues of the proceeding. Such applications shall be processed as motions in accordance with § 302.18 except that a grant of such motion by an examiner, in whole or in part, shall be immediately reviewed by the Board on its own initiative and shall be subject to final Board action. No application will be required for the attendance of Board personnel or the production of records in their custody when requested by an enforcement attorney. Where a Board employee has testified in an enforcement proceeding that he used documents in his custody, or parts thereof, to refresh his recollection, a ruling by the examiner for their production shall be final in the absence of an objection by the enforcement attorney. In the event of such objection, Board review will be limited to the documents, or portions thereof, to which objection is taken by the enforcement attorney.

§ 302.20 Depositions.

(a) For good cause shown, the Board, or any member or examiner assigned as a hearing officer in a proceeding may order that the testimony of a witness be taken by deposition and that the witness produce documentary evidence in connection with such testimony. Ordinarily an order to take the deposition of a witness will be entered only if (1) the person whose deposition is to be taken would be unavailable at the hearing, or (2) the deposition is deemed necessary to perpetuate the testimony of the witness, or (3) the taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in an undue burden to other parties or in undue delay.

(b) Any party desiring to take the deposition of a witness shall make application therefor in duplicate to a member of the Board or examiner designated to preside at the reception of evidence or, in the event that a hearing officer has not been assigned to a proceeding or is not available, to the Board, setting forth the reasons why such deposition should be taken, the name and residence of the witness, the time and place proposed for the taking of the deposition, and a general description of the matters concerning which the witness will be asked to testify. If good cause be shown, the Board or the hearing officer (member or examiner) may, in its or

his discretion, issue an order authorizing such deposition and specifying the witness whose deposition is to be taken, the general scope of the testimony to be taken, the time when, the place where, and the designated officer (authorized to take oaths) before whom the witness is to testify, and the number of copies of the deposition to be supplied. Such order shall be served upon all parties by the person proposing to take the deposition a reasonable period in advance of the time fixed for taking testimony.

(c) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question propounded shall be recorded and the answers shall be taken down in the words of the witness.

(d) Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon, but no transcript filed by the officer shall include argument or debate. Objections to questions or evidence shall be noted by the officer upon the deposition, but he shall not have power to decide on the competency or materiality or relevance of evidence, and he shall record the evidence subject to objection. Objections to questions or evidence not made before the officer shall not be deemed waived unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(e) The testimony shall be reduced to writing by the officer, or under his direction, after which the deposition shall be subscribed by the witness unless the parties by stipulation waived the signing or the witness is ill or cannot be found or refuses to sign, and certified in usual form by the officer. If the deposition is not subscribed to by the witness, the officer shall state on the record this fact and the reason therefor. The original deposition and exhibits shall be forwarded to the Docket Section of the Board and shall be filed in the proceedings.

(f) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. Ordinarily such procedure will only be authorized if necessary to achieve the purposes of an oral deposition and to serve the balance of convenience of the parties. The interrogatories shall be filed in quadruplicate with two copies of the application and a copy of each shall be served on each party. Within seven (7) days after service any party may file with the person to whom application was made two copies of his objections, if any, to such interrogatories and may file such cross-interrogatories as he desires to submit. Cross-interrogatories shall be filed in quadruplicate, and a copy thereof together with a copy of any objections to interrogatories, shall be served on each party, who shall have five (5) days thereafter to file and serve his objections, if any, to such cross-interrogatories. Objections to interrogatories or cross-interrogatories shall be settled by the Board or hearing officer considering the application. Objections to interrogatories shall be made before the order for taking the deposition issues and if not so made shall be deemed waived. When a deposition is taken upon written interrogatories, and cross-interrogatories, no party shall be present or represented, and no person other than the witness, a stenographic reporter, and the officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words. The provisions of paragraph (e) of this section shall be applicable to depositions taken in accordance with this paragraph.

(g) All depositions shall conform to the specifications of § 302.3 except that the filing of three copies thereof shall be sufficient. Any fees of a witness, the stenographer, or the officer designated to take the deposition shall be paid by the person at whose instance the deposition is taken.

(h) The fact that a deposition is taken and filed in a proceeding as provided in this section does not constitute a determination that it is admissible in evidence or that it may be used in the proceeding. Only such part or the whole of a deposition as is received in evidence at a hearing shall constitute a part of the record in such proceeding upon which a decision may be based.

§ 302.21 Attendance fees and mileage.

(a) *Where tender of attendance fees and mileage is a condition of compliance with subpena.* No person whose attendance at a hearing or whose deposition is to be taken shall be obliged to respond to a subpena unless upon a service of the subpena he is tendered attendance fees and mileage by the party at whose instance he is called in accordance with the requirements of paragraph (b) of this section: *Provided,* That a witness summoned at the instance of the Board or one of its employees, or a salaried employee of the United States summoned to testify as to matters related to his public employment, need not be tendered such fees or mileage at that time.

(b) *Amount of mileage and attendance fees to be paid.* (1) Witnesses who are not salaried employees of the United States, or such employees summoned to testify on matters not related to their public employment, shall be paid the same fees and mileage paid to witnesses for like services in the courts of the United States, as provided in subdivisions (i) through (iii) of this subparagraph: *Provided,* That no employee, officer or attorney of an air carrier who travels under the free or reduced rate provisions of section 403(b) of the act shall be entitled to any fees or mileage.

(i) *Per diem for attendance.* There shall be tendered $4 for each day of expected attendance at a hearing or place where deposition is to be taken, and for the time necessarily occupied in going to and returning from the place of attendance.

(ii) *Allowance for subsistence.* In addition to per diem for attendance, when attendance is required at a point so far removed from the witness' residence as to prohibit daily return thereto, there shall be tendered an additional sum of $8 per day for expenses of subsistence for each day of expected attendance and for the time necessarily occupied in going to and returning from the place of attendance.

(iii) *Mileage.* There shall be tendered an amount equal to 8 cents per mile for the round-trip distance between the witness' place of residence and the place where attendance is required. Regardless of the mode of travel employed, computation of mileage shall be made on the basis of a uniform table of distances adopted by the Attorney General where the travel is covered by such table: *Provided,* That in lieu of this mileage allowance witnesses who are required to travel between the territories, possessions or to and from the continental United States or between two foreign points shall be tendered a ticket for such transportation at the lowest first-class rate available at the time of reservation plus the required per diem attendance fees: *And provided further,* That in Alaska where permitted by section 403(b) of the Federal Aviation Act of 1958, as amended, the witness may, at his option, accept a pass for travel by air.

(2) Witnesses who are not salaried employees of the United States, or such employees summoned to testify on matters not related to their public employment, who are summoned to testify at the instance of the Board or one of its employees or the United States or one of its agencies shall be paid in accordance with the provisions of subparagraph (1) of this paragraph. Such witnesses shall be furnished appropriate forms and instructions for the submission of claims for attendance fees, subsistence and mileage from the Government before the close of the proceedings which they are required to attend. Only persons summoned by subpena shall be entitled to claim attendance fees, subsistence or mileage from the Government.

(3) Witnesses who are salaried employees of the United States and who are summoned to testify on matters relating to their public employment, irrespective of at whose instance they are summoned, shall be paid in accordance with applicable Government regulations.

(4) Whenever the sums tendered to a witness are inadequate for reimbursement under the requirements of this section, and such witness has complied with the summons, he shall upon request within a reasonable period of time be entitled to such additional sums as may be due him under the provisions of this section. Whenever the sums tendered and paid to a witness are excessive under the above requirements, either because the witness traveled under the free or reduced rate provisions of section 403 (b) of the act, or for any other reason, the witness shall upon request within a reasonable period of time refund such

sums as may be excessive under the provisions of this section.

§ 302.22 Examiners.

(a) *Defined.* The term "examiner" as used in this part includes presiding officers, hearing examiners, individual members of the Board or any other representative of the Board assigned to hold a hearing in a proceeding.

(b) *Disqualification.* An examiner shall withdraw from the case if at any time he deems himself disqualified. If, prior to the initial or recommended decision in the case, there is filed with the examiner, in good faith, an affidavit of personal bias or disqualification with substantiating facts and the examiner does not withdraw, the Board shall determine the matter, if properly presented by exception or brief, as a part of the record and decision in the case. The Board shall not otherwise consider any claim of bias or disqualification. The Board, in its discretion, may order a hearing on a charge of bias or disqualification.

(c) *Powers.* An examiner shall have the following powers, in addition to any others specified in this part:

(1) To give notice concerning and to hold hearings;

(2) To administer oaths and affirmations;

(3) To examine witnesses;

(4) To issue subpenas and to take or cause depositions to be taken;

(5) To rule upon offers of proof and to receive relevant evidence;

(6) To regulate the course and conduct of the hearing;

(7) To hold conferences, before or during the hearing, for the settlement or simplification of issues;

(8) To rule on motions and to dispose of procedural requests or similar matters;

(9) To make initial or recommended decisions as provided in § 302.27;

(10) To take any other action authorized by this part, by the Administrative Procedure Act, or by the Federal Aviation Act.

The examiner's authority in each case will terminate either upon the service of a recommended decision, or upon the certification of the record in the proceeding to the Board, or upon the expiration of the period within which petitions for discretionary review of his initial decision may be filed, or when he shall have withdrawn from the case upon considering himself disqualified.

(d) *Certification to Board for decision.* At any time prior to the close of the hearing, the Board may direct the examiner to certify any question or the entire record in the proceeding to the Board for decision. In cases where the record is thus certified, the examiner shall not render an initial decision but shall recommend a decision to the Board as required by section 8(a) of the Administrative Procedure Act unless, in rulemaking or determining applications for initial licenses, the Board advises him that it intends to issue a tentative decision.

§ 302.23 Prehearing conference.

(a) *Purpose and scope of conference.* Prior to any hearings there will ordinarily be a prehearing conference before an examiner, although in economic enforcement proceedings where the issues are drawn by the pleadings such conference will usually be omitted. Written notice of the prehearing conference shall be sent by the chief examiner to all parties to a proceeding and to other persons who appear to have an interest in such proceeding. The purpose of such a conference is to define and simplify the issues and the scope of the proceeding, to secure statements of the positions of the parties with respect thereto and amendments to the pleadings in conformity therewith, to schedule the exchange of exhibits before the date set for hearing, and to arrive at such agreements as will aid in the conduct and disposition of the proceeding. For example, consideration will be given to: (1) Matters which the Board can consider without the necessity of proof; (2) admissions of fact and of the genuineness of documents; (3) requests for documents; (4) admissibility of evidence; (5) limitation of the number of witnesses; (6) reducing of oral testimony to exhibit form; (7) procedure at the hearing, etc. The examiner may require further conference, or responsive pleadings, or both. If a party refuses to produce documents requested by another party at the conference, the examiner may compel the production of such documents prior to hearing by subpena issued in accordance with the provisions of § 302.19 as though at a hearing. Applications for the production prior to hearing of documents in the Board's possession shall be addressed to the examiner, in accordance with the provisions of § 302.19(g), in the same manner as provided therein for production of documents at a hearing. The examiner may also on his own motion or on motion of any party direct any party to the proceeding (air carrier or non-air carrier) to prepare and submit exhibits setting forth studies, forecasts, or estimates on matters relevant to the issues in the proceeding.

(b) *Report of prehearing conference.* The examiner shall issue a report of prehearing conference, defining the issues, giving an account of the results of the conference, specifying a schedule for the exchange of exhibits and rebuttal exhibits, the date of hearing, and specifying a time for the filing of objections to such report. The report shall be served upon all parties to the proceeding and any person who appeared at the conference. Objections to the report may be filed by any interested person within the time specified therein. The examiner may revise his report in the light of the objections presented. The revised report, if any, shall be served upon the same persons as was the original report. Exceptions may be taken on the basis of any timely written objection which has not been met by a revision of the report if they are filed within the time specified in the revised report. Such report shall constitute the official account of the conference and shall control the subsequent course of the proceeding, but it may be reconsidered and modified at any time to protect the public interest or to prevent injustice.

§ 302.24 Hearings.

(a) *Notice.* The examiner to whom the case is assigned or the Board shall give the parties reasonable notice of a hearing or of the change in the date and place of a hearing and the nature of such hearing.

(b) *Evidence.* Evidence presented at the hearing shall be limited to material evidence relevant to the issues as drawn by the pleadings or as defined in the report of prehearing conference, subject to such later modifications of the issues as may be necessary to protect the public interest or to prevent injustice and shall not be unduly repetitious. Evidence shall be presented in written form by all parties wherever feasible, as the examiner may direct.

(c) *Objections to evidence.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument or debate thereon except as ordered by the examiner. Rulings on such objections shall be a part of the transcript.

(d) *Exceptions.* Formal exceptions to the rulings of the examiner made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, at the time the ruling of the examiner is made or sought, makes known the action he desires the examiner to take or his objection to an action taken, and his grounds therefor.

(e) *Offers of proof.* Any offer of proof made in connection with an objection taken to any ruling of the examiner rejecting or excluding proferred oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony, and if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(f) *Exhibits.* When written exhibits are offered in evidence, one copy must be furnished to each of the parties at the hearing, and two copies to the examiner, unless the parties previously have been furnished with copies or the examiner directs otherwise. If the examiner has not fixed a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time, preferably before the hearing or, at the latest, at the commencement of the hearing.

(g) *Substitution of copies for original exhibits.* In his discretion, the examiner may permit a party to withdraw original documents offered in evidence and substitute true copies in lieu thereof.

(h) *Designation of parts of documents.* When relevant and material matter offered in evidence by any party

is embraced in a book, paper, or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. The immaterial and irrelevant parts shall be excluded and shall be segregated insofar as practicable. If the volume of immaterial or irrelevant matter would unduly encumber the record, such book, paper, or document will not be received in evidence, but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record, or, if the examiner so directs, a true copy of such matter, in proper form, shall be received as an exhibit, and like copies delivered by the party offering the same to opposing parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the book, paper, or document, and to offer in evidence in like manner other portions thereof.

(i) *Records in other proceedings.* In case any portion of the record in any other proceeding or civil or criminal action is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless:

(1) The portion is specified with particularity in such manner as to be readily identified; and

(2) The party offering the same agrees unconditionally to supply such copies later, or when required by the Board; and

(3) The parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference, and that any portion offered by any other party may be incorporated by like reference upon compliance with subparagraphs (1) and (2) of this paragraph; and

(4) The examiner directs such incorporation or waives the above requirement with the consent of the parties.

(j) *Receipt of documents after hearing.* No document or other writings shall be accepted for the record after the close of the hearing except in accordance with an agreement of the parties and the consent of the examiner.

(k) *Transcript of hearings.* Hearings shall be recorded and transcribed by a contract reporter of the Board under supervision of the examiner. Copies of the transcript shall be supplied to the parties to the proceeding by the reporter at rates not to exceed the maximum rates fixed by contract between the Board and the reporter.

(l) *Corrections to transcript.* Changes in the official transcript may be made only when they involve errors affecting substance. A motion to correct a transcript shall be filed with the Docket Section of the Board within ten (10) days after receipt of the completed transcript by the Board. If no objections to the motion are filed within ten (10) days thereafter, the transcript may, upon the approval of the examiner, be changed to reflect such corrections. If objections are received, the motion and objections shall be submitted to the official reporter by the examiner together with a request for a comparison of the transcript with the stenographic record of the hearing. After receipt of the report of the official reporter an order shall be entered by the examiner settling the record and ruling on the motion.

(m) *Official notice of facts contained in certain documents.* (1) Without limiting, in any manner or to any extent, the discretionary powers of the Board and its examiners to notice other matters or documents properly the subject of official notice, facts contained in any document within the categories enumerated in this subdivision are officially noticed in all formal economic proceedings except those subject to Subpart B of this part. Each such category shall include any document antedating final Board decision in the proceeding where such notice is taken. The matters officially noticed under the provisions of this paragraph are:

1. Official Guide of the Airways for each month prior to and including April 1943; Universal Airline Schedules for each month from May 1943 to September 1944, inclusive; American Aviation Air Traffic Guide for each month from October 1944 to August 1948, inclusive; and Official Airline Guide.

2. Official Guide of the Railways and Russell's Official National Motor Coach Guide.

3. Book of Official CAB Airline Route Maps and Airport to Airport Mileages published by Air Transport Association of America.

4. Shuler Guide and Official Airline Guide Quick Reference Edition.

5. All schedules and amendments thereof, and all tariffs and amendments thereof, of all carriers, on file with the Board.

6. Air carrier operating certificates or applications therefor, of all carriers, together with any requests for amendment thereof.

7. Monthly reports, Forms 2380 and 2780, for each month through December 1946, and monthly and quarterly reports, Forms 41 and 41(a) (including monthly and annual reports required to be filed by all carriers in connection therewith), filed with the Board.

8. Recurrent Reports of Mileage and Traffic Data of all Domestic Airline Carriers from 1945 and all similar reports issued by the Civil Aeronautics Board.

9. Certificated Air Carrier Traffic Statistics from 1955; prepared by the Office of Carrier Accounts and Statistics, Civil Aeronautics Board, and all such other similar compilations of statistics issued by the Civil Aeronautics Board.

10. Recurrent Reports of Financial Data of all Domestic Airline Carriers from 1947 through the quarter ended September 30, 1953; issued by the Civil Aeronautics Board, and all such other similar recurrent reports issued by the Civil Aeronautics Board.

11. Certificated Air Carrier Financial Data from the quarter ended December 31, 1953; prepared by the Office of Carrier Accounts and Statistics, Civil Aeronautics Board, and all such other similar compilations of data issued by the Civil Aeronautics Board.

12. Annual Airline Statistics, Domestic Carriers, fiscal years 1936–1941; Annual Airline Statistics, Domestic Carriers, calendar years 1938–1947; prepared by the Economic Bureau, Civil Aeronautics Board; and all such other similar compilations of statistics issued by the Civil Aeronautics Board.

13. Quarterly Report of Air Carrier Operating Factors, for the quarter ended September 30, 1953; prepared by the Office of Carrier Accounts and Statistics, Civil Aeronautics Board, and all such other reports for quarterly periods as may be made available to the public by the Civil Aeronautics Board.

14. Passenger, mail, express, and freight data submitted to the Board on Form 2787 or on punch cards submitted in lieu of such forms, by all carriers for any months subsequent to March 1955.

15. Airline Traffic Surveys, compiled by the Civil Aeronautics Board, from September 1946, and any other such surveys made available to the public.

16. The publication Competition Among Domestic Air Carriers, March 1–14, 1955, compiled by the Civil Aeronautics Board and published by the Air Transport Association of America, and any other compilations of similar data made available to the public.

17. Service Mail Pay and Subsidy for United States Certificated Air Carriers, from 1955, published by the Civil Aeronautics Board, and any supplemental data and subsequent issues published.

18. Airport Activity Statistics of Certificated Air Carriers, from December 31, 1955; compiled by the Civil Aeronautics Board, and published by Air Transport Association of America, and any subsequent issues thereof published.

19. Enplaned Airline Traffic, by community, by year, 1948–1951; Air Commerce Traffic Pattern, fiscal years 1953–1955 and calendar years 1952–1955, published by the Civil Aeronautics Administration, U.S. Department of Commerce, and any subsequent editions thereof published by the Federal Aviation Agency.

20. Population Volumes I and II of the Eighteenth (1960) Census of the United States, issued by the Census Bureau, Department of Commerce; and similar publications of the Census Bureau relating to the Seventeenth (1950) Census.

21. The Rand McNally Commercial Atlas and Marketing Guide, from 1958, and the Rand McNally Road Atlas, United States, Canada, and Mexico, from 1956.

22. Survey of Buying Power, from 1955, published by Sales Management Magazine.

23. Volumes II and III of the Census of Manufacturers, 1954, issued by the Bureau of Census of the U.S. Department of Commerce; and similar publications of the Bureau of the Census relating to the 1947 and 1958 Census of Manufacturers.

24. Volumes II, IV, and VI of the Census of Business, 1954, issued by the Bureau of the Census of the U.S. Department of Commerce; and similar publications of the Bureau of the Census relating to the 1948 and 1958 Census of Business.

25. Federal Airways Air Traffic Activity, from 1953–1956 (fiscal year) issued by the Civil Aeronautics Administration, U.S. Department of Commerce, and subsequent editions thereof issued by the Federal Aviation Agency.

26. National Airport Plan, from 1956, Civil Aeronautics Administration, U.S. Department of Commerce and subsequent editions thereof issued by the Federal Aviation Agency.

27. Record of Airport Facilities, Form ACA-29A, issued by the Civil Aeronautics Administration, U.S. Department of Commerce and by the Federal Aviation Agency.

28. International Section, Airline Traffic Surveys prepared by the Civil Aeronautics Board from March and September 1952, and any such surveys issued or otherwise made available to the parties by the Civil Aeronautics Board or published privately.

29. The ABC World Airways Guide, Thomas Skinner and Co., Ltd., from June 1950.

30. ICAO Statistical Summary, Preliminary Issue and Nos. 1 through 14, and Digest of Statistics, Nos. 15 through 71, prepared by

the International Civil Aviation Organization, Montreal, Canada, with all changes and additions.

31. Foreign-Commerce Yearbook, from 1951, U.S. Department of Commerce, office of International Trade.

32. Statistical Abstract of the United States, from 1953, U.S. Department of Commerce, Bureau of Census.

33. Yearbook of International Trade Statistics, from 1956.

34. Annual Reports of the Immigration and Naturalization Service, U.S. Department of Justice, from fiscal year ended June 30, 1945.

35. Official Steamship and Airways Guide International. Transportation Guides, Inc., from June 1945.

36. The Airman's Guide, from 1950, issued by the Civil Aeronautics Administration, U.S. Department of Commerce, and any subsequent editions thereto, issued by the Federal Aviation Agency.

37. Plant and Product Directory of the 500 Largest U.S. Industrial Corporations, from 1961, published by Time Inc.

38. Thomas' Register of American Manufacturers, from 1955, published by Thomas Publishing Company.

39. First and Second Class Post Offices, July 1, 1939–July 1, 1946 and Receipts and Classes of Post Offices, from July 1, 1947, issued by the U.S. Post Office Department.

40. Quarterly Report on Federal Aid to Highways, from March 1960, issued by the Bureau of Public Roads of the U.S. Department of Commerce.

41. All forms and reports required by the Post Office Department to be filed by air carriers certificated to transport mail.

42. All orders of the Postmaster General designating schedules for the transporation of mail.

43. Handbook of Airline Statistics from 1961, prepared by the Bureau of Accounts and Statistics, Civil Aeronautics Board.

(2) Any fact contained in a document belonging to a category enumerated in subparagraph (1) of this paragraph shall be deemed to have been physically incorporated into and made part of the record in such proceedings. However, such taking of official notice shall be subject to the rights granted to any party or intervener to the proceeding under section 7(d) of the Administrative Procedure Act.

(3) The decisions of the Board and its examiners may officially notice any appropriate matter without regard to whether or not such items are contained in a document belonging to the categories enumerated in subparagraph (1) of this paragraph. However, where the decision rests on official notice of a material fact or facts, it will set forth such items with sufficient particularity to advise interested persons of the matters which have been noticed.

### § 302.25 Argument before the examiner.

(a) The examiner shall give the parties to the proceeding adequate opportunity during the course of the hearing for the presentation of arguments in support of or in opposition to motions, and objections and exceptions to rulings of the examiner.

(b) When, in the opinion of the examiner, the volume of the evidence or the importance or complexity of the issues involved warrants, he may, either of his own motion, or at the request of a party, permit the presentation of oral argument. He may impose such time limits on the argument as he may determine, having regard for other assignments for hearing before him. Such argument shall be transcribed and bound with the transcript of testimony and will be available to the Board for consideration in deciding the case.

### § 302.26 Proposed findings and conclusions before the examiner or the Board.

Within such limited time after the close of the reception of evidence fixed by the examiner, any party may, upon request and under such conditions as the examiner may prescribe, file for his consideration briefs to include proposed findings and conclusions of law which shall contain exact references to the record and authorities relied upon. The provisions of this section shall be applicable to proceedings in which the record is certified to the Board without the preparation of an initial or recommended decision by the examiner.

### § 302.27 Delegation to examiners and action by examiners after hearing.

(a) *Delegation of authority to make the agency decision subject to discretionary review.* Pursuant to the authority conferred on the Board and the Chairman of the Board by Reorganization Plan No. 3 of 1961, 26 F.R. 5989, there is hereby delegated to each hearing examiner assigned to a particular case subject to this part the Board's function of making the agency decision on the substantive and procedural issues remaining for disposition at the close of the hearing in such case, except that this delegation does not apply in cases where the record is certified to the Board, with or without a recommended decision by the examiner, or in cases requiring Presidential approval under section 801 of the Act. This delegation does not apply to the review of rulings by the examiner on interlocutory matters which have been appealed to the Board in accordance with the requirements of § 302.18. The term "initial decision," as used in this part, shall encompass the examiner's decision pursuant to this delegation of authority on the merits of the proceeding and on all ancillary procedural issues remaining for disposition at the close of the hearing.

(b) *Action by examiner after hearing.* (1) Every initial or recommended decision issued shall state the names of the persons who are to be served with copies of it, the time within which exceptions to, or petitions for review of, such decision may be filed, and the time within which briefs in support of the exceptions may be filed. In addition, every initial decision shall recite that it is made under delegated authority, and contain notice of the provisions of paragraph (c) of this section. In the event the examiner certifies the record to the Board without an initial or recommended decision, he shall notify the parties of the time within which to file proposed findings and conclusions with the Board and supporting briefs.

(2) Except where the Board directs otherwise, after the taking of evidence and the receipt of proposed findings and conclusions, if any, the examiner shall take the following action:

(i) *Cases subject to section 801 of the Act.* In cases where the action of the Board is subject to the approval of the President pursuant to section 801 of the Act, the examiner shall render a recommended decision orally on the record or in writing.

(ii) *Other matters.* If the proceeding relates to any matter not provided for in subdivision (i) of this subparagraph, the examiner shall render an initial decision in writing.

(c) *Effect of initial decision.* Unless a petition for discretionary review is filed pursuant to § 302.28 or the Board issues an order to review upon its own initiative, the initial decision shall become effective as the final order of the Board 30 days after service thereof. If a petition for discretionary review is timely filed or action to review is taken by the Board upon its own initiative, the effectiveness of the initial decision is stayed until the further order of the Board.

### § 302.28 Petitions for discretionary review of initial decisions; review proceedings.

(a) *Petitions for discretionary review.* (1) Review by the Board pursuant to this section is not a matter of right but of the sound discretion of the Board. Any party may file and serve a petition for discretionary review by the Board of an initial decision within 25 days after service thereof. Such petitions shall be accompanied by proof of service on all parties.

(2) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(i) A finding of a material fact is erroneous;

(ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to law, Board rules, or precedent;

(iii) A substantial and important question of law, policy or discretion is involved; or

(iv) A prejudicial procedural error has occured.

(3) Each issue shall be separately numbered and plainly and concisely stated. Petitioners shall not restate the same point in repetitive discussions of an issue. Each issue shall be supported by detailed citations of the record when objections are based on the record, and by statutes, regulations or principal authorities relied upon. Any matters of fact or law not argued before the examiner, but which the petitioner proposes to argue on brief to the Board, shall be stated.

(4) Petitions for discretionary review shall be self-contained and shall not incorporate by reference any part of another document. Except by permission of the Board or the Chief Examiner, petitions shall not exceed 20 pages including appendices and other papers physically attached to the petition. Petitions of more than 10 pages shall contain a subject index with page references.

(5) Requests for oral argument on petitions for discretionary review will not be entertained by the Board.

(b) *Answer.* Within 15 days after service of a petition for discretionary review, any party may file and serve an answer of not more than 15 pages in support of or in opposition to the petition. If any party desires to answer more than one petition for discretionary review in the same proceeding, he shall do so in a single document of not more than 20 pages.

(c) *Orders declining review.* Board orders declining to exercise the Board's right of review will specify the date upon which the examiner's decision shall become effective as the final decision of the Board. A petition for reconsideration of a Board order declining review will be entertained only when the order exercises, in part, the Board's right of review, and such petition shall be limited to the single question of whether any issue designated for review and any issue not so designated are so inseparably interrelated that the former cannot be reviewed independently or that the latter cannot be made effective before the final decision of the Board in the review proceeding.

(d) *Review proceedings.* (1) The Board will exercise its right of review upon petition for review or on its own initiative when two or more Board members vote in favor of review. The Board will issue a final order upon such review without further proceedings on any or all the issues where it finds that matters raised do not warrant further proceedings.

(2) Where the Board desires further proceedings, the Board will issue an order for review which will:

(i) Specify the issues to which review will be limited. Such issues shall constitute one or more of the issues raised in a petition for discretionary review and/or matters which the Board desires to review on its own initiative. Only those issues specified in the order shall be argued on brief to the Board, pursuant to § 302.31, and considered by the Board.

(ii) Specify the portions of the examiner's decision, if any, which are to be stayed as well as the effective date of the remaining portions thereof.

(iii) Designate the parties to the review proceeding.

**§ 302.29 Tentative decision of the Board.**

(a) Except as provided in paragraph (b) of this section, whenever the examiner certifies the record in a proceeding directly to the Board without issuing an initial or recommended decision in the matter, the Board shall, after consideration of any proposed findings and conclusions submitted by the parties, prepare a tentative decision and serve it upon the parties. Every tentative decision of the Board shall state the names of the persons who are to receive copies of it, the time within which exceptions to such decision may be filed, the time within which briefs in support of the exceptions may be filed, and the date when such decision will become final in the absence of exceptions thereto. If no exceptions are filed to the tentative decision of the Board within the period fixed (which in no event shall be less than 10 days), it shall become final at the expiration of such period unless the Board orders otherwise.

(b) Notwithstanding the provisions of paragraph (a) of this section, in rule making proceedings or proceedings determining applications for initial licenses, the Board may omit a tentative decision in any case in which it finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires.

**§ 302.30 Exceptions to recommended decisions of examiners or tentative decisions of the Board.**

(a) *Time for filing.* Within ten (10) days after service of any recommended decision of an examiner or tentative decision of the Board, any party to a proceeding may file exceptions to such decision with the Board.

(b) *Form and contents of exceptions.* Each exception shall be separately numbered and shall be stated as a separate point, and appellants shall not restate the same point in several repetitive exceptions. Each exception shall state, sufficiently identify, and be limited to, an ultimate conclusion in the decision to which exception is taken (such as, selection of one carrier rather than another to serve any point or points; points included in or excluded from a new route; imposition or failure to impose a given restriction; determination of a rate at a given amount rather than another). No specific exception shall be taken with respect to underlying findings or statements, but exceptions to an ultimate conclusion shall be deemed to include exceptions to all underlying findings and statements pertaining thereto. *Provided, however,* That exceptions shall specify any matters of law, fact or policy which were not argued before the examiner but will be set forth for the first time on brief to the Board.

(c) *Effect of failure to file timely and adequate exceptions.* No objection may be made on brief or at a later time to an ultimate conclusion which is not expressly made the subject of an exception in compliance with the provisions of this section. *Provided, however,* That any party may file a brief in support of the decision and in opposition to the exceptions filed by any other party.

**§ 302.31 Briefs before the Board.**

(a) *Time for filing.* Within such period after the date of service of any recommended decision of an examiner or tentative decision by the Board as may be fixed therein, any party may file a brief addressed to the Board, in support of his exceptions to such decision or in opposition to the exceptions filed by any other party. Briefs to the Board on initial decisions of examiners shall be filed only in those cases where the Board grants discretionary review and orders further proceedings, pursuant to § 302.28(d)(2), and only upon those issues specified in the order. Such briefs shall be filed within 30 days after date of the order granting discretionary review. In cases where, because of the limited number of parties and the nature of the issues, the filing of opening, answering and reply briefs will not unduly delay the proceeding and will assist in its proper disposition, the Board or the examiner (where the examiner's decision was not made under delegated authority) may direct that the parties file briefs at different times rather than at the same time.

(b) *Effect of failure to restate objections in briefs.* In determining the merits of an appeal, the Board will not consider the exceptions or the petition for discretionary review but will consider only the brief. Each objection contained in the exceptions or each issue specified in the Board's order exercising discretionary review must be restated and supported by a statement and adequate discussion of all matters relied upon, in a brief filed pursuant to and in compliance with the requirements of this section.

(c) *Formal specifications of briefs.*—(1) *Contents.* Each brief shall discuss every point of law and fact which the party submitting it is entitled to raise pursuant to this part and any pertinent order of the Board, and which he desires the Board to consider. Support and justification for every such point shall include itemized references to the pages of the transcript of hearing, exhibit or other matter of record, and citations of the statutes, regulations or principal authorities relied upon. If a brief or any point discussed therein is not in substantial conformity with the requirement for such support and justification, no motion to strike or dismiss such document shall be made but the Board may disregard the points involved.

(2) *Incorporation by reference.* Briefs to the Board shall be completely self-contained and shall not incorporate by reference any portion of any other brief or pleading: *Provided, however,* That in lieu of submitting a brief to the Board a party may adopt by reference specifically identified pages or the whole of his prior brief to the examiner. In such cases, the party may file with the Docket Section a letter exercising this privilege and serve all parties in the same manner as a brief to the Board.

(3) *Length and index.* Briefs shall comply with the formal specifications set forth in § 302.3(b). Except by permission or direction of the Board or the Chief Examiner, briefs shall not exceed 50 pages including those pages contained in any appendix, table, chart, or other document physically attached to the brief, except maps. In this case "map" means only those pictorial representations of routes, flight paths, mileage, and similar ancillary data that are superimposed on geographic drawings and contain only such text as is needed to explain the pictorial representation. Any brief that exceeds 10 pages shall contain a subject index of its contents, including page references.

§ 302.32 Oral argument before the Board.

(a) If any party desires to argue a case orally before the Board, he shall request leave to make such argument in his exceptions or brief. Such request shall be filed no later than the date when briefs before the Board are due in the proceeding. The Board will rule on such request, and if oral argument is to be allowed, all parties to the proceeding will be advised of the date and hour set for such argument and the amount of time allowed to each party. Requests for oral argument on petitions for discretionary review will not be entertained.

(b) Pamphlets, charts, and other written data may be presented to the Board at oral argument only in accordance with the following rules: All such material shall be limited to facts in the record of the case being argued. All such material shall be served on all parties to the proceeding and eight copies transmitted to the Docket Section of the Board at least five (5) calendar days in advance of the argument. As used herein "material" includes, but is not limited to, maps, charts included in briefs, and exhibits which are enlarged and used for demonstration purposes at the argument, but does not include the enlargements of such exhibits.

§ 302.33 Waiver of procedural steps after hearing.

The parties to any proceeding may agree to waive any one or more of the following procedural steps provided in §§ 302.25 through 302.32: Oral argument before the examiner, the filing of proposed findings and conclusions for the examiner or for the Board, a recommended decision of the examiner, a tentative decision of the Board, exceptions to a recommended decision of the examiner or a tentative decision of the Board, a petition for discretionary review of an initial decision, the filing of briefs with the Board, or oral argument before the Board.

§ 302.35 Shortened procedure.

In cases where a hearing is not required by law, §§ 302.23 through 302.33, relating to prehearing, hearing, and post-hearing procedures, shall not be applicable except to the extent that the Board shall determine that the application of some or all of such rules in the particular case will be conducive to the proper dispatch of its business and to the ends of justice.

§ 302.36 Final decision of the Board.

When a case stands submitted to the Board for final decision on the merits, the Board will dispose of the issues presented by entering an appropriate order which will include a statement of the reasons for its findings and conclusions. Such orders shall be deemed "final orders" within the purview of § 302.37(a).

§ 302.37 Petitions for reconsideration.

(a) *Board orders subject to reconsideration; time for filing.* Unless an order or a rule of the Board specifically provides otherwise, any party to a proceeding may file a petition for reconsideration, rehearing or reargument of (1) a final order issued by the Board or (2) an interlocutory order issued by the Board which institutes a proceeding or defines the scope and issues of a proceeding or suspends a provision of a tariff on file with the Board. Unless the time is shortened or enlarged by the Board, petitions for reconsideration shall be filed, in the case of a final order, within twenty (20) days after service thereof, and, in the case of an interlocutory order, within ten (10) days after service. However, neither the filing nor the granting of such a petition shall operate as a stay of such final or interlocutory order unless specifically so ordered by the Board. Within ten (10) days after a petition for reconsideration, rehearing, or reargument is filed, any party to the proceeding may file an answer in support of or in opposition to the petition. Motions for extension of time to file a petition or answer, and for leave to file a petition or answer after the time for the filing thereof has expired, will not be granted by the Board except on a showing of unusual and exceptional circumstances, constituting good cause for movant's inability to meet the established procedural dates.

(b) *Contents of petition.* A petition for reconsideration, rehearing, or reargument shall state, briefly and specifically, the matters of record alleged to have been erroneously decided, the ground relied upon, and the relief sought. If the petition is based, in whole or in part, on allegations as to the consequences which would result from the Board's order, the basis of such allegations shall be set forth. If the petition is based, in whole or in part, on new matter, such new matter shall be set forth, accompanied by a statement to the effect that petitioner, with due diligence, could not have known or discovered such new matter prior to the date the case was submitted for decision. Unless otherwise directed by the Board upon a showing of unusual or exceptional circumstances, petitions for reconsideration, rehearing or reargument or answers thereto which exceed twenty-five (25) pages (including appendices) in length shall not be accepted for filing by the Docket Section.

(c) *Successive petitions.* A successive petition for rehearing, reargument, or reconsideration filed by the same party or parties, and upon substantially the same ground as a former petition which has been considered or denied by the Board, will not be entertained.

§ 302.38 Petitions for rule making.

(a) *Scope.* Any interested person may petition the Board for the issuance, amendment, modification, or repeal of any regulation. For purposes of this section, such proposed action will be termed rule making. Any interested person may file an answer to the petition at any time prior to the institution of a proceeding thereon or prior to denial thereof, as the case may be. Such answer shall be served upon the petitioner. The right to file an answer is purely permissive, and failure to file an answer shall not prejudice any interested person in any rule making proceeding which may be instituted on the petition. The procedures set forth in this section shall not apply to recommendations for rule making submitted by other agencies of the Government.

(b) *Form and contents.* Petitions for rule making, and answers thereto, shall conform to the requirements of §§ 302.3 and 302.4; and a petition or answer which does not conform to such requirement will not be considered by the Board.

(c) *Procedure.* Petitions for rule making will be given a docket number and will, together with any answers thereto, become matters of public record upon filing. No public hearing, oral argument, or other form of proceedings will be held directly on any such petition, but if the Board determines that the petition discloses sufficient reasons in support of the relief requested to justify the institution of public rule making procedures, an appropriate notice of proposed rule making will be issued. Thereafter, the procedures to be followed will be as required in the Administrative Procedure Act. Where the Board determines that the petition does not disclose sufficient reasons to justify the institution of public rule making procedures, petitioner, as well as persons filing answers, will be so notified together with the grounds for such denial. The provisions of this section shall not operate to prevent the Board, on its own motion, from acting on any matter disclosed in any petition.

(d) *Prohibition of petitions for reconsideration of adopted rules.* Unless the Board in adopting a rule expressly provides otherwise, the Board will not entertain petitions for reconsideration of an adopted rule. Nothing in this subsection shall be interpreted as precluding a petition for amendment, modification or repeal of an adopted rule prior to its effective date.

§ 302.39 Objections to public disclosure of information.

(a) *Information contained in paper to be filed.* Any person who objects to the public disclosure of any information contained in any paper filed in any proceeding, or in any application, report, or other document filed pursuant to the provisions of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order of the Board thereunder, shall segregate, or request the segregation of, such information into a separate paper and shall file it, or request that it be filed, with the examiner or the person conducting the hearing or proceeding, as the case may be, or with the person with whom said application, report, or document is required to be filed, separately in a sealed envelope, bearing the caption of the enclosed paper and the notation "Classified or Confidential Treatment Requested Under § 302.39." At the time of filing such paper, or when the objection is made by a person not himself

filing the paper, application, report or other document, within five (5) days after the filing of such paper, the objecting party shall file a motion to withhold the information from public disclosure, in accordance with the procedure outlined in paragraph (d) of this section, or in accordance with the procedure outlined in paragraph (c) of this section if objection is made by a Government department or a representative thereof. Notwithstanding any other provision of this section, copies of the filed paper and of the motion need not be served upon any other party unless so ordered by the Board.

(b) *Information contained in oral testimony.* Any person who objects to the public disclosure of any information sought to be elicited from a witness or deponent on oral examination shall, before such information is disclosed, make his objection known. Upon such objection duly made, the witness or deponent shall be compelled to disclose such information only in the presence of the examiner or the person before whom the deposition is being taken, as the case may be, the official stenographer and such attorneys for and lay representative of each party as the examiner or the person before whom the deposition is being taken, as the case may be, shall designate, and after all present have been sworn to secrecy. The transcript of testimony containing such information shall be segregated and filed in a sealed envelope, bearing the title and docket number of the proceeding, and the notation "Classified or Confidential Treatment Requested Under § 302.39 Testimony Given by (name of witness or deponent)." Within five (5) days after such testimony is given, the objecting person shall file a motion, except as hereinafter provided in paragraph (c) of this section, in accordance with the procedure outlined in paragraph (d) of this section, to withhold the information from public disclosure. Notwithstanding any other provision of this section, copies of the segregated portion of the transcript and of the motion need not be served upon any other party unless so ordered by the Board.

(c) *Objection by Government departments or representative thereof.* In the case of objection to the public disclosure of any information filed by or elicited from any United States Government department, or representative thereof, under paragraph (a) or (b) of this section, the department making such objection shall be exempted from the provisions of paragraphs (a), (b), and (d) of this section insofar as said paragraphs require the filing of a written objection to such disclosure. However, any department, or person representing said department, if it so desires, may file a memorandum setting forth the reasons on the basis of which it is claimed that a public disclosure of the information should not be made. If such a memorandum is submitted, it shall be filed and handled as is provided by this section in the case of a motion to withhold information from public disclosure.

(d) *Form of motion to withhold information from public disclosure.* Subject to the exception of paragraph (c) of this section, no information covered by paragraphs (a) and (b) of this section need be withheld from public disclosure unless written objection to such disclosure is filed with the Board in accordance with the following procedure:

(1) The motion shall be headed with the title and docket number of the proceeding and shall be signed by the objecting person, any duly authorized officer or agent thereof, or by counsel representing such person in the proceeding.

(2) The motion shall include (i) a description of the information sought to be withheld, sufficient for identification of the same, and (ii) a full statement of the reasons on the basis of which it is claimed that a public disclosure of the information would adversely affect the interests of the objecting person and is not required in the interest of the public, or that the information is of a secret nature affecting the national defense.

(3) Such motion shall be filed with the examiner or the person conducting the hearing or proceeding, as the case may be, or with the person with whom said application, report, or document is required to be filed.

If such motion relates to contracts, agreements, understandings, or arrangements filed pursuant to section 412 (a) of the Federal Aviation Act of 1958, as amended, and Part 261 of this chapter, or pursuant to Part 262 of this chapter, an executed original copy and two copies of such motion shall be filed.

(e) *Motions referred to the Board.* The order of the Board containing its ruling upon each such motion will specify the extent to which, and the conditions upon which, the information may be disclosed to the parties and to the public, which order shall become effective upon the date stated therein, unless, within five (5) days after the date of the entry of the Board's order with respect thereto, a petition is filed by the objecting person requesting reconsideration by the Board, or a written statement is filed indicating that the objecting person in good faith intends to seek judicial review of the Board's order.

(f) *Objections in proceeding before the Board.* Notwithstanding any of the provisions of this section, whenever the objection to disclosure of information shall have been made, in the first instance, before the Board itself, the written motion of objection contemplated by paragraphs (a), (b), and (d) of this section shall not be necessary but may be submitted if the parties so desire or if the Board, in a particular case, shall so direct.

### § 302.40 Saving clause.

Repeal, revision or amendment of any Economic Regulation of the Board shall not affect any pending enforcement proceeding or any enforcement proceeding initiated thereafter with respect to causes arising or acts committed prior to said repeal, revision or amendment, unless the act of repeal, revision or amendment specifically so provides.

## Subpart B—Rules Applicable to Economic Enforcement Proceedings

### § 302.200 Applicability of this subpart.

(a) *In general.* This subpart sets forth the special rules applicable to proceedings for enforcement of the economic regulatory provisions of the act, and rules, regulations, orders, limitations, conditions and requirements issued thereunder. For information as to other applicable rules, reference should also be made to Subpart A of this part, to the act and to the substantive rules, regulations and orders of the Board.

(b) *Informal complaints.* Informal complaints may be made in writing with respect to anything done or omitted to be done by any person in contravention of any provision of the act or any requirement established pursuant thereto without compliance with this part. Matters so presented may, if their nature warrants, be handled by the Board by correspondence or conference with the appropriate persons. Any matter not disposed of informally may be made the subject of a formal proceeding pursuant to this subpart. The filing of an informal complaint shall not bar the subsequent filing of a formal complaint.

### § 302.201 Formal complaints.

Any person may make a formal complaint to the Board with respect to anything done or omitted to be done by any person in contravention of any economic regulatory provisions of the act, or any rule, regulation, order, limitation condition or other requirement established pursuant thereto. Every formal complaint shall conform to the requirements of § 302.3, concerning the form and filing of documents. The submission of a formal complaint by a person other than an enforcement attorney (hereinafter called a third party) shall not in itself result in the institution of a formal economic enforcement proceeding and a hearing with respect to the complaint unless and until the Director of the Bureau of Enforcement dockets a petition for enforcement with respect to such complaint, or a portion thereof, in accordance with § 302.206. A formal complaint, whether filed by a third party or an enforcement attorney, may be amended at any time prior to the service of an answer to a complaint. Thereafter, such amendment may be filed only upon the grant of a motion filed in accordance with § 302.18, except that permission to amend a third-party complaint after the filing of an answer but before the docketing of a petition for enforcement must be obtained from the Director of the Bureau of Enforcement.

### § 302.202 Subscription and verification.

Every formal complaint, supplemental complaint, answer or other pleading filed in an economic enforcement proceeding shall be signed by the party filing the same, or by a duly authorized officer, agent or attorney of such party. In

addition, such documents shall be verified under oath by the person so signing. Such verification shall set forth that the person verifying the document has read the same and knows the contents thereof and the attached exhibits, if any, and that the matters and things therein stated are true of his own knowledge, except such matters therein stated on information and belief, and as to such matters he believes them to be true. If the subscription and verification, or either of them, be by anyone other than the party filing the same or an officer or attorney of such party, the reason therefor must be stated and the power of attorney or other authority authorizing such affiant to subscribe the document and make the verification must be filed with the document.

§ 302.203 Insufficiency of formal complaint.

In any case where the Director of the Bureau of Enforcement is of the opinion that a complaint does not sufficiently set forth the material required by any applicable rule, regulation or order of the Board, or is otherwise insufficient, he may advise the party filing the same of the deficiency and require that any additional information be supplied by amendment.

§ 302.204 Third-party complaints.

(a) A third-party complaint, and any amendments thereto, submitted pursuant to § 302.201 shall be served by the person filing such documents upon each party complained of and upon the Director of the Bureau of Enforcement.

(b) Within fifteen (15) days after the date of service of a third-party complaint, each person complained of shall file an answer in conformance with and subject to the requirements of § 302.207 (b). Extensions of time for filing an answer may be granted by the Director of the Bureau of Enforcement for good cause shown.

(c) A person complained against in a third-party complaint may offer to satisfy the complaint through submission of facts, offer of settlement or proposal of adjustment. Such offer shall be in writing and shall be served, within fifteen (15) days after service of the complaint, upon the same persons and in the same manner as an answer. The submittal of an offer to satisfy the complaint shall not excuse the filing of an answer.

(d) Motions to dismiss a third-party complaint shall not be fileable prior to the docketing of a petition for enforcement with respect to such complaint or a portion thereof.

§ 302.205 Procedure when no enforcement proceeding is instituted.

(a) Within a reasonable time after a formal third-party complaint has been processed, the Director of the Bureau of Enforcement shall either institute an enforcement proceeding in accordance with § 302.206 or shall advise the complainant in writing that no enforcement proceeding will be instituted in whole or in part, with respect to his complaint, and the reasons therefor.

(b) The letter of the Director of the Bureau of Enforcement shall conform to the requirements of § 302.3 and shall be deemed an order of the Board dismissing the complaint unless review of such ruling is requested by the complainant or is initiated by the Board in accordance with the provisions of paragraph (c) of this section.

(c) Within twenty (20) days after service of a letter from the Director of the Bureau of Enforcement refusing to institute an enforcement proceeding with respect to all or any part of a complaint, the complainant may file a motion with the Board to review such action. The proceedings on such motion shall be in accordance with § 302.18. Upon conclusion of such proceedings, the Board shall enter an order either dismissing the complaint or directing such other action as it deems appropriate. If a complainant does not appeal, the Board may review the action of the Director of the Bureau of Enforcement on its own initiative within 15 days after the expiration date for appeal.

§ 302.206 Docketing of petition for enforcement.

Whenever in the opinion of the Director of the Bureau of Enforcement there are reasonable grounds to believe that any provision of the act or any rule, regulation, order, limitation, condition or other requirement established pursuant thereto, has been or is being violated, that, in the case of third-party complaints, efforts to satisfy a complaint insofar as required by § 302.204 have failed, and that investigation of any or all of the alleged violations is in the public interest, the Director of the Bureau of Enforcement may institute an economic enforcement proceeding by docketing a petition for enforcement. The petition for enforcement shall incorporate by reference a formal complaint submitted pursuant to § 302.201 or shall be accompanied by a complaint complying with § 302.3 which is verified by an enforcement attorney. The petition for enforcement, and accompanying complaint, if any, shall be formally served upon the respondent and complainant. The proceedings thus instituted shall be processed in regular course in accordance with this part. However, nothing in this part shall be construed to limit the authority of the Board to institute or conduct any investigation or inquiry within its jurisdiction in any other manner or according to any other procedures which it may deem necessary or proper.

§ 302.207 Answer.

(a) Within fifteen (15) days after the date of service of a petition for enforcement docketed pursuant to § 302.206, the respondent shall file an answer to the complaint attached thereto or incorporated therein unless an answer has already been filed in accordance with § 302.204. Any requests for extension of time for filing of answer to a complaint attached to or incorporated in a petition for enforcement shall be filed with the Board in accordance with § 302.17.

(b) All answers shall conform to the requirements of § 302.8 (a) (2) and shall fully and completely advise the parties and the Board as to the nature of the defense and shall admit or deny specifically and in detail each allegation of the complaint unless the person complained of is without knowledge, in which case, his answer shall so state and the statement shall operate as a denial. Allegations of fact not denied or controverted shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered and shall, in the absence of a reply, be deemed to be controverted.

§ 302.208 Default.

Failure of a respondent to file and serve an answer within the time and in the manner prescribed by this part shall be deemed to authorize the Board, in its discretion, to find the facts alleged in the petition to be true and to enter such order as may be appropriate without notice or hearing, or, in its discretion, to proceed to take proof, without notice, of the allegations or charges set forth in the complaint or order, provided that the Board or examiner may permit late filings of an answer for good cause shown.

§ 302.209 Reply.

The Board (or the examiner) may, in its discretion, require or permit the filing of a reply in appropriate cases, otherwise no reply shall be filed.

§ 302.210 Parties.

The parties to an economic enforcement proceeding shall be the Board (represented by an enforcement attorney), the respondent, any person whose formal complaint alleged violations which were later covered by the petition for enforcement, and any other person permitted to intervene pursuant to § 302.15.

§ 302.211 Prehearing conference.

Ordinarily the issues in an economic enforcement proceeding will be drawn by the pleadings and no prehearing conference shall be held. However, such a conference may be held where the Board or the examiner believes that the fair and expeditious disposition of the proceeding so requires. In the event a prehearing conference is to be held it shall be conducted in accordance with § 302.23.

§ 302.212 Admissions as to facts and documents.

At any time after answer has been filed, any party may file with the Board and serve upon the opposing side a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request or for the admission of the truth of any relevant matters of fact stated in the request with respect to such documents. Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request, not less than ten (10) days after service thereof, or within such further time as the Board or the examiner may allow

upon motion and notice, the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny such matters. Service of such request and answering statement shall be made as provided in § 302.8. Any admission made by a party pursuant to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered therein, and shall not constitute an admission by him for any other purpose or be used against him in any other proceeding or action.

**§ 302.213 Hearing.**

After the issues have been formulated, whether by the pleadings or otherwise, the examiner or the Board shall give the parties reasonable written notice of the time and place of the hearing.

**§ 302.214 Appearances by persons not parties.**

With consent of the examiner or the Board, appearances may be entered without request for or grant of permission to intervene by interested persons who are not parties to the proceeding. Such persons may, with consent of the examiner or the Board, cross-examine a particular witness or suggest to any party or counsel therefor questions or interrogations to be propounded to witnesses called by any party, but may not otherwise examine witnesses and may not introduce evidence or otherwise participate in the proceeding. However, such persons may present to both the examiner and the Board an oral or written statement of their position on the issues involved in the proceeding.

**§ 302.215 Offers of settlement.**

Any party to an economic enforcement proceeding at any time prior to final decision thereof may submit offers of settlement or proposals of adjustment. Each such offer or proposal shall be submitted in writing and addressed to the Director of the Bureau of Enforcement, who will promptly advise the party or parties submitting same whether he will recommend acceptance thereof to the Board. If the Director of the Bureau of Enforcement advises the party or parties that he will not recommend acceptance, and the party or parties so request in writing, he will transmit such offer or proposal directly to the Board for its consideration and acceptance or rejection. The submission of such offer or proposal shall not alter or delay the course of the proceeding unless so ordered by the Board.

**§ 302.216 Evidence of previous violations.**

Evidence of previous violations by any person of any provision of the act or any requirement thereunder found by the Board or a court in any other proceeding or criminal or civil action may, if relevant and material, be admitted in any enforcement proceeding involving such person.

**§ 302.217 Motions for immediate suspension of operating authority pendente lite.**

All motions for the suspension of the economic operating authority of an air carrier during the pendency of proceedings to revoke such authority shall be filed with, and decided by the Board. Proceedings on the motion shall be in accordance with § 302.18. In addition, the Board shall afford the parties an opportunity for oral argument on such motion.

## Subpart C—Rules Applicable to Mail Rate Proceedings

**§ 302.300 Applicability of this subpart.**

This subpart sets forth the special rules applicable to proceedings for the establishment of mail rates by the Board. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules, regulations and orders of the Board.

**§ 302.301 Parties to the proceeding.**

The parties to the proceeding shall be the air carrier or carriers for whom rates are to be fixed, the Postmaster General, bureau counsel, and any other person whom the Board permits to intervene. (See § 302.15.)

### Final Mail Rate Proceedings

**§ 302.302 Participation by persons other than parties.**

In addition to participation in hearings in accordance with § 302.14, persons other than parties may, within the time fixed for filing notice of objections to an order to show cause in a mail rate proceeding as provided in § 302.305, submit a memorandum of opposition to, or in support of, the position taken in the petition or order. Such memorandum shall not be received as evidence in the proceeding.

**§ 302.303 Institution of proceedings.**

Proceedings for the determination of rates of compensation for the transportation of mail may be commenced by the filing of a petition by an air carrier whose rate is to be fixed, or the Postmaster General, or upon the issuance of an order by the Board.

(a) The petition shall set forth the rate or rates sought to be established, a statement that they are believed to be fair and reasonable, the reasons supporting the request for a change in rate, and a detailed economic justification sufficient to establish the reasonableness of the rate or rates proposed.

(b) In any case where a carrier is operating under a final mail rate uniformly applicable to an entire rate-making unit as established by the Board, a petition must clearly and unequivocally challenge the rate for such entire rate-making unit and not only a part of such unit: *Provided, however,* That this rule shall not apply (1) to petitions seeking equalization of service mail rates to a lower competitive level in order to participate in the carriage of mail between specific points or (2) to petitions by local service air carriers for ad hoc adjustments pursuant to provisions therefor in local service class subsidy rates. Unless a petition clearly and unequivocally requests review of the rate for the entire rate-making unit, it shall be dismissed. No amendment intended to cure the omission shall be given retroactive effect.

(c) All petitions, amended petitions, and documents relating thereto shall be served upon the Postmaster General by sending a copy to the Assistant General Counsel, Transportation, by registered or certified mail, postpaid, prior to the filing thereof with the Board. Proof of service on the Postmaster General shall consist of a statement in the document that the person filing it has served a copy on the Assistant General Counsel, Transportation, as required by this section. The petition need not be accompanied by any further proof of service, but, upon setting any petition down for public hearing, the Board will cause notice of such hearing to be given to such interested person as it deems appropriate in a particular case.

### Procedure When an Order To Show Cause Is Issued

**§ 302.304 Order to show cause.**

Whether the proceeding is commenced by the filing of a petition or upon the Board's own initiative, the Board may issue an order directing the respondent to show cause why the Board should not adopt such provisional findings and conclusions, and such rates, as may be specified in the order to show cause.

**§ 302.305 Objections and answer to order to show cause.**

(a) Any person having objections to the provisional rates specified in such order shall file with the Board a notice of objection within ten (10) days after the date of service of such order.

(b) If such notice is filed as aforesaid, written answer and any supporting documents shall be filed within thirty (30) days after the service of the order to show cause. The Board may specify different times for filing a notice of objection or an answer. An answer to an order to show cause shall contain specific objections, and exhibits in support thereof, and shall set forth the findings and conclusions, the rates, and the supporting exhibits which would be substituted for the corresponding items in the Statement of Provisional Findings and Conclusions, if such objections were found valid.

(c) A notice or answer filed by a person who is neither a party nor a person ultimately permitted to intervene shall be treated as a memorandum filed under § 302.302.

**§ 302.306 Effect of failure to file notice or answer.**

If no notice, or if after notice, no answer is filed within the designated time, all parties shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision of the Board fixing rates, and the Board may thereupon, upon the basis of all of the documents filed in the proceeding, enter a final order fixing the

fair and reasonable rate or rates as specified in the order to show cause.

§ 302.307 Procedure after answer.

If an answer is filed within the time designated in the Board's order, a prehearing conference and hearing shall be held unless waived by all parties. The issues shall be limited to those specifically raised by the answer, except that at the prehearing conference, the examiner may permit the parties to raise such additional issues as he deems necessary to a full and fair determination of a fair and reasonable rate. (Reference should be made to Subpart A of this part for rules applicable to hearings.)

§ 302.308 Evidence.

All direct evidence shall be in writing and shall be filed in exhibit form in advance of the hearing unless, for good cause shown, the examiner otherwise directs.

PROCEDURE WHEN NO ORDER TO SHOW CAUSE IS ISSUED

§ 302.309 Hearing to be ordered.

When no order to show cause is to be issued by the Board, the Board will order a hearing before an examiner similar to that provided for in §§ 302.307 and 302.308, except that the issues at such hearing shall be formulated initially at a prehearing conference.

TEMPORARY RATE PROCEEDINGS

§ 302.310 Procedure for fixing temporary service and subsidy mail rates.

(a) At any time during the pendency of a proceeding for the determination of final mail rates, the Board, upon its own initiative, or on petition by the carrier whose rates are in issue or the Postmaster General, may fix temporary rates of compensation for the transportation of mail subject to downward or upward adjustment upon the determination of final mail rates.

(b) Temporary service mail rates: The procedure for determining temporary mail rates involving an issue as to the service mail rates payable by the Postmaster General pursuant to section 406(c) of the Act shall be the same as for the determination of final mail rates, except that:

(1) Notice of objections to the Board's show cause order proposing temporary service mail rates must be filed by any party or petitioner for intervention within 8 days, and an answer within 15 days, of the time such order is served;

(2) Failure to file notice of objections within the 8-day period shall be deemed to be a waiver of all further procedural steps before final decision, including hearing and initial or tentative decision, and the proceeding will stand submitted to the Board for final decision.

(3) In the absence of a convincing showing that it will result in substantial prejudice to any party or delay the proceeding, the examiner shall require the parties to submit all their testimony in writing and shall closely limit cross-examination to the essential issues (bearing in mind the purpose and urgency of fixing temporary mail rates together with the fact that such temporary rates are subject to downward or upward adjustment upon the fixing of final rates), and shall in all other respects urgently expedite the proceeding.

(c) Temporary subsidy mail rates: The procedure for determining temporary mail rates involving an issue as to the subsidy mail rates payable by the Board pursuant to section 406(c) shall be the same as for the determination of temporary service mail rates pursuant to paragraph (b) of this section except that:

(1) After the filing of answers (if any) the Board may in its discretion (i) issue a final order establishing temporary mail rates at the same level as that proposed in the show cause order, or a different level, (ii) set the matter down for an evidentiary hearing before an examiner, or (iii) notice the matter for oral argument before the Board. Neither oral argument nor an evidentiary hearing will be granted except upon a showing, set forth in the answer, (*a*) that the case presents major issues of fact or policy which cannot fairly be resolved on the basis of written documents, and (*b*) that the establishment of the rates proposed in the show cause order would have a critical impact on the carrier by reason of its immediate and pressing cash requirements. In the case of requests for evidentiary hearing, the answer shall set forth in detail the nature of the evidence which the party requesting hearing would submit if hearing were granted.

(2) The following procedure shall be applicable in the event that the matter is set down for evidentiary hearing pursuant to subparagraph (1)(ii) of this paragraph:

(i) Unless the Board's order setting the case for hearing provides otherwise, or unless prehearing conference is waived by all the parties, a prehearing conference shall be held not later than the eighth day following the date of service of such order. Any requests for extension of the date of the prehearing conference shall be made in the answer to the show cause order and shall contain a showing of exceptional circumstances necessitating extension of the prehearing date.

(ii) The hearing shall commence no later than the fifteenth day after the date of the prehearing conference. Any requests for extension of the date of the hearing shall be made by motion and shall contain a showing of exceptional circumstances necessitating extension of the hearing date.

(iii) Upon the conclusion of the hearing, the examiner shall immediately certify the entire record to the Board. Proposed findings and conclusions and supporting briefs with reasons why the Board should or should not issue a tentative decision shall be filed with the Board within ten days of the date of the conclusion of the hearing. The Board may thereupon issue a tentative decision or may at once issue its final decision establishing temporary subsidy mail rates.

(iv) In the event that the Board issues a tentative decision, the parties may not file separate exceptions and briefs, but may file in lieu thereof exceptions and briefs in support thereof in one document. Such documents shall be filed within 10 days of service of the tentative decision, shall not exceed 25 pages and shall comply with the specifications of § 302.31(c), unless the Board directs otherwise in the tentative decision. If no such documents are filed within the prescribed time, the tentative decision shall, without further proceedings, become the final decision of the Board. If such documents are duly filed, no further pleadings will be permitted and the proceeding shall stand submitted to the Board for final decision. The Board will not entertain petitions for reconsideration of its final order in any case where it has issued a tentative decision. A petition for reconsideration may be filed in any case where the Board has issued a final order pursuant to subparagraph (1)(i) of this paragraph or subdivision (iii) of this subparagraph, which prescribes rates different from those proposed in the order to show cause.

(3) The pendency of any motion or petition in a temporary subsidy mail rate proceeding shall not be grounds for deferring procedural dates.

INFORMAL MAIL RATE CONFERENCE PROCEDURE

§ 302.311 Invocation of procedure.

Conferences between members of the Board's staff, representatives of air carriers, the Post Office Department and other interested persons may be called by the Board's staff for the purpose of considering and clarifying issues and factual material in pending proceedings for the establishment of rates for the transportation of mail.

§ 302.312 Scope of conferences.

The mail rate conferences shall be limited to the discussion of, and possible agreement on, particular issues and related factual material in accordance with sound rate-making principles. The duties and powers of the Board's staff in rate conferences essentially will not be different, therefore, from the duties and powers it has in the processing of rate cases not involving a rate conference. The staff function in both instances is to present clearly to the Board the issues and the related material facts, together with recommendations. The Board will make an independent determination of the soundness of the staff's analyses and recommendations.

§ 302.313 Participants in conferences.

The persons entitled to be present in mail rate conferences will be the representatives of the carrier whose rates are in issue, the staff of the Postmaster General, and the Board's staff. No other person will attend unless the Board's staff deems his presence necessary in the interest of one or more purposes to be accomplished, and in such case his participation will be limited to such specific purposes. No person, however, shall have the duty to attend merely by reason of invitation by the Board's staff.

**§ 302.314 Conditions upon participation.**

(a) *Nondisclosure of information.* As a condition to participation, every participant, during the period of the conference and for 90 days after its termination, or until the Board takes public action with respect to the facts and issues covered in the conference, whichever is earlier: (1) Shall, except for necessary disclosures in the course of employment in connection with conference business, hold the information obtained in conference in absolute confidence and trust; (2) shall not deal, directly or indirectly, for the account of himself, his immediate family, members of his firm or company, or as a trustee, in securities of the carrier involved in the rate conference except that under exceptional circumstances special permission may be obtained in advance from the Board; and (3) shall adopt effective controls for the confidential handling of such information and shall instruct personnel under his supervision, who by reason of their employment come into possession of information obtained at the conference, that such information is confidential and must not be disclosed to anyone except to the extent absolutely necessary in the course of employment, and must not be misused. The word "information", as used in paragraph (b) of this section, shall refer only to information obtained at the conference regarding the future course of action or position of the Board or the Board's staff with respect to the facts or issues discussed at the conference.

(b) *Signed statement required.* Every representative of a carrier actually present at any conference shall sign a statement that he has read this entire instruction and promises to abide by it and advise any other participant to whom he discloses any confidential information of the restrictions imposed above. Every representative of the Postmaster General actually present at any conference shall, on his own behalf, sign a statement to the same effect.

(c) *Presumption of having conference information.* A director of any carrier, which has had a representative at the conference, who deals either directly or indirectly for himself, his immediate family, members of his firm or company, or as a trustee, in securities of the air carrier involved in the conference, during the restricted period set forth above, shall be presumed to have come into possession of information obtained at the conference knowing that such information was subject to the restrictions imposed above; but such presumption can be rebutted.

(d) *Compliance report required.* Within ten (10) days after the expiration of the time specified for keeping conference matters confidential every participant, as defined in this section, shall file a verified compliance report with the Secretary of the Board stating that he has complied in every respect with the conditions of this section, or if he has not so complied, stating in detail in what respects he has failed to comply.

(e) *Persons subject to the provisions of this section.* For the purposes of this section, participants shall include (1) any representative of any carrier and any representative of the Postmaster General actually present at the conference; (2) the carrier and the officers of any carrier which has had a representative at the conference; (3) the directors of any carrier, which has had a representative at the conference, the members of any firm of attorneys or consultants, which has had a representative at the conference, and the members of the Postmaster General's staff, who come into possession of information obtained at the conference, knowing that such information is subject to the restrictions imposed in this section.[4]

**§ 302.315 Information to be requested from carrier.**

With respect to the rate for the future period, the carrier will be requested to submit detailed estimates as to traffic, revenues and expenses by appropriate periods and the investment which will be required to perform the operations for a full future year. Full and adequate support shall be presented for all estimates, particularly where such estimates deviate materially from the carrier's past experience. With respect to the rate for a past period, essentially the same procedure shall be followed. Other information or data likewise may be requested by the Board's staff. All data submitted by the carrier shall be certified by a responsible officer.

**§ 302.316 Staff analysis of data for submission of answers thereto.**

After a careful analysis of these data, the Board's staff will, in most cases, send the carrier what might be termed a statement of exceptions showing areas of differences. Where practicable, the carrier may submit its answer to these exceptions. Conferences will then be scheduled to work out a clear understanding and resolution of the issues and facts from the standpoint of sound ratemaking principles.

**§ 302.317 Availability of data to Post Office Department.**

The representatives of the Postmaster General shall have access to all conference data and, insofar as practicable, shall be furnished copies of all pertinent data prepared by the Board's staff and the carrier, and a reasonable time shall be allowed to get acquainted with the facts and issues and to make any presentation deemed necessary. *Provided,* That in cases other than those involving an issue as to the service mail rates payable by the Postmaster General pursuant to section 406(c) of the act or Reorganization Plan 10 of 1953, or those involving any period prior to October 1, 1953, representatives of the Postmaster General shall be furnished with copies of data under this provision only upon their written request.

[4] Restrictions on disclosure of confidential information and dealing in air carrier securities are imposed upon the Board's staff pursuant to applicable law.

**§ 302.318 Post-conference procedure.**

The rate conferences not being in the nature of proceedings, no briefs, or argument, or any formal steps, will be entertained by the Board. The form, content and time of the staff's presentation to the Board are entirely matters of internal procedure. Any party to the mail rate proceeding may, through the Board's staff, request the opportunity to submit a written or oral statement to the Board on any unresolved issue. The Board will grant such requests whenever it deems such action desirable in the interest of further clarification and understanding of the issues. The granting of an opportunity for such further presentation shall not, however, impair the rights that any party might otherwise have under the act and the rules of practice.

**§ 302.319 Effect of conference agreements.**

No agreements or understanding reached in rate conferences as to facts or issues shall in any respect be binding on the Board or any participant. Any party to mail rate proceedings will have the same rights to file an answer and take other procedural steps as though no rate conference had been held. The fact, however, that rate conferences were held and certain agreements or understandings may have been reached on certain facts and issues renders it proper to provide that upon the filing of an answer by any party to the rate proceeding all issues going to the establishment of a rate shall be open, except insofar as limited in prehearing conference in accordance with § 302.23.

**§ 302.320 Waiver of §§ 302.313 and 302.314.**

After the termination of a mail rate conference hereunder, the carrier, whose rates were in issue, may petition the Board for a release from the obligations imposed upon it and all other persons by §§ 302.313 and 302.314. The Board will grant such petition only after a detailed and convincing showing is made in the petition and supporting exhibits and documents that there is no reasonable possibility that any of the abuses sought to be prevented will occur or that the Board's processes will in any way be prejudiced. There will be no hearing or oral argument on the petition and the Board will grant or deny the request without assigning reasons therefor.

**§ 302.321 Time of commencing and terminating conference.**

At the commencement of an informal mail rate conference pursuant to this section, the members of the Board's staff conducting such conferences shall issue to each person present at such conference a written statement to the effect that such conference is being conducted pursuant to this section and stating the time of commencement of such conference; and at the termination of such conference the members of the Board's staff conducting such conference shall

note in writing on such statement the time of termination of such conference.

## Subpart D—Rules Applicable to Exemption Proceedings

**§ 302.400 Applicability of this subpart.**

This subpart sets forth the special rules applicable to proceedings on applications for exemption orders pursuant to section 101(3) or section 416(b)(1) of the Act. It further provides for the granting of exemptions upon the Board's own initiative and for the granting of emergency exemptions. As far as is consistent with this subpart, the provisions of Subpart A of this part also apply to such proceedings. Proceedings for the issuance of exemptions by regulation shall remain subject to the provisions governing rule making. Additional requirements for applications for interim extension of fixed-term temporary route authorizations granted by exemption are set out in § 302.909. See also §§ 377.10(c) and 399.18 of this chapter.

**§ 302.401 Filing of application.**

(a) *Filing.* An application for exemption shall conform to the formal requirements of §§ 302.3 and 302.4. Such application shall be assigned a docket number and any additional documents filed in connection with such exemption shall be identified by the assigned docket number.

**§ 302.402 Contents of application.**

(a) *Title.* An application filed pursuant to this subpart shall be entitled "Application for Exemption".

(b) *Factual detail.* The application shall set forth the section or sections of the act, or the rule, regulation, term, condition, or limitation prescribed thereunder from which exemption is desired and shall state in detail the facts relied upon to establish that the enforcement of the provisions from which exemption is sought, is or would be an undue burden upon the applicant by reason of the limited extent of, or unusual circumstances affecting, the operations of such applicant and that enforcement of such provision is not in the public interest.

(c) *Supporting evidence.* The application shall be accompanied by a statement of economic data or other matters which the applicant desires the Board to officially notice, and by affidavits establishing such other facts as the applicant desires the Board to rely upon. Applications of air carriers for temporary route authority shall contain at least the following economic and operating data on an annual basis:

(1) Present and proposed schedules, by type of aircraft;

(2) Number of departures, plane-miles, passengers and passenger-miles;

(3) Estimate of self-diversion or diversion from other carriers, if applicable;

(4) Anticipated operating revenues; and

(5) Estimate of impact of proposal on operating expenses which, in the case of local service carriers, should be computed according to Subpart K of this part.

In addition, for local service carriers the following:

(6) Estimate of allowance for return on investment and taxes, computed according to Subpart K of this part;

(7) Increase or decrease in subsidy requirements; and

(8) Increase or decrease in subsidy payments under the applicable class rate formula.

(d) *Record of service.* An application shall contain the names of the parties served as required by § 302.403, and a notice to such parties that they may, within 10 days of the date the application was filed, file and serve an answer in support of, or in opposition to, the application.

**§ 302.403 Service of application.**

(a) *Manner of service.* An application for exemption shall be served as provided by § 302.8.

(b) *Persons to be served.* Except in the case of an application for an exemption from sections 403 and 404 of the act or an application for exemption which will permit the applicant to render irregular services only other than between specified points, a copy of an application shall be served on the following parties who shall be presumed to have an interest in the subject matter of the application: (1) Any air carrier which is authorized to render regular service to any point involved in the application; (2) any person whose application for a certificate of public convenience and necessity, or for an exemption, authorizing regular service to or from any such point has been filed with, and has not finally been disposed of by, the Board; (3) the chief executive of any State, territory, or possession of the United States in which any such point is located; and (4) the chief executive of the city, town, or other unit of local government at any such point located in the United States or any territory or possession thereof.

(c) *Additional service of notice.* The Board may, in its discretion, order additional service made on such person or persons as the facts of the situation warrant.

**§ 302.404 Posting of application.**

The Board shall cause a copy of every application for exemption filed with it to be posted promptly on a public bulletin board at its principal offices in Washington, D.C.

**§ 302.405 Dismissal of incomplete application.**

(a) *Dismissal.* The Board may, on its own motion or the motion of any party in interest, dismiss an application for exemption which fails in any material respect to comply with the requirements of this part.

(b) *Additional data.* The Board may request the filing of additional data with respect to any application for exemption or any answer or reply filed by a party in interest in connection therewith.

**§ 302.406 Answers to applications for exemptions.**

Within ten (10) days after filing of an application for exemption, any party in interest may file an answer in support of or in opposition to the grant of a requested exemption. Such answer shall set forth in detail the reasons why the party believes the exemption should be granted or denied. The answer shall be accompanied by a statement of economic data or other matters which it is desired that the Board officially notice, and by affidavits establishing such other facts as are relied upon.

**§ 302.407 Reply.**

Within seven (7) days after service of an answer, an applicant for exemption may file a reply thereto in conformity with the provisions of § 302.402.

**§ 302.408 Request for hearing.**

Although in the usual course of disposition of an application for exemption no formal hearing will be granted to the applicant or to a party in interest opposing such exemption, the Board may, in its discretion, order such proceeding set down for hearing. Any applicant, or any party in interest opposing an application, who desires to request a hearing on an application for exemption shall set forth in detail in his request the reasons why the filing of affidavits or other written evidence will not permit the fair and expeditious disposition of the application, and, to the extent that such request is dependent upon factual assertions, shall accompany such request by affidavits establishing such facts. In the event a hearing is ordered by the Board, Subpart A of this part shall govern the proceedings.

**§ 302.409 Exemptions on the Board's initiative.**

Where required by the circumstances and the public interest, the Board may enter exemption orders on its own initiative.

**§ 302.410 Emergency exemptions.**

(a) *Applicability.* Where required by the circumstances and the public interest, the Board may, upon request or upon its own initiative, enter exemption orders pursuant to section 101(3) or section 416(b) of the act, or deny applications therefor, upon less than the normal period provided for filing answers (§ 302.406) and replies thereto (§ 302.407) and upon no notice. In particular proceedings the Board may specify a lesser time within which answers and replies thereto may be filed and notify interested persons of this time period. Where the public interest so requires, the Board may act without awaiting the filing of answers or replies thereto.

(b) *Applications.* Applications for emergency exemption need not conform to the requirements of Subparts A and D of this part except that they must be in writing and must set forth, with detailed facts and evidence in support thereof, the grounds on which the exemption is requested. In addition, any applicant requesting such action shall state the reasons it deems adequate to justify departure from the normal procedures and shall state which air carriers have been notified in accordance with paragraph (c) of this section. The

Board, moreover, may require additional information from any applicant before acting on the application.

(c) *Notice.* Except where the Board consents that no notice need be given, applicants for emergency exemption shall notify any air carrier which is authorized to render route-type service between points or areas involved in the application that such request has been filed. Such notification shall be made in the same manner of communication, contain the same information, and be dispatched at the same time, as the application made with the Board.

## Subpart E—Rules Applicable to Proceedings With Respect to Rates, Fares and Charges

### § 302.500 Applicability of this subpart.

This subpart sets forth the special rules applicable to proceedings with respect to rates, fares and charges. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules, regulations and orders of the Board.

### § 302.501 Institution of proceedings.

A proceeding to determine rates, fares, or charges for the transportation of persons or property by aircraft, or the lawful classification, rule, regulation, or practice affecting such rates, fares or charges, may be instituted by the filing of a petition or complaint by any person, or by the issuance of an order by the Board.

### § 302.502 Contents of petition or complaint.

If a petition or complaint is filed it shall state the reasons why the rates, fares, or charges, or the classification, rule, regulation, or practice complained of are unlawful and shall support such reasons with a full factual analysis.

### § 302.503 Dismissal of petition or complaint.

If the Board is of the opinion that a petition or complaint does not state facts which warrant an investigation or action on its part, it may dismiss such petition or complaint without hearing.

### § 302.504 Order of investigation.

The Board on its own initiative, or if it is of the opinion that the facts stated in a petition or complaint warrant it, may issue an order instituting an investigation of the lawfulness of any present or proposed rates, fares, or charges for the transportation of persons or property by aircraft or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares, or charges, and assigning the proceeding for hearing before an examiner. (Reference should be made to Subpart A of this part for rules applicable to hearings.)

### § 302.505 Complaints requesting suspension of tariffs—answers to such complaints.

(a) Formal complaints seeking suspension of tariffs pursuant to section 1002(g) of the Act shall fully identify the tariff and include reference to the name of the publishing carrier or agent, to the CAB number, and to specific items or particular provisions protested or complained against. The complaint should indicate in what respect the tariff is considered to be unlawful, and state what complainant suggests by way of substitution.

(b) A complaint requesting suspension of any tariff filed under the Act ordinarily will not be considered unless made in conformity with this section and is filed at least eighteen (18) days before the effective date of the tariff, or, in the event a posting date is printed on a tariff, unless the complaint is filed within twelve (12) days after said posting date.

(c) In an emergency satisfactorily shown by complainant, and within the time limits herein provided, a telegraphic complaint may be sent to the Board and to the publishing carrier or agent stating the grounds relied upon, but such a telegraphic complaint must immediately be confirmed by complaint filed and served in accordance with this section.

(d) Answers to complaints shall be filed within six (6) days after the complaint is filed.

NOTE: Section 302.16 should be used in computing the time for filing answers.

### § 302.506 Burden of going forward with the evidence.

At any hearing involving a change in a rate, fare, or charge for the transportation of persons or property by aircraft, or the lawful classification, rule, regulation, or practice affecting such rate, fare, or charge, the burden of going forward with the evidence shall be upon the person proposing such change to show that the proposed changed rate, fare, charge, classification, rule, regulation or practice is just and reasonable, and not otherwise unlawful.

### § 302.507 Requests to prevent foreign air carrier tariffs from taking effect.

Requests, addressed to the Board, that tariffs and amendments to existing tariffs of foreign air carriers be prevented from going into effect shall be filed not later than twenty (20) days before the effective date of such tariffs or amendments. Such requests will not be docketed and no formal Board proceeding will be instituted thereon.

### § 302.508 Computing time for filing complaints.

In computing the time for filing formal complaints pursuant to § 302.505, with respect to tariffs which do not contain a posting date, the first day preceding the effective date of the tariff shall be the first day counted, and the last day so counted shall be the last day for filing unless such day is a Saturday, Sunday, or legal holiday for the Board, in which event the period for filing shall be extended to the next successive day which is neither a Saturday, Sunday, nor holiday. The computation of the time for filing complaints as to tariffs containing a posting date shall be governed by § 302.16.

## Subpart F—Rules Applicable to Proceedings for Leave To Conduct Charter Trips or Special Services

### § 302.600 Applicability of this subpart.

This subpart sets forth the special rules applicable to proceedings brought by air carriers holding certificates of public convenience and necessity who seek to obtain Board approval to perform charter trips or special services in overseas or foreign air transportation to points or areas where such service would otherwise be contrary to the provisions of § 207.8 of this chapter.

### § 302.601 Petitions to conduct charter trips or special services into areas protected by § 207.8 of this chapter.

(a) Petitions filed pursuant to this section need not conform to the requirements of §§ 302.3 and 302.4 but must be submitted in triplicate, signed by a managing officer of the company. Such petition shall set forth the proposed date(s), number of trips, and area(s) or point(s) between which the service is desired to be performed, together with the equipment to be utilized, the approximate number of passengers or amount and kind of cargo to be carried, and the compensation to be received. In the case of charter trips, a copy of the proposed charter agreement(s) shall be annexed to the petition. A copy of the petition, together with all supporting documents, shall be served upon the air carrier certificated to serve the points or areas concerned at its principal office, and proof of such service shall accompany the petition when filed with the Board.

(b) The air carrier certificated to serve the points or areas concerned shall have five days (not including Saturday or Sunday or legal holidays) after the filing of such a petition in which to file notice of objections thereto, if any, with the Board and if such notice is filed, an additional ten days (not including Saturday or Sunday or legal holidays) in which to file supporting reasons or arguments as to why the petition should not be granted in the public interest. Such objections shall include a statement as to the objecting carrier's ability to handle the traffic and may, if desired, include the terms upon which the service requested would be performed by it.

(c) Thereafter the Board will grant the petition to such extent and subject to such terms and conditions as it finds to be in the public interest. Petitions for the approval of service which it finds not in the public interest will be denied.

## Subpart G—Rules Applicable to Adequacy of Service Petitions

### § 302.700 Applicability of this subpart.

This subpart sets forth the special rules applicable to proceedings with respect to the adequacy of the service, equipment and facilities provided by a certificated air carrier at a duly authorized point. For information as to other

applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules, regulations, and orders of the Board.

§ 302.701 Institution of proceedings.

A proceeding to determine the adequacy of the service, equipment and facilities being provided by a certificated air carrier at a duly authorized point may be instituted by the filing of a petition or complaint, or by the issuance of an order by the Board on its own initiative pursuant to section 1002 of the act.

§ 302.702 Contents of petition.

If a petition or complaint is filed, it shall state the reason why the service, equipment or facilities complained of are inadequate and shall support such reasons with a full factual analysis. Within fifteen (15) days after the date of service of a petition or complaint, the respondent may file an answer thereto.

§ 302.703 Parties to the proceeding.

The parties to the proceeding shall be the person filing the petition or complaint, the air carrier or carriers whose service is being challenged, bureau counsel and any other person whom the Board permits to intervene.

§ 302.704 Action on petition or complaint.

If the Board is of the opinion that a petition or complaint does not state facts which warrant an investigation or action on its part, it may dismiss such petition or complaint without hearing. If the air carrier complained against shall not satisfy the complaint and there shall appear to be any reasonable ground for investigating the complaint, the Board shall investigate the matter complained of.

§ 302.705 Hearing.

In the event a hearing is ordered by the Board, Subpart A of this part shall govern the proceeding.

## Subpart H—Rules Applicable to Compromise of Civil Penalties and Seizure of Aircraft [1]

§ 302.800 Applicability of this subpart.

This subpart sets forth the special rules applicable to (a) procedures pursuant to section 901(a)(2) of the Federal Aviation Act of 1958, as amended, for the compromise of civil penalties provided for in section 901(a)(1), for the violation of any provision of Title IV (Air Carrier Economic Regulation) of the Act, or any rule, regulation or order issued thereunder; under section 1002(i) (Power to Establish Through Air Transportation Service); or any term, condition or limitation of any permit or certificate issued under Title IV; and (b) procedures pursuant to section 903(b) of the Act applicable to the seizure of aircraft involved in a violation and subject to a lien, pursuant to section 901(b) of the Act, for penalties for which the owner or person in command of such aircraft may be liable for any of the foregoing violations.

§ 302.801 Initial proposal to compromise.

Whenever the Director of the Bureau of Enforcement has information as to a possible violation for which the imposition and compromise of civil penalties is authorized by section 901 of the Federal Aviation Act of 1958, as amended, he may propose compromise of the civil penalties that might be imposed for such violation by serving upon the alleged violator (hereinafter called "the respondent"), by registered or certified mail, a notice containing the information specified in § 302.802.

§ 302.802 Contents of notice of alleged violation.

A notice served pursuant to § 302.801 shall state:

(a) The provisions of the Act, rule, regulation, order, or term, condition or limitation of the permit or certificate deemed violated, and a statement of the acts or omissions deemed to constitute such violations;

(b) The provisions of sections 901 and 903 of the Federal Aviation Act of 1958, as amended;

(c) The maximum civil penalities for which the violator may be liable pursuant to section 901 in accordance with the information that the Director then has; and

(d) The time within which an answer to the notice may be filed. A copy of this subpart (Subpart H) shall also be furnished with the notice.

§ 302.803 Answer to notice of alleged violation.

(a) An answer may be filed by submitting or mailing it to the Director, Bureau of Enforcement, Civil Aeronautics Board, Washington 20428, D.C., within 15 days of receipt of the notice, or within such different time as may be specified in the notice or permitted by the Director upon a request for extension of time to file the answer. Answers shall be deemed filed only upon actual receipt by the Board.

(b) If an answer is not timely filed, the Board may refer the matter to the United States Attorney for institution of a civil action to collect the statutory civil penalty in accordance with the provisions of section 903 of the Act, or take such other or additional action as it may deem desirable.

§ 302.804 Contents and subscription of answer.

(a) The answer should contain all relevant facts, data, or arguments which the respondent wishes to submit in order to demonstrate that he has not committed the violations charged, or that such violations took place under mitigating circumstances. The respondent may also submit any other pertinent matter in explanation.

(b) The answer shall be signed by the party filing the same or by a duly authorized officer or the attorney-at-law of record of such party. The signature of the person signing the answer constitutes a certification that he has read the answer; that to the best of his knowledge, information and belief every statement contained therein is true; and that no such statements are misleading.

§ 302.805 Action upon receipt of answer.

The Board will consider all material timely submitted in accordance with §§ 302.803 and 302.804, and will take appropriate action as follows:

(a) If the Board determines that the alleged violations have not been committed or that the nature of the alleged violations does not warrant the imposition of civil penalties, it may close the case, without prejudice to the institution of new or other proceedings, and if appropriate the Board may issue a letter of reprimand.

(b) If the Board determines that civil penalties should be imposed, and that it would be appropriate to compromise such civil penalties, it may issue a notice of willingness to compromise in accordance with § 302.806.

§ 302.806 Contents of notice of willingness to compromise.

A notice of willingness to compromise shall advise the respondent:

(a) That the Board has determined on the basis of the materials submitted and other information that violations appear to have been committed, and shall specify such violations.

(b) That the Board has determined that the commission of such violations warrants the imposition of civil penalties pursuant to section 901(a) of the Federal Aviation Act of 1958, as amended, and shall indicate the extent of the penalties to which the respondent may be liable under that section for such violations.

(c) That the Board in accordance with section 901(a)(2) is willing to compromise such civil penalties, and that it is proposed that a specified amount may be acceptable as compromise of such penalties.

(d) That if the respondent is willing to compromise the civil penalties on the basis of the proposed amount, he should within 15 days make an offer of compromise in writing, accompanied by a check made payable to the Treasurer of the United States, addressed or submitted to the Director of the Bureau of Enforcement, and that if the offer is accepted, it would be in full settlement of the civil penalties for the violations charged.

(e) That the respondent is not required to make an offer of compromise.

(f) That if the civil penalties are not compromised, the Board may take steps to collect the statutory civil penalty by court action pursuant to section 903(b) of the Act.

§ 302.807 Acceptance of an offer of compromise.

Upon receipt of a written offer of compromise of civil penalties from a respondent, accompanied by a check in the full amount proposed in the notice of willingness to compromise, the Board may accept such offer as full settlement of civil penalties for the violations set forth in the notice of willingness to compromise. An offer of compromise may be withdrawn by the respondent at any

time prior to its final acceptance; and any proposal for compromise shall not preclude the Board from suggesting a different or higher basis of compromise, or of seeking the collection of the maximum statutory civil penalties by court action, at any time prior to such final acceptance. The respondent will be promptly notified of the acceptance of his offer of compromise, and that such acceptance shall constitute full satisfaction of the civil penalties for the violations set forth in the notice of willingness to compromise. If the offer of compromise is not accepted by the Board, the check shall be promptly returned to the respondent, together with a notification of the action taken.

NOTE: In § 385.22(b), the Board has delegated authority to the Director of the Bureau of Enforcement to compromise civil penalties imposed for economic violations.

### § 302.808 Seizure of aircraft.

(a) Under sections 901 and 903 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471, 1473), a Federal, State or local law enforcement officer, or a Federal Aviation Administration safety inspector, may, upon an authorization from the Civil Aeronautics Board specifying the reasons therefor, summarily seize an aircraft that is involved in a violation committed by the owner or person in command for which a civil penalty may be imposed for violations of Title IV or any rule, regulation or order issued thereunder, or under section 1002 (i), or any term, condition or limitation of any permit or certificate issued under Title IV. Such authorization may be issued at such time and in such manner as the Board deems appropriate, and irrespective of whether other procedures under this Subpart H are pending or proposed.

(b) Each person seizing an aircraft under this section shall place it in the nearest available and adequate public storage facility in the judicial district in which is was seized.

(c) The Board shall without delay send a written notice and a copy of this regulation to the registered owner of the seized aircraft and to each other person known to have an interest therein, including any air carrier or foreign air carrier involved in the violation, stating the—

(1) Time, date, and place of seizure;

(2) Name and address of the custodian of the aircraft;

(3) Reasons for the seizure, including the violations believed, or judicially determined, to have been committed; and

(4) Amount that may be tendered as—

(i) A compromise of a civil penalty for the alleged violation; or

(ii) Payment for a civil penalty imposed by a Federal court for a proven violation.

(d) The Board shall immediately send a report to the United States District Attorney for the judicial district in which the aircraft was seized, requesting him to institute proceedings to enforce a lien against the aircraft.

(e) The Board shall direct the release of a seized aircraft whenever—

(1) The alleged violator pays a civil penalty or an amount agreed upon in compromise, and the costs of seizing, storing, and maintaining the aircraft;

(2) The aircraft is seized under an order of a Federal court in proceedings in rem to enforce a lien against the aircraft, or the United States Attorney for the judicial district concerned notifies the Board that he refuses to institute those proceedings; or

(3) A bond in the amount and with the sureties prescribed by the Board is deposited, conditioned on payment of the penalty, or the compromise amount, and the costs of seizing, storing, and maintaining the aircraft.

## Subpart I—Rules Applicable to Route Proceedings Under Sections 401 and 402 of the Act

### GENERAL PROVISIONS

### § 302.901 Applicability.

This subpart sets forth the special rules applicable to proceedings for conferment and/or modification of route authority under sections 401 and 402 of the Federal Aviation Act of 1958. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act and to the substantive rules (see Parts 201 and 211 of the Economic Regulations as to the form of applications) and orders of the Board.

### APPLICATIONS FOR ROUTE AUTHORITY

### § 302.909 Renewal of fixed-term route authorizations granted by exemption.

(a) *Form of application.* An application for certificate authority to replace a fixed-term route authorization granted by exemption, filed pursuant to § 399.18 of this chapter, shall in all respects comply with the requirements of this part and of Part 201 of the Economic Regulations, except that the applicant shall additionally submit therewith exhibits which, in its judgment, establish a prima facie case for the relief requested, including a summary of the results of operations under the exemption and a forecast for the year immediately following its expiration.

(b) *Interim extension of exemption pending Board action upon certificate application; application therefor.* If the applicant desires to avail himself of the provisions of the last sentence of section 9(b) of the Administrative Procedure Act (5 U.S.C. 558(c)) he shall incorporate in the application a request for extension of the exemption authorization pending determination of the certificate application, with a statement that he invokes the automatic extension provision of section 9(b) of the Administrative Procedure Act. Failure on the part of the applicant to incorporate such a request will be construed as a waiver of his rights under the cited provision of the Administrative Procedure Act. (See § 377.10(c) of this chapter.) The caption of the application shall indicate whether or not it asks for both certificate authorization and extension of the exemption authorization.

### § 302.911 Dismissal of certain stale applications filed under section 401.

(a) *Types of applications subject to dismissal.* An application filed under section 401, other than an application for renewal of an expired temporary certificate of public convenience and necessity which is within the purview of section 9(b) of the Administrative Procedure Act,[*] shall be subject to dismissal, pursuant to the provisions of this section.

(b) *Mandatory dismissal of stale applications.* An application subject to dismissal, pursuant to the provisions of paragraph (a) of this section, shall be dismissed by order of the Board three years after the date of filing of such application unless prior to the expiration of said period the application has been designated for prehearing conference or hearing, or hearing thereon has commenced. The three-year period will be calculated from the date of the original filing of such application, and not from the dates of any subsequently filed amendments thereto.

(c) *Right to refile.* Dismissal of applications pursuant to this section will be without prejudice to the right of the applicant at any time to file a new application seeking all or any part of the route authority requested by the application which has been dismissed. Such new application will be assigned a new docket number.

(d) *Definitions.* For the purpose of this section, an application shall be deemed to have been designated for prehearing conference or hearing when:

(1) Such application has been designated in a written notice of prehearing conference issued under § 302.23(a); or

(2) Such application has been designated for hearing in an order of consolidation issued under § 302.12; or

(3) Such application has been designated for hearing in an order of the Board instituting proceedings under § 302.915(b) of this subpart, or an order disposing of pleadings filed in response to an order issued under § 302.915(b).

### INITIATION OF ROUTE PROCEEDINGS

### § 302.915 Inititiation of route proceedings by Board order.

(a) *Purpose and policy.* The purpose of this section is to establish a procedure for the initiation of proceedings involving particular routes or geographic areas, in addition to existing procedures under Subpart A, so that the Board may select the one best suited to the efficient and expeditious disposition of route proceedings.

(b) *Order instituting proceedings.* The Board may initiate a route proceeding by issuing an order of investigation or an order to show cause which, respectively, defines the scope of the issues in the proceeding, or consolidates pending applications and proceedings for

[*] As implemented by Part 377 of the Board's Special Regulations.

simultaneous hearing, or institutes investigations under sections 401(g) or 402(f) of the Act directed to the amendment of outstanding certificates of public convenience and necessity and foreign air carrier permits, and specifies other matters included in the proceeding.

(c) *Pleadings in response to Board order instituting proceedings.* Any person having a substantial interest may respond to the Board's order instituting a proceeding by filing with the Board a written answer, or a motion pursuant to § 302.12 of this part, or both, within the period of time specified in said order. Such answer or motion shall set forth all objections and proposals which such persons may have with respect to the geographic scope of the proceeding or the scope of the issues, as respectively defined in such order. Such answer or motion shall be in lieu of petitions for reconsideration of said order under § 302.37. Any such objection or proposal which is not set forth in such answer or motion shall be deemed to have been waived. Any person who fails to file a timely answer or motion in response to the Board's order shall also be deemed to have waived his right to have his own application consolidated or contemporaneously considered with those falling within the geographic scope of the proceeding or the scope of the issues therein, as respectively defined in said order: *Provided, however,* That where any further order of the Board adds to the geographic scope of a proceeding or the scope of the issues therein beyond that defined in the Board's order instituting such proceeding, failure to file an answer or motion addressed to the Board's first order shall not preclude the filing of a petition under § 302.37, or of a motion under § 302.12, addressed exclusively to the additional scope or issues.

(d) *Answers to motions.* Answers in support of or in opposition to motions as mentioned in paragraph (c) of this section may be filed within seven (7) days after service of such motions or within such other period as may be specified in the Board's order.

CONDUCT OF ROUTE PROCEEDINGS

§ 302.930 Evidence in route proceedings.

(a) *Route authority not specifically applied for.* Applicants for certificate authority under section 401 of the Act may not introduce, in support of awards to them of route authority, evidence which does not support service to the points, routes or areas specifically described in their applications pursuant to § 201.4(c) (3) and (4) of this chapter.

## Subpart J—Rules Applicable to Proceedings Involving Supplemental Air Carriers

§ 302.1001 Applicability.

This subpart sets forth procedural rules specifically applicable to certain proceedings involving supplemental air carriers. For information as to other applicable rules, reference should be made to Subparts A and B of this part, to the Federal Aviation Act of 1958, as amended, and to the substantive rules and orders of the Board. See especially Part 208 of this chapter (Economic Regulations).

§ 302.1002 Definition.

As used in this part, "supplemental air carrier" means a person holding operating authority issued pursuant to section 401(d)(3) or 417 of the Federal Aviation Act of 1958, as amended.

IMMEDIATE SUSPENSION OF OPERATING AUTHORITY

§ 302.1011 Rules governing proceedings.

Proceedings for suspension, modification or revocation of a supplemental air carrier certificate pursuant to section 401(n)(5) of the Act, or of special operating authorizations issued pursuant to section 417 of the Act, shall be governed by §§ 302.1012 to 302.1017 and, as to matters not provided for in said sections, by Subparts A and B of this part.

NOTE: Sections 302.1012 to 302.1017 do not apply to proceedings for modification, suspension or revocation not initiated under, or by reference to, the provisions of section 401(n)(5) of the Act.

§ 302.1012 Order of suspension.

In any case in which the Board determines that the failure of a supplemental air carrier to comply with the provisions of paragraphs (1), (3) or (4) of section 401(n) of the Act or regulations or orders of the Board thereunder requires, in the interest of the rights, welfare or safety of the public immediate suspension of such carrier's certificate or other operating authority as the case may be, the Board will issue, without notice or hearing, an order of suspension which will set forth:

(a) The duration of the suspension, which initially will be for not more than 30 days;

(b) The specific provision or provisions of section 401(n)(1), (3) or (4), or of the regulations or orders of the Board thereunder with which the carrier has failed to comply together with the manner of such failure;

(c) A determination that such failure requires the immediate suspension, in whole or in part as the case may be, of the carrier's operating authority in the interest of the rights, welfare, or safety of the public;

(d) A statement that the order shall constitute a complaint instituting a formal economic proceeding on which a hearing shall be held to determine whether the supplemental air carrier's operating authority should be modified, suspended or revoked;

(e) A statement as to which staff component of the Board is to be made a party to the proceeding.

§ 302.1013 Answer of carrier.

(a) *Time for filing, and contents.* Within 7 days of service of the order of suspension, the carrier may file and serve on all parties an answer to the order of suspension. No objections or affirmative defenses not plainly raised in the answer may be raised subsequently in the proceeding, except if based on grounds of newly discovered evidence or supervening events. Late filing of an answer shall be permitted only for good cause shown.

(b) *Failure to file an answer.* In case of the carrier's failure to file and serve an answer to the order within the time and in the manner prescribed, the right to all further procedural steps before final decision, including hearing, briefs, and recommended and tentative decisions, shall be deemed waived, and the Board will proceed immediately to disposition of the case.

§ 302.1014 Motions.

(a) *Motions for termination of suspension and/or proceeding.* (1) The supplemental air carrier may at any time file and serve on all parties to the proceeding, a motion addressed to the Board asking that the suspension be lifted, on the ground (i) that suspension, pending completion of the proceeding, is not required in the interest of the rights, welfare or safety of the public; or (ii) that the carrier has come into compliance with the provision or provisions with which it had failed to comply. Such motions may be combined with a motion to terminate the proceeding. Such motions shall be made in lieu of petitions for reconsideration of the Board's initial order, or of motions to dismiss.

(2) Motions made pursuant to subparagraph (1) of this paragraph will be submitted to the Board for determination. The Board may grant motions for termination of suspension in proper cases without waiting for expiration of the time for answers but parties may submit informal written or telegraphic statements of position on such motions which will be considered if received prior to Board action. Such communications need not be served separately but shall be copied in full in a timely answer filed and served pursuant to the provisions of this part.

(b) *Motions directed to pleadings.* No motion for more definite statement shall be made but the substance thereof may be stated in the answer. The examiner may permit or require a more definite statement or other amendment to any pleading at the hearing upon just and reasonable terms.

(c) *Motions for extension of time.* Substantial extensions of procedural dates shall be granted only when required in the interest of justice, unless the respondent air carrier stipulates that it will refrain from operating the suspended service until the Board's adjudication on the merits of the proceeding becomes final even though the Board has exhausted its emergency suspension power. The filing of motions for extension shall not operate to excuse failure of timely compliance with any procedural requirement.

(d) *Other motions.* The provisions of § 302.18 shall govern the above mentioned motions in respects not provided for in this section, and shall govern any

other motions, except that answers to written motions shall be filed and served within 5 days of service of such motions.

**§ 302.1015 Additional suspension.**

Pending the completion of proceedings hereunder, the Board, upon motion or its own initiative, may further extend the period of suspension of the supplemental carrier's operating authority for an additional period or periods aggregating not more than 60 days.

**§ 302.1016 Accelerated hearing.**

The examiner shall set the date of hearing not later than 15 days after the issuance of the Board's suspension order. He may postpone the date of the hearing, or grant continuations of the hearing, only to the extent necessary in the interest of justice. The examiner shall urgently expedite the proceeding and shall fix all procedural dates on the basis of maximum acceleration consistent with justice. Proposed findings and conclusions and supporting reasons shall be stated orally on the record. The delegation of § 302.27(a) shall not be applicable and the examiner shall, upon termination of the hearing, make his initial decision orally on the record. Requests for a written initial decision may be granted on the same condition as substantial extensions of procedural dates (§ 302.1014(c)).

**§ 302.1017 Final decision.**

The parties may appeal from the initial decision by filing with the Board and serving upon all other parties a notice of appeal within two days after the rendering of the initial decision if it is made orally, or the service of a written initial decision, as the case may be. No exceptions shall be filed but within 10 days of the notice of appeal each party may file one brief (§ 302.31(c)) with the Board. The Board will give three days' notice of oral argument, where granted. If no notice of appeal is filed, or if no brief is filed by the party or parties having filed a notice of appeal, within the times herein provided, the initial decision shall without further proceedings become the final decision of the Board five days after expiration of the time for filing notice of appeal or brief, as the case may be, unless the Board has issued an order to review upon its own initiative.

SPECIAL OPERATING AUTHORIZATIONS

**§ 302.1020 Application for special operating authorization.**

(a) Any supplemental air carrier whose certificate is currently effective may file with the Board an application for special operating authorization under section 417 of the Act.

(b) The application shall identify the pair of points for which an authorization to provide service is requested and shall contain a detailed statement of the facts relied upon to establish that: (1) If said points are both in the United States, the capacity for air transportation being offered by the certificated route carrier or carriers between such points is, or will be, temporarily insufficient to meet the requirements of the public or the postal service, or (2) with respect to any points, one or both of which is not regularly served by any air carrier, there is a temporary requirement for air transportation between such points; and (3) the additional service is temporarily required in the public interest and can be provided by the applicant.

(c) The application shall specify:

(1) The type of service for which authority is requested (i.e., transportation of persons, property, and/or mail);

(2) The airports to be used;

(3) The number, type and capacity of aircraft to be used;

(4) The proposed frequency and time of flights;

(5) The inclusive dates of the proposed service, not to exceed a period of 30 days;

(6) The fares or rates to be charged; and

(7) The names of all air carriers (if any) certificated to provide scheduled service at any of the points involved.

(d) The application shall be accompanied by a statement of economic data or other matters that the applicant desires the Board to officially note, and affidavits establishing such other facts as the applicant wishes the Board to rely upon. The application and accompanying statement shall be verified by a person or persons having personal knowledge of the facts stated therein. It shall comply with the formal requirements of §§ 302.3 and 302.4.

**§ 302.1021 Filing and service of application.**

The application shall be filed not less than 30 days before the requested effective date thereof unless good cause for late filing is shown. Such applications shall be served upon all air carriers certificated to provide service at any of the points involved, and on such other persons as the Board may require, and proof of service shall accompany the application as provided in § 302.8.

**§ 302.1022 Answer.**

(a) Any air carrier certificated to provide service at any of the points involved may file, and serve on the applicant, an answer in protest within 10 days after the filing of the application or within such shorter time as the Board may fix by written or telegraphic notice.

(b) The answer shall contain a detailed statement of the facts relied upon to controvert any pertinent allegations of the application and shall be accompanied by a statement of economic data or other matters that the carrier desires the Board to officially note, and affidavits establishing such other facts as the respondent wishes the Board to rely upon. The answer shall be verified by a person or persons having personal knowledge of the facts stated therein.

(c) If the opposing carrier desires oral argument it shall include a request therefor in its answer.

**§ 302.1023 Memoranda of interested persons.**

Any interested person, other than an air carrier entitled to answer, may file a memorandum in support of, or in opposition to, an application for special authorization within the time permitted for the filing of answers. Such memoranda shall be verified by persons having personal knowledge of the facts stated therein.

**§ 302.1024 Oral argument.**

Requests for oral argument shall be filed no later than three days after the date permitted for the filing of answers. Oral argument will be granted only upon a showing that it will be in the interest of justice and will not unduly delay issuance of the special operating authorizations, taking into account the degree of emergency involved.

**§ 302.1025 Issuance of special authorization.**

If the Board finds that the application is duly filed and the statutory requirements are fulfilled, it may issue a special operating authorization to engage in air transportation between the respective points for a period not to exceed 30 days. The Board will attach such limitations and requirements to the authorization as will assure that the service so authorized will alleviate the insufficiency which otherwise would exist without significant diversion of traffic from the holders of certificates for the route.

**§ 302.1026 Issuance of special authorization on the Board's initiative.**

The Board may, on its own initiative, issue to any supplemental air carrier a special operating authorization in accordance with § 302.1025.

**§ 302.1027 Extension of authorization.**

(a) The Board may extend a special operating authorization for an additional period or periods aggregating not more than 60 days upon its own initiative or upon the request of the supplemental air carrier.

(b) A request for extension shall be filed not later than 15 days before the expiration of the existing authorization and shall set forth facts to establish the continuing need for the service, updating the information required by § 302.1020, and a description of the services actually performed pursuant to the authorization. It shall be verified by a person having personal knowledge of the facts stated therein and shall be served upon all parties to the original authorization proceeding.

NOTE: Section 417(b)(3) of the Act provides in effect that the filing of an application for extension does not automatically extend the authorization. If the Board has not acted on the application by the time of expiration of the authorization, operations thereunder must cease.

(c) Any air carrier which is certificated to provide service at any of the points involved may file, and serve on the applicant, an answer in protest within 5 days after the filing of the request. Such answers shall be verified by persons having personal knowledge of the facts therein.

(d) Any interested person, other than an air carrier entitled to answer, may

file a memorandum in support of or in opposition to the extension. Such memoranda shall be verified by persons having personal knowledge of the facts therein.

## Subpart K—Standardized Method for Costing Proposed Changes in the Authorized Operations of Local Service Carriers

### § 302.1101 Applicability.

This subpart sets forth the specific rules applicable to the preparation of cost estimates submitted by any party or nonparty in hearing or nonhearing proceedings which involve proposed changes in the authorized operations of any of the local service air carriers named hereinbelow. The rules set forth herein are also to be used to prepare the estimated cost of operating an existing route or route segment as to which no change in authority is currently proposed, where this information is required in a proceeding; for this purpose, the authorized operation to be costed shall be treated as a proposed deletion. The rules are not applicable to proceedings involving rates and fares. For use with these provisions the Board will issue on or about the first of January and July of each year a compilation entitled "Local Service Air Carriers' Unit Costs," referred to in these provisions as the "compilation." See § 302.1109.

Air West, Inc.
Allegheny Airlines, Inc.
Frontier Airlines, Inc.
Mohawk Airlines, Inc.
North Central Airlines, Inc.
Ozark Air Lines, Inc.
Piedmont Aviation, Inc.
Southern Airways, Inc.
Texas International Airlines, Inc.

### § 302.1102 Prescribed cost estimates.

Each party in a proceeding subject to these provisions shall submit cost estimates in accordance with the method prescribed herein for the determination of either the additional cost or the reduction in cost, on an annual basis, attributable to a proposed change in authorized operations, provided that any party may, as additional evidence, submit cost estimates based upon other methods.

### § 302.1103 Total annual expense involved in proposed operation changes.

In order to determine either the additional cost or the reduction in cost, on an annual basis, attributable to a proposed change in authorized operations, add the following amounts:

(a) The amount of aircraft operating expense, as determined pursuant to § 302.1104.

(b) The amount of servicing expense, as determined pursuant to § 302.1105.

(c) The amount of aircraft depreciation expense, as determined pursuant to § 302.1106, and

(d) The amount of return on investment and tax allowance, as determined pursuant to § 302.1107.

### § 302.1104 Aircraft operating expense.

(a) In order to determine the amount of aircraft operating expense, add (1) the cost of enroute flight and (2) the cost associated with landing, taxiing, and take-off as determined herein.

(b) In order to determine the cost of enroute flight, multiply the carrier's unit cost per plane-mile for the type of aircraft by the number of plane-miles forecast to be involved in the proposed change in authorized operations.

(c) In order to determine the cost of landing, taxiing and take-off, multiply the carrier's unit cost per aircraft stop by the number of aircraft stops forecast to be involved in the proposed change in authorized operations.

(d) In order to ascertain the carrier's unit costs per plane-mile and per aircraft stop, refer to the compilation for the latest 12-month period setting forth such unit costs by carrier and by type of aircraft.

### § 302.1105 Servicing expense.

(a) In order to determine the amount of servicing expense, add the cost associated with the change in the number of (1) weighted departures, (2) weighted stations, (3) revenue tons originated, and (4) revenue ton-miles as determined herein.

(b) In order to determine the amount of expense associated with the number of weighted departures, proceed in accordance with the following steps:

(1) Refer to the compilation for the latest 12-month period setting forth each carrier's average capacity by aircraft type. Multiply the change in the number of departures to be caused by the proposed route modifications by the relevant aircraft capacity to obtain the total weighted departure units involved in the change.

(2) Refer to the compilation for the latest 12-month period setting forth the prescribed weighted departure unit rate for each carrier, and ascertain the applicable figure.

(3) Multiply the amount ascertained in subparagraph (2) of this paragraph by the number of weighted departure units determined in subparagraph (1) of this paragraph to determine the amount of weighted departure expense.

(c) In order to determine the amount of expense associated with the change in the number of weighted station units, proceed in accordance with the following steps:

(1) In accordance with paragraph (b) (1) of this section ascertain the change in the number of weighted departures which would occur at existing stations on the carrier's system caused by the proposed modification. Multiply the change in the number of weighted departures by the total number of existing stations on the carrier's system to determine the change in the number of weighted station units associated with existing stations.

(2) In accordance with paragraph (b) (1) of this section ascertain the number of weighted departures which would occur at any new stations to be added to the carrier's system caused by the proposed route change. Multiply the number of weighted departures occurring at the new stations by the sum of the existing stations on the carrier's system plus the number of new stations to be added to the system to determine the number of weighted station units associated with any new stations to be added to the carrier's system caused by the proposed route change.

(3) Refer to the compilation for the latest 12-month period setting forth the prescribed weighted station unit rate for each carrier and ascertain the applicable figure.

(4) Multiply the amount ascertained in subparagraph (3) of this paragraph by the sum of the weighted station units determined in subparagraphs (1) and (2) of this paragraph to determine the amount of weighted station expense.

(d) In order to determine the amount of expense associated with the change in the number of revenue tons originated, proceed in accordance with the following steps:

(1) Refer to the compilation for the latest 12-month period setting forth for each carrier the prescribed unit rate per revenue ton originated, and ascertain the applicable figure.

(2) Multiply the amount ascertained in subparagraph (1) of this paragraph by the change in the number of revenue tons originated to be caused by the proposed route modification in order to determine the amount of expense for revenue tons originated.

(e) In order to determine the amount of expense associated with the change in the number of revenue ton-miles, proceed in accordance with the following steps:

(1) Refer to the compilation for the latest 12-month period setting forth for each carrier the prescribed unit rate per revenue ton-mile, and ascertain the applicable figure.

(2) Multiply the amount ascertained in subparagraph (1) of this paragraph by the change in the number of revenue ton-miles to be caused by the proposed route modification in order to determine the amount of expense for revenue ton-miles.

### § 302.1106 Aircraft depreciation expense.

In order to determine the amount of aircraft depreciation expense, proceed in accordance with the following steps:

(a) Refer to the compilation for the latest 12-month period setting forth, by type of aircraft, each carrier's experienced revenue flight time per stop and per mile. Multiply the change in the number of stops forecast to be caused by the proposed route change by the experienced revenue flight time per stop, and multiply the change in the number of miles forecast to be caused by the proposed modification by the experienced revenue flight time per mile. Add the products of these multiplications to obtain total revenue flight hours involved in the change.

(b) Refer to the compilation for the latest 12-month period setting forth the prescribed hourly depreciation rate, by type of aircraft for each carrier, and ascertain the applicable figure.

(c) Multiply the amount ascertained in paragraph (b) of this section by the number of hours determined in paragraph (a) of this section, in order to determine the total annual amount of aircraft depreciation expense.

### § 302.1107 Return on investment and tax allowance.

In order to determine the amount of return on investment and the tax allowance, proceed in accordance with the following steps:

(a) Refer to the compilation for the latest 12-month period setting forth, by type of aircraft, the prescribed hourly rate for return on investment and tax allowance for each carrier, and ascertain the applicable figure.

(b) Multiply the amount ascertained in paragraph (a) of this section by the number of hours determined in § 302.1106 (a), in order to determine the total annual amount for return on investment and tax allowance.

### § 302.1108 Form of estimate.

Cost estimates presented in proceedings subject to this subpart may be submitted on CAB Form 600 "Estimated Costs of Route Operations," copies of which may be obtained on request from Publications Services Section, Civil Aeronautics Board, Washington, D.C. 20428. Use of this form is optional.

### § 302.1109 Compilation.

(a) *Use of compilation in proceedings.* There is hereby incorporated by reference herein the compilation entitled "Local Service Air Carriers' Unit Costs" which will be issued by the Board on or about the first of January and July of each year. Each new issue shall be appropriately dated and identified and will supersede the previous edition. Copies of the latest edition may be obtained upon request from the Publications Services Section, Civil Aeronautics Board, Washington, D.C. 20428 and interested persons may, upon written request, be placed on a mailing list to receive new issues as copies become available for mailing. Copies of the current and all past issues will be available for inspection and copying during office hours at the Board's Docket Section, Room 711, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C. Evidence, pleadings and argument introduced in a proceeding on the basis of a then current issue shall not be invalidated by the publication of a later issue; however, the examiner or the Board may take official notice of the later issue and make appropriate adjustments in the estimates. Where changes in the compilation substantially affect an issue in the proceeding, the examiner or the Board may, upon appropriate terms, permit or require amendments to the record in the light of the subsequent issue.

(b) *Contents of compilation.* Each compilation will contain a summary sheet showing the currently-prescribed unit costs for each local service air carrier which are to be used in estimating the total annual cost effect of a proposed change in authorized operations, in accordance with the instructions contained in §§ 302.1104 to 302.1107 of this subpart. Attachments to the summary sheet in the nature of work papers will show the derivation of the unit costs. The work sheets will reflect the methods approved by the Board in this rule making proceeding for the determination of the unit costs. In addition, the compilation will contain a general exposition of the costing system prescribed herein.

## Subpart L—Procedure for the Processing of Undocketed Section 412 Contracts and Agreements [6]

### § 302.1201 Applicability.

This subpart sets forth the specific rules applicable to the processing of section 412 contracts and agreements which have not been docketed. After receipt by the Board of a section 412 contract or agreement, the Director, Bureau of Operating Rights, shall assign a CAB contract number to such document. The processing of a docketed section 412 contract or agreement shall, to the extent applicable, be governed by the other subparts of this part. An undocketed agreement which is subsequently docketed shall thereafter be processed as a docketed proceeding.

### § 302.1202 Public file.

The Director, Bureau of Operating Rights, shall maintain a public file with respect to every undocketed section 412 contract or agreement. The public file shall be available for inspection in the Bureau's public file room. If a section 412 contract or agreement is thereafter docketed with the Board's Docket Section, the public file thereon, if any, shall thereupon be consolidated into the docket which shall be available for public inspection at the Docket Section of the Board (see § 302.1207, infra).

### § 302.1203 Notice to the public.

Notice of the filing of section 412 contracts and agreements is provided in a weekly publication of the Board entitled "Agreements Filed with the Civil Aeronautics Board under Section 412(a)." Subscription to this publication may be obtained by complying with the provisions of Part 389 of this chapter (CAB Organization Regulations). In the event that an undocketed section 412 contract or agreement is thereafter docketed, notice of such docketing is given in a weekly publication of the Board entitled "Applications and/or amendments thereto filed with the Civil Aeronautics Board during the week ending _____." Subscription to this publication also may be obtained as outlined above in this section.

### § 302.1204 General requirements.

The requirements of Part 261 of this chapter shall apply to all section 412 contracts and agreements.

[6] Certain section 412 contracts and agreements are docketed immediately upon receipt by the Board, e.g., IATA rate conference agreements and amendments thereto.

### § 302.1205 Service requirements.

Except as the Director, Bureau of Operating Rights, may otherwise prescribe in particular cases, there is no requirement that section 412 contracts or agreements be served on other parties. The provisions of Subpart A of this part with respect to service shall be complied with to the extent applicable.

### § 302.1206 Filing of comments.[7]

Interested persons may file comments and/or reply comments with respect to undocketed section 412 contracts or agreements. In particular cases where the Director, Bureau of Operating Rights, may prescribe, comments and/or reply comments shall be served upon each party to a section 412 contract or agreement to which the comments appertain, and the service provisions of Subpart A of this part shall be complied with. In the absence of a Board order prescribing time limits, comments and/or reply comments in undocketed cases may be filed at any time prior to approval or disapproval of the agreement.

### § 302.1207 Procedure for docketing.

When the Director, Bureau of Operating Rights, or the Board determines that a section 412 contract or agreement should be docketed, the Director shall transmit the public file thereon to the Board's Docket Section to be incorporated in the docket (see § 302.1202, supra.)

### § 302.1208 Staff action.

When the Director, Bureau of Operating Rights, takes action under delegated authority approving or disapproving an undocketed section 412 contract or agreement, and, thereafter, a petition for review of staff action is filed pursuant to Subpart C of Part 385 of this chapter (CAB Organization Regulations), he shall concurrently with the receipt of a duly filed petition for review, forward the public file on such contract or agreement to the Board's Docket Section for docketing.[8]

### § 302.1209 Board action.

When the Board issues an order taking final action with respect to any undocketed section 412 contract or agreement, petitions for reconsideration of such order may be filed by interested persons by following the procedure set forth in § 302.37.

## Subpart M—Expedited Procedure for Modifying or Removing Certain Limitations on Nonstop Operations Contained in Certificates of Public Convenience and Necessity of Local Service Carriers

### § 302.1301 Applicability.

This subpart sets forth the special rules applicable to proceedings on applications

[7] See § 302.4(d)(2), supra, as to form of comments.

[8] See § 385.13(p) of the Board's Organization Regulations (14 CFR 385.13(p)).

for amendments of certificates of public convenience and necessity of local service carriers to remove or modify certificate provisions which require local service carriers to serve one or more points between particular pairs of points.

§ 302.1302 Subpart A governs.

Except as otherwise provided herein, the provisions of Subpart A of this part are applicable.

§ 302.1303 Filing of application and publication of notice.

Any local service carrier may file an application for amendment of its certificate as described in § 302.1301. If the applicant desires the Board to process the application pursuant to the expedited procedure provided by this subpart, the application should clearly so state. The Board shall publish notice of the application of the local service carrier in the FEDERAL REGISTER. Applications shall be served as provided in § 302.1307.

§ 302.1304 Contents of application.

The application shall set forth all the facts upon which the applicant relies to show that the public convenience and necessity require the relief sought. The application shall include estimates of the financial results of the operation, including the estimated effect on the applicant's subsidy need for each of the succeeding 2 years. The application shall set forth the names of the parties served as required by § 302.1307.

§ 302.1305 Preliminary procedures; summary dismissal of application; stay of proceedings.

(a) Applications involving one segment: On or before the 14th day following the filing of an application under § 302.1303 seeking removal or modification of a restriction applicable solely to service between points on the same segment, the Board may, in its discretion, (1) dismiss the application without prejudice to the refiling thereof under the normal certificate procedure, if the Board finds that the application is not in compliance with, or is inappropriate for processing under, the provisions of this subpart, or (2) stay further procedural steps with respect to such application pending further order of the Board.

(b) Applications involving more than one segment: In the case of an application for the removal or modification of a restriction applicable to service between points on different segments, the Board shall, upon consideration of such application and any statement filed pursuant to paragraph (c) of this section, issue an order either (1) providing for further proceedings pursuant to §§ 302.1306–10, or (2) dismissing the application without prejudice to the refiling thereof under the normal certificate procedure, if the Board finds that the application is not in compliance with, or is inappropriate for processing under, the provisions of this subpart.

(c) Any interested person may, within 10 days after the filing of an application under § 302.1303, file and serve upon the applicant a statement requesting the Board to exercise its discretion to dismiss the application without further procedures in accordance with paragraph (a) or (b) of this section. The filing of a statement shall not operate as a stay of proceedings.

§ 302.1306 Answers to application.

(a) Any interested person may file and serve an answer with the Docket Section of the Board in opposition to, or in support of, an application. Answers shall set forth the economic data and other facts upon which the party relies to support its position. In the case of an application governed by § 302.1305(a), such answers shall be filed and served within 25 days after (1) the expiration of the 14-day period following the filing of an application without Board action, or (2) service of a Board order directing further proceedings pursuant to §§ 302.1306–302.1310. In the case of an application governed by § 302.1305(b), such answers shall be filed and served within 25 days after service of a Board order providing for further proceedings pursuant to §§ 302.1306–302.1310.

(b) Failure of a person to file an answer within the time specified in this section shall be considered as a waiver by such person of the right to a hearing on the application and all other procedural steps short of a final decision of the Board in the proceeding. Failure to request a hearing in an answer filed pursuant to this section shall be deemed to be a waiver of the right to a hearing on the application and all other procedural steps short of final Board decision.

§ 302.1307 Service of application and answer.

(a) *Persons to be served.* A copy of an application or an answer shall be served on (1) any certificated air carrier which is authorized to engage in individually ticketed or waybilled air transportation at one or both of the points with respect to which the applicant seeks nonstop authority; (2) the chief executive of any State of the United States in which any point which is involved in the application is located: *Provided, however,* That if there be a State commission or agency having jurisdiction of transportation by air, the application shall be served on such commission or agency rather than the chief executive of the State; and (3) the chief executive of the city, town, or other unit of local government at each of the points located in the United States, between which the applicant seeks authority, as well as each certificated point intermediate thereto.

(b) *Additional service of notice.* The Board may, in its discretion, order additional service on such person or persons as the facts of the situation warrant.

§ 302.1308 Intervention.

(a) *Persons served.* A person who is served pursuant to § 302.1307 of this subpart with a copy of an original application and who files an answer to such application will automatically become a party to the proceeding without the necessity of filing a petition for intervention. A person who is so served and who does not file an answer is not entitled to seek intervention under the provisions of paragraph (b) of this section.

(b) *Persons not served.* A person who is not served pursuant to § 302.1307 with a copy of an original application may petition for interventior not later than 10 days after service of the Board's order of hearing. Answers to such petition shall be filed within 10 days after the petition is filed.

§ 302.1309 Motions to consolidate.

(a) Motions to consolidate for hearing other applications shall be filed within the time limits specified by § 302.1306 for the filing of answers. Motions to consolidate which request different authority from that requested in the original application with which consolidation is sought shall be denied, except where consolidation is required by law. Motions to consolidate shall include economic data and other facts in support of both the motion to consolidate and the application sought to be consolidated. Data in support of the application sought to be consolidated shall conform, to the extent applicable, to the provisions of § 302.1304 with respect to original applications. Such motions shall be served upon the persons specified in § 302.1307.

(b) Answers to motions to consolidate shall be filed within 25 days after service of the motion. Such answers shall (1) set forth the basis of the support of or opposition to the motion to consolidate, and (2) with respect to the merits of the application for route authority, set forth the type of data required by § 302.1306 for answers to an original application.

§ 302.1310 Reply to answers.

Replies to answers may be filed and served within 10 days after service of an answer to an original application or an answer to a motion to consolidate, as the case may be.

§ 302.1311 Procedures after filing of answers and reply.

After the time for filing a reply or replies has expired, the Board shall issue an order setting the matter for hearing, denying the application without prejudice to refiling the application under normal certificate procedure, or taking other appropriate action. The Board shall also dispose of motions to consolidate filed pursuant to § 302.1309. Except where the Board issues a final order disposing of an application on the pleadings, petitions for reconsideration of these Board actions shall not be entertained.

§ 302.1312 Hearing.

If the Board determines, pursuant to § 302.1311, that a hearing should be held, the application or applications shall be set promptly for hearing in Washington, D.C., before an examiner of the Board.

No prehearing conference shall be held. The issues shall be restricted to the relief requested in the application or applications. Unless the examiner finds that additional evidence is necessary in order to assure a party a fair hearing, the hearing shall be limited to (a) introduction into evidence of the application, answer and reply, and the motion to consolidate and related pleadings, and (b) oral testimony on cross-examination of any witness sponsoring such application, answer or reply or motion to consolidate or related pleadings.

§ 302.1313 Briefs to the examiner.

Briefs to the examiner shall be filed not more than 10 days following the close of the hearing, unless the examiner determines that briefs are not necessary under the circumstances of the case.

§ 302.1314 Examiner's initial decision.

Except for the following, the provisions of § 302.27 shall be applicable:

(a) Unless a petition for discretionary review is filed pursuant to §§ 302.28 and 302.1315 or the Board issues an order to review upon its own initiative, the initial decision shall become effective as the final order of the Board 15 days after service thereof; and

(b) Where a petition for discretionary review is timely filed or action to review is taken by the Board upon its own initiative, the effectiveness of the initial decision is stayed until the further order of the Board.

§ 302.1315 Subsequent procedures.

Except for the following, the provisions of §§ 302.28 to 302.33 and 302.36 and 302.37 shall be applicable:

(a) Any party may file and serve a petition for discretionary review by the Board of an initial decision within 10 days after service thereof;

(b) Within 10 days after service of a petition for discretionary review, any party may file and serve an answer in support of or in opposition to the petition;

(c) Within 10 days after date of the order granting discretionary review, any party may file a brief to the Board;

(d) A petition for reconsideration of any order shall be filed within 10 days after service thereof, and an answer in support of or in opposition to such petition shall be filed within 10 days after the petition is filed.

## Subpart N—Expedited Procedures for Modifying or Removing Nonstop and Long-Haul Restrictions Contained in Certificates of Public Convenience and Necessity of Trunkline Air Carriers

§ 302.1401 Applicability.

This subpart sets forth the special rules applicable to proceedings on applications for amendment of certificates of public convenience and necessity of trunkline carriers to remove or modify provisions which restrict the authority of the holder to provide service between a specified pair of certificated points within the 48 contiguous States, by requiring that one or more intermediate stops be made, or that the flight serving such pair of points originate and/or terminate at a point or points beyond the specified pair of points. Application of this subpart is further limited to cases where (a) the applicant is already providing single carrier service; (b) the applicant is carrying 20 percent or more of the passengers transported between those points as shown in the Board's competition surveys; (c) the new authority requested is not directly in issue in a pending proceeding and (d) it does not appear that the grant of the application will increase significantly the subsidy needs of any subsidized carrier. For the purposes of this section "pending proceeding" shall mean a proceeding instituted by the Board by an order of investigation or in which an order or notice setting an application for hearing has been entered.

§ 302.1402 Subpart A governs.

Except as otherwise provided herein, the provisions of Subpart A of this part are applicable.

§ 302.1403 Filing of application.

Any carrier may file an application for amendment of its certificate as described in § 302.1401. If the applicant desires the Board to process the application pursuant to the expedited procedure provided by this subpart, the application should clearly so state. Applications shall be served as provided in § 302.1407.

§ 302.1404 Contents of application.

The application shall set forth all the facts upon which the applicant relies to show that the public convenience and necessity require the relief sought, and that the applicant has carried an average of 20 percent or more of the passengers transported between the subject pair of points, as shown in the Board's competition surveys[*] in the four successive calendar quarters for the latest period for which such data are available, except that more recent data may be used if available to the applicant. The application shall set forth the names of the parties served as required by § 302.1407 and shall contain at least the following economic and operating data on an annual basis sufficiently documented to show the basis for the estimates and permit reconstruction of the estimates from the basic data:

(a) Present and proposed schedules, by type of aircraft;

(b) Number of departures, plane-miles, passengers, and passenger-miles;

(c) Estimate of self-diversion and diversion from other carriers, if applicable;

(d) Anticipated operating revenues; and

(e) Estimate of impact of proposal on operating expenses.

§ 302.1405 Preliminary procedures; summary dismissal of application.

(a) Upon consideration of any application filed under § 302.1403 and any statement filed pursuant to paragraph (b) of this section, the Board shall issue an order either (1) providing for further proceedings pursuant to §§ 302.1406–302.1410, or (2) dismissing the application without prejudice to the refiling thereof under the normal certificate procedure, if the Board finds that the application is not in compliance with, or is inappropriate for processing under, the provisions of this subpart.

(b) Any interested person may, within 10 days after the filing of an application under § 302.1403, file and serve upon the applicant a statement requesting the Board to exercise its discretion to dismiss the application without further procedures in accordance with paragraph (a) of this section.

§ 302.1406 Answers to application.

(a) Any interested person may file and serve an answer with the Docket Section of the Board in opposition to or in support of an application. Answers shall set forth the economic data and other facts upon which the party relies to support its position including proof of significant subsidy need increases for subsidized carriers. Such answers shall be filed and served within 25 days after service of a Board order providing for further proceedings pursuant to §§ 302.1406–302.1410.

(b) Failure of a person to file an answer within the time specified in this section shall be considered as a waiver by such person of the right to a hearing on the application and all other procedural steps short of a final decision of the Board in the proceeding. Failure to request a hearing in an answer filed pursuant to this section shall be deemed to be a waiver of the right to a hearing on the application and all other procedural steps short of final Board decision.

§ 302.1407 Service of application and answer.

(a) *Persons to be served.* A copy of an application or an answer shall be served on (1) any certificated air carrier which is authorized to engage in individually ticketed or waybilled air transportation at each of the points with respect to which the applicant seeks improved authority; (2) the chief executive of any State of the United States in which any point which is involved in the application is located: *Provided, however,* That if there be a State commission or agency having jurisdiction over transportation by air, the application shall be served on such commission or agency rather than the chief executive of the State; and (3) the chief executive of the city, town, or other unit of local government at each of the points located in the United States with respect to which the applicant seeks improved authority, as well as each certificated point which has during the 12-month period preceding the filing of an application received regularly scheduled service on a flight subject to the restriction sought to be removed or modified.

(b) *Additional service of notice.* The Board may, in its discretion, order additional service on such person or persons as the facts of the situation warrant.

[*] "Competition Among Domestic Air Carriers."

§ 302.1408 Intervention.

(a) *Persons served.* A person who is served pursuant to § 302.1407 of this subpart with a copy of an original application and who files an answer to such application will automatically become a party to the proceeding without the necessity of filing a petition for intervention. A person who is so served and who does not file an answer is not entitled to seek intervention under the provisions of paragraph (b) of this section.

(b) *Persons not served.* A person who is not served pursuant to § 302.1407 with a copy of an original application may petition for intervention not later than 10 days after service of the Board's order of hearing. Answers to such petition shall be filed within 10 days after the petition is filed.

§ 302.1409 Motions to consolidate.

(a) Motions to consolidate for hearing other applications shall be filed within the time limits specified by § 302.1406 for filing of answers. Motions to consolidate which request different authority from that requested in the original application with which consolidation is sought shall be denied, except where consolidation is required by law. Motions to consolidate shall include economic data and other facts in support of both the motion to consolidate and the application sought to be consolidated. Data in support of the application sought to be consolidated shall conform, to the extent applicable, to the provisions of § 302.1404 with respect to original applications, except that applications by local service carriers shall also include the estimated effect on the applicant's subsidy need for each of the succeeding two years. Such motions shall be served upon the persons specified in § 302.1407.

(b) Answers to motions to consolidate shall be filed within 25 days after service of the motion. Such answers shall (1) set forth the basis of the support of or opposition to the motion to consolidate, and (2) with respect to the merits of the application for route authority, set forth the type of data required by § 302.1406 for answers to an original application.

§ 302.1410 Reply to answers.

Replies to answers may be filed and served within 10 days after service of an answer to an original application or an answer to a motion to consolidate, as the case may be.

§ 302.1411 Procedures after filing of answers and reply.

After the time for filing a reply or replies has expired, the Board shall issue an order setting the matter for hearing or denying the application without prejudice to refiling the application under normal certificate procedure, or taking other appropriate action. Such order shall be published in the FEDERAL REGISTER. The Board shall also dispose of motions to consolidate filed pursuant to § 302.1409. Except where the Board issues a final order disposing of an application on the pleadings, petitions for reconsideration of these Board actions shall not be entertained.

§ 302.1412 Hearing.

If the Board determines, pursuant to § 302.1411, that a hearing should be held, the application or applications shall be set promptly for hearing in Washington, D.C., before an examiner of the Board. No prehearing conference shall be held. The issues shall be restricted to the relief requested ir the application or applications. Unless the examiner finds that additional evidence is necessary in order to assure a party a fair hearing, the hearing shall be limited to (a) introduction into evidence of the application, answer and reply, and the motion to consolidate and related pleadings, and (b) oral testimony on cross-examination of any witness sponsoring such application, answer or reply or motion to consolidate or related pleadings.

§ 302.1413 Briefs to the examiner.

Briefs to the examiner shall be filed not more than 10 days following the close of the hearing, unless the examiner determines that briefs are not necessary under the circumstances of the case.

§ 302.1414 Examiner's initial decision.

Except for the following, the provisions of § 302.27 shall be applicable:

(a) Unless a petition for discretionary review is filed pursuant to §§ 302.28 and 302.1415 or the Board issues an order to review upon its own initiative, the initial decision shall become effective as the final order of the Board 15 days after service thereof; and

(b) Where a petition for discretionary review is timely filed or action to review is taken by the Board upon its own initiative, the effectiveness of the initial decision is stayed until the further order of the Board.

§ 302.1415 Subsequent procedures.

Except for the following, the provisions of §§ 302.28 to 302.33 and 302.36 and 302.37 shall be applicable:

(a) Any party may file and serve a petition for discretionary review by the Board of an initial decision within 10 days after service thereof;

(b) Within 10 days after service of a petition for discretionary review, any party may file and serve an answer in support of or in opposition to the petition;

(c) Within 10 days after date of the order granting discretionary review, any party may file a brief to the Board;

(d) A petition for reconsideration of any order shall be filed within 10 days after service thereof, and an answer in support of or in opposition to such petition shall be filed within 10 days after the petition is filed.

[F.R. Doc. 70-7408; Filed, June 15, 1970; 8:45 a.m.]

# Title 16—COMMERCIAL PRACTICES

## Chapter I—Federal Trade Commission

[Docket No. C-1739]

## PART 13—PROHIBITED TRADE PRACTICES

### Funeral Directors Institute International, Inc., and John T. Arends

Subpart—Advertising falsely or misleadingly: § 13.15 *Business status, advantages, or connections:* 13.15–125 Individual or private business being: 13.15–125(s) Institute; 13.15–125(u) Non-profit organization; 13.15–225 Personnel or staff; 13.15–265 Service; 13.15–270 Size and extent. Subpart—Misrepresenting oneself and goods—Business status, advantages or connections: § 13.1495 *Non-profit character;* § 13.1553 *Services;* § 13.1555 *Size, extent or equipment.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Funeral Directors Institute International, Inc., et al., Chicago Heights, Ill., Docket C-1739, May 21, 1970]

*In the Matter of Funeral Directors Institute International, Inc., a Corporation, and John T. Arends, Individually and as an Officer of Said Corporation*

Consent order requiring a Chicago Heights, Ill., public relations agency which sells memberships, advertising and public relations programs to funeral directors, to cease misrepresenting that it is a large organization with several departments, using the words "institute" or "funeral directors institute" as part of its trade or corporate name, exaggerating the benefits accruing to its customers, and misrepresenting the nature and extent of its services.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

*It is ordered,* That respondents Funeral Directors Institute International, Inc., a corporation, and its officers, and John T. Arends, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of membership in the corporate respondent and services in connection therewith, do forthwith cease and desist from:

1. Representing, directly, or by implication, that respondent, Funeral Directors Institute International, Inc., is a large organization, or has many members, or maintains more than one place of business, or has a substantial staff, or is organized into several functional operating departments including but not

limited to an Art Department, Copy Department, Business Department, Production Department or Family Contact Department; or misrepresenting, in any manner, the size, scope, extent or amount or volume of respondents' business or operations; or misrepresenting, in any manner, the number or size of separate functional departments or divisions; or using any fictitious organizational description or designation.

2. Using the words "institute" or "funeral directors institute" either singly or together or in conjunction with any other word or words of similar import and meaning or any abbreviation or simulation thereof as part of respondents' trade or corporate name, or using said word or words in any other manner to designate, describe or refer to respondents' business; or misrepresenting, in any manner, the nature of respondents' organization.

3. Representing, directly or by implication, that respondents screen applications for membership or limit membership to the most ethical and progressive funeral director in each community; or misrepresenting, in any manner, the criteria for admission to membership in the corporate respondent.

4. Representing, directly or by implication, that the staff of the corporate respondent includes individuals highly skilled in the various fields of funeral directing, business administration, counseling and public relations; or misrepresenting, in any manner, the number, kind or qualifications of the persons employed in the respondents' organization.

5. Representing, directly or by implication, that the corporate respondent is a fellowship or other nonprofit organization; or misrepresenting, in any manner, the nature of respondents' business.

6. Representing, directly or by implication, that all persons who have purchased memberships in the corporate respondent have met a large number of new potential customers through the use of the programs which the respondents provide for their customer; or misrepresenting, in any manner, the effect or benefits that membership in the corporate respondent has bestowed upon member funeral directors.

7. Representing, directly or by implication, that for the basic purchase price of membership, or for an additional fee, the respondents will provide any of the following named items or services to persons purchasing memberships in the corporate respondent:

(a) Public opinion surveys of the member funeral directors' community performed at quarterly intervals by respondents, or their agents or representatives;

(b) Consultation services with staff personnel of the corporate respondent concerning the problems of member funeral directors in the areas of funeral home operation and management;

(c) Advertising copy specially prepared for the member funeral director's particular market situation;

(d) Complete market surveys of the areas in which the member funeral director's establishment is located;

(e) Annual workshops which are held at times and places convenient to member funeral directors; or

(f) Complete collection service, complete bookkeeping and tax services and complete business analysis service;

or, misrepresenting, in any manner, the services or items which the respondents provide member funeral directors.

8. Failing to deliver a copy of this order to Cease and Desist to all operating divisions of the corporate respondent, and to all present or future salesmen or other persons engaged in the sale of respondents' memberships or services in connection therewith, and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

*It is further ordered*, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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

Issued: May 21, 1970.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 70-7496; Filed, June 15, 1970; 8:51 a.m.]

---

[Docket No. C-1740]

## PART 13—PROHIBITED TRADE PRACTICES

### Textron, Inc.

Subpart—Acquiring corporate stock or assets: § 13.5 *Acquiring corporate stock or assets.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 18) [Cease and desist order, Textron, Inc., Providence, R.I., Docket No. C-1740, May 22, 1970]

*In the Matter of Textron, Inc., a Corporation*

Consent order requiring a major manufacturer of industrial machinery and other products headquartered in Providence, R.I., to divest within 1 year its Aetna Bearing Co. Division and to refrain from acquiring any manufacturer of antifriction bearing assemblies for a period of 10 years without prior Commission approval.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

I. *It is ordered*, That respondent, Textron, Inc., and its officers, directors, agents, representatives, and employees shall, within one (1) year from the effective date of this Order, divest itself absolutely and in good faith, subject to the prior approval of the Federal Trade Commission, of all the assets, properties, rights and privileges, tangible or intangible, including but not limited to all properties, plants, machinery, equipment, raw material reserves, patents, trade names, trademarks, contract rights, marketing organizations, and good will, acquired by said respondent as a result of its acquisition of the Aetna Bearing Co., together with all additions and improvements thereto, so as to assure that said company is reestablished as an effective, viable competitor in the production, distribution and sale of antifriction bearings.

II. *It is further ordered*, That, if respondent is unable to sell or dispose of Aetna Bearing Co. for cash, nothing in this order shall be deemed to prohibit respondent from retaining, accepting and enforcing in good faith any security interest therein, not to exceed 5 years in duration, for the sole purpose of securing to respondent full payment of the price, with interest, at which Aetna Bearing Co. is sold or disposed of; provided, however, that if after a good faith divestiture of Aetna Bearing Co. pursuant to this order, the buyer fails to perform his obligations and respondent regains ownership or control of Aetna Bearing Co. by enforcement of any security interest therein, respondent shall redivest such company within 1 year in the same manner as provided for herein.

III. *It is further ordered*, That pending divestiture, respondent shall not make any changes, other than in the ordinary course of business, or permit any deterioration in any of the plants, machinery, buildings, equipment or other property or assets of whatever description of its Aetna Bearing Co. Division which may impair said Division's capacity for the manufacture, distribution or sale of antifriction bearings.

IV. *It is further ordered*, That the divestiture required by paragraph I of this order shall not be effected, directly or indirectly, to anyone who, subsequent to such divestiture, is an officer, director, employee, or agent of, or otherwise under the control or influence of respondent, or who owns or controls, directly or indirectly, more than one (1) percent of the outstanding stock of respondent.

V. *It is further ordered*, That, pending divestiture, respondent shall cease and desist from acquiring, directly or indirectly, the whole or any part of the stock, share capital, or assets (other than products, machinery and equipment sold in the ordinary course of business and non exclusive patent and know-how licenses) of any concern engaged in the manufacture and/or distribution of antifriction bearings in the United States.

VI. *It is further ordered*, That, for a period commencing upon the effective date of this order and continuing for a period of ten (10) years from and after the date of completing the divestiture required by this order, respondent shall cease and desist from acquiring, directly or indirectly, without prior approval by the Federal Trade Commission, the whole or any part of the stock, share capital, or assets (other than products, machinery and equipment sold in the normal course of business and nonexclusive patent and know-how licenses) of any domestic concern, corporate or noncorporate, engaged in the manufacture and/or distribution of antifriction bearings in the United States, or any foreign concern, corporate or noncorporate, engaged in the manufacture and/or distribution of antifriction bearings whose sales in the United States in the 5 years preceding the acquisition exceeded an average of $500,000 per year. (For the purposes of this order a concern will be deemed to be engaged in the distribution of antifriction bearings if it derives 50 percent or more of its total annual sale from such activity.)

This prohibition on acquisitions shall include, but not be confined to, the entering into of any arrangement by respondent pursuant to which respondent acquires the market share, in whole or in part, of any concern, (a) through such concern discontinuing manufacturing or selling antifriction bearings under a brand name or label it owns and thereafter manufacturing or selling any of said products under any of respondent's brand names or labels, or (b) by reason of such concern discontinuing manufacturing antifriction bearings and thereafter transferring to respondent customer lists or any other way making available to respondent access to customers or customer accounts.

VII. *It is further ordered*, That commencing upon the effective date of this order and continuing for a period to ten (10) years from and after the date of completing the divestiture required by this order, respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital or assets (other than products, machinery and equipment sold in the ordinary course of business and nonexclusive patent and known-how licenses) of any domestic concern, corporate or noncorporate, whose purchases of precision ball bearings (ABEC–1 and above) for use in original equipment manufacture in any of the immediately preceding 3 years exceeded one million dollars ($1,000,000).

VIII. *It is further ordered*, That respondent shall, within sixty (60) days after the effective date of this order, and every sixty (60) days thereafter, until respondent has fully complied with paragraph I of this order, and annually thereafter, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent intends to comply, is complying, or has complied with this order. All compliance reports shall include, in addition to such other information and documentation as may hereafter be required, without limitation, a summary of all contracts and negotiations with any parties concerning divestiture of the specified assets and properties, the identity of all such parties and copies of all written communications to and from such parties.

STATEMENT OF COMMISSION

The Commission reconsidered the proposed consent agreement in light of the comments submitted and decided to accept the agreement in the manner and form proposed. The consensus of the public comments was that the proposed consent order was inadequate in that it represented a rejection of the "leading company approach" to conglomerate mergers recommended in the FTC staff Economic Report on Corporate Mergers. That approach is that acquisitions by large diversified firms of leading firms in concentrated industries should be challenged.

The Commission has determined that under the particular circumstances presented, it probably would not have challenged respondent's acquisition of Fafnir, absent respondent's ownership of Aetna. While the Commission rejects any per se rule of "leading company" illegality, it looks most carefully at leading firm acquisitions by conglomerates into a concentrated industry, and stands ready to challenge these acquisitions where they may tend to eliminate potential competition, create reciprocity or cross-subsidization opportunities, or result in full-line forcing, predatory pricing, tie-in sales, or other anticompetitive practices.

Respondent, through Aetna, was a small factor in the ball bearing industry, producing different, though related types of ball bearings than those produced by Fafnir. Commission concluded that the acquisition of Fafnir did not eliminate potential competition, since Textron absent its acquisition of Fafnir and without its position in Aetna which it is now required to divest, would not have been considered a likely potential entrant through internal expansion into Fafnir's ball bearing markets.

A review of respondent's overall purchase requirements indicates that it has little or no ability to force its bearing customers to deal with it in a systematized reciprocal manner. Moreover, there is no evidence to indicate that respondent will confer additional power to subsidize Fafnir's bearing operations in the light of the latter's profitable operations.

The Commission reasoned further that in the circumstances of this case, it was more in the public interest to obtain an order requiring prompt divestiture of Aetna, in that such divestiture would not only reinstate the competition that formerly existed between Aetna and Fafnir, but would also recreate the opportunity for the new owners of Aetna to expand internally its product line to compete more directly with Fafnir.

Issued: May 22, 1970.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 70-7497; Filed, June 15, 1970; 8:51 a.m.]

[Docket No. 8752]

## PART 13—PROHIBITED TRADE PRACTICES

### Universe Chemicals, Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.170 *Qualities or properties of product or service:* 13.170–96 Waterproof, waterproofing, water-repellent. Subpart—Furnishing means and instrumentalities of misrepresentation or deception: § 13.105: *Furnishing means and instrumentalities of misrepresentation or deception.* Subpart—Misrepresenting oneself and goods—Business status, advantages or connections: § 13.1395 *Connections and arrangements with others;* Misrepresenting oneself and goods—Goods: § 13.1615 *Earnings and profits;* § 13.1647 *Guarantees;* § 13.1710 *Qualities or properties;* § 13.1725 *Refunds;* § 13.1730 *Results;* § 13.1762 *Tests, purported.* Subpart—Securing agents or representatives by misrepresentation: § 13.2140 *Qualities or properties of product.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Universe Chemicals, Inc., et al., Chicago, Ill., Docket No. 8752, May 13, 1970]

*In the Matter of Universe Chemicals, Inc., a Corporation, and Raymond L. Rosen and Jordan L. Lichtenstein, Individually and as Officers of Said Corporation*

Order requiring a Chicago, Ill., distributor of water-repellent paints and coatings under the trade names "Kleer-Kote" and "Kolor-Kote" to cease misrepresenting that it is affiliated in any way with Union Carbide Co. or any other well-known company or laboratory, using deceptive guarantees, exaggerating the waterproofing and rust resistant qualities of its products, misrepresenting the return privileges and earnings of its dealers, and furnishing others with means to mislead prospective purchasers.

The order to cease and desist, is as follows:

*It is ordered*, That respondents Universe Chemicals, Inc., a corporation, and its officers, and Raymond L. Rosen and Jordan L. Lichtenstein, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of any paint or paint products or any other articles of merchandise or rights to trade in or sell merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. Respondents are a subsidiary of, a division of, an exclusive licensee of, or are affiliated with the Union Carbide Co. or any other well-known company; or misrepresenting, in any manner, respondents' trade or business connections or affiliations.

2. Any of respondents' products were manufactured or developed by the Union Carbide Co. or any other well-known company; or misrepresenting, in any manner, the company or organization which manufactured or developed any of the products sold or distributed by the respondents.

3. Respondents' products have been tested or evaluated by the Union Carbide Co., any other well-known company, or an independent laboratory or any other person or organization qualified to test or evaluate such products or that respondents have tested such products; unless respondents shall have in their files written reports clearly and accurately reflecting such test results and such tests were devised and conducted so as to constitute a suitable basis for evaluating respondents' products with respect to the properties thereof.

4. Respondents' products are guaranteed unless the nature, conditions, and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction with such representation and unless respondents, in fact, comply with the terms of such represented guarantee.

5. Respondents' products contain any specific percentage or amount of silicones; unless such percentage or amount is, in fact, true as represented; or misrepresenting, in any manner, the quantity or quality of the constituent elements comprising respondents' products.

6. Dealers will earn any stated or gross or net amount; or representing, in any manner, the past earnings of dealers unless, in fact, the past earnings represented are those of a substantial number of dealers and accurately reflect the average earnings of these dealers under circumstances similar to those of the dealer to whom the representation is made.

7. Respondents' products will be sold out by the purchaser within any stated period of time; or representing, in any manner, that dealers, in the past, have sold out their supplies within any stated period of time unless the past sales represented are those of a substantial number of dealers and accurately reflect the average sales of these dealers under circumstances similar to those of the dealer to whom the representation is made.

8. Respondents' dealers may return to the respondent any unsold quantities of the respondents' products or the respondents will transfer the unsold quantities to another dealer or a refund will be made to the dealers for unsold merchandise or that the contract is other than an outright sale of the respondents' products to the dealer.

9. Respondents' products are waterproof or will cause any surface to which they are applied to become waterproof; or misrepresenting, in any manner, the performance characteristics of respondents' products.

10. Respondents' products prevent rust or will prevent or impede the rusting of any material to which they are applied.

11. Respondents' products are suitable for use on the inside of a structure; or misrepresenting, in any manner, the use characteristics of respondents' products.

12. One coat of any of the respondents' products is sufficient to cover the surface to be painted; or misrepresenting, in any manner, the effectiveness of any of respondents' products.

B. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

C. Furnishing to, or otherwise placing in the hands of, others, including salesmen, retailers, or dealers, the means or instrumentalities by or through which they may mislead or deceive the public in the manner or as to the things prohibited by this order.

By "Final Order" further order requiring report of compliance is as follows:

*It is further ordered*, That respondents Universe Chemicals, Inc., and Raymond L. Rosen and Jordan L. Lichtenstein shall, within sixty (60) days after service of this order upon them, file a written report with the Commission, signed by said respondents, setting forth in detail the manner and form of their compliance with the order to Cease and Desist hereby adopted by the Commission.

*It is further ordered*, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising under this order.

Issued: May 13, 1970.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 70-7498; Filed, June 15, 1970; 8:51 a.m.]

# Title 21—FOOD AND DRUGS

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

## PART 19—CHEESES, PROCESSED CHEESES, CHEESE FOODS, CHEESE SPREADS, AND RELATED FOODS

### Cottage Cheese; Order Amending Identity Standard To Permit Alternate Direct Acidification Process

In the matter of amending the standard of identity for cottage cheese (§ 19.525) to provide for the optional use of food grade acid as a means of setting the curd:

A notice of proposed rule making in the above-identified matter was published in the FEDERAL REGISTER of June 25, 1969 (34 F.R. 9809), based on a petition submitted by the Milk Industry Foundation, 910 17th Street NW., Washington, D.C. 20005. In response 23 comments were received, 19 of which favored adoption of the proposal. One comment suggested that malic acid should be added to the list of food grade acids proposed for use in the direct acidification process. Three comments took exception to the proposal because no provision was made for appropriate label declaration on cottage cheese made by the direct acidification process.

Having considered the information submitted by the petitioner, the comments received, and other relevant material, the Commissioner of Food and Drugs concludes that it will promote honesty and fair dealing in the interest of consumers to amend the standards for cottage cheese as proposed, but with provision for label declaration in the cottage cheese standard and also in the creamed cottage cheese standard (§ 19.530) to inform when the curd used is set by direct acidification. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner (21 CFR 2.120): *It is ordered*, That Part 19 be amended as follows:

1. Section 19.525 is amended by revising paragraph (b)(1) and by adding a new paragraph (c), as follows:

**§ 19.525 Cottage cheese; identity.**

* * * * *

(b) (1) One or more of the dairy ingredients specified in subparagraph (2) of this paragraph is pasteurized; calcium chloride may be added in a quantity of not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the mix; thereafter one of the following methods is employed:

(i) Harmless lactic-acid-producing bacteria, with or without rennet, are added and it is held until it becomes coagulated. The coagulated mass may be cut; it may be warmed; it may be stirred; it is then drained. The curd may be washed with water and further drained; it may be pressed, chilled, worked, seasoned with salt; or

(ii) Food grade phosphoric acid, lactic acid, citric acid, or hydrochloric acid, with or without rennet, is added in such amount as to reach a pH of between 4.5 and 4.7; coagulation to a firm curd is achieved while heating to a maximum of 120° F. without agitation during a continuous process. The curd may be warmed; it may be stirred; it is then drained. The curd is washed with water, stirred, and further drained. It may be pressed, chilled, worked, seasoned with salt.

* * * * *

(c) When the optional process described in paragraph (b)(1)(ii) of this section is used to make cottage cheese, the label shall bear the statement "Curd set by direct acidification." Wherever the name "cottage cheese" appears on the label so conspicuously as to be seen under customary conditions of purchase, the statement specified in this paragraph, showing the optional process used, shall immediately and conspicuously precede or follow such name without intervening written, printed, or graphic matter.

2. Section 19.530(d) is amended by revising subparagraph (3) and redisignating it as subparagraph (4) and by adding a new subparagraph (3), as follows:

**§ 19.530 Creamed cottage cheese; identity; label statement of optional ingredients.**

* * * * *

(d) * * *

(3) When the optional process described in § 19.525(b)(1)(ii) is used to make the cottage cheese used in creamed cottage cheese, the label shall bear the statement "Curd set by direct acidification."

(4) Wherever the name "creamed cottage cheese" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the label declarations prescribed in this paragraph, showing the optional ingredients present and optional process used, shall immediately and conspicuously precede or follow such name without intervening written, printed, or graphic matter.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-62, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and such objections must be supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in six copies.

*Effective date.* This order shall become effective 60 days after its date of publication in the FEDERAL REGISTER, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be given by publication in the FEDERAL REGISTER.

(Secs. 401, 701, 52 Stat. 1046, 1055, as amended, 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371)

Dated: June 9, 1970.

CHARLES C. EDWARDS,
*Commissioner of Food and Drugs.*

[F.R. Doc. 70-7461; Filed, June 15, 1970; 8:48 a.m.]

## PART 121—FOOD ADDITIVES

### Subpart A—Definitions and Procedural and Interpretative Regulations

FOOD ADDITIVE STATUS OPINION LETTERS; STATEMENT OF POLICY

In the FEDERAL REGISTER of April 9, 1970 (35 F.R. 5810), a statement of policy, § 121.11, was promulgated regarding food additive status opinion letters. Section 121.11(e) provided for the replacement of prior opinions by qualified and current opinions if certain submissions were made within 60 days after said publication date.

The Commissioner of Food and Drugs has received a request to extend this period of time and, good reason therefor appearing, it is changed as set forth below.

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-88, as amended; 21 U.S.C. 321(s), 348, 371(a)) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.11(e) is revised to read as follows:

**§ 121.11 Food additive status opinion letters; statement of policy.**

* * * * *

(e) The prior opinions of the kind described in paragraph (c) of this section will be replaced by qualified and current opinions if the recipient of each such letter forwards a copy of each to the Department of Health, Education, and Welfare, Food and Drug Administration, Bureau of Foods, Pesticides, and Product Safety, Office of Compliance, 200 C Street SW., Washington, D.C. 20204, along with a copy of his letter of inquiry, on or before July 23, 1970.

* * * * *

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-88, as amended; 21 U.S.C. 321(s), 348, 371(a))

Dated: June 4, 1970.

SAM D. FINE,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70-7463; Filed, June 15, 1970; 8:48 a.m.]

## PART 121—FOOD ADDITIVES

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

ADHESIVES

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP OB2502) filed by Uniroyal Chemical, Division of Uniroyal, Inc., Elm Street, Naugatuck, Conn. 06770, and other relevant material, concludes that the food additive regulations should be amended to provide for the safe use of 4,4'-bis(α,α-dimethylbenzyl) diphenylamine as an antioxidant component of food-packaging adhesives. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.2520(c)(5) is amended by alphabetically inserting a new item in the list of substances, as follows:

**§ 121.2520 Adhesives.**

* * * * *

(c) * * *

(5) * * *

COMPONENTS OF ADHESIVES

| *Substances* | *Limitations* |
|---|---|
| * * * | * * * |
| 4,4'-Bis(α,α-dimethylbenzyl) diphenylamine | --- |
| * * * | * * * |

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-62, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

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

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

Dated: June 8, 1970.

R. E. DUGGAN,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70-7437; Filed, June 15, 1970; 8:46 a.m.]

## PART 121—FOOD ADDITIVES

### Subpart C—Food Additives Permitted in Feed and Drinking Water of Animals or for the Treatment of Food-Producing Animals

## PART 144—ANTIBIOTIC DRUGS; EXEMPTIONS FROM LABELING AND CERTIFICATION REQUIREMENTS

### Diethylstilbestrol, Bacitracin Methylene Disalicylate

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (36-479V) filed by S. B. Penick & Co., 100 Church Street, New York, N.Y. 10007, proposing the use of a combination of diethylstilbestrol and bacitracin methylene disalicylate in the feed of feedlot beef cattle. The supplemental application is approved.

Pending recodification of previously established regulations in Part 121 under regulations to be established under the provisions of section 512(i) of the

Federal Food, Drug, and Cosmetic Act, this order is issued in accordance with § 3.517 *New animal drugs; transitional provisions re section 512 of the act.*

Therefore, pursuant to provisions of the act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)), in accordance with § 3.517, and under authority delegated to the Commissioner (21 CFR 2.120), Parts 121 and 144 are amended as follows:

1. Section 121.241(b) is amended by adding to table 1, item 1, a new subitem d, as follows:

**§ 121.241 Diethylstilbestrol.**

* * * * *

(b) * * *

TABLE 1—DIETHYLSTILBESTROL IN FEED

| Principal ingredient | Amount | Combined with— | Amount | Limitations | Indications for use |
|---|---|---|---|---|---|
| 1. * * * | * * * | * * * | * * * | * * * | * * * |
| d. 1 | 10 | Bacitracin | 70-250 | § 121.252, table 3, items 1 or 2. | Reduction in the number of liver condemnations due to abscesses in feedlot beef cattle. |
| * * * | * * * | * * * | * * * | * * * | * * * |

2. Section 121.252(d) is amended by revising table 3 to read as follows:

**§ 121.252 Bacitracin methylene disalicylate.**

* * * * * * *

(d) * * *

TABLE 3—BACITRACIN METHYLENE DISALICYLATE IN CATTLE FEED

| Principal ingredient | Amount | Combined with— | Amount | Limitations | Indications for use |
|---|---|---|---|---|---|
| | *Mg. per head per day* | | *Mg. per head per day* | | |
| 1. Bacitracin | 70 | | | For feedlot beef cattle; administer continuously throughout the feeding period; as bacitracin methylene disalicylate. | Reduction in the number of liver condemnations due to abscesses in feedlot beef cattle. |
| 2. Bacitracin | 250 | | | For feedlot beef cattle; administer continuously for 5 days then discontinue for subsequent 25 days, repeat the pattern during the feeding period; as bacitracin methylene disalicylate. | Do. |
| a. 1 or 2 | | Diethylstilbestrol. | 10 | § 121.241(b), table 1, item 1 (when used in accordance with item 2, diethylstilbestrol should be continued throughout the subsequent 25-day period). | Fattening of beef cattle. |

3. Section 144.26(b)(28) is revised to read as follows:

**§ 144.26 Animal feed containing certifiable antibiotic drugs.**

* * * * *

(b) * * *

(28) It is a medicated feed for beef cattle containing bacitracin methylene disalicylate with or without diethylstilbestrol in the amounts and for the purposes specified in § 121.252 of this chapter and its labeling bears adequate directions and warnings for such use.

* * * * *

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-62, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

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

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i))

Dated: June 2, 1970.

SAM D. FINE,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70-7462; Filed, June 15, 1970; 8:48 a.m.]

## PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

### Betamethasone Acetate and Betamethasone Disodium Phosphate Aqueous Suspension

The Commissioner of Food and Drugs has evaluated the new animal drug application (34-010V) filed by Schering Corp., Bloomfield, N.J. 07003, proposing safe and effective use of a combination drug containing betamethasone acetate and betamethasone disodium phosphate for the treatment of various inflammatory joint conditions in horses. The application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), the following new section is added to Part 135b:

**§ 135b.13 Betamethasone acetate and betamethasone disodium phosphate aqueous suspension.**

(a) *Chemical names.* Betamethasone acetate: 9-α-Fluoro-16-β-methylprednisolone-21-acetate ($C_{24}H_{31}FO_6$). Betamethasone disodium phosphate: 9-α-Fluoro-16-β-methylprednisolone-21-disodium phosphate ($C_{22}H_{28}FNa_2O_8P$).

(b) *Specifications.* The drug is a sterile aqueous suspension and each cubic centimeter contains: 12 milligrams of betamethasone acetate (equivalent to 10.8 milligrams of betamethasone), 3.9 milligrams of betamethasone disodium phosphate (equivalent to 3 milligrams of betamethasone), 2 milligrams of dibasic sodium phosphate, 5 milligrams of sodium chloride, 0.1 milligram of disodium EDTA, 0.5 milligram of polysorbate 80, 9 milligrams of benzyl alcohol, 5 milligrams of sodium carboxymethylcellulose, 1.8 milligrams of methylparaben, 0.2 milligram of propylparaben, hydrochloric acid and/or sodium hydroxide to adjust pH, and water for injection q.s.

(c) *Sponsor.* Schering Corp., 86 Orange Street, Bloomfield, N.J. 07003.

(d) *Conditions of use.* It is used or intended for use by intra-articular injection of horses for the treatment of various inflammatory joint conditions; for example, acute and traumatic lameness involving the carpel and fetlock joints. Administer from 2.5 to 5 cubic centimeters per dose. Dose may be repeated when necessary depending upon the duration of relief obtained. Not for use in horses intended for food. For use only by or on the order of a licensed veterinarian.

*Effective date.* This order is effective upon publication in the FEDERAL REGISTER.

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i))

Dated: June 1, 1970.

SAM D. FINE,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70-7464; Filed, June 15, 1970; 8:48 a.m.]

# Title 28—JUDICIAL ADMINISTRATION

## Chapter I—Department of Justice

[Order 434-70]

## PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

### Subpart AA—Sections and Subunits

CHANGES WITHIN ORGANIZATIONAL UNITS

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, § 0.190 of Subpart AA of Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended to read as follows:

**§ 0.190 Changes within organizational units.**

The head of each organizational unit may from time to time establish or terminate, or transfer the functions of, sections or other subunits within his organizational unit as he may deem necessary or appropriate. In each instance, the head of the organizational unit shall report the proposed action in writing in advance to the Attorney General and to the Assistant Attorney General for Administration.

Dated: June 2, 1970.

JOHN N. MITCHELL,
*Attorney General.*

[F.R. Doc. 70-7444; Filed, June 15, 1970; 8:46 a.m.]

# Title 43—PUBLIC LANDS: INTERIOR

## Chapter II—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 4842]

[BLM 062905]

### MICHIGAN

### Addition to National Forest

By virtue of the authority contained in the Act of July 9, 1962, 76 Stat. 140, 43 U.S.C. 315g-1 (1964), it is ordered as follows:

Subject to valid existing rights, the following described lands, acquired in an exchange made pursuant to section 8 of the Taylor Grazing Act of June 28, 1934, 48 Stat. 1272, as amended, 43 U.S.C. 315g (1964), are hereby added to and made a part of the Hiawatha National Forest and hereafter shall be subject to all laws and regulations applicable to said national forest:

MICHIGAN MERIDIAN

T. 42 N., R. 21 W.,
Sec. 18, E½SE¼;
Sec. 21, W½SE¼;
Sec. 28, NW¼SW¼.

The areas described aggregate 200 acres in Delta County.

All of the mineral rights in the described lands are owned by the State of Michigan.

HARRISON LOESCH,
*Assistant Secretary of the Interior.*

JUNE 5, 1970.

[F.R. Doc. 70-7438; Filed, June 15, 1970; 8:46 a.m.]

[Public Land Order 4843]

[BLM 059707]

### MICHIGAN

### Addition to National Forest

By virtue of the authority contained in the Act of July 9, 1962, 76 Stat. 140, 43 U.S.C. 315g-1 (1964), it is ordered as follows:

Subject to valid existing rights, the following described lands, acquired in an exchange made pursuant to section 8 of the Taylor Grazing Act of June 28, 1934, 48 Stat. 1272, as amended, 43 U.S.C. 315g (1964), are hereby added to and made a part of the Hiawatha National Forest and hereafter shall be subject to all laws and regulations applicable to said national forest:

MICHIGAN MERIDIAN

T. 47 N., R. 4 W.,
Sec. 25, lot 2;
Sec. 26, lots 4, 5, 6, and 7.

The areas described aggregate 123.30 acres in Chippewa County.

HARRISON LOESCH,
*Assistant Secretary of the Interior.*

JUNE 5, 1970.

[F.R. Doc. 70-7439; Filed, June 15, 1970; 8:46 a.m.]

[Public Land Order 4844]

[Montana 3959]

### MONTANA

### Withdrawal for National Forest Recreation Area

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows.

1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from appropriation under the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, in aid of programs of the Department of Agriculture:

KANIKSU NATIONAL FOREST

PRINCIPAL MERIDIAN

*Rock Meadows Recreation Area*

T. 26 N., R. 31 W., unsurveyed, but when surveyed probably will be:
Sec. 6, NW¼NE¼NE¼, N½NW¼NE¼, SW¼NW¼NE¼, NE¼NW¼, SE¼NW¼NW¼, NW¼SE¼NW¼, NE¼SW¼NW¼.
T. 27 N., R. 31 W., unsurveyed, but when surveyed, probably will be:
Sec. 31, E½SE¼SE¼, SW¼SE¼SE¼, SE¼SW¼SE¼;
Sec. 32, W½SW¼SW¼.

The areas described aggregate approximately 170 acres in Sanders County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

HARRISON LOESCH,
*Assistant Secretary of the Interior.*

JUNE 5, 1970.

[F.R. Doc. 70-7440; Filed, June 15, 1970; 8:46 a.m.]

[Public Land Order 4845]

[Sacramento 2816]

### CALIFORNIA

### Modification of Public Land Order No. 2618

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Public Land Order No. 2618 of March 5, 1962, reserving lands under the jurisdiction of the Bureau of Land Management, Department of the Interior, for the preservation of recreational values and access to water areas, is hereby modified to the extent necessary to withdraw the following described lands from appropriation under the mining laws (30 U.S.C., Ch. 2):

MOUNT DIABLO MERIDIAN

COPCO LAKE

T. 48 N., R. 4 W.,
Sec. 34, SW¼NE¼, SE¼NW¼, W½SE¼, SE¼SE¼.

The areas described aggregate approximately 200 acres in Siskiyou County.

2. The withdrawal made by this order does not otherwise change the provisions of the withdrawal of the lands made under Public Land Order No. 2618.

HARRISON LOESCH,
*Assistant Secretary of the Interior.*

JUNE 5, 1970.

[F.R. Doc. 70-7441; Filed, June 15, 1970; 8:46 a.m.]

# Title 49—TRANSPORTATION

## Subtitle A—Office of the Secretary of Transportation

[OST Docket No. 1; Admt. 1-32]

## PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

### Delegation of Authority With Respect to Military Decorations

The purpose of this amendment is to delegate the authority of the Secretary of Transportation with respect to awarding life-saving medals and military decorations, other than the Medal of Honor, the Distinguished Service Medal, and the Legion of Merit, to the Commandant of the Coast Guard.

Since this amendment relates only to the internal management of the Department, notice and public procedure thereon are not required and the amendment can be made effective in less than 30 days.

In consideration of the foregoing, effective June 16, 1970, paragraph (k) of § 1.46 of Title 49, Code of Federal Regulations, is amended to read as set forth below.

(Sec. 9, Department of Transportation Act; 49 U.S.C. 1659)

Issued in Washington, D.C., on June 10, 1970.

JOHN A. VOLPE,
*Secretary of Transportation.*

**§ 1.46 Delegations to Commandant of the Coast Guard.**

* * * * *

(k) Award life-saving medals and military decorations (except the Medal of Honor, the Distinguished Service Medal, and the Legion of Merit) and carry out the laws and Executive orders relating to those awards (14 U.S.C. 492a, 493, 494, 496, 497, 498, 500, 501, 502; Executive Order No. 4601, Mar. 1, 1926, as amended by Executive Order No. 7786 (3 F.R. 49); Executive Order No. 9158 (7 F.R. 3541), as amended by Executive Order No. 9242A (7 F.R. 7874); Executive Order No. 10637 (20 F.R. 7025); Executive Order No. 11016 (27 F.R. 4139); Executive Order No. 11046 (27 F.R. 8575); Executive Order No. 11448 (34 F.R. 915)).

[F.R. Doc. 70-7453; Filed, June 15, 1970; 8:47 a.m.]

## Chapter X—Interstate Commerce Commission

### SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. 1041]

### PART 1033—CAR SERVICE

### Distribution of Boxcars

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 10th day of June 1970.

It appearing, that an acute shortage of certain plain boxcars exists on the railroads named in paragraph (a)(1) herein; that shippers located on the lines of these carriers are being deprived of such cars required for loading, resulting in a severe emergency and causing grain elevators to be unable to accept newly harvested grain, or to store grain on the ground, thus creating economic loss; that present rules, regulations, and practices with respect to the use, supply, control, movement, distribution, exchange, interchange, and return of boxcars owned by these railroads are ineffective. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than 30 days' notice.

*It is ordered*, That:

**§ 1033.1041 Service Order No. 1041.**

(a) *Distribution of boxcars.* Each common carrier by railroad subject to the Interstate Commerce Act shall observe, enforce, and obey the following rules, regulations, and practices with respect to its car service:

(1) Return to owners empty, except as otherwise authorized in subparagraphs (2) and (3) of this paragraph, all plain boxcars which are listed in the Official Railway Equipment Register, ICC R.E.R. 375, issued by E. J. McFarland, or reissues thereof, as having mechanical designation XM, with inside length 44 feet 6 inches or less and equipped with doors less than 9 feet wide, owned by the following railroads: The Atchison, Topeka and Santa Fe Railway Co.; Chicago, Rock Island and Pacific Railroad Co.; Missouri-Kansas-Texas Railroad Co.; Missouri Pacific Railroad Co.; St. Louis-San Francisco Railway Co.

(2) Boxcars described in subparagraph (1) of this paragraph, owned by the carriers listed and located in States other than those listed under the name of the owning carrier, may be loaded to any station in such States:

| ATSF | CRIP | MKT | MP | SLSF |
|---|---|---|---|---|
| Colorado<br>Illinois<br>Kansas<br>Missouri<br>Oklahoma<br>Texas | Arkansas<br>Colorado<br>Illinois<br>Iowa<br>Kansas<br>Missouri<br>Nebraska<br>Oklahoma<br>Texas | Kansas<br>Missouri<br>Oklahoma<br>Texas | Arkansas<br>Illinois<br>Kansas<br>Missouri<br>Nebraska<br>Texas | Arkansas.<br>Kansas.<br>Missouri.<br>Oklahoma.<br>Texas. |

(3) Boxcars described in subparagraph (1) of this paragraph, and located in the states listed under the name of the owning carrier in subparagraph (2) of this paragraph, may be loaded to stations on the lines of the car owning railroad only, if routed via the lines of the car owner.

(4) No common carrier by railroad subject to the Interstate Commerce Act shall accept from shipper any loaded boxcar for movements contrary to the provisions of subparagraphs (2) and (3) of this paragraph.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(c) *Effective date.* This order shall become effective at 12:01 a.m., June 12, 1970.

(d) *Expiration date.* This order shall expire at 11:59 p.m. June 30, 1970, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1 (10-17), 15(4), and 17(2), 40 Stat. 101, as amended 54 Stat. 911, 49 U.S.C. 1(10-17), 15(4), and 17(2))

*It is further ordered*, That a copy of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] H. NEIL GARSON,
*Secretary.*

[F.R. Doc. 70-7489; Filed, June 15, 1970; 8:50 a.m.]

# Proposed Rule Making

## DEPARTMENT OF AGRICULTURE

### Consumer and Marketing Service

### [ 7 CFR Part 991 ]

### HOPS OF DOMESTIC PRODUCTION

### Notice of Proposed Exemption From Regulation of Hops Grown or Used for Research Purposes

Notice is hereby given of a proposal unanimously recommended by the Hop Administrative Committee. The proposal would authorize the Committee to exempt annually from regulation the handling (not to exceed 200 bales) of hops grown or used for research purposes. The proposed exemption would facilitate growing of new or experimental varieties of hops and their use in pilot brewing tests. The proposal would implement § 991.30 of Order No. 991, as amended (7 CFR Part 991), regulating the handling of hops of domestic production, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposal should file the same in quadruplicate with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, within 7 days after the date of publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during official hours of business (7 CFR 1.27(b)).

The proposal is as follows:

**§ 991.130 Exemption of hops grown or used for research purposes.**

Pursuant to § 991.30, the Committee may exempt from regulation the handling of hops grown or used for research purposes. Subject to an annual review by the Committee of the applicable research projects, the Committee may grant such an exemption which shall not exceed 200 bales annually. Such exemption, if granted, shall be subject to the requirements of §§ 991.60–991.63, Reports and Records, and shall be given to the Crop Research Division, Agricultural Research Service, U.S. Department of Agriculture, Oregon State University, Corvallis, Oreg. 97331, with authority for such Division to apportion such exemption, to the following research stations: Said Crop Research Division; Parma Branch Experiment Station, Parma, Idaho 83660; The Irrigated Agriculture Research and Extension Center, Washington State University, Bunn Road, Prosser, Wash. 99350; Department of Plant Pathology, University of California, Davis, Calif. 95616; and the Department of Botany and Plant Pathology, Oregon State University, Corvallis, Oreg. 97331.

Dated: June 10, 1970.

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

[F.R. Doc. 70-7450; Filed, June 15, 1970; 8:47 a.m.]

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### [ 14 CFR Part 39 ]

[Docket No. 10354]

### MORANE SAULNIER MODELS MS.880B, MS.885, AND MS.894A AIRPLANES

### Proposed Airworthiness Directive

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Morane Saulnier Models MS.880B, MS.885, and MS.894A airplanes. It has been reported that the cover glass for the airspeed indicator can rotate in the instrument and that there is no means for the pilot to determine whether the airspeed indicator markings on the cover glass are properly aligned with the face of the dial. Since this represents an unsafe condition and is likely to exist or develop on other airplanes of the same type design, the proposed airworthiness directive would require inspection of the cover glass to insure proper alignment and cross marking of the glass and instrument to permanently indicate the proper alignment position of the glass.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20590. All communications received on or before July 16, 1970, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 by adding the following new airworthiness directive:

MORANE SAULNIER. Applies to Models MS.880B, MS.885 and MS.894A airplanes.

To maintain correct alignment of the airspeed limit markings on the cover glass of the airspeed indicator with the face of the dial, within the next 50 hours' time in service after the effective date of this AD, unless already accomplished, align the cover glass and mark its correct position in accordance with Socata Service Bulletin No. 73 dated March 1970, or later SGAC-approved issue or an FAA-approved equivalent.

Issued in Washington, D.C., on June 4, 1970.

WILLIAM G. SHREVE, Jr.,
*Acting Director, Flight Standards Service.*

[F.R. Doc. 70-7447; Filed, June 15, 1970; 8:46 a.m.]

---

### Federal Highway Administration

### [ 49 CFR Part 393 ]

[Docket No. MC-19]

### SMOKING ON BUSES

### Oral Hearing

The Federal Highway Administrator published in the FEDERAL REGISTER on February 26, 1970 (35 F.R. 3762), a notice of proposed rule making, Docket No. MC-19, proposing to amend Part 393 of the Motor Carrier Safety Regulations to prohibit operation of buses subject to the jurisdiction of the Federal Highway Administration while their occupants are smoking. The proposed amendment to Part 393 of Title 49, CFR, would add a new section which would provide that "No bus shall be driven while cigars, cigarettes, and pipes are being smoked therein by passengers or drivers."

In response to a request for an oral hearing by the petitioner, the Administrator announces that he will hold a public hearing to give all interested persons an opportunity to state their views on the proposed regulation. The hearing will begin at 9:30 a.m., July 29, 1970, at the Federal Highway Administration, Room 2230, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20591.

The hearing will be an informal one conducted by the Administration pursuant to 49 CFR 389.27. It will not be a judicial or evidentiary type of hearing. There will be no cross-examination of persons presenting statements. A member of the staff of the Federal Highway Administration will make a brief opening statement about the nature of the proceeding. Interested persons will then

have an opportunity to present initial oral statements not more than 15 minutes in length. Supplemental written statements and data will also be received. Statements should focus on the issues raised in the notice published in the February 26, 1970, FEDERAL REGISTER. After all initial statements have been complete, those persons who wish to make rebuttal statements will be given the opportunity to so do in the same order in which they made their initial statements. Additional procedures for the conduct of the hearing will be announced at the hearing.

Interested persons are invited to attend the hearing and present oral or written statements on the matters set for the hearing. These statements will be made a part of the record of the hearing, the transcript of which will be a matter of public record. Any person who wishes to make and present an oral or written statement at the hearing should notify the Director of the Bureau of Motor Carrier Safety by July 15, 1970, stating the amount of time required for his initial statement.

All communications concerning this hearing should be addressed to the Bureau of Motor Carrier Safety, Washington, D.C. 20591.

This notice is issued under the authority of section 204 of the Interstate Commerce Act, as amended, 49 U.S.C. 304, section 6 of the Department of Transportation Act, 49 U.S.C. 1655, and the delegation of authority by the Secretary to the Federal Highway Administrator, 49 CFR 1.48.

Issued on June 4, 1970.

F. C. TURNER,
*Federal Highway Administrator.*

[F.R. Doc. 70-7448; Filed, June 15, 1970; 8:46 a.m.]

# DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## Public Health Service

## [ 42 CFR Part 78 ]

## CONTROL OF ELECTRONIC PRODUCT RADIATION

### Proposed Performance Standard for Microwave Ovens; Extension of Comment Period

On May 22, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 7901) inviting comments on the proposed performance standard for microwave ovens to be prescribed pursuant to the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263b et seq.).

The notice stated that consideration would be given to all comments received within 30 days after the above publication date, and also that the amendments would be effective on the date of their republication in the FEDERAL REGISTER.

The Bureau of Radiological Health has received requests for an extension of time for submission of comments on the proposed standard, and I have determined that an extension of time for comment would be in the public interest. Accordingly, pursuant to the authority delegated to me by the Administrator, Environmental Health Service, the time within which comments on the proposed standard for microwave ovens will be received, is hereby extended to the close of business on July 21, 1970.

Dated: June 11, 1970.

RAYMOND T. MOORE,
*Acting Commissioner, Environmental Control Administration.*

[F.R. Doc. 70-7509; Filed, June 15, 1970; 8:51 a.m.]

# CIVIL AERONAUTICS BOARD

## [ 14 CFR Part 221 ]

[Docket No. 20853]

## AIR CARRIERS AND FOREIGN AIR CARRIERS

### Written Notice of Limitations on Baggage Liability; Supplemental Notice

JUNE, 11, 1970.

The Board, by circulation of notice of proposed rule making EDR-182, dated May 7, 1970, and publication at 35 F.R. 7513, gave notice that it had under consideration proposed amendments to Part 221 which would require air carriers and foreign air carriers availing themselves of limitations on liability for loss of or damage to baggage to give written notice in terms of U.S. dollars to passengers of international, domestic, and overseas limitations on baggage liability. Interested persons were invited to participate in the proceeding by submission of twelve (12) copies of written data, views, or arguments pertaining thereto to the Docket Section of the Board on or before June 12, 1970.

Subsequent to the issuance of the proposed rule, a working group of member carriers of the Air Transport Association of America and the International Air Transport Association was formed to develop a feasible and effective form of notice. Counsel representing these carriers has requested an extension of 3 months to provide time for the working group to complete its efforts.

The undersigned finds that good cause has been shown for additional time for filing comments to the extent of 60 days. Accordingly, pursuant to authority delegated in § 385.20(d) of the Board's Organization Regulations, the undersigned hereby extends the time for submitting comments to August 11, 1970.

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324)

By the Civil Aeronautics Board.

[SEAL] ARTHUR H. SIMMS,
*Associate General Counsel, Rules and Rates Division.*

[F.R. Doc. 70-7484; Filed, June 15, 1970; 8:49 a.m.]

# SECURITIES AND EXCHANGE COMMISSION

## [ 17 CFR Part 270 ]

[Release No. IC-6069]

## INVESTMENT COMPANY ACT OF 1940

### Sales of Redeemable Securities at Reduced or Eliminated Sales Load to Certain Persons

Notice is hereby given that the Securities and Exchange Commission has under consideration the amendment of paragraph (h) of Rule 22d-1 (17 CFR 270.22d-1(h)) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et. seq.) (Act) to allow sales of redeemable securities issued by registered investment companies at a reduced or eliminated sales load to certain persons as defined in the rule. The proposed amendment of the rule would be adopted pursuant to the authority granted to the Commission in sections 6(c), 22(d), and 38(a) of the Act (15 U.S.C. 80a-6, 80a-22, 80a-37; 54 Stat. 800, 54 Stat. 823, 54 Stat. 841).

Section 22(d) of the Act prohibits a registered investment company, its principal underwriter, or a dealer in its redeemable securities from selling such securities to "any person" except "at a current public offering price described in the prospectus." The purpose of the section, as described in the Congressional reports on the Act, is to prohibit investment companies from selling redeemable securities ("shares") to any person other than a dealer or principal underwriter at a price less than that at which the security is sold to the public. Section 6(c) of the Act provides that the Commission by rule, regulation, or order may exempt any person or transaction or any class of persons or transactions from any provision of the Act 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 policy and provisions of the Act. Section 38(a) of the Act authorizes the Commission to issue such rules as are necessary or appropriate to the exercise of the powers conferred upon the Commission in the Act.

In 1958, the Commission adopted Rule 22d-1, which in most respects codified prior administrative interpretations of section 22(d) of the Act as well as exemptive orders granted under section 6(c) of the Act. The rule permits reductions in or eliminations of the sales loads charged upon the sale of shares under certain circumstances. (Investment Company Act of 1940 Release No. 2798, Dec. 2, 1958 (23 F.R. 9603)).

The categories of circumstances are in connection with: (1) Quantity purchases, (2) purchases by certain tax-favored employees' trusts, pension, and profit-sharing plans and other employee benefit plans or by certain tax exempt organizations, (3) reinvestment of dividends and capital gains distributions, (4)

purchases by a registered unit investment trust accumulating the investment company's shares, (5) purchases to satisfy the net worth requirements of the Act for investment companies, and (6) purchases by certain persons connected with the investment company, its investment advisor or principal underwriter. Thus, the rule presently allows reduced or eliminated sales loads to be made available to several classes of persons, both related and unrelated to the functions of the investment company, its investment advisor or principal underwriter.

Paragraph (h) under the rule now provides for sales of shares either at a reduced sales load or at no sales load to the directors, officers or partners of the investment company, its investment advisor or principal underwriter, or to the bona fide, full-time employees or sales representatives of any of the foregoing who have acted as such for not less than 90 days, or to any trust, pension, profit-sharing, or other benefit plan for such persons, provided that such sales are made upon the written assurance of the purchaser that the purchase is made for investment purposes, and that the shares will not be resold except through redemption or repurchase by or on behalf of the issuer.[1] The Commission deemed it appropriate to include paragraph (h) in the rule in response to contentions that such sales serve legitimate corporate purposes by promoting employee incentive and good will, and that, with proper safeguards, no adverse effects upon the interests of other investors result. However, the rule was adopted at a time when most investment advisors and principal underwriters for registered investment companies had relatively few employees.

Because of the way paragraph (h) is written, there are certain anomalies in its applicability. For example, it permits a life insurance company which may have thousands of employees to offer shares of an investment company for which it acts as investment advisor or for which it is the principal underwriter at a reduced load or at no load to all directors, officers, partners, bona fide, full-time employees or sales representatives of the insurance company—even to those employees whose activities are completely unrelated to the investment advisory or underwriting functions—or to any trust, pension, profit-sharing or other benefit plan for such persons. However, where the same insurance company or its parent company conducts its investment advisory and principal underwriting functions through one or more subsidiaries, it cannot make the same offer under the present rule.

As a result of this anomaly, and because in recent years an increasing number of investment advisors and principal underwriters of investment companies have become parts of larger complexes of companies, a number of applications have been filed with the Commission pursuant to section 6(c) of the Act for exemptive orders from the provisions of section 22(d) of the Act to enable an investment company which customarily sells shares to the general public with a sales charge to sell its shares to certain classes of persons connected with such investment company or a related company at a reduced load or at no load. Typically the persons to whom the opportunity has been afforded are officers, directors, full-time employees and sales representatives of the investment company, its investment advisor or principal underwriter (as the rule presently allows), and persons holding comparable positions with direct and indirect parents or subsidiaries or affiliates of any of the foregoing. The Commission has issued orders granting the exemptions requested in circumstances which did not come strictly within the requirements of Rule 22d–1 (h), in all recent cases on the express condition that if an amendment of Rule 22d–1 more restrictive than the order is adopted, the order would automatically terminate and the amended rule would apply. It is contemplated that on the adoption of this amendment to the rule, to the extent that the outstanding exemptive orders are inconsistent with the provisions of the amended rule, revocation or modification of such orders may be necessary or appropriate to assure uniformity in the application of the rule. The Commission, therefore, intends to institute appropriate proceedings looking toward such revocation or modification where the applicants have not consented in advance to such revocation or modification.

In view of the proliferation of insurance companies and conglomerate complexes in the investment company industry and the many thousands of employees and other persons who would be entitled to special treatment if the Commission continued to grant exemptive orders in this area, the Commission has reconsidered its position and believes that it may be desirable at this time to restrict the class of persons eligible for reduced or eliminated sales charges under Rule 22d–1(h). Accordingly, the Commission has determined to propose an amendment of paragraph (h) of Rule 22d–1 which will continue to allow sales at a reduced or eliminated load under certain circumstances, but which will eliminate the anomaly described above.

Thus, the Commission proposes to amend the rule to add the following condition: no natural person now described in the rule who is not a director, officer, partner, or full-time employee of the investment company, nor any trust, pension or profit-sharing, or other benefit plan for such person shall be entitled to exemptive treatment unless more than one-half of his working time involves (i) rendering investment advisory services to the investment company or (ii) selling the investment company's shares.[2]

The text of the proposed Commission action is as follows: Paragraph (h) of Rule 22d–1 (Section 270.22d–1(h) of this chapter) under the Investment Company Act of 1940 is amended as follows: After the words "provided that" the following is added: "no natural person described above who is not a director, officer, partner or full-time employee of the investment company, nor any trust, pension, profit-sharing of other benefit plan for such person, shall be entitled to any reduction or elimination of sales load unless more than one-half of his working time involves (i) rendering investment advisory services to the investment company or (ii) selling the investment company's shares, and further provided that * * *."

As so amended, § 270.22d–1(h) of Title 17 of the Code of Federal Regulations would read as follows:

**§ 270.22d–1 Variations in sales load permitted for certain sales of redeemable securities.**

* * * * *

(h) Upon the sale, pursuant to a uniform offer described in the prospectus, to the directors, officers, or partners of the investment company, its investment adviser or principal underwriter, or to the bona fide, full-time employees or sales representatives of any of the foregoing who have acted as such for not less than 90 days, or to any trust, pension, profit-sharing or other benefit plan for such persons, provided that no natural person described above who is not a director, officer, partner or full-time employee of the investment company, for any trust, pension, profit-sharing or other benefit plan for such person, shall be entitled to any reduction or elimination of sales load unless more than one-half of his working time involves (1) rendering investment advisory services to the investment company or (2) selling the investment company's shares, and further provided that such sales are made upon the written assurance of the purchaser that the purchase is made for investment purposes, and that the securities will not be resold except through

---

[1] Rule 22d–1(h) under the Act reads as follows:

"A registered investment company which is the issuer of redeemable securities, a principal underwriter of such securities or a dealer therein shall be exempted from the provisions of Section 22(d) to the extent necessary to permit the sale of such securities by such persons at prices which reflect reductions in, or eliminations of, the sales load under any of the following circumstances:

* * * * *

"(h) Upon the sale, pursuant to a uniform offer described in the prospectus, to the directors, officers or partners of the investment company, its investment advisor or principal underwriter, or to the bona fide, full-time employees or sales representatives of any of the foregoing who have acted as such for not less than 90 days, or to any trust, pension, profit-sharing or other benefit plan for such persons, provided that such sales are made upon the written assurance of the purchaser that the purchase is made for investment purposes, and that the securities will not be resold except through redemption or repurchase by or on behalf of the issuer."

[2] It should be noted that the requirements of Rule 22d–1(h) as now written and as proposed to be amended may not be evaded by setting up a registered unit trust to accumulate shares of an open-end investment company for some special group of employees or other persons in reliance on Rule 22d–1(f) and attempting to sell shares in such unit trust at a reduced or eliminated sales load.

redemption or repurchase by or on behalf of the issuer.

All interested persons are invited to submit their views and comments on the proposed amendment to Rule 22d–1. Written statements of views and comments in respect of the proposed amendment should be submitted to the Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, on or before July 6, 1970. All such communications will be available for public inspection.

(Secs. 6(c), 22(d), and 38(a); 54 Stat. 800, 823, 841; 15 U.S.C. 80a(6)(c), 80a-22(d), 80a-37(a))

By the Commission.

[SEAL] ORVAL L. DUBOIS,
*Secretary.*

JUNE 5, 1970.

[F.R. Doc. 70-7502; Filed, June 15, 1970; 8:51 a.m.]

# Notices

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

[Order No. 102 (Rev. 2)]

### DIRECTOR, PERSONNEL DIVISION, ET AL.

### Delegation of Authority in Employee-Management Relation Matters

The authority delegated to the Commissioner of Internal Revenue in Chapter 711, Treasury Personnel Manual to administer the Employee-Management Cooperation Program is hereby delegated as follows:

A. The Director, Personnel Division, is authorized:

(1) To act as the Service's National Liaison Representative with the national headquarters of employee organizations;

(2) To make final unit determinations for the Service on requests from employee organizations for the establishment of units on bases for which Regional Commissioners, District Directors, Service Center Directors, and the Chief, National Office Branch have not been delegated approval authority;

(3) To approve Agreements for Voluntary Allotments for Payment of Dues to Employee Organizations based on recognition at the national level;

(4) To make final decision for the Service on matters relating to denying, suspending, or withdrawing recognition from an employee organization for failure to comply with the Standards of Conduct for Employee Organizations; and

(5) To make final decision on alleged violation of the Code of Fair Labor Practices by (a) supervisors and managers of Regional Offices, including offices of Regional Inspectors, (b) supervisors and managers in the National Office through the Assistant Commissioner level excluding the Assistant Commissioner (Administration), and (c) on appeals of such decisions filed by employee organizations under the provisions outlined in the IR-Manual.

B. Except for employees of the IRS Data Center, and the National Computer Center, the Chief, National Office Branch, Personnel Division, is authorized:

(1) To identify and to establish units upon request for exclusive recognition of National Office employees within the guidelines contained in the IR-Manual;

(2) To grant appropriate recognition to employee organizations for National Office employees and to approve agreements with such employee organizations after consultation with appropriate Assistant Commissioners or Division Directors;

(3) To consult, as appropriate, with recognized employee organizations;

(4) To approve Agreements for Voluntary Allotments for Payment of Dues to Employee Organizations by National Office employees based on local-level recognition; and

(5) To deny recognition when the employee organization does not meet the conditions of recognition specified in Executive Order 11491, Chapter 711 of the Treasury Personnel Manual, and the IR-Manual, except when denial is based on failure to comply with the Standards of Conduct for Employee Organizations.

C. Regional Commissioner are authorized:

(1) To identify and to establish units upon request for exclusive recognition of Regional Office employees under his jurisdiction within the guidelines contained in the IR-Manual;

(2) To grant appropriate recognition to any eligible employee organization chapter, lodge, or local, for representation of Regional Office employees under his jurisdiction, which meets the requirements specified in the IR-Manual and to consult with formally recognized employee organizations and to approve agreements where exclusive recognition has been granted for Regional Office employees;

(3) To approve Agreements for Voluntary Allotments for the payment of Dues to Employee Organizations for employees under his jurisdiction;

(4) To deny recognition when the employee organization does not meet the conditions of recognition specified in Executive Order 11491, Chapter 711 of the Treasury Personnel Manual, and the IR-Manual, except when denial is based on failure to comply with the Standards of Conduct for Employee Organizations; and

(5) To make decision on alleged violations of the Code of Fair Labor Practices by supervisors and managers of districts and service centers filed by employee organizations under the procedures outlined in the IR-Manual.

D. District Directors, Service Center Directors, the Director, IRS Data Center, and the Director, National Computer Center are authorized:

(1) To identify and establish units upon request for exclusive recognition of district, service center, data center or computer center employees within the guidelines contained in the IR-Manual;

(2) To grant appropriate recognition to any eligible employee organization chapter, lodge, or local which meets the requirements specified in the IR-Manual;

(3) To consult, as appropriate, with recognized employee organizations and to approve agreements where exclusive recognition has been granted for district, service center, data center, or computer center employees;

(4) To approve Agreements for Voluntary Allotments for Payment of Dues to Employee Organizations based on recognition at the local level; and

(5) To deny recognition when the employee organization does not meet the conditions of recognition specified in Executive Order 11491, Chapter 711 of the Treasury Personnel Manual, and the IR-Manual, except when denial is based on failure to comply with the Standards of Conduct for Employee Organizations.

The authority delegated herein may not be redelegated, except that Regional Commissioners may redelegate to Assistant Regional Commissioners the authority to approve agreements where exclusive recognition has been granted for Regional Office employees.

Delegation Order No. 102 (Rev. 1), dated July 3, 1969, is hereby superseded.

Date of issue: June 8, 1970.

Effective date: June 8, 1970.

[SEAL] RANDOLPH W. THROWER, *Commissioner.*

[F.R. Doc. 70-7454; Filed, June 15, 1970; 8:47 a.m.]

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### DISTRICT MANAGERS, MONTANA

### Redelegation of Authority

JUNE 8, 1970.

In accordance with Bureau Order No. 701 dated July 23, 1964, as amended, the District Managers are authorized to perform in their respective areas of responsibility, in accordance with existing policies and regulations of this Department and under the direct supervision of the State Director, the function listed below, subject to the limitation set forth in Bureau Order No. 701, as amended, together with any limitations specified below:

AUTHORITY IN SPECIFIED MATTERS

SEC. 3.9 *Land use.* The District Manager may take all the listed action on:

* * * * *

(g) Material other than forest products without constraint on the value of the material to be sold.

This order will become effective upon publication in the FEDERAL REGISTER.

EDWIN ZAIDLICZ, *State Director.*

[F.R. Doc. 70-7501; Filed, June 15, 1970; 8:51 a.m.]

---

[Serial No. U 6047]

### UTAH

### Notice of Classification of Public Lands for Multiple-Use Management

1. Pursuant to the Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. 1411–18), and to the regulations in Title 43 CFR Parts 2410 and 2411, the public

lands within the area described below are hereby classified for multiple-use management. Publication of this notice has the effect of segregating the described lands from appropriation under the agricultural land laws (43 U.S.C., Parts 7 and 9; 25 U.S.C. sec. 334), and from sales under section 2455 of the Revised Statutes as amended (43 U.S.C. 1171). The lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws except as noted in paragraph 4 below. As used herein, "Public Lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

2. The public lands affected are those administered by the Bureau of Land Management within the following described area in Washington County, Utah:

SALT LAKE MERIDIAN, UTAH

Beginning at the northwest corner of sec. 1, T. 39 S., R. 13 W., thence south, west, and north along the Dixie National Forest boundary to its intersection with the Nevada State line, thence south along the Utah-Nevada State line to its intersection with the Arizona State line, thence east along the Utah-Arizona State line to the Washington County line, thence north along the Washington County line to the Zion National Park boundary, thence west and north along the Zion National Park boundary to the northeast corner of sec. 5, T. 39 S., R. 12 W., thence west 3 miles to the point of beginning.

3. The following parcels of public domain land that fall within the above-described area are excluded from this classification:

SALT LAKE MERIDIAN, UTAH

T. 41 S., R. 10 W.,
Sec. 29, lot 3, NW¼SE¼;
Sec. 33, NE¼NW¼, S½NW¼, SW¼ (partially surveyed).
T. 42 S., R. 10 W.,
Sec. 3, N½SW¼;
Sec. 4, NW¼ (unsurveyed);
Sec. 5, lots 1 and 2, S½NE¼, SE¼NW¼;
Sec. 6, NE¼SW¼.
T. 43 S., R. 10 W.,
Sec. 17, N½NW¼, SW¼NW¼;
Sec. 18, lots 1, 2, 3, NE¼, E½NW¼, NE¼SW¼, SE¼SE¼;
Sec. 19, lots 2, 3, 4, E½, SE¼NW¼, E½SW¼;
Sec. 20, W½NE¼, NW¼, W½SW¼;
Sec. 23, S½SE¼;
Sec. 24, SW¼SW¼;
Sec. 27, W½NE¼, NW¼, SW¼SE¼;
Sec. 28, NE¼NE¼, NW¼SW¼, SE¼SW¼;
Sec. 29, S½N½, NW¼NW¼, N½S½;
Sec. 33, lots 2, 3, 4, NW¼NE¼, S½NE¼, NE¼NW¼;
Sec. 34, SW¼NW¼.
T. 41 S., R. 11 W.,
Sec. 30, lots 2 and 3, E½SW¼, SE¼;
Sec. 31, lots 2, 3, and 4, NE¼NE¼, E½SW¼, SE¼;
Sec. 33, all (irregular).
T. 42 S., R. 11 W.,
Sec. 1, lots 1 to 8, inclusive;
Sec. 3, lots 3, 4, 6, 7, 10, and 11;
Sec. 4, lots 2 to 15, inclusive;
Sec. 5, all (irregular);
Sec. 12, S½NW¼, E½SW¼, SW¼SE¼;
Sec. 13, NW¼NE¼, NW¼, E½SW¼;
Sec. 14, NE¼NE¼, S½NE¼;
Sec. 24, E½NW¼;
Sec. 26, SW¼SW¼;
Sec. 27, S½NW¼, N½SW¼, SE¼;
Sec. 28, N½NE¼, SE¼NE¼, NE¼NW¼.
T. 43 S., R. 11 W.,
Sec. 3, E½, S½NW¼, E½SW¼;
Sec. 10, E½, E½W½;
Sec. 11, SW¼;
Sec. 12, NE¼SW¼, NW¼SE¼;
Sec. 13, NE¼, N½S½;
Sec. 14, N½NW¼, SW¼NW¼, NE¼SE¼;
Sec. 15, E½E½;
Sec. 24, E½SE¼.
T. 41 S., R. 12 W.,
Sec. 13, lots 1 and 2, NE¼, NW¼NW¼, N½S½, SE¼SW¼;
Sec. 14, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 15, all (irregular);
Sec. 19, lot 4, E½E½;
Sec. 20, N½, N½S½, SE¼SW¼;
Sec. 21, N½;
Sec. 22, NW¼NE¼, N½NW¼, SE¼NW¼;
Sec. 23, NW¼NE¼, N½NW¼, E½SE¼;
Sec. 24, lots 1 to 8, inclusive, E½NW¼, SW¼;
Sec. 25, NW¼NE¼, N½NW¼, SW¼, S½SE¼;
Sec. 26, SW¼NW¼, S½;
Sec. 27, S½NE¼, SE¼NW¼, NE¼SW¼, S½SW¼, SE¼;
Sec. 28, N½NE¼, SW¼NW¼, SW¼, NW¼SE¼, S½SE¼;
Sec. 29, S½N½, S½;
Sec. 30, lots 1, 2, 3, and 4, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 31, all (irregular);
Sec. 33, N½;
Sec. 34, N½;
Sec. 35, N½.
T. 41 S., R. 13 W.,
Sec. 25, lots 5 and 6, NW¼NE¼, SE¼;
Sec. 28, NW¼NW¼;
Sec. 29, NE¼, NE¼NW¼, S½NW¼, S½;
Sec. 30, lots 1 to 6, inclusive, SW¼NE¼, N½SE¼, exclusive of patented mining claims.
T. 42 S., R. 13 W.,
Sec. 8, NE¼SE¼;
Sec. 10, SE¼SE¼;
Sec. 11, lot 3;
Sec. 15, lots 2, 3, and 4, SE¼NW¼, E½SW¼;
Sec. 19, all (irregular);
Sec. 20, W½W½, SE¼SW¼;
Sec. 22, E½W½;
Sec. 27, W½W½;
Sec. 28, NW¼NW¼, S½SW¼, NW¼SE¼;
Sec. 29, S½NE¼, E½W½, SE¼;
Sec. 30, lots 1 to 12, inclusive, W½E½;
Sec. 31, lots 1 to 6, inclusive, NE¼;
Sec. 33, SW¼, NE¼SE¼, S½SE¼;
Sec. 34, W½W½.
T. 43 S., R. 13 W.,
Sec. 4, NW¼NE¼, NW¼, W½SW¼;
Sec. 5, all;
Sec. 6, E½E½;
Sec. 7, NE¼;
Sec. 8, N½NE¼, SW¼NE¼, NW¼.
T. 41 S., R. 14 W.,
Sec. 25, lot 10, W½SE¼;
Sec. 34, lots 3 and 4, SW¼SE¼;
Sec. 35, lots 5 to 11, inclusive, S½NE¼, NE¼SW¼, N½SE¼.
T. 42 S., R. 14 W.,
Sec. 3, lots 1, 4, 5, 6, 7, and 9 to 14, inclusive;
Sec. 4, lots 6, 7, and 8;
Sec. 8, SE¼NE¼, SE¼SW¼, SE¼;
Sec. 9, W½NE¼, NE¼NW¼, S½NW¼, S½;
Sec. 10, lots 1 to 11, inclusive, SE¼NW¼, W½SW¼, NE¼SE¼;
Sec. 11, lot 2, SW¼SE¼;
Sec. 13, SW¼;
Sec. 14, W½NE¼, NE¼NW¼, S½NW¼, S½;
Sec. 15, lots 1 to 5, inclusive, SW¼NE¼, SW¼, S½SE¼;
Sec. 17, N½;
Sec. 19, lots 2, 3, 10, 17, and 19, S½SE¼;
Sec. 20, lot 5, S½SW¼;
Sec. 21, SE¼;
Secs. 22 to 27, inclusive;
Sec. 28, NE¼NE¼, S½NE¼, NW¼, S½;
Sec. 29, N½, N½SW¼, SW¼SW¼, SE¼;
Secs. 30 and 31, all (irregular);
Sec. 33, W½NE¼, W½.
T. 43 S., R. 14 W.,
Sec. 4, NW¼NW¼;
Sec. 5, N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 6, lots 1, 2, 3, and 4, NE¼, E½W½, N½SE¼;
Sec. 7, lots 1, 2, 3, and 4, SW¼NE¼, E½W½, W½SE¼;
Sec. 8, E½;
Sec. 9, SW¼SW¼;
Sec. 17, E½E½;
Sec. 18, lots 1, 2, 3, and 4, W½E½, E½W½;
Sec. 19, lots 1, 2, 3, and 4, W½NE¼, E½NW¼;
Sec. 20, NW¼SW¼, S½S½;
Sec. 21, E½, E½W½, SW¼SW¼;
Sec. 22, S½;
Sec. 27, N½, N½S½;
Sec. 28, N½, N½S½;
Sec. 29, NE¼;
Sec. 30, lots 1, 2, 3, and 4, E½W½;
Sec. 31, lot 3, NE¼NW¼.
T. 42 S., R. 15 W.,
Sec. 14, SW¼NE¼;
Sec. 18, lots 3 and 4;
Sec. 19, NE¼, E½NW¼;
Sec. 20, W½NW¼;
Sec. 23, lot 1, NW¼NE¼;
Sec. 24, NE¼, E½W½, NW¼SE¼;
Sec. 25, S½NE¼, SE¼NW¼, SE¼.
T. 43 S., R. 15 S.,
Sec. 1, lots 1, 2, 4, 5, 6, 7, and 10 to 14, inclusive;
Sec. 8, SW¼NW¼, W½SW¼, SE¼SE¼;
Sec. 9, SW¼SW¼;
Sec. 12, E½;
Sec. 13, N½, E½SW¼, SE¼;
Sec. 21, N½;
Sec. 24, NE¼, W½NW¼;
Sec. 25, E½, E½W½, SW¼SW¼.
T. 41 S., R. 16 W.,
Sec. 31, SE¼NE¼;
Sec. 33, E½SE¼;
Sec. 34, E½NE¼, W½SW¼;
Sec. 35, SW¼NW¼, W½SW¼, SE¼SW¼.
T. 42 S., R. 16 W.,
Sec. 3, lots 1 and 2, S½NE¼, N½SE¼;
Sec. 4, lots 4, 7, 8, and 9, SW¼NE¼, S½NW¼, N½SW¼, SE¼SW¼;
Sec. 5, SE¼NE¼;
Sec. 7, lots 13 and 14;
Sec. 9, lots 1 to 6, inclusive, E½NW¼, W½SE¼;
Sec. 10, SE¼NE¼, NE¼SE¼, W½SW¼;
Sec. 11, NW¼;
Sec. 13, NE¼, E½NW¼;
Sec. 15, W½E½, NW¼NW¼, SE¼NW¼, NE¼SW¼, N½SE¼SW¼, E½W½SW¼SE¼SW¼, E½SW¼SE¼SW¼, SE¼SE¼SW¼;
Sec. 17, lot 1, NE¼NW¼, NW¼SE¼;
Sec. 18, lots 1 to 5, inclusive, S½NE¼;
Sec. 21, NW¼NE¼, SE¼NE¼, NE¼SE¼;
Sec. 25, lots 7 and 8;
Sec. 26, lot 4;
Sec. 35, SE¼NW¼.
T. 43 S., R. 16 W.,
Sec. 1, S½NW¼;
Sec. 11, N½, W½SW¼;
Sec. 12, lots 3 and 4, N½NW¼, SW¼NW¼;
Sec. 13, SE¼NE¼, NE¼SE¼.
T. 42 S., R. 17 W.,
Sec. 1, lots 1 and 7, SW¼NE¼, W½SE¼;
Sec. 12, N½NE¼, SE¼NE¼, NE¼NW¼, NE¼SE¼.

The areas described excluded from this classification aggregate 48,674.86 acres.

The public lands classified for multiple-use management in Washington County aggregate approximately 579,069 acres, of which 530,523 acres are in the Cedar City District, and 48,546 acres are in the Kanab District.

4. Publication of this notice has the further effect of segregating the recreation sites described below from all forms of appropriation, entry, location, or selection, including the general mining laws, and from surface use and occupancy under the mineral leasing laws:

SALT LAKE MERIDIAN

BAKER DAM RECREATION SITE

T. 39 S., R. 16 W.,
Sec. 21, N½SE¼, SE¼SE¼;
Sec. 22, SW¼SW¼, W½SE¼SW¼;
Sec. 28, N½NE¼.

BLACK RIDGE RECREATION SITE

T. 39 S., R. 12 W.,
Sec. 7, lots 11, 16, 17, and 18.

JACKSON RESERVOIR RECREATION SITE

T. 40 S., R. 18 W.,
Sec. 29, E½SE¼.

The areas described aggregate 502 acres.

5. The public lands in the Joshua Tree Natural Area, described below, are further designated as a Natural Area by virtue of the authority vested in the Secretary of the Interior under the Classification and Multiple Use Act, supra, and R.S. 2478 (43 U.S.C. 1201), and pursuant to the provisions of 43 CFR Subpart 1727.

JOSHUA TREE NATURAL AREA (NATURAL LANDMARK)

T. 4 S., R. 18 W.,
Sec. 15, S½;
Sec. 21, N½, N½N½S½;
Sec. 22, N½.

1,040 acres.

6. No adverse comments were received following publication of a notice of proposed classification in the FEDERAL REGISTER of April 2, 1970 (35 F.R. 5494), or at the public hearing which was held at St. George, Utah, on April 15, 1970. Maps depicting these lands and the record showing the comments received and other information are on file and may be viewed at the Bureau of Land Management District Office, 154 North Main Street, Cedar City, Utah; and the State Office, Federal Building, 125 South State Street, Salt Lake City, Utah.

7. For a period of 30 days from date of publication of this notice of classification in the FEDERAL REGISTER, this classification shall be subject to the exercise of administrative review and modification by the Secretary of the Interior as provided for in 43 CFR 2411.2(c). During this 30-day period, interested parties may submit comments to the Secretary of the Interior, LLM, 320 Washington, D.C. 20240.

R. D. NIELSON,
*State Director.*

[F.R. Doc. 70-7442; Filed, June 15, 1970; 8:46 a.m.]

## Fish and Wildlife Service

[Docket No. C-320]

### PAUL W. HAWKINS

### Notice of Loan Application

JUNE 8, 1970.

Paul W. Hawkins, 4505 Tivoli Street, San Diego, Calif. 92107 has applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a used 36-foot length overall wood vessel to engage in the fishery for albacore, bottomfish, sablefish, sole, and sea bass.

Notice is hereby given pursuant to the provisions of Public Law 89-85 and Fisheries Loan Fund Procedures (50 CFR Part 250, as revised) that the above-entitled application is being considered by the Bureau of Commercial Fisheries, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, Bureau of Commercial Fisheries, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operations of the vessel will or will not cause such economic hardship or injury.

JAMES F. MURDOCK,
*Acting Chief,*
*Division of Financial Assistance.*

[F.R. Doc. 70-7443; Filed, June 15, 1970; 8:46 a.m.]

# FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 93]

### BEMO SHIPPING CO., INC.

### Order of Revocation

By letter dated June 1, 1970, Bemo Shipping Co., Inc., 11 Broadway, New York, N.Y. 10004, advised that it had ceased operations as an independent ocean freight forwarder under its License No. 93, and voluntarily returned said license for cancellation.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order 201.1, section 6.03:

*It is ordered*, That the Independent Ocean Freight Forwarder License No. 93 of Bemo Shipping Co., Inc., be and is hereby revoked effective June 1, 1970, without prejudice to reapplication for a license at a later date.

*It is further ordered*, That a copy of this order be published in the FEDERAL REGISTER and served upon Bemo Shipping Co., Inc.

LEROY F. FULLER,
*Director,*
*Bureau of Domestic Regulation.*

[F.R. Doc. 70-7471; Filed, June 15, 1970; 8:48 a.m.]

### PORT OF SEATTLE AND JAPAN LINE, LTD., ET AL.

### Notice of Agreement Filed

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

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202, or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif.

By order served June 1, 1970, in Docket No. 70-22, the Commission instituted an investigation to determine whether Agreement No. T-2323 between the Port of Seattle and Japan Line, Ltd., Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Showa Shipping Co., Ltd., and Yamashita-Shinnihon Steamship Co., Ltd., should be approved, modified, or disapproved pursuant to section 15, Shipping Act, 1916. The Commission order stated that in the event any modification of Agreement No. T-2323 was filed with the Commission, such agreement would be included in the investigation. Therefore, Agreement No. T-2323-2, the subject agreement, will be included in Docket No. 70-22 and persons who desire to participate herein shall promptly file a petition to intervene with the Secretary, Federal Maritime Commission, Washington, D.C. 20573.

Notice of agreement filed for approval by:

Mr. Wade Thompson, Assistant Manager, Property Management, Port of Seattle, Post Office Box 1209, Seattle, Wash. 98111.

Agreement No. T-2323-2 modifies the basic agreement which provides for the lease of certain terminal property. The purpose of the modification is to amend one of the conditions concerning the effective date of the agreement.

Dated: June 10, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
*Secretary.*

[F.R. Doc. 70-7472; Filed, June 15, 1970; 8:48 a.m.]

### PORT OF SEATTLE AND PACIFIC MOLASSES CO.

### Notice of Agreement Filed

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

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on the agreement, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the

matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed for approval by:

Mr. Edward G. Lowry III, Bogle, Gates, Dobrin, Wakefield and Long, 14th Floor Norton Building, Seattle, Wash. 98104.

Agreement No. T-2423 between the Port of Seattle (Port) and Pacific Molasses Co. (PM) provides for the 10-year lease of certain terminal facilities and the nonpreferential use of two berths of Terminal 20 to PM for loading, unloading, handling, and storing bulk liquid cargoes. Rental for the leased premises is a fixed annual sum and Port's tariff will apply where applicable. Certain persons have alleged that the agreement is subject to section 15, Shipping Act, 1916, and is unapprovable under the standards of that section. The Port contends that the agreement is not subject to section 15. The Commission, therefore, requests comments on (1) whether the agreement is subject to section 15; and (2) if so, whether the agreement should be approved, disapproved, or modified pursuant to section 15.

Dated: June 10, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
*Secretary.*

[F.R. Doc. 70-7473; Filed, June 15, 1970; 8:49 a.m.]

# DEPARTMENT OF AGRICULTURE

## Agricultural Research Service

[P.P.D. 640, Amended]

## GYPSY MOTH AND BROWN-TAIL MOTH QUARANTINE

### List of Approved Establishments

Pursuant to §§ 301.45-2 and 301.45-2b(8) of the regulations (7 CFR 301.45-2, 301.45-2b(8)) supplemental to the gypsy moth and brown-tail moth quarantine (Notice of Quarantine No. 45, 7 CFR 301.45), under sections 8 and 9 of the Plant Quarantine Act of 1912, as amended, and section 106 of the Federal Plant Pest Act (7 U.S.C. 161, 162, 150ee), the list of approved establishments (35 F.R. 382) [1] eligible to ship stone and quarry products, which are gypsy moth regulated articles, without certification or permit from areas regulated under the said notice of quarantine and regulations, is hereby amended by adding thereto specifically approved establishments in the State of New Jersey as follows:

NEW JERSEY

Samuel Braen's Sons, Central Avenue, Haledon (Mail: Brookside Avenue, Wyckoff); Basalt.

Samuel Braen's Sons, Route 23, Hamburg (Mail: Brookside Avenue, Wyckoff); Gneiss.

Samuel Braen's Sons, Route 23, Riverdale (Mail: Brookside Avenue, Wyckoff); Gneiss.

Anthony Ferranti & Sons, Inc., Mine Brook Road, Bernardsville; Gneiss.

Peter W. Kero, Inc., Route 206, Byram (Mail: 216 Washington Avenue, Carlstadt); Gneiss-Jettystone.

Passaic Crushed Stone, Inc., Broad Street, Pompton Lakes; Gneiss-Jettystone.

Shamoon Industries, Inc., Mount Hope; Gneiss.

(Secs. 8 and 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33; 7 U.S.C. 161, 162, 150ee; 29 F.R. 16210, as amended, 7 CFR 301.45-2)

This amendment shall become effective upon publication in the FEDERAL REGISTER.

Under a supplemental regulation designated as 7 CFR 301.45-2b(8), mined, quarried, or manufactured stone and quarry products are exempt from the certification and permit requirements of this subpart when shipped directly from establishments which are specifically approved by the Director. The Director has determined that the stone and quarry establishments listed above qualify for approval and accordingly are approved for the purposes of said supplemental regulation.

Inasmuch as this amendment relieves certain restrictions previously imposed, it should be made effective promptly in order to be of maximum benefit to the persons subject to the restrictions that are being relieved. Accordingly, it is found upon good cause, under the administrative procedure provisions of 5 U.S.C. 553, that notice and other public procedure with respect to this amendment are unnecessary and contrary to the public interest, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Hyattsville, Md., this 10th day of June 1970.

D. R. SHEPHERD,
*Director,*
*Plant Protection Division.*

[F.R. Doc. 70-7451; Filed, June 15, 1970; 8:47 a.m.]

[1] Inadvertently appeared in Rules and Regulations section.

## Packers and Stockyards Administration

## CENTRAL ARKANSAS AUCTION SALE, INC., ET AL.

### Notice of Changes in Names of Posted Stockyards

It has been ascertained, and notice is hereby given, that the names of the livestock markets referred to herein, which were posted on the respective dates specified below as being subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), have been changed as indicated below.

| *Original name of stockyard, location, and date of posting* | *Current name of stockyard and date of change in name* |
|---|---|
| ARKANSAS | |
| Roy R. Chaney's Auction Sale, Inc., Morrilton, Sept. 30, 1959. | Central Arkansas Auction Sale, Inc., May 2, 1970. |
| Allen-White Auction, Russellville, Dec. 15, 1958.... | White Auction Company, Mar. 17, 1970. |
| CALIFORNIA | |
| San Jacinto Livestock Commission Co., Inc., San Jacinto, Oct. 15, 1959. | San Jacinto Livestock Auction, May 23, 1970. |
| GEORGIA | |
| Shuman Livestock Market, Inc., Hagan, May 30, 1959. | Hagan Stockyard, Apr. 20, 1970. |
| IOWA | |
| Keith E. Myers, Inc., Grundy Center, June 24, 1966. | Keith E. Myers Enterprises, a division of Keith E. Myers, Inc., Apr. 8, 1970. |
| KENTUCKY | |
| Allen County Livestock Commission Market, Inc., Scottsville, Dec. 11, 1959. | Allen County Livestock Market, Inc., Jan. 1, 1970. |
| TEXAS | |
| Smithville Livestock Commission Company, Smithville, Sept. 17, 1968. | Smithville Livestock Commission Company, a Corp., Jan. 2, 1970. |

Done at Washington, D.C., this 8th day of June 1970.

G. H. HOPPER,
*Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.*

[F.R. Doc. 70-7452; Filed, June 15, 1970; 8:47 a.m.]

# DEPARTMENT OF COMMERCE

## Maritime Administration

## THE OCEANIC STEAMSHIP COMPANY

### Notice of Application for Approval of Certain Cruises

Notice is hereby given that The Oceanic Steamship Company has applied for approval pursuant to section 613 of the Merchant Marine Act, 1936, as amended, of the following cruises during 1970, which cruises are in addition to those which were published in the FEDERAL REGISTER of November 26, 1969 (34 F.R. 18869) and approved by the Maritime Subsidy Board on January 30, 1970:

| Ship | Approximate cruise dates | Itinerary |
|---|---|---|
| Monterey | July 4–July 16 | Los Angeles, San Francisco, Honolulu, Los Angeles. |
| Do | July 16–July 27 | Los Angeles, San Francisco, Honolulu, Los Angeles. |
| Do | July 27–Aug. 7 | Los Angeles, San Francisco, Honolulu, Los Angeles. |
| Do | Aug. 7–Aug. 29 | Los Angeles, San Francisco, Honolulu, Hilo, Kona, Lahaina, Nawiliwili, Honolulu, Los Angeles. |
| Do | Aug. 29–Sept. 9 | Los Angeles, San Francisco, Honolulu, Los Angeles. |
| Do | Sept. 9–Sept. 19 | Los Angeles, Honolulu, Los Angeles. |
| Do | Sept. 19–Oct. 11 | Los Angeles, San Francisco, Honolulu, Hilo, Kona, Lahaina, Nawiliwili, Honolulu, Los Angeles. |
| Do | Oct. 11–Nov. 3 | Los Angeles, San Francisco, Honolulu, Hilo, Kona, Lahaina, Nawiliwili, Honolulu, San Francisco, Los Angeles. |
| Do | Dec. 14–Jan. 8, 1971 | Los Angeles, San Francisco, Honolulu, Hilo, Kona, Lahaina, Nawiliwili, Honolulu, San Francisco, Los Angeles. |
| Mariposa | Oct. 27–Nov. 20 | Los Angeles, San Francisco, Honolulu, Hilo, Kona, Lahaina, Nawiliwili, Honolulu, San Francisco, Los Angeles. |

Any person, firm, or corporation having any interest, within the meaning of section 613 of the Merchant Marine Act, 1936, as amended, in the foregoing who desires to offer data, views, or arguments should submit the same in writing, in triplicate, to the Secretary, Maritime Subsidy Board, Washington, D.C. 20235, by the close of business on June 22, 1970.

In the event an opportunity to present oral argument is also desired, specific reason for such request should be included. The Maritime Subsidy Board will consider these comments and views and take such action with respect thereto as in its discretion it deems warranted.

Dated: June 12, 1970.

By order of the Maritime Subsidy Board.

JAMES S. DAWSON, Jr.,
*Secretary.*

[F.R. Doc. 70-7595; Filed, June 15, 1970; 8:51 a.m.]

# DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## Food and Drug Administration

[Docket No. FDC-D-171; NADA No. 12-400V, 12-401V]

## ABBOTT LABORATORIES

### Dioleen Suspension and Dioleen Cream; Notice of Opportunity for Hearing

An announcement published in the FEDERAL REGISTER of March 20, 1969 (34 F.R. 5449), invited Abbott Laboratories, North Chicago, Ill. 60064, holder of new animal drug application No. 12-400V for Dioleen Suspension and new animal drug application No. 12-401V for Dioleen Cream (products containing diiodohydroxyquin), and any other interested person, to submit pertinent data on the drugs' effectiveness. No efficacy data were furnished in response to the announcement and available information still fails to provide substantial evidence of effectiveness of the drugs for their recommended use in treating contact and allergic dermatitis, nonspecific dermatitis, fungus infections, and hot spots.

Therefore, notice is given to Abbott Laboratories, and to any interested person who may be adversely affected, that the Commissioner of Food and Drugs proposes to issue an order under the provisions of section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)) withdrawing approval of new animal drug applications No. 12-400V and 12-401V, and all amendments and supplements thereto, held by Abbott Laboratories for the drugs Dioleen Suspension and Dioleen Cream on the grounds that:

Information before the Commissioner with respect to the drugs, evaluated together with the evidence available to him when the applications were approved, does not provide substantial evidence that the drugs have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

In accordance with the provisions of section 512 of the act (21 U.S.C. 360b), the Commissioner will give the applicant, and any interested person who would be adversely affected by an order withdrawing such approval, an opportunity for a hearing at which time such persons may produce evidence and arguments to show why approval of new animal drug applications Nos. 12-400V and 12-401V should not be withdrawn. Promulgation of the order will cause any drug containing diiodohydroxyquin, and recommended for the same conditions of use as Dioleen Suspension and Dioleen Cream, to be a new animal drug for which an approved new animal drug application is not in effect. Any such drug then on the market would be subject to regulatory proceedings.

Within 30 days after publication hereof in the FEDERAL REGISTER, such persons are required to file with the Hearing Clerk, Department of Health, Education, and Welfare, Office of the General Counsel, Food, Drug, and Environmental Health Division, Room 6-62, 5600 Fishers Lane, Rockville, Md. 20852, a written appearance electing whether:

1. To avail themselves of the opportunity for a hearing; or

2. Not to avail themselves of the opportunity for a hearing.

If such persons elect not to avail themselves of the opportunity for a hearing, the Commissioner without further notice will enter a final order withdrawing the approval of the new animal drug applications.

Failure of such persons to file a written appearance of election within 30 days following date of publication of this notice in the FEDERAL REGISTER will be construed as an election by such persons not to avail themselves of the opportunity for a hearing.

The hearing contemplated by this notice will be open to the public except that any portion of the hearing that concerns a method or process which the Commissioner finds is entitled to protection as a trade secret will not be open to the public, unless the respondent specifies otherwise in his appearance.

If such persons elect to avail themselves of the opportunity for a hearing, they must file a written appearance requesting the hearing and giving the reasons why approval of the new animal drug application should not be withdrawn, together with a well-organized and full-factual analysis of the clinical and other investigational data they are prepared to prove in support of their opposition to the notice of opportunity for a hearing. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. When it clearly appears from the data in the application and from the reasons and factual analysis in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, the Commissioner will enter an order on these data, making findings and conclusions on such data. If a hearing is requested and is justified by the response to the notice of hearing, the issues will be defined, a hearing examiner will be named, and he shall issue a written notice of the time and place at which the hearing will commence, not more than 90 days after the expiration of such 30 days unless the hearing examiner and the applicant otherwise agree.

This notice is issued pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-51; 21 U.S.C. 360b) and under authority

delegated to the Commissioner (21 CFR 2.120).

Dated: June 2, 1970.

SAM D. FINE,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70-7466; Filed, June 15, 1970; 8:48 a.m.]

## DAUBERT CHEMICAL CO.

### Notice of Withdrawal of Petition for Food Additives

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b), 72 Stat. 1786; 21 U.S.C. 348(b)), the following notice is issued:

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of the procedural food additive regulations (21 CFR 121.52), Daubert Chemical Co., 4700 South Central Avenue, Chicago, Ill. 60638, has withdrawn its petition (FAP 0B2470), notice of which was published in the FEDERAL REGISTER of November 1, 1969 (34 F.R. 17738), proposing that § 121.2551 *Corrosion inhibitors used for steel or tinplate* (21 CFR 121.2551) be amended to provide for additional use of the regulated corrosion inhibitors in packaging materials for the packaging of aluminum intended for use in, or to be fabricated as, food containers or food-processing or handling equipment.

Dated: June 8, 1970.

R. E. DUGGAN,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70-7432; Filed, June 15, 1970; 8:45 a.m.]

[Docket No. FDC-D-139; NADA No. 8-080V, etc.]

## DR. MAYFIELD LABORATORIES ET AL.

### Certain Large Roundworm Tablets; Notice of Withdrawal of Approval of New Animal Drug Applications

An announcement concerning Dr. Mayfield Large Roundworm Tablets which contain antimonyl potassium tartrate was published in the FEDERAL REGISTER of February 5, 1969 (34 F.R. 1738). The announcement set forth the findings of the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, and the Food and Drug Administration, that available information does not establish that the drug is effective for its intended use. Holders of new animal drug applications for the drug were provided 6 months within which to submit adequate documentation in support of the labeling used. No such information was received.

Dr. Mayfield Laboratories, 1209 South Main Street, Charles City, Iowa 50616, sponsor of new animal drug application No. 8-080V covering the drug Dr. Mayfield Large Roundworm Tablets, has requested that the Commissioner of Food and Drugs enter a final order withdrawing the application's approval.

Also, the Corn King Co., 700 16th Street NE., Cedar Rapids, Iowa 52400, sponsor of new animal drug application No. 9-044V covering the drug Large Roundworm Tablets, which is similar in composition and labeling to the Dr. Mayfield drug, has asked the Commissioner to withdraw approval of its application.

The Commissioner of Food and Drugs finds on the basis of new information before him with respect to said drugs, evaluated together with the evidence available to him when the applications were approved, that there is a lack of substantial evidence that said drugs will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Based on the foregoing requests and finding the Commissioner concludes that approval of new animal drug applications No. 8-080V and No. 9-044V should be withdrawn. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-47; 21 U.S.C. 360b(e)) and under the authority delegated to the Commissioner (21 CFR 2.120), approval of new animal drug applications No. 8-080V and No. 9-044V, including all amendments and supplements thereto, is hereby withdrawn effective on the date of signature of this document.

Dated: June 4, 1970.

SAM D. FINE,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70-7467; Filed, June 15, 1970; 8:48 a.m.]

[Docket No. FDC-D-169; NADA No. 6-376V]

## FORT DODGE LABORATORIES, INC.

### Ringet; Notice of Opportunity for Hearing

An announcement published in the FEDERAL REGISTER of February 6, 1969 (34 F.R. 1783), invited the holder of new animal drug application No. 6-376V for Ringet (a drug product containing trichlorophenol, benzethonium chloride, and cyclomethycaine hydrochloride), and any other interested person, to submit pertinent data on the drug's effectiveness. No efficacy data were submitted in response to the announcement and available information still does not provide substantial evidence of effectiveness of the drug for its recommended use in treating ringworm of the skin of animals.

Therefore, notice is given to Fort Dodge Laboratories, Inc., Fort Dodge, Iowa 50501, and to any interested person who may be adversely affected, that the Commissioner of Food and Drugs proposes to issue an order under the provisions of section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)), withdrawing approval of new animal drug application No. 6-376V and all amendments and supplements thereto held by Fort Dodge Laboratories, Inc., for the drug Ringet on the grounds that:

Information before the Commissioner with respect to the drug, evaluated together with the evidence available to him when the application was approved, does not provide substantial evidence that the drug has the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

In accordance with the provisions of section 512 of the Act (21 U.S.C. 360b), the Commissioner will give the applicant, and any interested person who may be adversely affected by an order withdrawing such approval, an opportunity for a hearing at which time such persons may produce evidence and arguments to show why approval of new animal drug application No. 6-376V should not be withdrawn. Promulgation of the order will cause any drug similar in composition to Ringet, and recommended for conditions of use similar to those recommended for Ringet, to be a new animal drug for which an approved new animal drug application is not in effect. Any such drug then on the market would be subject to regulatory proceedings.

Within 30 days after publication hereof in the FEDERAL REGISTER, such persons are required to file with the Hearing Clerk, Department of Health, Education, and Welfare, Office of the General Counsel, Food, Drug, and Environmental Health Division, Room 662, 5600 Fishers Lane, Rockville, Md. 20852, a written appearance electing whether:

1. To avail themselves of the opportunity for a hearing; or
2. Not to avail themselves of the opportunity for a hearing.

If such persons elect not to avail themselves of the opportunity for a hearing, the Commissioner without further notice will enter a final order withdrawing the approval of the new animal drug application.

Failure of such persons to file a written appearance of election within 30 days following date of publication of this notice in the FEDERAL REGISTER will be construed as an election by such persons not to avail themselves of the opportunity for a hearing.

The hearing contemplated by this notice will be open to the public except that any portion of the hearing that concerns a method or process which the Commissioner finds is entitled to protection as a trade secret will not be open to the public unless the respondent specifies otherwise in his appearance.

If such persons elect to avail themselves of the opportunity for a hearing, they must file a written appearance requesting the hearing and giving the reasons why approval of the new animal drug application should not be withdrawn, together with a well-organized and full-factual analysis of the clinical and other investigational data they are prepared to prove in support of their opposition. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. When it clearly appears from the data in the application and from the reasons and factual analysis in the request for the hearing that there is no genuine and

substantial issue of fact which precludes the withdrawal of approval of the application, the Commissioner will enter an order on these data, making findings and conclusions on such data. If a hearing is requested and is justified by the response to the notice of hearing, the issues will be defined, a hearing examiner will be named, and he shall issue a written notice of the time and place at which the hearing will commence, not more than 90 days after the expiration of such 30 days unless the hearing examiner and the applicant otherwise agree.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343–51; 21 U.S.C. 360b) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: June 1, 1970.

SAM D. FINE,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70-7436; Filed, June 15, 1970; 8:45 a.m.]

## HAZLETON LABORATORIES, INC.

### Notice of Filing of Petition for Food Additives

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 0H2545) has been filed by Hazleton Laboratories, Inc., Post Office Box 30, Falls Church, Va. 22046, on behalf of Paper Products, Inc., Post Office Box 5158, Long Beach, Calif. 90805, proposing the issuance of a food additive regulation (21 CFR Part 121) to provide for the safe use of lindane (gamma isomer of benzene hexachloride) as the active ingredient in shelf and drawer paper to be used as a contact insecticide.

Dated: June 8, 1970.

R. E. DUGGAN,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70-7433; Filed, June 15, 1970; 8:45 a.m.]

## IMPERIAL CHEMICAL INDUSTRIES, LTD.

### Notice of Filing of Petition for Food Additives

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 0H2547) has been filed by Imperial Chemical Industries, Ltd., Post Office Box 42, Hexagon House, Blackley, Manchester, England, proposing that § 121.2505 *Slimicides* (21 CFR 121.2505) be amended to provide for the safe use of 1,2-benzisothiazoline-3-one as a slimicide in the manufacture of paper and paperboard.

Dated: June 8, 1970.

R. E. DUGGAN,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70-7431; Filed, June 15, 1970; 8:45 a.m.]

[DESI 11380V]

## MEDICATED PREMIX CONTAINING DIETHYLCARBAMAZINE

### Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on Cypip, a medicated premix containing 30 grams of diethylcarbamazine per pound, which is marketed by American Cyanamid Co., Post Office Box 400, Princeton, N.J. 08540.

The Academy stated that the medicated premix is probably effective as an aid in the prevention and elimination of large roundworms (ascarids) in dogs; however, definitive data are needed to support the efficacy claim against large roundworms when the drug is given in feed and data are needed to support safety of the drug when given to dogs harboring adult heartworms.

The Food and Drug Administration, upon review of additional data, concludes that the product is effective as an aid in the prevention and elimination of large roundworms in dogs when used as directed in feed. The Administration concurs with the Academy's conclusion that data are needed to support safety of the drug when given to dogs harboring adult heartworms.

This announcement is published (1) to inform the holders of new animal drug applications of the findings of the Academy and of the Food and Drug Administration and (2) to inform all interested persons that such articles to be marketed must be the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

Holders of the new animal drug applications are provided 6 months from the date of publication of this announcement in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a "deemed approved" new animal drug application (i.e., an application which became effective on the basis of safety prior to Oct. 10, 1962) for such drugs is requested to submit updating information as needed to make the application current with regard to manufacture of the drug including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 of the Act.

Written comments regarding this announcement including requests for an informal conference may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The holder of the new animal drug application for the listed drug has been mailed a copy of the NAS-NRC report. Any manufacturer, packer, or distributor of a drug of similar composition and labeling or any other interested person may obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to the Commissioner of Food and Drugs. (21 CFR 2.120).

Dated: June 2, 1970.

SAM D. FINE,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70-7468; Filed, June 15, 1970; 8:48 a.m.]

[DESI 13293V]

## OXYTETRACYCLINE SPRAY

### Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on Terra-Cortril Spray; each 2 fluid oz. aerosol unit contains 300 milligrams oxytetracycline as the hydrochloride, and 100 milligrams hydrocortisone; by Chas. Pfizer & Co., Inc., 235 East 42d Street, New York, N.Y. 10017.

The Academy evaluated this product as probably effective for the immediate relief of discomfort and for the continued treatment of many allergic, infectious, and traumatic skin conditions of cats and dogs. The Academy stated, however, documentation is needed to support the label claims such as "more penetration," "pustular dermatitis," "food allergies," and "contact dermatitis" or the label should be modified to delete these claims.

The Food and Drug Administration concurs in the Academy's findings.

This announcement is published (1) to inform the holders of new animal drug applications of the findings of the Academy and the Food and Drug Administration and (2) to inform all interested persons that such articles may be marketed provided they are the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

Holders of new animal drug applications are provided 6 months from the date of publication of this announcement in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a "deemed approved" new animal drug application (i.e., an application which became effective on the basis of safety prior to Oct. 10, 1962) for such drugs is requested to submit updating information as needed to make the application current with regard to manufacture of the drug, including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 of the act.

Written comments regarding this announcement, including requests for an informal conference, may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The holder of the new animal drug application for the listed drug has been mailed a copy of the NAS–NRC report. Any interested person may obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: June 2, 1970.

SAM D. FINE,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70-7435; Filed, June 15, 1970; 8:45 a.m.]

[DESI 0120 NV]

## STREPTOMYCIN-SULFONAMIDE BOLUSES

### Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on Sulfastrep and Pro Pak Sulfastrep; each bolus contains 0.125 gram streptomycin sulfate (base), 0.5 gram sulfamethazine, 2.0 grams phthalylsulfathiazole, 1.0 gram kaolin; by Merck & Co., Inc., Rahway, N.J. 07065.

The Academy evaluated these products as probably effective for prevention and treatment of bacterial intestinal infections in calves and pigs. The Academy further stated that:

1. Each disease claim should be properly qualified "appropriate for use in (name of disease) caused by pathogens sensitives to (name of drug)." If the disease cannot be so qualified the claim must be dropped.

2. Label claims regarding "for prevention of" or "to prevent" should be replaced with "as an aid in the control of" or "to aid in the control of".

3. Substantial evidence was not presented to establish that each ingredient designated as active makes a contribution to the total effect claimed for the drug combination.

4. The manufacturer should provide evidence that the boluses disintegrate in the gastrointestinal tract of the medicated species to produce the desired therapeutic effect.

The Food and Drug Administration concurs in the findings of the Academy.

This evaluation is concerned only with these drugs' effectiveness and safety to the animal to which administered. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drugs or their metabolites as residues in food products derived from treated animals.

This announcement is published (1) to inform the holders of new animal drug applications of the findings of the Academy and the Food and Drug Administration and (2) to inform all interested persons that such articles to be marketed must be the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

Holders of the new animal drug applications are provided 6 months from the date of publication of this announcement in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a "deemed approved" new animal drug application (i.e., an application which became effective on the basis of safety prior to Oct. 10, 1962) for such drugs is requested to submit updating information is needed to make the application current with regard to manufacture of the drug, including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 of the act.

Written comments regarding this announcement, including requests for an informal conference, may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The holder of the new animal drug application for the listed drugs has been mailed a copy of the NAS-NRC report. Any other interested person may obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: June 2, 1970.

SAM D. FINE,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70-7434; Filed, June 15, 1970; 8:45 a.m.]

[DESI 0162 NV]

## SULFAQUINOXALINE-PENICILLIN-STREPTOMYCIN COMBINATION DRUG

### Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on S. Q. Prostrep; each pound contains 3.75 grams penicillin (from procaine penicillin), 18.75 grams streptomycin (from streptomycin sulfate), and 10 percent sulfaquinoxaline; by Merck & Co., Inc., Rahway, N.J. 07065.

The Academy stated that the product is probably not effective as labeled for aid in the prevention of intestinal coccidia (*E. acervulina*) or to aid in maintaining or increasing egg production in poultry laying flocks.

The Academy further stated:

1. Substantial evidence was not presented to establish that each ingredient designated as active makes a contribution to the total effect claimed for the drug combination.

2. Label claims regarding "for prevention of" or "to prevent" should be replaced with "as an aid in the control of" or "to aid in the control of". The claim for egg production should be stated "May aid in maintaining egg production under appropriate conditions, by controlling pathogenic microorangisms."

3. The label should warn that treated animals must actually be consuming enough medicated feed to provide a therapeutic dose under the conditions that prevail. As a precaution the label should state the desired oral dose per day for each species, as a guide to effective use of the preparation in feed.

4. Because of possible incompatibilities in the mechanisms of action of antimicrobial ingredients in a product containing more than one, it is suggested that the manufacturer reconsider the formula. The addition of one antibiotic to another may result in a less than additive action with regard to inhibition of bacterial multiplication, or with regard to the fraction of a bacterial population killed.

The Food and Drug Administration concurs in the Academy's evaluation.

This evaluation is concerned only with the drug's effectiveness and safety to the animal to which administered. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drug or its metabolites as residues in food products derived from treated animals.

This announcement is published (1) to inform the holders of new animal drug applications of the findings of the Academy and the Food and Drug Administration and (2) to inform all interested persons that such articles may be marketed provided they are the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

Holders of the new animal drug applications are provided 6 months from the date of publication of this announcement in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a "deemed approved" new animal drug application (i.e., an application which became effective on the basis of safety prior to Oct. 10, 1962)

for such drugs is requested to submit updating information as needed to make the application current with regard to manufacture of the drug including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 (21 CFR 512) of the act.

Written comments regarding this announcement including requests for an informal conference may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The holder of the new animal drug application for the listed drug has been mailed a copy of the NAS-NRC report. Any other interested person may obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: June 2, 1970.

SAM D. FINE,
*Acting Associate Commissioner for Compliance.*

[F.R. Doc. 70-7465; Filed, June 15, 1970; 8:48 a.m.]

## Office of the Secretary

## HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION

### Statement of Organization, Functions, and Delegations of Authority

Part 5 (Health Services and Mental Health Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare (33 F.R. 15953, Oct. 30, 1968), is hereby amended with regard to section 5-B, Organization, as follows:

Delete the paragraph entitled "Office of Buildings and Facilities (20197)" and insert the following:

*Engineering Consultation Staff (3A 1907).* (1) Provides architectural and engineering consultation services to program officials within the Health Services and Mental Health Administration in developing a program to meet facility needs and interprets such needs to the Facilities Engineering and Construction Agency and to other components of the Office of the Secretary; (2) furnishes technical advice to the Administrator on engineering and environmental matters; and (3) provides space management services for headquarters offices and field installations.

Dated: June 10, 1970.

SOL ELSON,
*Acting Deputy Assistant Secretary for Administration.*

[F.R. Doc. 70-7492; Filed, June 15, 1970; 8:50 a.m.]

## OFFICE OF THE GENERAL COUNSEL

### Statement of Organization, Functions, and Delegations of Authority

The Statement of Organization, Functions, and Delegations of Authority of the Department, Chapter 2-320 thereof entitled "Divisions in the Office of the General Counsel" (34 F.R. 1275), is hereby amended to reflect the combining of the Health Insurance Division and the Old-Age and Survivors Insurance Division, approved by the Secretary on February 6, 1970, into a new Social Security Division. Chapter 2-320 is revised to read as follows:

CHAPTER 2-320—DIVISIONS IN THE OFFICE OF THE GENERAL COUNSEL

Sec.
2-320.10 Organization.
2-320.20 Business and Administrative Law Division.
2-320.30 Civil Rights Division.
2-320.40 Education Division.
2-320.50 Food, Drug, and Environmental Health Division.
2-320.60 Legislation Division.
2-320.70 Public Health Grants and Services Division.
2-320.80 Social and Rehabilitation Service Division.
2-320.90 Social Security Division.

SEC. 2-320.10 *Organization.* A. The Divisions in the Office of the General Counsel are:

Business and Administrative Law Division.
Civil Rights Division.
Education Division.
Food, Drug, and Environmental Health Division.
Legislation Division.
Public Health Grants and Services Division.
Social and Rehabilitation Service Division.
Social Security Division.

B. Each division shall be under the general supervision of the General Counsel and the Deputy General Counsel and the immediate supervision of an Assistant General Counsel and Deputy Assistant General Counsel.

SEC. 2-320.20 *Business and Administrative Law Division.* A. The Business and Administrative Law Division shall be responsible for:

1. Legal services on business management activities and administrative operations throughout the Department, including procurement, contracting, personnel, patents, copyrights, and claims by and against the Department.

2. Legal services for the Department's surplus property, civil defense and security programs.

3. Liaison with the Comptroller General.

4. Counselling, under section 702 of E.O. 11222, for those employees who request advice on or interpretation of standards of conduct.

SEC. 2-320.30 *Civil Rights Division.* The Civil Rights Division shall provide legal services for the Office for Civil Rights.

SEC. 2-320.40 *Education Division.* The Education Division shall provide legal services for programs administered by the Office of Education and the Office of the Assistant Secretary for Education.

SEC. 2-320.50 *Food, Drug, and Environmental Health Division.* The Food, Drug, and Environmental Health Division shall provide legal services for programs administered by the Food and Drug Administration and by the Environmental Health Service of the Public Health Service.

SEC. 2-320.60 *Legislation Division.* A. The Legislation Division shall be responsible for:

1. Drafting all proposed legislation originating in the Department, reviewing specifications for such proposed legislation, and reviewing all proposed legislation submitted to the Department or to any constituent unit of the Department for comment.

2. Preparing or reviewing reports and letters to Congressional Committees, the Office of Management and Budget, and others on proposed legislation.

3. Reviewing proposed testimony of Department officials before Congressional Committees relating to pending or proposed legislation.

4. Acting as Department liaison with the Office of Management and Budget on legislative matters.

5. Prescribing procedures to govern the routing and review, within the Department, of material relating to proposed Federal legislation.

SEC. 2-320.70 *Public Health Grants and Services Division.* The Public Health Grants and Services Division shall provide legal services for programs administered by the National Institutes of Health and by the Health Services and Mental Health Administration of the Public Health Service.

SEC. 2-320.80 *Social and Rehabilitation Service Division.* The Social and Rehabilitation Service Division shall provide legal services for programs administered by the Social and Rehabilitation Service and the Office of Child Development.

SEC. 2-320.90 *Social Security Division.* The Social Security Division shall provide legal services for programs administered by the Social Security Administration.

Dated: June 9, 1970.

SOL ELSON,
*Acting Deputy Assistant Secretary for Administration.*

[F.R. Doc. 70-7491; Filed, June 15, 1970; 8:50 a.m.]

# CIVIL AERONAUTICS BOARD

[Docket No. 20093; Order 70-6-63]

## INTERNATIONAL AIR TRANSPORT ASSOCIATION

### Order Regarding Cargo Rate Matters

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 10th day of June 1970.

An agreement 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, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Joint Conferences 1-2 and 1-2-3 of the International Air Transport Association (IATA),

and adopted by mail vote. The agreement (which carried an intended effectiveness date of June 1) has been assigned the above-designated CAB agreement number.

Insofar as air transportation is concerned, the agreement, in addition to readopting the previously approved cargo charter resolution,[1] proposes an across-the-board increase in both general cargo and specific commodity rates of 4 cents a kilogram for North Atlantic services. This proposal based on New York-London, would produce increases in the general cargo rate scale, ranging from 1.5 percent for shipments of less than 45 kilograms to 5.4 percent for shipments of 500 kilograms and over. With respect to rates for specific commodities, for which there are many, the proposal, in general and again based on New York-London, would produce increases ranging roughly from 3 percent for the highest rated commodity (personal effects) for shipments of 45 kilograms to almost 11 percent for the lowest rated commodity (fruits and vegetables) for shipments of 500 kilograms or over.

Complaints have been received from two U.S. air freight forwarders, Express Air Freight, and Airborne Freight Corp. These firms are mostly concerned with their inability to adjust their tariffs concurrently with the scheduled service carriers, particularly if the Board permits the scheduled service carriers to file the rate increases on less than 30 days' notice.[2] [3] In general terms, both firms ask that effectiveness be deferred for a sufficient span of time to permit the forwarders to revise and publish their revised tariffs concurrently with the scheduled carriers. As a minimum, Airborne Freight asks for 45 days' notice after Board action on the merits of the agreement.

In support of the agreement, the three U.S. North Atlantic carriers,[4] among other things, emphasize the unsatisfactory economic results of all-cargo services and the outlook for the future in the face of increasing costs. Seaboard, for example, shows an overall contractual increase in labor costs of 12 percent in 1969 for nonflight personnel which represents 75 percent of its employees and states that there will be an additional increase of about 14 percent in 1970 in this category of employment. It also anticipates an increase of 15 to 20 percent in wages for flight personnel in 1970. Based generally on 1969 traffic, these carriers estimate revenue increases flowing from the rate agreement of 4.5 to about 5 percent for North Atlantic all-cargo services.

We believe that the agreement warrants approval. The carriers are not earning reasonable profits on their all-cargo services which account for the major portion of their cargo revenues. In 1969, their combined all-cargo revenues, which are primarily from air freight, just barely exceeded costs. Their combined operating profit for calendar 1969 was less than $3 million on total transport revenues of $91 million in all-cargo service. While Pan American and TWA showed improvement in 1969 in their rates of return on invested capital, neither reached a level of 4 percent. Seaboard's declined to less than 1 percent. In view of the general inflationary trend in the economy, it would be unrealistic to expect that the carriers' financial position could be markedly improved under the current rate structure. We would observe, too, that the increases proposed are relatively small for many shipments. The greater increases would apply to specific commodity rates which typically provide substantial reductions from the general cargo rates. For the most part, specific commodity rates are warranted only by the traffic stimulation they provide and should operate to increase carrier revenues.

While we are herein approving the agreement, we believe it should be implemented on statutory notice. Shippers and air freight forwarders need a reasonable period of time to accommodate themselves to the higher rates. The 30-day statutory notice requirement, among other things, is intended to provide such a period. Accordingly, we are approving the agreement effective this date: *Provided*, That tariffs implementing the changes shall not be filed on less than 30 days' statutory notice.

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, does not find the following resolutions, incorporated in Agreement CAB 21752, to be adverse to the public interest or in violation of the Act: *Provided*, That such approval is subject to the condition hereinafter ordered:

*IATA resolutions*

JT12(Mail 738)001c
JT12(Mail 738)045a
JT123(Mail 643)001c
JT123(Mail 643)045a
JT12(Mail 738)554a
JT12(Mail 738)014u
JT12(Mail 738)590k
JT123(Mail 643)014u

*Accordingly, it is ordered*, That:

Agreement CAB 21752, R-1, R-2, R-3, R-5, and R-6 be and hereby is approved: *Provided*, That the agreement shall not be implemented by tariff filings, insofar as air transportation as defined by the Act is concerned, on less than 30 days' notice.

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 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] HARRY J. ZINK,
*Secretary.*

[F.R. Doc. 70-7485; Filed, June 15, 1970; 8:50 a.m.]

[1] Our action herein should not be construed as disposing of the petition by Seaboard World Airlines to condition certain IATA resolutions so as to permit U.S.-flag carriers to carry on charter flights mail, diplomatic bags and commercial freight in space not utilized by the charterer with or without his consent. (Docket No. 21673)

[2] NOVO Air Freight in a letter to IATA, a copy of which was directed to the Board, asked that the carriers abandon their proposal. It feels it was not given sufficient notification and that an in-depth study of the impact could not logically be made on such short notice.

[3] Lyons Laperriere of Oyonna Ritasa of Milan protests the increases as deterimental to its clients (telegraphic communication signed by Mr. Jean Legoubey, Paris).

[4] Seaboard World Airlines, Inc., Pan American World Airways, Inc., and Trans World Airlines, Inc.

# CIVIL SERVICE COMMISSION

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Health, Education, and Welfare to fill by noncareer executive assignment in the excepted service the position of Assistant to the Commissioner for Public Affairs, Office of Education.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[F.R. Doc. 70-7455; Filed, June 15, 1970; 8:47 a.m.]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Notice of Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Health, Education, and Welfare to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary for Health Services, Office of the Assistant Secretary for Health and Scientific Affairs.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[F.R. Doc. 70-7457; Filed, June 15, 1970; 8:47 a.m.]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Health, Education, and

Welfare to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary for Health Policy Implementation, Office of the Assistant Secretary for Health and Scientific Affairs.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[F.R. Doc. 70-7456; Filed, June 15, 1970; 8:47 a.m.]

# FEDERAL COMMUNICATIONS COMMISSION

[FCC 70-609]

## USE OF TELEPHONE FOR DEBT COLLECTION PURPOSES

JUNE 10, 1970.

The Commission has received information that interstate telephone service is being increasingly used for collection of claimed debts in ways that are or may be in violation of applicable tariffs of the telephone companies and criminal statutes. Practices alleged include calling at odd hours of the day or night; repeated calls; calls to friends, neighbors, relatives, employers, and children; calls making a variety of threats; calls asserting falsely that credit ratings will be hurt; calls falsely stating that legal process is about to be served; calls demanding payments for amounts not owed; calls to places of employment; and calls misrepresenting the terms and condition of existing or proposed contracts. Although many of these calls are placed on a local basis, there is increasing indication that such improper practices also involve use of interstate toll and Wide Area Telephone Service (WATS).

Tariffs of the telephone companies forbid use of the telephone "* * * for a call or calls, anonymous or otherwise, if in a manner reasonably to be expected to frighten, abuse, torment, or harass another;" or for calls that "* * * interfere unreasonably with the use of the service by one or more other customers;" or calls for "* * * unlawful purpose." Upon violation of any of these conditions the telephone company can, by written notice, discontinue service "forthwith." These tariff regulations are filed with this Commission pursuant to section 203 of the Communications Act, 47 U.S.C. 203, and are binding on the telephone company and customer alike. Users of the telephone service are also subject to the enforcement proceedings provided for in sections 401 and 411 of the Communications Act.

In addition to the loss of telephone service for violation of the tariffs, section 223 of the Communications Act makes it a crime to use the telephone in the District of Columbia or in interstate or foreign communication to make "repeated telephone calls, during which conversation ensues, solely to harass any person at the called number" or to knowingly permit "others to use his telephone" for such purpose. Penalties for violation of section 223 are a fine up to $500 or 6 months' imprisonment, or both, 47 U.S.C. 223.

The Commission is concerned that some users of telephone service may be unaware of their obligations to refrain from using the service for abusive or harassing calls. It is also concerned that other users may be wilfully and repeatedly violating the provision of the tariffs and the applicable statutes, and that the telephone companies are not adequately enforcing their tariffs. Accordingly, the Commission is issuing this Public Notice in order that the public may be informed of the requirements of law in this area and so that users may be alerted to their legal obligations in the use of the telephone and the penalties for failure to abide thereby. The Commission has also this date sent letters to the Bell, General, United, and Continental telephone systems requesting them to take positive steps to inform present and potential customers of the requirements of law, and to effectuate a more vigorous enforcement of their tariffs.

Action by the Commission June 10, 1970.[1]

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

[F.R. Doc. 70-7469; Filed, June 15, 1970; 8:48 a.m.]

---

[Docket Nos. 18870, 18871; FCC 70573]

## ROBERTS FLYING SERVICE, INC., AND LAKELAND FLYING SERVICE, INC.

### Order Designating Applications for Consolidated Hearing on Stated Issues

In regard applications of Roberts Flying Service, Inc., Lakeland, Fla., Docket No. 18870, File No. 86-A-RL-109; Lakeland Flying Service, Inc., Lakeland, Fla., Docket No. 18871, File No. 65-A-L-99; for Aeronautical Advisory Station to serve the Lakeland Municipal Airport, Lakeland, Fla.

1. Roberts Flying Service, Inc., has filed an application for renewal of the license of aeronautical advisory station KJA7, Lakeland Municipal Airport, Lakeland, Fla., and Lakeland Flying Service, Inc., has filed an application for a new aeronautical advisory station at the same airport. Section 87.251(a) of the Commission's rules provides that only one aeronautical advisory station may be authorized to operate at a landing area. Therefore, the above-captioned applications are mutually exclusive. Accordingly, it is necessary to designate the applications for hearing. Except for the issues specified herein each applicant is otherwise qualified.

2. Prior to filing its above-captioned application, Lakeland Flying Service, Inc., by letter dated August 23, 1969, objected to any further renewal of license of aeronautical advisory station KJA7 on the grounds that Roberts Flying Service, Inc., has repeatedly operated its station in violation of § 87.257 (a) and (b) of the Commission's rules. Section 87.257 (a) and (b) of the Commission's rules requires that at all times when an aeronautical advisory station is in operation, nonpublic service shall be provided to any private aircraft station upon request and without discrimination, and that communications by such a station shall be impartial with respect to information concerning similar available ground services at the landing area. By letter dated November 10, 1969, David P. Johnson, a pilot engaged in general aviation in the Lakeland, Fla., area, alleged that on several occasions when he was engaged in cross-country flights the Lakeland Unicom had failed to reply to his request for takeoff or landing information, and discriminated against him by providing other aircraft making the same request in the period immediately following his futile efforts with full information pertaining to their proposed landing.

3. Roberts Flying Service, Inc., denies the allegation that it has operated station KJA7 in violation of § 87.257 (a) and (b) of the Commission's rules, and by letter filed November 10, 1969, alleges that on various occasions since July 1966 to the present time, members of Lakeland Flying Service, Inc., have illegally used an unlicensed Unicom radio transmitter in direct violation of the Commission's rules, and have admitted to such violations in a meeting between the parties and official representatives of the city of Lakeland.

4. In view of the foregoing: *It is ordered,* That pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications are hereby designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent order on the following issues:

(a) To determine which applicant would provide the public with better aeronautical advisory service based on the following considerations:

(1) Location of the fixed-base operation and proposed radio station in relation to the landing area and traffic patterns;

(2) Hours of operation;

(3) Personnel available to provide advisory service;

(4) Experience of applicant and employees in aviation and aviation communications;

(5) Ability to provide information pertaining to primary and secondary communications as specified in § 87.257 of the Commission's rules;

(6) Proposed radio system including control and dispatch points; and

(7) The availability of the radio facilities to other fixed-base operators.

[1] Commissioners Bartley (Acting Chairman), Robert E. Lee, Johnson, H. Rex Lee, and Wells, with Commissioner Cox not participating.

(b) To determine whether Roberts Flying Service, Inc., has operated aeronautical advisory station KJA7 at Lakeland Municipal Airport, Lakeland, Fla., in violation of § 87.257 (a) and (b) of the Commission's rules;

(c) To determine whether Lakeland Flying Service, Inc., has operated a Unicom radio transmitter to communicate with aircraft at Lakeland Municipal Airport without an authorization from the Commission in violation of section 301 of the Communications Act of 1934, as amended, and the Commission's rules;

(d) To determine in light of the evidence adduced on the foregoing issues which, if either, of the applications should be granted.

5. *It is further ordered*, That the burden of proceeding with the introduction of evidence on issue (b) is placed on Lakeland Flying Service, Inc.; that the burden of proceeding with the introduction of evidence on issue (c) is placed on Roberts Flying Service, Inc.; and that the burden of items (1) through (7) under issue (a), and issue (d) which is conclusory, is placed on Roberts Flying Service, Inc., and Lakeland Flying Service, Inc., insofar as the issues per tain to each of these parties.

6. *It is further ordered*, That to avail themselves of an opportunity to be heard Roberts Flying Service, Inc., and Lakeland Flying Service, Inc., pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall within 20 days of the mailing of this order file with the Commission, in triplicate, a written appearance stating an intention to appear on the date set for hearing and present evidence on the issues specified in this order. Failure to file a written appearance within the time specified may result in dismissal of the application with prejudice.

Adopted: June 3, 1970.

Released: June 9, 1970.

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

[F.R. Doc. 70-7470; Filed, June 15, 1970; 8:48 a.m.]

# FEDERAL POWER COMMISSION

[Docket No. CP70-295]

## COLORADO INTERSTATE GAS CO.

### Notice of Application

JUNE 10, 1970.

Take notice that on June 1, 1970, Colorado Interstate Gas Co., a division of Colorado Interstate Corp. (applicant), Post Office Box 1087, Colorado Springs, Colo. 80901, filed in Docket No. CP70-295 an application pursuant to section 7(c) of the Natural Gas Act and § 157.7 of the regulations thereunder for a certificate of public convenience and necessity authorizing the construction of miscellaneous natural gas sales and transmission facilities during a 12-month period beginning on July 22, 1970, and the operation of such facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate not more than 25 new meter stations and mainline and lateral taps for existing customers and not more than five lateral pipelines with each line not to exceed 5 miles in length or 10 inches in diameter. Applicant states that the miscellaneous rearrangements proposed pursuant to the requested authorization will not include more than five relocations for highway construction, development of private property, or other similar projects and that such miscellaneous rearrangements to be constructed will not include pipeline to exceed 26 inches in diameter, with a maximum length of 2 miles.

The total estimated cost of the proposed facilities is not to exceed $300,000 with the cost of any single delivery point not to exceed $25,000, the cost of any single lateral line not to exceed $50,000, and the cost of any single miscellaneous rearrangement not to exceed $100,000. The proposed facilities will be financed by funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 30, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, a further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

GORDON M. GRANT,
*Secretary.*

[F.R. Doc. 70-7474; Filed, June 15, 1970; 8:49 a.m.]

[Docket No. CP70-296]

## EQUITABLE GAS CO.

### Notice of Application

JUNE, 10, 1970.

Take notice that on June 1, 1970, Equitable Gas Co., (applicant), 420 Boulevard of the Allies, Pittsburgh, Pa. 15219, filed in Docket No. CP70-296 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate a main line tap in order to serve an industrial customer, Monongahela Power Co., at its Harrison Power Station in Eagle District, Harrison County, W. Va. Applicant states that the customer's boilers are coal-fired and natural gas is to be used for starting operations only. When both boilers are in operation it is estimated that maximum use of natural gas will total 30,000 Mcf per year.

The total estimated cost of the proposed facilities is $30,530, which will come from the general funds available to applicant.

Any person desiring to be heard or to make a protest with reference to said application should on or before June 30, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for applicant to appear or be represented at the hearing.

GORDON M. GRANT,
*Secretary.*

[F.R. Doc. 70-7475; Filed, June 15, 1970; 8:49 a.m.]

[Docket No. IT-6097]

## MARIAS RIVER ELECTRIC COOPERATIVE, INC.

### Notice of Application

JUNE 10, 1970.

Take notice that Marias River Electric Cooperative, Inc. (applicant), incorporated under the laws of the State of Montana, having its principal place of business in Shelby, Mont., filed an application in Docket No. IT-6097 on May 14, 1970, for a supplemental order, pursuant to section 202(e) of the Federal Power Act, modifying applicant's current authorization to transmit electric energy from the United States to Canada.

By Commission order issued June 19, 1958, in Docket No. IT-6097 (19 FPC 971), applicant was authorized to transmit electric energy from the United States to Canada in an amount not in excess of 1 million kw.-hrs. per year at a transmission rate not to exceed 250 kw. for sale and delivery to Southern Utilities, Ltd., a Canadian corporation, over certain facilities of applicant located at the international border between the United States and Canada and covered by applicant's Presidential permit signed by the President of the United States on July 28, 1948, in Docket No. E-6108.

Applicant now requests that the authorization granted by Commission order issued June 19, 1958, referred to above, be modified so as to authorize applicant to export electric energy from a point in Sweet Grass, Mont., to a point immediately north of the international boundary line in Coutts, Alberta, in an amount not in excess of 2 million kw.-hrs. per year at a transmission rate not to exceed 500 kw. over the above-mentioned facilities for the purpose of meeting the expanding electric energy requirements of Southern Utilities, Ltd.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 25, 1970, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
*Secretary.*

[F.R. Doc. 70-7476; Filed, June 15, 1970; 8:49 a.m.]

[Docket No. CP70-293]

## MIDWESTERN GAS TRANSMISSION CO.

### Notice of Application

JUNE 10, 1970.

Take notice that on June 1, 1970, Midwestern Gas Transmission Co. (applicant), Post Office Box 2511, Houston, Tex. 77001, filed in Docket No. CP70-293 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of additional natural gas to any of its existing northern system customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant has concurrently filed in Docket No. CP70-293 an application pursuant to section 3 of the Natural Gas Act to authorize the importation of up to 5,000,000 Mcf of natural gas from Canada to the United States.

Applicant proposes to sell up to an additional 5,000,000 Mcf of natural gas on its northern system to existing customers requesting additional gas on and if, as, and when available basis during the period commencing upon the date of such authorization and terminating on October 31, 1970. Applicant states that it has been advised by one of its major customers, Michigan Wisconsin Pipe Line Co., that certain of its customers were faced with an emergency gas supply situation during the summer of 1970.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 30, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

GORDON M. GRANT,
*Secretary.*

[F.R. Doc. 70-7477; Filed, June 15, 1970; 8:49 a.m.]

[Docket No. CP70-292]

## MIDWESTERN GAS TRANSMISSION CO.

### Notice of Application

JUNE 9, 1970.

Take notice that on June 1, 1970, Midwestern Gas Transmission Co. (applicant), Post Office Box 2511, Houston, Tex. 77001, filed in Docket No. CP70-292 an application pursuant to section 3 of the Natural Gas Act for an order of the Commission authorizing applicant to import natural gas from Canada to the United States, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Concurrently with its application in Docket No. CP70-293 which it filed pursuant to section 7(c) of the Natural Gas Act for authorization to sell up to 5,000,000 Mcf of additional natural gas to its existing customers prior to November 1, 1970, applicant proposes to import natural gas from Canada which will be purchased from TransCanada Pipeline Co. and delivered to applicant at a point on the international boundary near Emerson, Manitoba. Applicant states that the natural gas is to be sold by TransCanada Pipeline Co. on a best efforts basis, and will be up to 5,000,000 Mcf in volume.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 30, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

GORDON M. GRANT,
*Secretary.*

[F.R. Doc. 70-7478; Filed, June 15, 1970; 8:49 a.m.]

[Docket No. CP70-298]

## PENNSYLVANIA GAS CO.

### Notice of Application

JUNE 10, 1970.

Take notice that on June 3, 1970, Pennsylvania Gas Co. (applicant), 213 Second Avenue, Warren, Pa. 16365, filed

in Docket No. CP70-298 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate 0.6 miles of 12-inch transmission pipeline and to drill in 1970 and 1971 four additional storage wells. Applicant states that the proposed transmission line is necessary to increase capacity from its present supply connection with Tennessee Gas Pipeline Co., a division of Tenneco Inc., into its main transmission system, and the proposed storage wells are necessary to increase deliverability from applicant's Summit Storage Pool, near its principal marketing area in Erie, Pa.

The total estimated cost of the proposed facilities is $202,053, which will be financed from available company funds and from funds obtained from issue to its parent corporation, United Fuel Gas Co., notes, stock, or both at face or par value.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 6, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

GORDON M. GRANT,
*Secretary.*

[F.R. Doc. 70-7479; Filed, June 15, 1970; 8:49 a.m.]

[Docket No. CP70-287]

## TEXAS GAS TRANSMISSION CORP.

### Notice of Application

JUNE 9, 1970.

Take notice that on May 26, 1970, Texas Gas Transmission Corp. (applicant), Post Office Box 1160, Owensboro, Ky. 42301, filed in Docket No. CP70-287 an application pursuant to subsections (b) and (c) of section 7 of the Natural Gas Act for an order of the Commission granting permission and approval to abandon certain natural gas facilities and a certificate of public convenience and necessity authorizing an increase in the contract demands of several of its existing customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to increase the contract demand of 43 of its customers by a total of 127,899 Mcf and construct and operate the following facilities:

(a) Approximately 67.10 miles of 36-inch loop pipeline in Arkansas, Mississippi, Tennessee, Kentucky, and Ohio;

(b) Approximately 19.47 miles of 36-inch loop pipeline in Louisiana;

(c) Approximately 8.51 miles of 30-inch loop pipeline in Kentucky;

(d) Approximately 21.17 miles of 20-inch pipeline in Indiana; and

(e) Approximately 3.31 miles of 26-inch pipeline in Indiana; and

(f) Two 1,000 horsepower compressor units in the Petersburg, Ind., compressor station.

Applicant further proposes to abandon 3.31 miles of 12-inch pipeline in Indiana, which will be replaced by the similar length of proposed 26-inch pipeline.

The total estimated cost of the proposed facilities is $26,388,000, which will be financed by funds from retained earnings, temporary borrowings, or both.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 29, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate or permission and approval for the proposed abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

GORDON M. GRANT,
*Secretary.*

[F.R. Doc. 70-7480; Filed, June 15, 1970; 8:49 a.m.]

[Docket No. CP70-300]

## TRANSCONTINENTAL GAS PIPE LINE CORP.

### Notice of Application

JUNE 11, 1970.

Take notice that on June 9, 1970, Transcontinental Gas Pipe Line Corp. (applicant), Post Office Box 1396, Houston, Tex. 77001, filed in Docket No. CP70-300 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the utilization on a temporary basis its presently authorized Chester and Barbadoes Island points of delivery to Philadelphia Electric Co. (PEC) as additional points of delivery to Philadelphia Gas Works Division of UGI Corp. (PGW), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has been requested by PEC and PGW, both existing customers, to deliver to PEC during June, July, and August of 1970, for the account of PGW at the Chester and Barbadoes Island delivery points, natural gas sold by applicant to PGW under existing service agreements. Applicant further states that such deliveries will effectuate a short-term sale arrangement between PGW and PEC and will be out of allocations previously authorized by the Commission. The proposed delivery points are upstream of the presently existing delivery points to PGW and applicant states that the temporary division of delivery will have no appreciable effect on the flow characteristics of its system.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 29, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a

party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

GORDON M. GRANT,
*Secretary.*

[F.R. Doc. 70-7508; Filed, June 15, 1970; 8:51 a.m.]

[Docket No. CP70-297]

## UNITED GAS PIPE LINE CO.

### Notice of Application

JUNE 10, 1970.

Take notice that on June 2, 1970, United Gas Pipe Line Co. (applicant), Post Office Box 1407, Shreveport, La. 71102, filed in Docket No. CP70-297 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain additional natural gas facilities and an increase in sales of natural gas to an existing customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate enlargements of metering, regulating, and appurtenant facilities required to deliver and sell an additional quantity of natural gas to Escambia Chemical Corp. (Escambia), Santo Rosa County, Fla. Applicant states that it has been advised by Escambia that the latter is committed to expanding its existing methanol manufacturing plant and this requires an additional volume of natural gas. Applicant proposes to increase its sale and delivery of gas by 12,000 Mcf per day from 36,000 Mcf per day to 48,000 Mcf per day.

The total estimated cost of the proposed facilities is $17,820.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 30, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

GORDON M. GRANT,
*Secretary.*

[F.R. Doc. 70-7481; Filed, June 15, 1970; 8:49 a.m.]

[Docket No. CP70-301]

## PENNSYLVANIA GAS AND WATER CO. AND MANUFACTURES LIGHT AND HEAT CO.

### Notice of Application

JUNE 12, 1970.

Take notice that on June 10, 1970, Pennsylvania Gas and Water Co. (Applicant), 30 North Franklin Street, Wilkes-Barre, Pa. 18701, filed in Docket No. CP70-301 an application pursuant to section 7(a) of the Natural Gas Act for an order of the Commission directing the Manufactures Light and Heat Co. (Respondent) to increase the availability of annual volumes of natural gas to applicant by increasing the contract demand under the Manufactures Light and Heat Co. FPC Gas Rate Schedule CDS-1 and reducing the maximum daily quantity with related winter contract quantity under the Manufactures Light and Heat Co. FPC Gas Rate Schedule WS, with no change in applicant's total daily entitlement, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant presently purchases 29,387 Mcf per day of natural gas from respondent for distribution in its Susquehanna Division and proposes that the Commission direct respondent to increase the contract demand by 7,000 Mcf per day and to reduce the maximum daily quantity by 7,000 Mcf per day with its related 350,000 Mcf of winter contract quantity to be effective commencing November 1, 1970.

Applicant states that the proposed increase in availability of annual volumes of natural gas is necessary to offset a gas supply emergency and that respondent has refused applicant's request for the additional annual volumes except on terms unacceptable to applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 2, 1970 file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
*Acting Secretary.*

[F.R. Doc. 70-7598; Filed, June 15, 1970; 10:06 a.m.]

# FEDERAL RESERVE SYSTEM

## BARNETT BANKS OF FLORIDA, INC.

### Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by Barnett Banks of Florida, Inc., which is a bank holding company located in Jacksonville, Fla., for prior approval by the Board of Governors of the acquisition by applicant of 80 percent or more of the voting shares of Barnett First National Bank in Seminole County, Altamonte Springs, Fla., a proposed new bank.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into

consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Atlanta.

By order of the Board of Governors, June 8, 1970.

[SEAL] KENNETH A. KENYON, *Deputy Secretary.*

[F.R. Doc. 70-7427; Filed, June 15, 1970; 8:45 a.m.]

## BARNETT BANKS OF FLORIDA, INC.

### Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of Barnett Banks of Florida, Inc., Jacksonville, Fla., for approval of acquisition of 64.67 percent of the voting shares of City National Bank and Trust Co., Clearwater, Fla.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and § 222.3 (a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), the application of Barnett Banks of Florida, Inc., Jacksonville, Fla. (Applicant), a registered bank holding company, for the Board's prior approval of the acquisition, for cash, of 64.67 percent of the voting shares of City National Bank and Trust Co., Clearwater, Fla. (Bank). Applicant has assured the Board that, within a reasonable period of time, a cash or stock exchange offer will be made to all holders of Bank shares not included in the current proposal and that such offer will be made on a basis that is not less favorable than the price paid for the controlling shares.

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Comptroller of the Currency and requested his views and recommendation. The Comptroller offered no objection to approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on April 11, 1970 (35 F.R. 6025), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered by the Board.

Proceeding on the understanding that Applicant will make an offer to Bank's minority stockholders as proposed, the Board has considered the application in the light of the factors set forth in section 3(c) of the Act, including the effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of the Applicant and the banks concerned, and the convenience and needs of the communities to be served. Upon such consideration, the Board finds that:

Applicant has 20 subsidiary banks with aggregate deposits of $585 million, is the third largest banking organization in Florida, and controls 5 percent of the deposits in the State. (All banking data refer to insured commercial banks and are as of June 30, 1969, adjusted to reflect holding company acquisitions approved by the Board to date.) Bank, with deposits of $33 million, ranks 11th among the 34 banks in Pinellas County; and ranks fourth among 12 banks in the relevant banking market which consists of the Clearwater area, including the city of Clearwater, Clearwater Beach, portions of Dunedin and Belleair, as well as portions of unincorporated areas north and south of Clearwater. Bank controls less than 10 percent of the deposits in the area. Although Bank and Applicant's subsidiary in St. Petersburg are located in the same county, the record shows that they compete in separate banking markets. The two banks are 19 miles apart and are separated by the town of Largo, large unincorporated areas, and a number of intervening banks. All other subsidiaries of Applicant are located more than 70 miles from Clearwater. It appears that consummation of Applicant's proposal would not eliminate existing competition, foreclose any significant potential competition, nor have any unduly adverse effects on other banks in the area involved.

Based on the foregoing, the Board concludes that consummation of the proposed acquisition would not adversely affect competition in any relevant area. On the record in this matter, the banking factors as they pertain to Applicant, its subsidiaries and to Bank are regarded as consistent with approval of the application. Applicant proposes to improve the quality and quantity of banking services performed by Bank, which should provide benefits to the community served by Bank. It is the Board's judgment that consummation of the proposed acquisition would be in the public interest, and that the application should be approved.

*It is hereby ordered*, On the basis of the Board's findings summarized above, that said application be and hereby is approved, provided that the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period shall be extended by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors, June 9, 1970.[1]

[SEAL] KENNETH A. KENYON, *Deputy Secretary.*

[F.R. Doc. 70-7500; Filed, June 15, 1970; 8:51 a.m.]

## FIRST NATIONAL BANCORPORATION, INC.

### Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of The First National Bancorporation, Inc., Denver, Colo., for approval of acquisition of 80 percent or more of the voting shares of The First National Bank of Greeley, Greeley, Colo.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), and § 222.3 (a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by The First National Bancorporation, Inc., Denver, Colo., a registered bank holding company, for the Board's prior approval of the acquisition of 80 percent or more of the voting shares of The First National Bank of Greeley, Greeley, Colo.

As required by section 3(b) of the Act, the Board notified the Comptroller of the Currency of the application and requested his views and recommendation. The Comptroller recommended approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on November 5, 1969 (34 F.R. 17930), providing an opportunity for interested persons to submit comments and views with respect to the proposed transaction. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered by the Board.

*It is hereby ordered*, For the reasons set forth in the Board's statement[2] of this date, that said application be and hereby is approved, provided that the application so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Kansas City pursuant to delegated authority.

[1] Voting for this action: Vice Chairman Robertson and Governors Mitchell, Daane, Maisel, and Sherrill. Absent and not voting: Chairman Burns and Governor Brimmer.

[2] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Kansas City. Also filed as part of the original document, and available upon request, is a Concurring Statement of Governor Mitchell and a Dissenting Statement of Governors Robertson, Maisel, and Brimmer.

By order of the Board of Governors,[2] June 9, 1970.

[SEAL] KENNETH A. KENYON,
*Deputy Secretary.*

[F.R. Doc. 70-7428; Filed, June 15, 1970; 8:45 a.m.]

## SECURITY NEW YORK STATE CORP.

### Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of Security New York State Corp., Rochester, N.Y., for approval of acquisition of voting shares of the successor by merger to The National Bank of Auburn, Auburn, N.Y.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and § 222.3 (a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), the application of Security New York State Corp., Rochester, N.Y. (Applicant), a registered bank holding company, for the Board's prior approval of the acquisition of 100 percent (less directors' qualifying shares) of the voting shares of a new national bank into which would be merged The National Bank of Auburn, Auburn, N.Y. (Auburn National). The new national bank has significance only as a means of acquiring all of the shares of the bank to be merged into it; the proposal is therefore treated herein as a proposal to acquire shares of The National Bank of Auburn.

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Comptroller of the Currency and requested his views and recommendation. The Comptroller recommended approval of the application.

The New York State Banking Board, in accordance with a recommendation of the New York Superintendent of Banks, approved an application with respect to the same proposal, filed with it pursuant to New York law.

Notice of receipt of the application was published in the FEDERAL REGISTER on March 31, 1970 (35 F.R. 5376), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered by the Board.

The Board has considered the application in the light of the factors set forth in section 3(c) of the Act, including the effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of the Applicant and the banks concerned, and the convenience and needs of the communities to be served. Upon such consideration, the Board finds that:

Applicant is the 19th largest banking organization and the sixth largest bank holding company in New York, controlling four banks which hold $350 million in deposits, equaling less than 0.5 percent of total bank deposits in the State. (All banking data are as of December 31, 1969, adjusted to reflect holding company formations and acquisitions approved by the Board to date.) Acquisition of Auburn National (deposits $30 million) would not significantly affect statewide concentration.

Applicant is a regional upstate holding company, presently operating in New York's Sixth, Eighth, and Ninth Banking Districts. Since Auburn National is located in the Sixth District, this proposal would not extend Applicant's operations beyond their present geographic limits.

Auburn National is the only bank headquartered in Auburn, Cayuga County. The county is also served by branches of three large Syracuse-headquartered banks, and by two local banks with deposits of $4 million and $13 million, respectively. Applicant's proposal would eliminate home-office protection for Auburn, thereby creating a potential for increased competition through branching by competing banks.

The closest subsidiary bank of Applicant, The State Bank of Seneca Falls, $14.6 million in deposits, is located 15 miles west of Auburn. The presence of physical barriers in the area intervening the two banks, and the orientation of each bank toward a metropolitan market centered in a different city, has prevented the existence of any meaningful competition between them. Therefore, consummation of the proposed acquisition would neither eliminate existing competition, foreclose potential competion, nor have any adverse effects on the viability or competitive effectiveness of any competing bank.

Based upon the foregoing, the Board concludes that consummation of the proposed acquisition would not have an adverse effect on competition in any relevant area. Giving appropriate weight to Applicant's expressed intention of increasing the capital of its lead bank and of Auburn National, the banking factors, as applied to the facts of record, are consistent with approval of the application. The convenience and needs of the Auburn community would be enhanced by Applicant's proposal to expand Auburn National's services. It is the Board's judgment that the proposed transaction would be in the public interest, and that the application should be approved.

*It is hereby ordered*, For the reasons set forth in the findings summarized above, that said application be and hereby is approved: *Provided*, That the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such time be extended for good cause by the Board, or by the Federal Reserve Bank of New York pursuant to delegated authority.

[2] Voting for this action: Chairman Burns and Governors Mitchell, Daane, and Sherrill. Voting against this action: Governors Robertson, Maisel, and Brimmer.

By order of the Board of Governors,[1] June 9, 1970.

[SEAL] KENNETH A. KENYON,
*Deputy Secretary.*

[F.R. Doc. 70-7499; Filed, June 15, 1970; 8:51 a.m.]

# OFFICE OF EMERGENCY PREPAREDNESS

## KENTUCKY

### Notice of Major Disaster and Related Determinations

Pursuant to the authority vested in me by the President under Executive Order 10427 of January 16, 1953, Executive Order 10737 of October 29, 1957, and Executive Order 11051 of September 27, 1962 (18 F.R. 407, 22 F.R. 8799, 27 F.R. 9683); and by virtue of the Act of September 30, 1950, entitled "An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes" (42 U.S.C. 1855–1855g); notice is hereby given that on June 5, 1970, the President declared a major disaster as follows:

I have determined that the damages in those areas of the Commonwealth of Kentucky, adversely affected by severe storms and flooding beginning on or about April 25, 1970, are of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 81-875. I therefore declare that such a major disaster exists in the Commonwealth of Kentucky. Areas eligible for Federal assistance will be determined by the Director of the Office of Emergency Preparedness.

Notice is hereby given that pursuant to the authority vested in me by the President under Executive Order 11495, November 18, 1969 (34 F.R. 18447, Nov. 20, 1969) to administer the Disaster Relief Act of 1969 (Public Law 91-79, 83 Stat. 125), I hereby appoint Mr. Floyd B. Anderson, Disaster Assistance Coordinator, OEP Region 2, to act as the Federal Coordinating Officer to perform the duties specified by section 9 of that act for this disaster.

I do hereby determine the following areas in the Commonwealth of Kentucky to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 5, 1970:

The counties of:

| | |
|---|---|
| Bullitt. | Larue. |
| Casey. | Lincoln. |
| Clay. | Marion. |
| Harlan. | Nelson. |
| Hardin. | Owsley. |
| Knox. | Leslie. |
| Jackson. | |

Dated: June 9, 1970.

G. A. LINCOLN,
*Director,*
*Office of Emergency Preparedness.*

[F.R. Doc. 70-7445; Filed, June 15, 1970; 8:46 a.m.]

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Maisel, Brimmer, and Sherrill.

## NORTH DAKOTA

### Notice of Major Disaster and Related Determinations

Pursuant to the authority vested in me by the President under Executive Order 10427 of January 16, 1953, Executive Order 10737 of October 29, 1957, and Executive Order 11051 of September 27, 1962 (18 F.R. 407, 22 F.R. 8799, 27 F.R. 9683); and by virtue of the Act of September 30, 1950, entitled "An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes" (42 U.S.C. 1855–1855g); notice is hereby given that on June 5, 1970, the President declared a major disaster as follows:

I have determined that the damages in those areas of the State of North Dakota adversely affected by severe storms and flooding beginning on or about April 8, 1970, are of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 81–875. I therefore declare that such a major disaster exists in the State of North Dakota. Areas eligible for Federal assistance will be determined by the Director of the Office of Emergency Preparedness.

Notice is hereby given that pursuant to the authority vested in me by the President under Executive Order 11495, November 18, 1969 (34 F.R. 18447, Nov. 20, 1969) to administer the Disaster Relief Act of 1969 (Public Law 91–79, 83 Stat. 125), I hereby appoint Mr. Donald G. Eddy, Regional Director, OEP Region 6, to act as the Federal Coordinating Officer to perform the duties specified by section 9 of that act for this disaster.

I do hereby determine the following areas in the State of North Dakota to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 5, 1970:

The counties of:

| | |
|---|---|
| Bottineau. | McHenry. |
| Burke. | Mercer. |
| Burleigh. | Morton. |
| Cavalier. | Oliver. |
| Emmons. | Pembina. |
| Dunn. | Renville. |
| Grand Forks. | Stark. |
| Grant. | Walsh. |
| Hettinger. | Ward. |

Dated: June 9, 1970.

G. A. LINCOLN,
*Director,*
*Office of Emergency Preparedness.*

[F.R. Doc. 70–7446; Filed, June 15, 1970; 8:46 a.m.]

# INTERSTATE COMMERCE COMMISSION

## FOURTH SECTION APPLICATION FOR RELIEF

JUNE 11, 1970.

Protests to the granting of an application must be prepared in accordance with § 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 41976—*Beet or cane sugar to points in Illinois and Indiana.* Filed by Southwestern Freight Bureau, agent (No. B–160), for interested rail carriers. Rates on sugar, beet or cane, in bulk, in carloads, as described in the application, from Bayport, Houston, and Sugar Land, Tex., to specified points in Illinois and Indiana.

Grounds for relief—Market competition and rate relationship.

Tariff—Supplement 17 to Southwestern Freight Bureau, agent, tariff ICC 4886.

By the Commission.

[SEAL] H. NEIL GARSON,
*Secretary.*

[F.R. Doc. 70–7488; Filed, June 15, 1970; 8:50 a.m.]

[Ex Parte No. 265]

## INCREASED FREIGHT RATES, 1970

At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D.C., on the 10th day of June 1970.

Upon consideration of the record in the above-entitled proceeding, a petition filed June 10, 1970, by Alabama Power Co. et al., seeking modification of the order of June 1, 1970, establishing procedures for the conduct of the proceeding and/or postponement of filing dates provided therein; petitions seeking postponement of the said filing dates, filed by the National Industrial Traffic League, American Paper Institute, Property Owners Committee, and The Fertilizer Institute, and telegraphic and letter requests by other protestants, including the Monsanto Co., the St. Louis East Side Traffic Conference, the Aluminum Association, and the National Association of Cement Shippers, all seeking similar relief; and the reply thereto filed by the respondent railroads, and good cause appearing therefor:

*It is ordered,* That the said order of June 1, 1970, be and it is hereby, amended as follows:

(1) Subparagraph (e) thereof is revised to provide for the filing of verified statements and accompanying arguments, if any, on or before July 22, 1970.

(2) Subparagraph (f) thereof is revised to provide for the filing of reply verified statements and accompanying arguments, if any, on or before August 19, 1970.

(3) Subparagraph (i) thereof is revised to provide for the submission of letter requests for oral hearing on or before August 26, 1970.

*It is further ordered,* That any party who has heretofore filed and served a brief in this proceeding pursuant to the provisions of paragraph No. 4 of the order of the Commission entered March 6, 1970, may, if desired, incorporate in the record the said briefs by specifically referring thereto in the argument submitted as authorized by subparagraphs (e) and (f) of the order entered June 1, 1970.

*And it is further ordered,* That the petitions and requests set forth above, except to the extent granted by this order, be and they are hereby, denied.

By the Commission, Division 2.

[SEAL] H. NEIL GARSON,
*Secretary.*

[F.R. Doc. 70–7490; Filed, June 15, 1970; 8:50 a.m.]

[Notice 548]

## MOTOR CARRIER TRANSFER PROCEEDINGS

JUNE 11, 1970.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), 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–71814. By order of June 9, 1970, the Motor Carrier Board approved the transfer to Sawyer Transport of Louisiana, Inc., Minneapolis, Minn., of certificate No. MC–123407 (Sub-No. 40) issued to Sawyer Transport, Inc., Minneapolis, Minn., authorizing the transportation of: Boxes and wrappers, interior packing forms, partitions and fillers for boxes, and pulpboard and fiberboard, from plantsite and warehouse facilities of Weyerhauser Co., New Orleans, La., commercial zone as defined by the Commission to points in Arkansas, Mississippi, Alabama, Florida, and Louisiana. Alan Foss, 502 First National Bank, Fargo, N. Dak. 58102, attorney for applicants.

No. MC–FC–72194. By order of June 5, 1970, the Motor Carrier Board approved the transfer to Huntington Moving & Storage Co., a corporation, Huntington, W. Va., of the operating rights in certificate No. MC–102595 (Sub-No. 2) issued November 24, 1959, to John Szasz, Jr., doing business as Star Transfer Co., Cedar Grove, W. Va., authorizing the transportation of household goods, as defined by the Commission, between points within 10 miles of Glasgow, W. Va., except points located on U.S. Highway 60 and West Virginia Highway 61, on the one hand, and, on the other, points in Ohio, Pennsylvania, Maryland, Virginia, and Kentucky. T. D. Kauffelt, Post Office Box 1386, Charleston, W. Va. 25325, attorney for applicants.

No. MC–FC–72048. By order of June 8, 1970, the Motor Carrier Board approved the transfer to Evelyn Mueller, doing business as Evelyn Mueller Trucking,

1605 South Shiloh Road, Sturgeon Bay, Wis. 54235, of the operating rights in certificate No. MC-118362 issued November 9, 1960, to E. F. Bushman, doing business as Sawyer Dray Line, Sturgeon Bay, Wis., authorizing the transportation, over irregular routes, of frozen fruits and frozen berries from Sturgeon Bay, Wis., to St. Louis, Mo., and Minneapolis, Minn., from Green Bay, Wis., and Chicago, Ill., to St. Louis, Mo., from Sturgeon Bay and Green Bay, Wis., to Cedar Rapids, Des Moines, and Laurens, Iowa, and from Green Bay, Wis., to Minneapolis, Minn.; and frozen cherries from Sturgeon Bay, Wis., to San Antonio and Houston, Tex., and Los Angeles, Calif. V. M. Bushman, 2148 Shawano Avenue, Green Bay, Wis. 54303, representative for transferor.

No. MC-FC-72172. By order of June 4, 1970, the Motor Carrier Board approved the transfer to Orlando Trucking, Inc., Lebanon, N.J., of the operating rights in permits Nos. MC-119229, MC-119229 (Sub-No. 1), and MC-119229 (Sub-No. 2) issued January 19, 1962, December 21, 1966, and February 26, 1969, respectively, to Charles Orlando, doing business as Orlando Trucking, Lebanon, N.J., authorizing the transportation of upholstered furniture and studio couches, from Lebanon, N.J., to points in New York, Connecticut, Massachusetts, Rhode Island, Pennsylvania, Delaware, Maryland, Virginia, Illinois, Indiana, Michigan, Ohio, West Virginia, and the District of Columbia; materials and supplies used in the manufacture of furniture, except in bulk, and mattresses and box springs, unwrapped, from New York, N.Y., to Lebanon, N.J.; and materials and supplies used in the manufacture and distribution of upholstered furniture and studio couches, from points in Illinois, Indiana, Michigan, Ohio, and West Virginia, to Lebanon, N.J. Bert Collins, 140 Cedar Street, New York, N.Y. 10006, registered practitioner for applicants.

No. MC-FC-72202. By order of June 8, 1970, the Motor Carrier Board approved the transfer to Blake Brown and Howard Brown, a partnership, doing business as Brown Bros., Curwensville, Pa., of certificate No. MC-128169 issued to Brown Bros. Bulk Transport, Inc., Curwensville, Pa., authorizing the transportation of: Coal, from points in Clearfield County, Pa., to points in Delaware, Maryland, and portions of New Jersey and New York. John A. Vuono, 2310 Grant Building, Pittsburgh, Pa. 15219, attorney for applicants.

[SEAL] H. NEIL GARSON,
*Secretary.*

[F.R. Doc. 70-7486; Filed, June 15, 1970; 8:50 a.m.]

---

[Notice 548A]

## MOTOR CARRIER TRANSFER PROCEEDINGS

JUNE 11, 1970.

Application filed for temporary authority under section 210(a)(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC-71701. By application filed June 10, 1970, KEARNEY'S TRUCKING SERVICE, INC., Alternate Route U.S. 611, Portland, Pa. 18331, seeks temporary authority to lease a portion of the operating rights of HOWARD H. KRAPF, doing business as KRAPF TRUCK SERVICE, Rural Delivery No. 4, Allentown, Pa. 18102, under section 210a(b). The transfer to KEARNEY'S TRUCKING SERVICE, INC., of a portion of the operating rights of HOWARD H. KRAPF, doing business as KRAPF TRUCK SERVICE, is presently pending.

By the Commission.

[SEAL] H. NEIL GARSON,
*Secretary.*

[F.R. Doc. 70-7487; Filed, June 15, 1970; 8:50 a.m.]

# SECURITIES AND EXCHANGE COMMISSION

[Files Nos. 24W-2952, 24W-2974]

## DYNAMIC MARKETING INDUSTRIES CORP. AND POTPOURRI INTERNATIONAL, INC.

### Order Temporarily Suspending Exemptions, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

JUNE 10, 1970.

In the matter of Dynamic Marketing Industries Corp., 201 Penn Center Boulevard, Pittsburgh, Pa., File No. 24W-2952; Potpourri International, Inc., 201 Penn Center Plaza, Pittsburgh, Pa., File No. 24W-2974.

I. Dynamic Marketing Industries Corp. (Dynamic), incorporated in the State of Pennsylvania on February 19, 1968, filed with the Commission on October 10, 1969 a notification on Form 1-A and an offering circular relating to an offering of 125,000 shares of its no par value common stock at $2.40 per share for an aggregate offering price of $300,000 for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, pursuant to the provisions of section 3(b) thereof and Regulation A promulgated thereunder.

Potpourri International, Inc. (Potpourri), incorporated in the State of Delaware on September 23, 1968, filed with the Commission on January 27, 1970, a notification on Form 1-A and an offering circular relating to an offering of 300,000 shares of its $0.01 par value common stock at $1 per share for an aggregate offering price of $300,000 for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, pursuant to the provisions of section 3(b) thereof and Regulation A promulgated thereunder.

II. The Commission, on the basis of information provided by its staff, has reasonable cause to believe that:

A. The notifications and offering circulars of Dynamic Marketing Industries Corp. and Potpourri International Inc. (collectively referred to as respondents) contain untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, particularly with respect to:

1. The common control of the respondents;

2. The relationship of a promoter of Dynamic to its underwriter.

B. The terms and conditions of Regulation A have not been complied with in that:

1. The Dynamic filing fails to disclose that Eugene Buday is an affiliate;

2. The respondents fail to disclose in their respective filings that they are affiliates by reason of the fact that they are under the common control of Eugene Buday;

3. The offering circular of Dynamic fails to disclose the interest of one of the promoters in the underwriter;

4. No exemption under Regulation A is available to the respondents pursuant to Rule 254 in that the aggregate offerings by both of the respondents would exceed $300,000.

C. The offerings, if made, would be in violation of sections 5 and 17 of the Securities Act of 1933.

III. It, appearing to the Commission that it is in the public interest and for the protection of investors that the exemptions of the respondents under Regulation A be temporarily suspended:

*It is ordered*, Pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, that the exemptions under Regulation A be and hereby are temporarily suspended.

*It is further ordered*, Pursuant to Rule 7 of the Commission's rules of practice, that the respondents file answers to the allegations contained in this order within 30 days of the entry thereof.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for a hearing within 30 days after the entry of this order; that within 20 days after receipt of such request the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order or suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; and that notice of the time and place for said hearing will be promptly given by the Commission. If no hearing is requested and none is ordered by the Commission, the order shall become permanent on the 30th day after its entry and shall remain in effect unless it is modified or vacated by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
*Secretary.*

[F.R. Doc. 70-7503; Filed, June 15, 1970; 8:51 a.m.]

[31-700]

## MORGAN GUARANTY TRUST COMPANY OF NEW YORK AND IRVING TRUST CO.

### Notice of Filing of Application for Order Declaring Applicants Not To Be Electric Utility Companies

JUNE 10, 1970.

In the matter of Morgan Guaranty Trust Company of New York, 23 Wall Street, New York, N.Y. 10015; Irving Trust Co., 1 Wall Street, New York, N.Y. 10015.

Notice is hereby given that Morgan Guaranty Trust Company of New York (Morgan) and Irving Trust Co. (Irving) have filed an application for an order declaring that neither Morgan nor Irving will become "an electric utility company" within the meaning of section 2(a)(3) of the Public Utility Holding Company Act of 1935 (Act) as a result of the transactions set forth in the application. All interested persons are referred to the application, which is summarized below, for a complete statement of the facts.

Morgan, all of whose outstanding capital stock is owned by J. P. Morgan & Co., Inc., a Delaware corporation, is a commercial bank organized under the laws of the State of New York. Irving is a commercial bank organized under the laws of the State of New York and all of its outstanding capital stock is owned by the Charter New York Corp., a New York corporation. Neither of the parent corporations of Irving or Morgan is at present either a holding company or a subsidiary company of a holding company, as defined in the Act. If Irving or Morgan were to become or be deemed to be an electric utility company under the Act as a result of the proposed transactions described below, their respective parent corporations would be holding companies under the Act.

Consolidated Edison Company of New York, Inc. (Con Ed), is an electric utility company organized under the laws of the State of New York and is subject to the jurisdiction of the Public Service Commission of New York. Con Ed has entered into purchase agreements with various manufacturers to supply to Con Ed 10 gas turbine generating units and accessory equipment (the Generators) for an aggregate purchase price of $20 million. Con Ed proposes to assign its right to buy the Generators to Irving, acting as trustee (the Trustee) for the benefit of Morgan and of the institutional investors referred to below. The Trustee would then purchase the Generators directly from the manufacturers and lease them to Con Ed under a lease (the Lease) having an initial term of approximately 25 years. Con Ed would have rights to extend the Lease for two terms of 5 years each and to buy the Generators at the end of any term for their then fair market value.

The Trustee would borrow approximately 80 percent of the funds required to purchase the Generators from institutional investors, who would receive equipment trust notes bearing a fixed rate of interest and maturing at the end of the initial term of the Lease. The equipment trust notes would be obligations of the Trustee, payable solely out of the proceeds of the Lease, would be guaranteed by Con Ed and would be secured by a security interest in the Generators and the Lease. The remaining 20 percent of the purchase price would be advanced to the Trustee by Morgan as an investment in the beneficial ownership of the Generators. Morgan has applied to the Internal Revenue Service for a ruling to the effect that it as beneficial owner of the Generators will be entitled for income tax purposes to depreciate the cost of the Generators and to deduct interest paid by the Trustee on the equipment trust notes.

The Lease to Con Ed would be a net lease under which Con Ed would be responsible for maintaining, repairing, and insuring the Generators and for paying substantially all taxes, assessments, and other costs arising from the possession and use thereof. The rentals to be paid by Con Ed to the Trustee during the initial term of the Lease would be calculated to provide funds sufficient to pay the principal of and interest on the equipment trust notes and to return Morgan's equity investment. After the initial term has expired, Morgan would be entitled to receive any proceeds realized from leasing or selling the Generators to Con Ed or to others.

The application states that although Irving as Trustee will hold legal title to the Generators to be leased and installed by Con Ed and Morgan will be the beneficial owner of the Generators, Irving and Morgan are each engaged in the banking business, and that since neither Irving nor Morgan will operate the generating facilities nor be engaged in the sale of electric energy, each requests an order under section 2(a)(3) of the Act declaring that it will not be an electric utility company as a result of the proposed transactions.

Con Ed has applied to the New York Public Service Commission for authority to enter into the Lease and to guarantee repayment of the equipment trust notes. A copy of that Commission's order will be supplied by amendment.

Notice is further given that any interested person may, not later than June 25, 1970, request in writing that a hearing be held in respect of the request for exemption, stating the nature of his interest and the reasons for such request, and the issues of fact or law which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date the Commission may grant exemption requested, or take such other action as it deems appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-7504; Filed, June 15, 1970; 8:51 a.m.]

[File No. 24SF-3333]

## TUCSON TURF CLUB

### Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

JUNE 10, 1970.

I. Tucson Turf Club (Issuer), an Arizona corporation, 4502 North First Avenue, Tucson, Ariz. 85719, organized to operate a horse racing track in Tucson, Ariz., filed with the Commission on August 21, 1967, a notification on Form 1-A and an offering circular related to a proposed offering of 298,000 shares of its $1 par value common stock at $1 per share for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) thereof and Regulation A promulgated thereunder. Jacob J. Isaacson located at 666 Omaha National Bank Building, Omaha, Nebr., was named as the underwriter.

II. The Commission, on the basis of information reported to it by its staff, has reasonable cause to believe that:

A. The terms and conditions of Regulation A have not been complied with in that since December 19, 1968, Issuer has filed no report of sales as required by Rule 260 and has not reported the offering as discontinued.

B. Reports of sales on Form 2-A filed by the Issuer on May 6, and December 19, 1968, are false and misleading with respect to the true ownership by Emprise Corp., a New York corporation, of 218,000 shares of stock reported as held by Jacob J. Isaacson, the nominal underwriter.

C. The terms and conditions of Regulation A have not been complied with in that Issuer has failed to amend its offering circular dated October 5, 1967, as amended November 7, 1967, at any time following 9 months from said date, or to reflect material events occurring since the date of said amendment, including the cessation of the operations of Issuer.

D. Issuer was caused by Jacob J. Isaacson, its director and nominal underwriter, and Emprise Corp., its controlling stockholder, to violate the provisions of section 17(a) of the Securities Act of 1933 by causing the offering circular to omit to state material facts necessary to be stated in order to make the statements made, in the light of the circumstances under which they were made, not misleading in that Jacob J. Isaacson was named therein as an underwriter, source of the financial backing for Issuer, and controlling person of Issuer when in fact Emprise Corp. was the actual underwriter, source of the financial backing and controlling entity.

III. It appearing to the Commission that it is in the public interest and for the protection of investors that the exemption of the issuer under Regulation A be temporarily suspended:

*It is ordered*, Pursuant to Rule 261(a), subparagraphs (1) and (2) of the general rules and regulations under the securities Act of 1933, as amended, that the

exemption under Regulation A be, and it hereby is, temporarily suspended.

*It is further ordered*, Pursuant to Rule 7 of the Commission's rules of practice, that the issuer file and answer to the allegations contained in this order within 30 days of the entry thereof.

Notice is hereby given that any person having any interests in the matter may file with the Secretary of the Commission a written request for hearing within 30 days after the entry of this order; that within 20 days after receipt of such request the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission, for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; that, if no hearing is requested and none is ordered by the Commission, this order shall become permanent on the 30th day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission; and that notice of the time and place for any hearing will promptly be given by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-7505; Filed, June 15, 1970; 8:51 a.m.]

---

[File No. 24B-1565]

## VISUAL INDUSTRIES CORP.

### Order Temporarily Suspending Exemptions, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

JUNE, 10, 1970.

I. Visual Industries Corp. ("Visual"), a Delaware corporation located at 19 Strathmore Road, Natick Industries Park, Natick, Mass., filed with the Commission on March 20, 1969, a notification on Form 1-A and an offering circular relating to a proposed offering of 100,000 shares of $0.01 par value common stock at $3 per share. These shares were to be offered by the company's officers and directors. The offering was commenced August 5, 1969. On August 22, 1969, Visual entered into a "best efforts" underwriting agreement with Daniel Breslin and Associates, an NASD member, located at 53 Hemlock Street, Needham, Mass. A posteffective amendment was duly filed. A report of sales (Form 2-A) signed by Edward J. Roy, president and treasurer of Visual, was received February 27, 1970, and indicated that the offering was discontinued November 28, 1969, with total sales of 18,500 shares for proceeds of $55,500.

On March 9, 1970, Visual filed a second notification (24B-1713) and statement required by Rule 257 indicating that it proposed to offer 14,833 shares at $3 per share for total proceeds of $44,499. This filing was withdrawn on April 15, 1970.

II. The Commission, on the basis of information reported to it by the staff, has reasonable cause to believe that:

A. The offering circular omits to state material facts necessary in order to make the statements made in the light of circumstances under which they were made not misleading, particularly with respect to the following:

1. The failure to state accurately and adequately the expenses to be incurred and the allocation of proceeds of the offering;

2. The failure to state accurately and adequately the dilution of securities resulting from "gifts" of issuer's securities;

3. The failure to disclose that while proposing to sell to the public at $3 per share, issuer was selling to certain people at $1.50 per share; and

4. The failure to disclose that the employees' "stock option plan" was never intended to be a stock option plan whereby employees would be granted options to purchase shares of issuer's stock at the fair market value of shares of common stock as of the date of such grant, but was a program of granting "bonuses" of shares of issuer's common stock to employees for no consideration.

B. The issuer has violated the terms and conditions of the Regulation A exemption in the following respects:

1. The notification fails to disclose by amendment during the period in which it was being processed the sale during that period of unregistered shares as required by Item 9;

2. In connection with the response to Item 10 in the notification, issuer failed to disclose that it intended to issue free stock to employees;

3. The notification failed to disclose the names of all promoters of Visual; and

4. The Form 2-A report filed by Visual in connection with this offering understated costs and failed to set forth accurately and adequately the application of proceeds of the offering as required by Rule 260.

C. The issuer and underwriter through the use of this offering circular and in the distribution of these securities have engaged in transactions, practices and a course of business which would operate and did operate as a fraud and deceit upon the purchasers of such securities in violation of section 17(a) of the Securities Act of 1933, as amended.

III. It appearing to that Commission that it is in the public interest and for the protection of investors that the exemption of the issuer under Regulation A be temporarily suspended:

*It is ordered*, Pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption of the issuer under Regulation A be, and hereby is, temporarily suspended,

*It is further ordered*, Pursuant to Rule 7 of the Commission's rules of practice, that the issuer file an answer to the allegations contained in this order within 30 days of the entry thereof.

Notice is hereby given that any persons having any interest in the matter may file with the Secretary of the Commission a written request for a hearing within 30 days after the entry of this order; that within 20 days after receipt of such request the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; and that notice of the time and place for said hearing will be promptly given by the Commission. If no hearing is requested and none is ordered by the Commission, the order shall become permanent on the 30th day after its entry and shall remain in effect unless it is modified or vacated by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-7506; Filed, June 15, 1970; 8:51 a.m.]

## CUMULATIVE LIST OF PARTS AFFECTED—JUNE

**The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during June.**

### 3 CFR

PROCLAMATIONS:
- 3986 — 8861
- 3987 — 8863
- 3988 — 8997

EXECUTIVE ORDERS:
- 10626 (superseded by EO 11532) — 8629
- 10945 (see EO 11533) — 8799
- 11532 — 8629
- 11533 — 8799
- 11534 — 8865
- 11535 — 9809

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:
- Letter of June 2, 1970 — 8631

### 5 CFR

- 213 — 8801, 9243, 9818

PROPOSED RULES:
- 2400 — 8947
- 2402 — 8947

### 7 CFR

- 26 — 9243
- 27 — 8531
- 28 — 8531, 8532
- 51 — 8652, 9813
- 61 — 8532
- 68 — 8535
- 295 — 8801
- 301 — 9103, 9104
- 319 — 9105
- 331 — 9010
- 775 — 8537
- 811 — 8915
- 845 — 9010
- 871 — 9105
- 905 — 8916
- 908 — 8471, 8652, 8802, 9011, 9821
- 910 — 8653, 8739, 8867, 9243
- 915 — 9244
- 917 — 8802
- 922 — 8916
- 923 — 8472
- 944 — 9011, 9822
- 953 — 9105
- 958 — 8653
- 965 — 8867
- 966 — 9011
- 980 — 9012
- 1402 — 8537
- 1421 — 8537, 8539, 8867, 8873, 9012, 9106, 9823
- 1427 — 9106
- 1481 — 8472
- 1872 — 8803

PROPOSED RULES:
- 52 — 8499, 9285
- 714 — 8569
- 777 — 9016
- 911 — 9287
- 917 — 8572
- 981 — 9288
- 991 — 9859
- 1005 — 9066
- 1007 — 8748
- 1033 — 9066
- 1034 — 9066
- 1035 — 9066
- 1036 — 9888

### 7 CFR—Continued

PROPOSED RULES—Continued
- 1041 — 9066
- 1136 — 9291

### 8 CFR

- 100 — 9246
- 223 — 9246
- 238 — 9246

### 9 CFR

- 2 — 8472
- 76 — 8543, 3653, 8731, 8819, 8874, 8917, 8999, 9246, 9247, 9823
- 78 — 8918

PROPOSED RULES:
- 76 — 8571
- 109 — 8945
- 113 — 8945
- 114 — 8945
- 121 — 8945
- 301 — 9291
- 303 — 9291

### 10 CFR

- 30 — 8820
- 161 — 8820

PROPOSED RULES:
- 20 — 8670
- 50 — 8594

### 12 CFR

- 204 — 8654
- 290 — 8919
- 292 — 8920
- 511 — 8544
- 589 — 8879

PROPOSED RULES:
- 204 — 8892
- 545 — 9019

### 13 CFR

- 121 — 8473

PROPOSED RULES:
- 107 — 8672
- 121 — 8504

### 14 CFR

- 39 — 8544, 8736–8738, 8821, 8924, 9106
- 71 — 8474–8476, 8654–8656, 8738, 8739, 8879, 8880, 8925, 8926
- 73 — 8544, 8926, 8927, 9247
- 75 — 8926, 9247
- 97 — 8656, 8821, 8999, 9107
- 167 — 8544
- 213 — 8880
- 298 — 8927
- 302 — 9823
- 385 — 9107

PROPOSED RULES:
- 23 — 8665
- 25 — 8665
- 27 — 8665
- 29 — 8665
- 39 — 9216, 9217, 9859
- 71 — 8500, 8501, 8666, 8667, 8748, 8750, 8945, 9292

### 14 CFR—Continued

PROPOSED RULES—Continued
- 73 — 8750
- 91 — 8665, 9217
- 207 — 9218
- 208 — 9218
- 212 — 9218
- 214 — 9218
- 221 — 9860
- 249 — 9218
- 295 — 9218
- 399 — 9218

### 15 CFR

- 368 — 9109
- 369 — 9112
- 370 — 8882, 9113
- 371 — 9119
- 372 — 9127
- 373 — 9136
- 374 — 9154
- 375 — 9156
- 376 — 9166
- 377 — 9173
- 378 — 9177
- 379 — 8882, 9178
- 385 — 9184
- 386 — 9185
- 387 — 9198
- 388 — 9200
- 389 — 9204
- 390 — 9206
- 399 — 9207
- 1000 — 9248

PROPOSED RULES:
- 7 — 8943, 8944

### 16 CFR

- 13 — 8657, 8658, 8883–8885, 9851–9853
- 501 — 9108

PROPOSED RULES:
- 302 — 8503

### 17 CFR

PROPOSED RULES:
- 270 — 9860

### 18 CFR

- 2 — 8927
- 141 — 8821
- 154 — 8633
- Ch. V — 8553

PROPOSED RULES:
- 601 — 8942
- 602 — 8942

### 19 CFR

- 12 — 8885
- 26 — 9251
- 30 — 9251
- 31 — 9251
- 32 — 9251
- 33 — 9251
- 53 — 9251
- 103 — 9254
- 111 — 9261
- 114 — 9262
- 146 — 9268
- 147 — 9271
- 153 — 9271

## 19 CFR—Continued

PROPOSED RULES:

4 8829
5 8829
6 8829
8 8741, 8829
14 8741
15 8741, 8829
16 8741
17 8741
18 8829
22 8741
23 8741
24 8499
30 8741
31 8741
32 8741
53 8741
54 8741

## 20 CFR

404 8928, 9277, 9278
405 9278
422 9278
614 9000

PROPOSED RULES:

602 9016

## 21 CFR

1 8550, 8928
3 9000
19 9854
120 8476, 8885, 8929, 8930, 9207
121 8551, 8552, 8930, 9001, 9208, 9855
130 9001
135b 9856
141b 8931
144 9855
146 9209
146b 8931
149b 8552
320 8822

PROPOSED RULES:

1 9214
18 8584
120 9214
130 9014, 9215
144 9215

## 22 CFR

41 8659
131 8887

## 24 CFR

200 8822
1914 8732
1915 8733

PROPOSED RULES:

15 9215
41 8586

## 25 CFR

46 8822
221 8886

## 26 CFR

1 8477, 8932
13 8823
20 8480
25 8480
147 8553
154 8886

PROPOSED RULES:

1 8569
151 9015

## 28 CFR

0 9857

## 29 CFR

604 8935
606 8935
689 9108

## 30 CFR

PROPOSED RULES:

75 8569

## 31 CFR

PROPOSED RULES:

10 8892

## 32 CFR

513 8888
578 9279
591 8554
592 8556
593 8557
594 8558
595 8566
596 8565
597 8566
601 8566
602 8566
603 8566
606 8566
608 8566
612 8567
888d 9811
1001 8659

## 32A CFR

BDSA (Ch. VI):
BDSA Reg. 2, Dir. 13 9108
FRS (Ch. XV):
Reg. V 9012

## 33 CFR

110 8823
117 9003
204 9279
207 8481
401 8936

PROPOSED RULES:

117 8500, 8664, 9017–9019

## 36 CFR

11 8734

## 38 CFR

21 9812

## 39 CFR

126 9279
153 8481

PROPOSED RULES:

113 8892

## 41 CFR

1–1 8482
1–2 8485
1–16 8485
3–3 9004
8–16 8485
8–95 8485
9–4 9006
9–5 9006, 9007
9–7 9006
9–9 9006

## 41 CFR—Continued

60–20 8888
101–17 8485
101–20 9007
101–43 9280
101–44 9280
101–45 9280
101–47 8486

## 42 CFR

57 8487
79 9282
81 8889, 8938, 9008

PROPOSED RULES:

34 9292
37 8584
52a 8662
78 9860
81 8499, 8748, 8892

## 43 CFR

Ch. II 9502

PUBLIC LAND ORDERS:

2618 9857
4582 (modified by PLO 4837) 8824
4836 8824
4837 8824
4838 8824
4839 8825
4840 8825
4842 9857
4843 9857
4844 9857
4845 9857

## 45 CFR

234 8990
249 8732

PROPOSED RULES:

204 8780
205 8780
206 8784
208 8785
233 8786
235 8789
246 8789
248 8790
249 8793
251 8664

## 46 CFR

309 8659
310 8553, 8890

PROPOSED RULES:

137 8945
540 8750

## 47 CFR

0 8567, 8825
1 8825, 9008
2 8634, 8644, 8828
18 8644
73 8650, 8825
83 8567
91 8939

PROPOSED RULES:

67 8502
73 8670, 8834, 8946
74 8671

## 49 CFR

1 9857
177 9284
310 8553, 8890
389 9209

## 49 CFR—Continued

Page

571 ..... 9211
1033 ..... 8735, 9213, 9858
1048 ..... 9213
1056 ..... 8890
1307 ..... 8736

PROPOSED RULES:

170–189 ..... 8831
172 ..... 8502
173 ..... 8502, 8946
190 ..... 8833
192 ..... 8833, 9293
393 ..... 9859
567 ..... 9293
575 ..... 8667, 8832
1048 ..... 8594

## 50 CFR

17 ..... 8491, 8736, 8941
280 ..... 8890

# FEDERAL REGISTER

VOLUME 35 • NUMBER 116

Tuesday, June 16, 1970 • Washington, D.C.

PART II

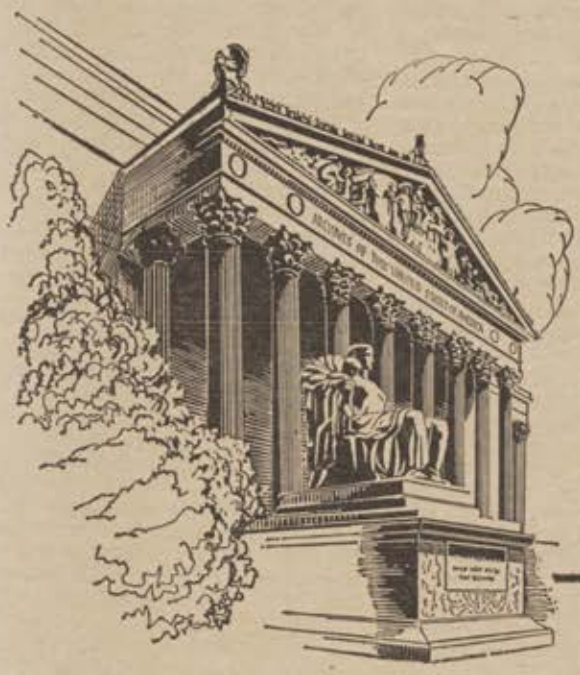
## DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

•

## Milk in Eastern Ohio-Western Pennsylvania Marketing Area

Recommended Decision



# DEPARTMENT OF AGRICULTURE

## Consumer and Marketing Service

## [ 7 CFR Part 1036 ]

[Docket No. AO-179-A32]

## MILK IN EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

### Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 15th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The above notice of filing of the decision and opportunity to file exceptions thereto are issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

PRELIMINARY STATEMENT

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Cleveland, Ohio, on September 9–12 and 15, 1969, pursuant to notice thereof which was issued August 14, 1969 (34 F.R. 13419).

Pursuant to notices thereof which were issued November 26, 1969 (34 F.R. 19078), January 8, 1970 (35 F.R. 435) and January 29, 1970 (35 F.R. 2527), this hearing was reopened on January 20, 1970, at Clayton, Mo. Such reopening was for the limited purpose of considering the use of an economic formula for changing simultaneously the Class I prices under all Federal milk orders, including the Eastern Ohio-Western Pennsylvania order. The economic formula issue will be considered in a separate decision.

The material issues on the record of the September 1969 hearing relate to:

1. Class I price;
2. Expansion of the marketing area;
3. Pooling standards for supply plants;
4. Definition of distributing plant;
5. Provisions relating to diverted milk;
6. Definition of producer-handler;
7. Pooling exemption for a handler's own production;
8. Classification of certain milk products;
9. Direct delivery differentials;
10. Price for milk used to produce cottage cheese, yogurt, and sour cream;
11. Price for milk used to produce butter;
12. Location adjustments on other source milk;
13. Producer-settlement fund reserve; and
14. Seasonal production incentive plans.

Issue No. 1 was considered in a decision issued December 5, 1969 (34 F.R. 19507). This decision deals with the remaining issues.

FINDINGS AND CONCLUSIONS

The following findings and conclusions are based on evidence presented at the hearing and the record thereof:

2. *Expansion of the marketing area.* Certain territory in Ohio and West Virginia not now included in any Federal order marketing area should be a part of the Eastern Ohio-Western Pennsylvania marketing area. The Ohio areas are Holmes County, Ashland County except Ruggles, Troy, and Sullivan Townships, the townships of Harrisville, Westfield, and Guilford in Medina County, and the remaining unregulated parts of Wayne, Stark, and Lake Counties. The West Virginia areas are Wetzel, Tyler, Doddridge, and Tucker Counties and the remaining unregulated parts of Lewis, Upshur, Randolph, Barbour, Taylor, and Preston Counties.

The addition of this unregulated territory to the Order 36 marketing area was proposed by five cooperative associations in the market. Their proposal to include also the unregulated Ohio townships of Litchfield, Chatham, Spencer, and Homer in Medina County and Ruggles, Troy, and Sullivan in Ashland County is denied.

Six of the 10 West Virginia counties involved in the proposed area expansion are now partially in the marketing area. The regulated portions include the magisterial districts of Grafton in Taylor County, Philippi in Barbour County, and Leadsville in Randolph County, the cities of Buckhannon in Upshur County and Weston in Lewis County, and the town of Kingwood in Preston County.

All Class I sales in these 10 West Virginia counties are by handlers regulated under either the Eastern Ohio-Western Pennsylvania order or the Tri-State order. The proponent cooperatives claimed that a majority of the sales in each county is by Order 36 handlers. A Tri-State handler stated, though, that he and another Tri-State handler have somewhat over 50 percent of the sales in Doddridge County, and nearly 50 percent of the sales in Lewis, Wetzel, and Tyler Counties. Although he opposed all of the proposed West Virginia territory, the handler did not indicate the extent of his sales in the other West Virginia areas under consideration.

In opposing the area expansion, the Tri-State handler contended that such expansion would result in additional Class I sales being made in the Order 36 marketing area by handlers regulated under the Tri-State order. However, he did not show how this might disrupt the orderly marketing of producer milk under either of the orders involved.

The proposed West Virginia territory is an integral part of the sales areas of Order 36 handlers. The Class I sales in the unregulated areas have resulted from the normal extension of distribution routes by Order 36 handlers having sales in the nearby regulated areas. All of the proposed area except Tyler County borders on the present Order 36 marketing area, and Tyler County adjoins two of the counties proposed to be included. As noted, portions of several of the counties to be added are already in the marketing area. Although Class I sales are being made in some of the proposed area by Tri-State handlers, it is concluded that the marketing relationship of the total unregulated territory is essentially with the presently regulated areas in West Virginia. While all fluid milk sales in the territory are by handlers subject to classified pricing under an order, including the proposed territory in the marketing area will insure price parity for all handlers should an unregulated distributor find Class I outlets in this area.

In Ohio, the proposed marketing area expansion would add the eastern part of Lake County consisting of Concord, Leroy, Perry, Madison, and Painesville Townships. The western part of the county is now in the marketing area. All Class I sales in this unregulated territory, which is bordered on three sides by the marketing area and on the other by Lake Erie, are by Order 36 handlers.

All of Stark County except Sugar Creek and Paris Townships is presently in the marketing area. Paris Township is completely surrounded, and Sugar Creek Township nearly so, by the present marketing area. The Class I sales in these townships are by Order 36 handlers:

Ten of the 17 townships in Medina County are now regulated under the order. The townships of Harrisville, Westfield, and Guilford that are proposed to be added are adjacent to the regulated portions of the county and are a part of the sales areas of Order 36 handlers who distribute milk in the regulated townships.

Only a very small part of Wayne County, namely, secs. 1, 2, 3, 10, 11, and 12 of Sugar Creek Township, is now in the marketing area. The Class I sales in this county and in the unregulated county of Holmes are largely by a handler who operates an Order 36 pool plant in Wayne County at Orrville. There are also limited sales in Wayne County by at least one other Order 36 handler. Handlers under the Southern Michigan, Northwestern Ohio, and Columbus orders also have sales in the two-county area.

In Ashland County, excluding Ruggles, Troy, and Sullivan Townships, Order 36 handlers account for about 70 percent of the fluid milk sales there. The remaining sales are by Columbus, Northwestern

Ohio, and Southern Michigan handlers.

The marketing situation just described for Ashland County is different from that depicted at the hearing. At the time of the hearing, about half of the Class I sales in the county were made from an unregulated distributing plant at Ashland in Ashland County. Milk distributed from this plant was received at the plant from dairy farmers and in packaged form from the plant operator's Order 36 pool distributing plant at Akron, Ohio.

Official notice is taken of the commercial fact that (1) the Ashland plant no longer receives milk from dairy farmers or processes and packages milk, and (2) such plant is a distribution point for milk fully regulated under the Eastern Ohio-Western Pennsylvania order.

Class I sales in the Ohio territory proposed herein to be added to the marketing area are largely, and in some areas entirely, by Order 36 handlers. Such territory is an integral part of the sales areas of such handlers. By extending regulation to this territory, the proposed marketing area would more nearly represent the total sales areas of the handlers now subject to the order. In addition, inclusion of this territory would insure price parity for all handlers who now have Class I sales in the area.

For pricing purposes, the Eastern Ohio-Western Pennsylvania marketing area is divided into the Pittsburgh district and the Cleveland-Erie district. All of the present marketing area that is in West Virginia is now included in the Pittsburgh district. The conditions supporting this arrangement are equally applicable to the additional West Virginia territory, which should be included in the Pittsburgh district. The Ohio areas proposed to be added are adjacent to those parts of the marketing area now included in the Cleveland-Erie district. It is reasonable that the new Ohio areas likewise be in the Cleveland-Erie pricing district.

Marketing conditions do not warrant the addition of Litchfield, Chatham, Spencer, and Homer Townships in Medina County and Ruggles, Troy, and Sullivan Townships in Ashland County to the Order 36 marketing area.

The inclusion of these areas would cause an unregulated plant at Oberlin, Ohio, from which sales are made in these townships to become fully regulated under the order. The proponent cooperatives contended that this distributor has a competitive advantage relative to regulated handlers since the cost of his Class I milk is not the order Class I price but rather approximates the Order 36 uniform price.

The operator of the Oberlin distributing plant opposed the inclusion of the seven townships. In addition to his sales in these areas, the distributor also sells milk in unregulated areas in Lorain, Huron, and Erie Counties. The plant is a partially regulated distributing plant under Order 36 on the basis of its limited route disposition in the regulated part of Medina County.

The Oberlin distributor's annual Class I utilization is about 80 percent of receipts. He pays the 12 dairy farmers supplying him the Order 36 uniform price plus whatever premiums Cleveland handlers are paying. He also offers a 10-cent per hundredweight quality bonus and deducts 15 cents per hundredweight for hauling.

At least two Order 36 handlers compete with this distributor in the four Medina County townships that the distributor opposes. The regulated handlers presented no testimony concerning the proposed extension of the area to include these townships.

There appears to be no compelling need at this time for adding the three Ashland County townships and the four Medina County townships to the marketing area. The proposal is denied.

3. *Pooling standards for supply plants.* Milk that is diverted to a supply plant from other plants should not be considered a part of the supply plant's receipts for the purpose of determining if the supply plant has met the prescribed shipping requirements for pooling. Presently, such diverted milk is included in the plant's receipts for this purpose.

This change in the pooling standards was proposed by several cooperatives, including the operator of a pool supply plant at Orrville, Ohio, that serves as a major surplus disposal outlet for the market. This plant also receives surplus milk from other markets, on an agreed upon Class II utilization, for manufacturing. Proponents claimed that the present order provisions cause unnecessary movements of milk from this plant for the purpose of assuring its qualification as a pool plant.

Proponents cited the milk movements that need to occur during the months of September, October, and November, for example, when the 50 percent shipping percentage applies. For each 100 pounds of milk that is not used at pool distributing plants and is diverted to a supply plant for manufacturing, 50 pounds of milk must be shipped from the supply plant to distributing plants. As an indication of the size of the problem, proponents stated that the supply plant at Orrville, Ohio, received over 17 million pounds of milk diverted from Order 36 pool plants as surplus during the months of September 1968 through February 1969, the months when the minimum shipping requirements apply.

The proposed change is desirable to assure the orderly disposition of reserve milk supplies in the market that are not needed for Class I use. The Orrville plant serves not only as a supply plant for the market, a function that would in no way be diminished by this order change, but also as an important outlet for reserve milk supplies. If the order were not changed, the plant might well refuse to receive milk diverted from distributing plants so as to not lose its pool plant status. The order tends to encourage movements of milk that are both uneconomic and unnecessary.

The proposed change will not result in dilution of the pool with additional milk for manufacturing purposes. Any milk received at a pool supply plant as milk diverted from another pool plant already will have qualified for inclusion in the pool on the basis of its association with the other pool plant. Also, milk received as a diversion from an other order plant is not included in the pool if the milk is designated for surplus use and priced under the other order. Moreover, the supply plant will not be pooled unless it moves to pool distributing plants the required minimum volume of its regular producer milk supply.

No provision should be made for "system" pooling for supply plants. A handler who operates two pool distributing plants and a pool supply plant in the market proposed an arrangement whereby his supply plant could qualify for pooling on a "system" basis with his distributing plants. The three-plant system, which would be considered for pooling purposes as a single plant operation, would have to meet the pooling standards prescribed for a pool distributing plant in order for each plant in the system to be a pool plant. Presently, a distributing plant qualifies for pooling if during the month it distributes on routes not less than 50 percent (40 percent monthly in April through August) of its total receipts of fluid milk products and distributes on routes in the marketing area not less than 15 percent of such receipts.

Proponent claimed that under his particular operation the proposed pooling arrangement would facilitate a more economical movement of producer milk now associated with his plants. He pointed out that the operations at his distributing plants are confined largely to the processing of Class I products. His Class II products such as cottage cheese and sour cream—cultured items which he claimed are normally asssociated with a fluid milk operation—are processed, on the other hand, at his supply plant. The milk products made at this plant are limited to dips, sour cream, cottage cheese, and half and half, the latter being a Class I product.

The handler pointed out that these cultured products are normally sold through the same outlets as Class I products, and any increase in Class I sales is usually accompanied by additional sales of cottage cheese and sour cream items. He indicated that with the shipping requirements for supply plants, any major increase in receipts at his supply plant to cover increased production of cottage cheese and sour cream necessitates additional shipments of milk from the supply plant to distributing plants, whether or not needed there. Proponent claimed that competitors who have all their milk operations in one plant can meet a similar increased demand for these cultured items without being burdened with offsetting milk movements.

The present pooling standards for supply plants, except for certain modifications proposed herein, continue to be appropriate under the existing marketing conditions. Under these standards, a supply plant qualifies for pooling if not less than a specified percentage of its receipts of approved milk from dairy farmers is moved, either by transfer or diversion, to pool distributing plants. For the months of September, October, and

November, the minimum shipments required are 50 percent of receipts; for all other months they are 40 percent. A supply plant that is pooled in each of the preceding months of September through February automatically qualifies as a pool plant for the months of March through August irrespective of whether it ships any milk to other plants.

These standards provide the necessary assurance that milk associated with pool supply plants will be available to distributing plants for fluid use. Minimum shipments are required at a time when supplies in the market tend to be less plentiful relative to the market's Class I demand. The order recognizes, on the other hand, that the demand for supply plant milk is less during the flush production months, and no shipments to distributing plants are required during a 6-month period.

It is possible that the proposed system pooling arrangement could result in some milk supplies in the market not being made available to distributors for Class I use when needed. In this case, producers would be receiving less than the highest possible returns for their milk since such milk would not be going into available Class I uses. Moreover, the unavailability of milk for fluid use could encourage handlers to obtain outside supplies to carry them over the peak bottling days. This would reduce further the total returns to producers regularly supplying the market.

There is no indication that proponent's supply plant, which has been a pool plant under the order for a substantial period of time, would be unable to remain associated with the market under the present pooling standards. In presently meeting these pooling standards, the plant is demonstrating its function as a source of milk for distributing plants. The handling of reserve milk at this plant, on the other hand, will be facilitated by the proposed change in these standards that was described earlier. Under this change, milk diverted from other pool plants to this plant would not count as a part of the supply plant's receipts in determining if the shipping percentages have been met for pooling.

A further modification in the supply plant pooling standards should be made in recognition of those handlers who may be processing Class I items at their supply plants as well as shipping milk to other plants for fluid use. The handler who proposed system pooling, for example, indicated that he processes half and half, a Class I product, at his supply plant. It is reasonable that any route disposition in the marketing area from a supply plant be counted with the plant's shipments to pool distributing plants in determining the plant's qualification for pooling. Any in-area route disposition of a supply plant is a part of the plant's demonstration of its association with the fluid market and should be recognized for pooling purposes.

A proposal to lower the shipping percentages for a supply plant should not be adopted. Also, a reloading operation on the premises of a supply plant should not be considered a separate operation.

The operator of a pool supply plant sought the latter changes to lessen the amount of milk which he must ship to pool distributing plants to qualify his plant for pooling. He contended that the increasing production of the 130 producers shipping to his plant is making it more difficult for the plant to qualify for pooling during the months of September through February when minimum shipments are required. He suggested that lowering the present shipping percentages of 50 percent for September, October and November and 40 percent for the other months to 40 percent and 30 percent, respectively, would be helpful to his operation. Also, the handler stated that not including in the plant's receipts milk reloaded from farm pickup tankers into over-the-road tankers on the plant's premises would help accommodate his situation. In addition to supplying milk to distributing plants, the handler manufactures several products at his plant.

A major function of the supply plant pooling standards is to insure that handlers who are processing milk and distributing it for sale primarily to consumers in the marketing area can regularly and dependably obtain milk from supply plants to meet their fluid milk requirements. Without such standards, or if minimum shipping requirements are set too low, supply plants could keep milk at their plants for manufacturing when it is to their advantage to do so rather than make the milk available to distributing plants for fluid use.

The present shipping percentages were determined, at the time Order 36 was greatly expanded, to be appropriate for this market. There is no indication of changed conditions throughout the market that make such shipping requirements inconsistent with the fluid milk needs of distributors.

The order defines a reload point as a location at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering a plant. Further, a reload operation on the premises of a plant is considered under the order as a part of the plant operation. This latter provision is necessary since it is often difficult from an administrative standpoint to be assured that the reload operation is in all instances and respects separate from the plant operation. The contemplated reloading operation of the proponent handler would appear to present this very problem of being able to distinguish at all times, and with the necessary certainty, between his reload operation and his plant operation. This situation requires that the handler's proposal be denied.

4. *Definition of distributing plant.* The proposed modification of the distributing plant definition should not be adopted.

The order defines a "distributing plant" as a plant in which either milk approved by a duly constituted health authority for fluid consumption or filled milk is processed or packaged and from which there is route disposition in the marketing area during the month. Several cooperatives suggested that a plant not qualify as a "distributing plant" unless its in-area route sales exceed 5,000 pounds per month. This change would exempt a distributing-type plant with less in-area sales from all regulatory provisions of the order. Proponents indicated that such plants should probably be required to file reports, however.

Proponents claimed that the administration of the order would be facilitated by excluding from regulation the very small distributors in the market. It was expected that the exemption would apply in most cases to persons in the market commonly referred to as "juggers". These are dairy farmers who retail their own production through outlets on the farm premises.

"Juggers" presently qualify in most cases as producer-handlers. As producer-handlers, such persons are exempt from all but the reporting provisions of the order. Inasmuch as the record is not clear as to what administrative problems are actually being encountered, and thus whether or not the proposed remedy is appropriate, the proposal is denied.

5. *Provisions relating to diverted milk.* Several provisions in the order concerning the regulatory treatment of producer milk diverted from one plant to another should be modified.

Several cooperatives proposed that the manner in which "over-diversions" are determined be changed. The order now provides that during the months of August through March the quantity of milk of any producer diverted to nonpool plants that exceeds that delivered to pool plants shall not be deemed to have been received by the diverting handler and shall not be producer milk. The cooperatives asked that this limit on diversions be measured in terms of days of delivery of a producer's milk rather than in terms of the pounds of milk delivered to plants.

Proponents claimed that it is difficult to know in advance how much milk a farmer will produce each month. It is not uncommon, for instance, for production to increase during the month because of cows freshening or an expansion of the herd. Proponents contended that sometimes they have difficulty in assuring that a producer's milk is not diverted to nonpool plants in excess of the quantity limit specified in the order. It is more practical and simpler, they claimed, to direct milk to various plants when milk movements can be considered in terms of days of delivery.

For the reasons set forth by proponents, the proposed change is reasonable and should be adopted. However, the diversion limits should be expressed in terms of days of production rather than days of delivery. This will accommodate the possible situation where a producer's milk might be picked up at his farm on a daily basis part of the month and on an every-other-day basis the rest of the month.

The order also prescribes certain diversion limits for determining the location at which diverted milk shall be priced. As

suggested by the cooperatives, these limits, which are now stated in terms of the quantity (or pounds) of a producer's milk, likewise should be expressed in terms of days of production. This, again, will assist the cooperatives in moving producer milk to outlets within the desired limits.

The shrinkage provisions should be changed so that a pool plant operator receiving milk diverted from another pool plant is allowed Class III shrinkage on such milk of up to 2 percent of the milk if he purchases it on the basis of farm weights. (This discussion reflects the proposal described later to change the order's classification system from two classes to three classes with the present "Class II" being redesignated as "Class III".) Presently, the Class II shrinkage on such milk is limited to 1.5 percent of the milk. The proprietary handler diverting the milk is allowed 0.5 percent Class II shrinkage on the milk. This change was proposed by a handler who purchases diverted milk on the basis of farm weights.

This proposed arrangement is similar to the present shrinkage allowance on milk which a pool plant operator purchases from a cooperative association that is acting as a handler for bulk tank milk. In both situations, the handler who physically receives the milk at his plant is purchasing milk that moves directly from the farm to his plant. The milk that is diverted from a pool plant has not actually moved through the plant where some shrinkage from handling would otherwise have occurred. Thus, there is no reason to treat the two situations differently as to the division of shrinkage on this milk received from producers.

The order should be modified to make it clear that in all handling arrangements, whether they involve movements of milk by a cooperative that is a bulk tank handler or diversions of milk by cooperatives or proprietary handlers, the operator physically receiving milk at his plant directly from producers' farms should be allowed up to 2 percent Class III shrinkage on the milk if it is purchased on the basis of farm weights. If the milk is purchased on some other basis, then the 1.5 percent shrinkage allowance should apply.

Under any of these arrangements, the handler that picks the milk up at the farm should not be allowed any shrinkage on the milk if the operator physically receiving the milk at his plant buys the milk on the basis of farm weights. If some other weight basis is used, the handler picking up the milk should be allowed up to 0.5 percent Class III shrinkage on the milk as measured by the farm weights.

With these changes it is desirable that the order be clear as to what milk is producer milk of which handlers and who is to be the reporting handler for the milk. The "producer milk" definition and the reporting provisions have been modified for this purpose.

The proposal to permit a cooperative association to divert producer milk between pool plants of other handlers and collect from the receiving handler class prices for the milk should not be adopted. Cooperatives proposed this change in the order to accommodate their methods of supplying handlers with their daily requirements of milk.

Proponents stated that in meeting the demands of handlers a cooperative may supply a distributing plant both from its supply plant and by moving to the distributing plant milk that is normally associated with another pool distributing plant. Proponents pointed out that under the present order provisions, however, these two types of movements involve different accounting and payment procedures for the cooperative and the distributing plant. For that milk which the cooperative moves from its pool supply plant to the distributing plant, the cooperative is the handler responsible for reporting to the market administrator the classification of the milk and settling with the pool at the class prices. The distributing plant operator is required to pay the cooperative not less than the applicable class prices for such milk.

In the other case, proponents stated, the cooperative is the handler for bulk tank milk and directs the milk from the farm to the distributing plant where needed. The plant operator who receives the milk is the handler responsible for reporting the classification of the milk to the market administrator and settling with the producer-settlement fund at the class prices. He is then required to pay the cooperative not less than the uniform price for the milk.

Proponents claimed that handlers who receive milk from a cooperative under both arrangements in the same month object to this mixture of accounting and payment methods.

From the standpoint of order administration, it is by far preferable to require that the plant operator who receives and processes the milk of producers be the handler who is principally responsible for all reporting and payment arrangements attendant to such milk. The order now provides for this under most circumstances. The plant operator must report monthly to the market administrator his receipts of milk from producers and the utilization of such milk. In paying for the milk at the order's class prices, the handler makes settlement with the producer-settlement fund directly through the market administrator. He then pays producers or cooperatives for milk delivered from the farm at the uniform price. Under this arrangement, any problems concerning a plant operator's order obligations involve from an administrative or enforcement standpoint only the operator and the market administrator.

In contrast, the accounting and payment arrangements which the cooperatives desire under the proposed diversion provision result in a less direct application of the order to those plant operators who in the end use the milk and are ultimately responsible for the payment of it. The cooperative, in submitting its monthly report to the market administrator, would need to first obtain from each plant operator the utilization of the milk diverted to plants. Any difficulty in obtaining adequate information from a handler affects the cooperative's ability to submit a proper report relative to the milk it delivers to all handlers. Similar complexities arise under this arrangement when verification of handlers' receipts and utilization require audit adjustments. Each audit adjustment of each handler receiving diverted milk from a cooperative must result in an adjustment of the cooperative's obligation to the producer-settlement fund.

It is recognized that the accounting and payment arrangement desired by proponents now applies in the case of milk which is moved from a cooperative's supply plant to distributing plants, including some which is moved by diversion. Thus, to the extent that cooperatives are operating pool supply plants, the more circuitous approach to order application does come into play in this market. However, adoption of the proposal would no doubt expand considerably this less desirable arrangement. The benefits of having the milk processor be the respnosible handler tend to outweigh any inconvenience that handlers may be experiencing when accounting and paying for milk received under varied circumstances. The proposal, therefore, is denied.

6. *Definition of producer-handler.* No change should be made in the definition of a producer-handler.

Under the order, a producer-handler is a person who operates a dairy farm and a distributing plant and whose receipts at the plant are limited to his own production and fluid milk products from pool plants. To remain qualified as a producer-handler, the person must provide proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing and packaging business are the personal enterprise and risk of such person.

A handler proposed that the producer-handler definition be modified to accommodate certain contractual arrangements when a producer-handler leases cows. As proposed, a producer-handler would be able to have his rental payments for the cows based on the current production of each cow. Also, the producer-handler would be able to return a cow to its owner whenever he determined that the cow was unfit for milk production.

The handler maintained that the present producer-handler definition does not preclude these particular arrangements between the lessor and lessee. Because the order has been applied to the contrary, the handler sought at the hearing a clarification of the order in this respect.

The order presently makes no specific reference to leasing arrangements that may or may not be entered into by a producer-handler. However, the specific

inclusion of provisions suggested by proponent would be inconsistent with the intent of the personal enterprise and risk requirement contained in the producer-handler definition.

Producer-handlers, in their capacity as handlers, are not subject to the pricing and pooling provisions of the order. In consideration of this exemption, the order requires that both the production and processing operations of a producer-handler be carried on as his personal enterprise and at his personal risk. Any sharing of this risk would be inconsistent with the basis for the producer-handler's exemption.

If a producer-handler's rental payments for a leased cow are contingent upon the cow's production, the risk of production is shared by the producer-handler and the cow owner. Such risk is shared also under an arrangement permitting the producer-handler the option of returning the cow to its owner whenever he determines that the cow is unfit for production. Under both arrangements, the producer-handler divests himself of at least part of the risk of producing milk which he would otherwise bear if he owned the cows himself.

For instance, if a cow owned by a producer-handler becomes unfit for production because of disease, accident, or death, he has to accept whatever he can get, if anything, for the cow. He also must assume whatever financial burden is involved in getting replacement cows. This normally entails a much greater degree of financial risk than what the producer-handler would have under the leasing arrangement desired by proponent.

Similarly, the degree of financial risk borne by a producer-handler is greater when he must assume all costs associated with his own cows regardless of their level of production. Actually, basing a producer-handler's rental payments on the amount of milk a cow produces is, in essence, merely the purchasing of milk from another dairy farmer. This is clearly contrary to the basis on which producer-handler exemption from pooling is granted.

For these reasons, the proposal to change the producer-handler definition is denied.

7. *Pooling exemption for a handler's own production.* A regulated handler's own production should continue to be pooled with the milk of other producers.

A group of milk handlers proposed that a handler's own production be exempt from pooling. In computing his net pool obligation, the handler's production would be subtracted from each class pro rata to the handler's total utilization of his own production and receipts at his plant from other producers.

The dealers contended that a handler should not have to share with other producers the returns from the Class I sale of his own production since he is the person who has created through his own distribution efforts the Class I outlet for the milk. Of the 84 dealers in the group, six or seven were described as possibly being affected by this proposal.

A handler who produces milk that is received at a pool plant, even though the plant is his own, has no different position in the regulated market with respect to such milk than does a dairy farmer whose milk is likewise received at such pool plant. Both are producers under the order and both are producing milk for the Class I market. There is nothing to distinguish the handler's production in a way that would warrant its not being priced and pooled in the same manner and under the same rules as other producer milk is priced and pooled.

Exempting a handler's production from pooling would permit him to have a preferential Class I market for his production that would not be available for other producers. The purpose of the marketwide pooling arrangement under the order is to have all producers in the market share equitably in the higher-valued Class I sales and also in the burden of the lower-valued reserve milk supplies normally associated with a Class I market. The handler's proposal, however, would set aside a part of the Class I market for the handler's own production and the returns from the sale of his milk would accrue to him only.

Proponents incorrectly contemplate through their proposal that the handler whose milk is exempt from pooling would share with other producers the burden of the reserve supplies. This is on the basis that his own production would receive the same pro rata utilization that would apply to all producer milk at his plant. The handler's production would not receive the same treatment as all producer milk in the market, however, unless the handler's Class I utilization approximated the average for the market. Relatively small handlers, and it is they who are seeking this change, usually have essentially a Class I operation. In their case, the exempt production would be nearly all Class I milk.

8. *Classification of certain milk products.* No change should be made in the present manner of classifying milk shake mixes. Such products containing less than 12 percent total milk solids are now classified as Class I products. Milk shake mixes with a higher milk solids content are Class II items. This classification scheme recognizes the two general uses of milk shake mixes. Mixes with the lower solids content are usually distributed to consumers for consumption in fluid form. Milk shake mixes with the higher solids content are usually sold to commercial establishments for further processing through freezing units.

Several cooperatives proposed that the 12 percent milk solids factor used for classifying milk shake mixes be changed to 15 percent. Thus, any milk shake mix containing less than 15 percent total milk solids would be a Class I product.

Proponents claimed that this change would facilitate the administration of the order's classification provisions. They stated that it can be difficult at times to differentiate between milk shake mix and chocolate milk since the milk solids content of chocolate milk may be 12 percent or more of the product. In this situation, proponents contended, chocolate milk, which is a Class I product, could be claimed by a handler to be a chocolate flavored milk shake mix, and thus a Class II product.

A number of handlers opposed any increase in the present 12 percent milk solids factor. They maintained that the present classification of milk shake mixes permits the production of a mix for commercial freezing that is competitive pricewise with imitation milk shake mixes and with milk shake mixes priced at the manufacturing price level. Opponents claimed that a higher milk solids requirement for Class II milk shake mixes could jeopardize their present outlets for such products.

The situation described by proponents does not warrant any change at this time in the manner of classifying milk shake mixes. Should there develop a more positive demonstration that the intent of the present classification provisions is being eroded, a further review of this matter may be necessary at a later time.

In conjunction with their proposed classification change for milk shake mixes, the cooperatives proposed that the "fluid milk product" definition be changed in line with what they had recommended at an earlier hearing on a proposed merger of five Ohio orders. A revision of this definition is appropriate for the purpose of making clear that only those items that are designated in the order as Class I products are considered as "fluid milk products." This is consistent with the current application of the term "fluid milk product" in the pool plant and transfer provisions where this term has particular significance.

A number of handlers proposed that the classification of milk products be based in part on the solids content of the product. They suggested that any product with less than 18 percent total solids be classified as a Class I product. Products with a higher total solids content would be classified in a lower class. Under their proposal, the order would specifically designate as Class I products those products now named in the order as Class I items.

Proponents claimed that the classification of products that have a "semi-liquid" consistency should be based on their total solids content. They contended that basing a product's classification on just the milk solids content does not take into account additional product ingredients, such as stabilizers and sweeteners, that affect the product's consistency. A total solids content of 18 percent was described as properly differentiating between those products that should be considered as fluid milk products, and thus as Class I items, and those products that should be considered as manufactured items with a lower classification.

No provision should be made at this time for classifying products on the basis of solids content. The handlers' proposal as explained at the hearing goes considerably beyond the scope of their proposal that was set forth in the hearing notice. The published proposal was limited to basing the classification of just

milk shake mix on the total solids content rather than on the milk solids content as the order now provides. Any classification scheme that incorporates the use of a solids percentage level for distinguishing between different classes of milk products warrants a thorough exploration of the issue at a hearing after adequate public notice. These conditions were not met at this hearing.

A handler's proposal to designate as a Class II product a milk product which he sells under the trade name of "Instant Breakfast" should not be adopted. The handler makes this product from milk, additional nonfat milk solids, and various nonmilk ingredients, including flavoring. It is marketed in liquid form for consumption in such form.

The handler claimed that "Instant Breakfast" competes primarily with similar products in dry or liquid form that are made by firms not covered by order regulation. Proponent contended that because of this competition the product should be a Class II product. Moreover, he contended, the relatively high 22 percent total solids content of "Instant Breakfast" distinguishes this product for classification purposes from other products defined as fluid milk products.

The product which proponent is marketing as "Instant Breakfast" is a form of a flavored milk product with added nonfat milk solids. The order now defines flavored milk and flavored milk drinks as fluid milk products and classifies them as Class I. This product is in the same form and is intended for the same use as other flavored fluid milk products. It is marketed in the same package and in the same trade channels as other flavored fluid milk products. Likewise, the product is consumed in liquid form. Such consideration of the use and form of "Instant Breakfast" is consistent with the Act which states that an order shall classify milk "in accordance with the form in which or the purpose for which it is used."

The Class I price serves to assure an adequate supply of high quality milk for fluid uses. Milk used in any product that is consumed as a beverage thus should make its proportionate contribution to the producer price level that induces a milk supply. Therefore, returns to producers for milk used in "Instant Breakfast" should be the same as for milk used in other flavored fluid milk products.

9. *Direct delivery differentials.* Milk delivered directly from producers' farms to pool plants in Cuyahoga County, Ohio, and Allegheny County, Pa., should not be subject to a special "direct delivery" differential.

Several cooperative associations proposed that producers whose milk is delivered directly from their farms to pool plants in these two counties receive an additional 5 cents per hundredweight over the uniform price. The differential would apply to a producer's total monthly production if at least two-thirds of his milk were delivered to pool plants in Allegheny and Cuyahoga Counties. The differential would apply also on milk delivered to plants in the two counties by diversion from other pool plants.

The effect of this proposal on handlers who operate plants in the two counties would be to increase their cost of producer milk used in each class 5 cents per hundredweight over the applicable class prices.

Cuyahoga County, which includes Cleveland and the surrounding metropolitan area, encompasses the largest concentration of population in the Ohio portion of the marketing area. Similarly, Allegheny County, in which Pittsburgh is located, encompasses the main metropolitan area in the Pennsylvania part of the marketing area.

About one-half of the Class I milk of Order 36 handlers is associated with pool plants in the two counties. Gross Class I use in the market totaled 2,301 million pounds in the July 1968–June 1969 period. Of this, 567 million pounds were handled by Cuyahoga County plants; Allegheny County plants handled 580 million pounds.

With respect to the proposed differential for Cuyahoga County, proponents claimed that the milk delivered to plants in that area involves higher hauling costs than does milk delivered to other outlets in the Ohio portion of the marketing area. Proponents cited hauling costs from the outlying Akron and Orrville, Ohio, areas to Cuyahoga County plants averaging 5 to 6 cents per hundredweight more than for deliveries to pool plants located in the outlying areas. The higher charges were explained in terms of longer hauling distances, traffic congestion in the Cleveland metropolitan area, and the incentive needed to move milk past the outlying consuming centers of Lorain, Akron, Canton, and Youngstown. It was contended that since deliveries to plants in other localities bear a lesser hauling cost, members of the cooperatives resist designation as suppliers for Cuyahoga County plants.

Proponents indicated that the need for the proposed direct delivery differential has become greater with the growing concentration of bottling operations in Cuyahoga County, which has resulted primarily from plant closings in outlying areas. With the shifting of processing operations to plants in Cuyahoga County, there has been an accompanying demand for increased producer deliveries to that area.

Support for a direct delivery differential at Allegheny County plants was related to the closing of country receiving stations in recent years and consequent greater length of haul from farms to processing plants. A witness cited lesser average hauling rates to alternative outlets in Youngstown, Ohio, and Wheeling, W. Va., than to Allegheny County plants. It was claimed that because of a longer haul and denser traffic a 5-cent differential should be paid by Allegheny County handlers for milk delivered directly from farms to their plants.

Handler testimony on the proposal was largely in opposition to a direct delivery differential. The one handler who acknowledged that he paid some hauling subsidies on milk moved from the Toledo area to his plant in Cleveland stated that the situation at his Pittsburgh plant is different and that no special incentive is needed there to secure milk. Other handlers in the Cleveland area maintained that no direct delivery differential for Cuyahoga County is needed and that they are not paying any hauling subsidy. Pittsburgh area handlers also generally denied that there are any hauling subsidies being paid or that there is any need for such an incentive to either haulers or producers for direct deliveries.

The evidence of this record does not indicate a milk procurement problem for handlers in Allegheny and Cuyahoga Counties that requires a special incentive to induce the delivery of milk directly from farms to plants in those areas. Handlers in the two counties are able to obtain adequate supplies under the present pricing structure for the market. The limited hauling subsidies being paid to get milk delivered to plants in these two counties are not a sufficient basis for the proposed direct delivery differential.

The marketing situation presented by proponents is not a matter of plants in Cuyahoga and Allegheny Counties being unable to attract sufficient milk for their Class I needs, but rather a case of some producers being unable to find Class I outlets at the same hauling cost as some other producers. This situation, of course, fosters discontent among neighboring producers when some must deliver their milk to more distant plants than others. Cooperatives have found this to be a particularly difficult problem when, in marketing the milk of their members, they must assign producers to various plants at different hauling costs.

Nevertheless, cooperatives in the market are regularly supplying plants in the two counties as well as plants in the outlying areas. To the extent that some equalization of hauling costs among individual members is considered necessary by cooperatives, the cooperatives are paying haulers from organizational funds.

Proponents stressed that the proposed direct delivery differential is necessary to continue the movement of milk past outlying consumption centers to plants in Cuyahoga and Allegheny Counties. It is not evident, however, that the option to producers is merely one of shipping milk to other cities in the marketing area as opposed to shipping to plants in the two counties, as proponents' testimony would imply. Dairy farmers cannot obtain the higher Class I returns in a fluid market unless they find a Class I outlet for their milk. As indicated, pool plants in Cuyahoga and Allegheny Counties handle about one-half of the Class I milk in the Order 36 market. Producers desiring to share in the fluid sales of this market will have to incur those hauling costs necessary to get their milk to Class I outlets, which for many producers will be in Cuyahoga and Allegheny Counties.

For many years, distributing plants and receiving stations were relatively numerous and producers seldom had to ship their milk any great distance. More recently, the consolidation of receiving

and processing operations in large, centrally located facilities has required many producers to move their milk much farther, and at greater hauling cost, in order to continue participating in a Class I market. This does not necessarily warrant the use of a direct delivery differential as proposed by cooperatives.

Differences in hauling costs do exist depending on the distance of the farm from the consuming center. The difference in net returns to producers in the market should reflect the relative values of milk supplies at various locations. No differential pricing now exists within the main supply area except for the 10-cent differential between the Pittsburgh and Cleveland-Erie districts. Other location differentials under the order apply only at plants beyond 85 miles from principal cities in the marketing area. It is estimated that 80 to 90 percent of the market supply is produced within the area delineated by the 85-mile limit.

If a new location differential structure is needed for this market to reflect different location values on milk, such a change should be based on a specific proposal for hearing.

10. *Price for milk used to produce cottage cheese, yogurt and sour cream.* The price for milk used to produce cottage cheese (including cottage cheese curd), yogurt, and sour cream (including sour cream products such as "dips") should be the basic formula price (Minnesota-Wisconsin manufacturing milk price) for the month plus 10 cents. To implement this, the classification system under the order should provide for three classes rather than two. Class II would apply to the cultured products just named. The present Class II would be redesignated as Class III.

As proposed herein, the present Class II butterfat differential would apply to both Class II milk and Class III milk. No different butterfat value was proposed for the new Class II. The additional charge to handlers for producer milk used in making the proposed Class II items thus would apply only to the skim milk portion of such milk.

Milk used in cottage cheese, yogurt, and sour cream is now classified as Class II and priced at the present Class II price. This price is the basic formula price or a butter-nonfat dry milk formula price, whichever is lower.

Several cooperatives proposed that the new Class II price be the present Class II price plus 20 cents. They maintained that the present Class II price does not represent the full value of producer milk used to make these several cultured products. Handlers claimed in response to the proposal that as long as there are markets nearby where no intermediate class price applies, they will be competitively disadvantaged on the sale of the proposed Class II products.

Handlers in the Eastern Ohio-Western Pennsylvania market rely substantially on producer milk supplies for the production of cottage cheese, sour cream, and yogurt. In the July 1968–June 1969 period, such handlers used over 205 million pounds of milk in making cottage cheese. This was 16 percent of the total milk used in Class II. Handlers also used 10.7 million pounds of milk in sour cream items during the same period. No data were available at the hearing on the amount of milk used in yogurt. From the testimony of handler witnesses, yogurt production in this market at this time is limited.

Of the proposed Class II products, cottage cheese and sour cream in particular constitute an important and continuous outlet for reserve supplies of producer milk. Handlers process these products on a regular basis and demand an adequate supply of high quality milk at all times for such uses. There is little, if any, relationship between the volume of these cultured products made and the amount of reserve milk available in the market, as in the case of butter and nonfat dry milk, for instance. Instead, producers are generally expected to produce sufficient supplies of high quality milk for these Class II products in addition to the Class I requirements of the market. This is undoubtedly due in part to the fact that these cultured items must be made from inspected milk if sold in the marketing area.

Making such milk available to handlers at central points in the market for the proposed Class II uses warrants at least a minimum compensation to producers of 10 cents over the Minnesota-Wisconsin manufacturing milk price. The Class I price should not compensate alone for the costs involved in inducing the necessary supplies for these regular outlets for producer milk. The class price applicable to these cultured products should bear a reasonable portion of these costs.

Other than the local producer supply, there are no dependable sources of inspected milk for Class II use within the normal milkshed for the market. The only nearby milk of the necessary quality is attached to other fluid milk markets surrounding the Eastern Ohio-Western Pennsylvania area and would be available only sporadically to Eastern Ohio-Western Pennsylvania handlers. Inspected milk supplies are usually available from more distant heavy production areas such as in Wisconsin. However, the value of such milk in that area would be expected to be no less than the Minnesota-Wisconsin manufacturing price for ungraded milk. With the additional cost of transporting the milk to the Eastern Ohio-Western Pennsylvania area, the cost of such milk would be in excess of the Class II price adopted herein.

11. *Price for milk used to produce butter.* The present Class II price should continue to apply to milk used in making butter.

A number of handlers proposed that producer milk used for butter production be priced to handlers at something less than the current Class II price. They contended that at a time when the butterfat content of Class I products is averaging less than the butterfat content of producer receipts, handlers should have some price relief on surplus cream that is used in butter. They argued that there should be a Class II "credit" on the skim milk and butterfat contained in such cream of at least 5 cents per pound of butterfat plus the Class II value of the skim milk.

In justifying the proposal the spokesman for the handlers described his own situation. The handler claimed that he is unable to recover from his surplus cream sales to a creamery the Class II price, his order obligation on the cream. He stated that in addition to receiving a price for the butterfat that is lower than what the order provides, he realizes nothing for the skim milk in the cream. He indicated that for the 12-month period of August 1968 through July 1969 he experienced a loss of about $8,640 on the sale of surplus cream.

The total Class II disposition of all Order 36 handlers during the August 1968–July 1969 period was nearly 1,296 million pounds of milk. Of this quantity, a relatively limited amount, 23 million pounds (1.8 percent of the total), was used to produce butter. The spokesman's cream sales for butter production were about 1 percent of all milk disposed of by handlers for butter use. The quantity of cream sales by the other proponents is not stated in the record.

Producer milk not needed for Class I use should be priced at the maximum level that permits the orderly disposition of the milk. Only when there is a definite indication that the order price is not clearing the market of reserve supplies in an orderly manner would there appear to be any justification for reducing the price level.

At a time when consumer preference is for low-fat fluid milk products, the problem of excess butterfat undoubtedly is experienced by other handlers in the market as well as by proponents. The average butterfat test of producer milk in the August 1968–July 1969 period was 3.71 percent. The average test of Class I producer milk was 3.36 percent. Handlers and cooperatives both have surplus butterfat for which they must find an outlet. The record does not indicate that the majority of handlers in the market or cooperatives are experiencing the problems described by proponents. The present Class II price level apparently is not hindering in general the removal of surplus butterfat from the market.

Providing for a lower price for milk used in butter could tend to channel milk into butter production rather than into other available uses that would return more to producers. Adoption of the handlers' proposal under present marketing conditions would return to producers less than the obtainable market value for milk not needed for Class I purposes.

It should be noted that the present Class II price provisions give recognition to prices paid by butter manufacturers. The current Class II price is the lower of the Minnesota-Wisconsin pay price for manufacturing grade milk or a butter-nonfat dry milk formula price. The formula price has been the effective Class II price in this market since October 1968.

The butter-nonfat dry milk price was incorporated in the Class II price provisions in recognition of the possibility that the butter segment of the manufactured

milk industry may be unduly influenced occasionally by certain supply-demand conditions not affecting the remainder of the industry. Using the butter-nonfat dry milk formula price insures that the order surplus price continues to reflect the product values of butter and nonfat dry milk in the event of any unusual divergence in the relationship between such values and the values of other manufactured products reflected in the Minnesota-Wisconsin pay price.

For these reasons, the proposal for a special butter credit is denied.

12. *Location adjustments on other source milk.* The producers' proposal to modify the computation of a handler's pool obligation on certain other source milk should be adopted.

The order provides that a pool plant operator's obligation to the producer-settlement fund shall include a payment for fluid milk products received from an unregulated supply plant if they are allocated to Class I use. The handler's payment is determined by charging him at the Class I price for the milk involved and giving him a credit on such milk at the uniform price. Both prices are adjusted for the location of the unregulated supply plant. The adjustment of the uniform price, though, is limited to not less than the present Class II price. No limitation is applied to the Class I price adjustment.

A similar limitation on the Class I price adjustment should be provided. Otherwise, the Class I price adjustment could result under certain conditions in the handler receiving a payment from the producer-settlement fund on the Class I milk obtained from the unregulated supply plant. Such payment could result when the location differential at the distant plant is greater than the difference between the Class I price and the lowest class price. In this circumstance, producers under the order, in effect, would be giving the handler a credit sufficient to reduce his cost for the distant milk below its value for manufacturing use at the point of purchase.

A similar situation now exists with respect to the obligation of the operator of a partially regulated distributing plant or an other order plant. In certain cases, the handler's obligation includes a payment to the producer-settlement fund at the difference between the Class I price applicable at his plant and either the uniform price or the present Class II price. For the reasons stated above, the proposed order should provide that the Class I price, as adjusted for location, not be less than the lowest class price in computing the obligation of these handlers.

13. *Producer-settlement fund reserve.* The proposal to increase the operating reserve maintained in the producer-settlement fund should not be adopted. Cooperatives proposed that the amount to be withheld monthly from producers' returns for this reserve should be not less than 5 cents nor more than 6 cents per hundredweight. The present deduction is from 4 to 5 cents per hundredweight of milk.

A reasonable operating reserve is necessary to provide for such contingencies as the failure of a handler to pay his monthly obligation to the producer-settlement fund, or the payment to a handler from the fund for an audit adjustment. Proponents claimed that the current reserve has not been sufficient for the satisfactory functioning of the producer-settlement fund. They indicated that occasional delays in the mail service affect the market administrator's timely receipt of payments by handlers to the producer-settlement fund. This, they claimed, sometimes delays payments from the producer-settlement fund to handlers.

How extensive this problem may be was not revealed on the record. Nevertheless, it is questionable whether increasing the operating reserve is the most satisfactory approach to resolving the problem described by proponents. Any increase in the reserve fund means, of course, tying up additional money of producers.

Consideration should be given, perhaps, to establishing different dates in the order for payments, uniform price announcements, and maybe even reporting as alternative means of meeting the problem. Presently, the order prescribes that the uniform price be announced by the 14th day of the month. Following this, handlers must make payments to the producer-settlement fund by the 16th day, and payments from such fund are to be made by the 17th day. Handlers' payments to producers are to be by the 18th day of the month.

From a practical standpoint, it is possible that all payments cannot physically be made within the period set in the order. However, different payment dates should not be fixed without adequate consideration of this issue at a hearing. No proposal of this nature was offered as a solution to the problem raised by the cooperatives. Nevertheless, the proposal to increase the operating reserve should not be adopted.

14. *Seasonal production incentive plans.* The order should provide for a "Louisville plan" to encourage a more even seasonal pattern of milk production.

Under the Louisville plan adopted herein, a portion of the total value of milk delivered to all handlers, which value is based on handlers' utilization of milk at class prices, would be retained as an obligated balance in the producer-settlement fund. The amount retained would be equivalent to 6 percent of the average basic formula price for the preceding calendar year, but not more than 25 cents per hundredweight. These obligated funds would be accumulated automatically in the producer-settlement fund when settlement is made by handlers for producer milk delivered in each of the months of April, May, June, and July. This obligated balance would be subject to short-term investment, with the interest earned being included in such balance when the monies withheld are included in the uniform price computation.

The uniform price computed for milk delivered in April, May, June, and July, after the retention of the monies indicated above, is expected to be sufficient to stimulate the necessary production of milk during such months for the fluid needs of the market.

The proposed plan also provides that one-fourth of the obligated balance previously established be included in the computation of the uniform price payable to producers for milk delivered during each of the months of September through December. The interest earned on this obligated balance would be included in the computation of the December uniform price.

As has always been the case under marketwide pool orders, the uniform price payable periodically to producers does not reflect any "obligated" balance. However, when certain monies are no longer obligated, the funds involved are merged with other unobligated funds in the producer-settlement fund and are distributed to producers through the announced order uniform prices. In the case of funds retained as a part of the "obligated" balance under the Louisville plan, the order itself would contain provisions for the systematic release of such funds together with whatever interest has been earned during the period in which they are held as an obligated balance.

The Louisville plan is a particular method of distributing to producers the total utilization value of all milk over a multimonth period. A handler's obligation under the order is not affected by the plan.

Minimum blend prices to be paid periodically to producers out of the total use value of milk must be such as will insure a sufficient quantity of pure and wholesome milk each month throughout the year and be in the public interest. This necessitates consideration of the inherent seasonal characteristics of milk production and the nature of consumer demand that must be satisfied throughout the year. Commensurate with the production and demand conditions for this market, the blend price, insofar as possible, should stimulate the necessary production when and as needed in the area covered by the order and remove or reduce unnecessary seasonal surpluses. One method for achieving this is the "Louisville" plan.

This method of paying uniform prices to producers each month and distributing among producers the amounts paid by handlers throughout the year, based on their individual uses of such milk, will promote orderly marketing and is in the public interest. It permits the total utilization value paid by handlers, and ultimately by consumers, to have an enhanced influence in attracting sufficient quantities of milk to satisfy the needs and habits of the consuming public, and tends to minimize the production of burdensome market surpluses. Thus, the producer, by careful herd control, can benefit from higher fall prices and become a more efficient producer. The consumer can be assured that he is receiving maximum value for his milk dollar and does not have to bear the inherent

cost involved in maintaining the additional supplies throughout the year which inevitably result from meeting minimum market requirements each month under an uneven production pattern.

If a Louisville plan is not used for establishing seasonal prices to producers, the Class I price to handlers, which is relatively constant, might have to be adjusted seasonally in order to achieve comparable seasonality in producer prices. While such an alternative might result in approximately the same prices to producers each month as would be provided by the Louisville plan, it could create greater and undesirable variation in resale prices, thereby contributing to consumer unrest and market instability rather than orderly marketing.

Although the production history of this market as presently constituted is relatively brief (the order for the Eastern Ohio-Western Pennsylvania marketing area became effective July 1, 1968), the problem of seasonal production is similar to that of other markets in the region. The yearly cycle of relatively high production in the spring and early summer contrasted with lower production in the fall and winter is inherent for milk production in this region. Neighboring markets already provide for some type of seasonal incentive payment plan for leveling production.

Data on the average daily production per producer for the July 1968–June 1969 period illustrate the seasonal variation in milk production in the Order 36 market. Average daily production was highest at 1,019 pounds in May 1969 and lowest at 761 pounds in November 1968. These amounts were 118 percent and 88 percent, respectively, of the annual average of 864 pounds per producer.

Dairymen in the Order 36 area produce milk primarily for the fluid market where demand is relatively stable throughout much of the year. The wide seasonal variation in the proportion of producer milk used in Class I in this market is illustrated by the 56 percent Class I utilization in June 1969 compared with the 82 percent utilization in November 1968.

Production patterns that coincide with Class I demand are in accord with marketing efficiency. For instance, wide swings in production can overburden milk handling facilities in some months and cause their inefficient use in other months. Such a production pattern also tends to associate with the market a greater total milk supply relative to the Class I demand than does a more level production pattern, thereby lowering total returns to producers. This occurs as handlers and cooperatives attach to the market that number of producers necessary to assure an adequate milk supply during the period of lowest production. To the extent that local supplies are not adequate during the low-production months, supplemental supplies must be obtained from other markets, usually at additional expense because of handling and hauling charges.

The proposed plan for reducing producer returns for the high-production months and increasing the returns to producers for the low-production months will provide an economic incentive for dairymen in the Eastern Ohio-Western Pennsylvania area to produce more evenly throughout the year.

The proposed plan also will tend to eliminate the seasonal disparity between blend prices in the Order 36 market and such prices in neighboring markets. The Eastern Ohio-Western Pennsylvania market has common production areas with several markets which have seasonal incentive plans. Producers for this market who are in Ohio, Indiana, Michigan, Pennsylvania, Maryland, and West Virginia are located in areas also supplying the Columbus, Cincinnati, Miami Valley, Northwestern Ohio, Tri-State, Indiana, Southern Michigan, New York-New Jersey, Delaware Valley, Upper Chesapeake Bay, and Washington, D.C., markets. All of these markets have seasonal incentive plans which are either Louisville plans or base and excess plans.

Since the Order 36 market is the only market in the region without a seasonal price plan, the Order 36 blend prices often differ significantly from the blend prices of other markets. This can be disconcerting to dairy farmers located in areas where they could ship to either this market or another market. Producer witnesses expressed concern that blend price disparities could result in shifting of producers or plants between markets.

Cooperatives representing a major portion of the more than 10,000 producers on the market favored some kind of seasonal incentive plan. A substantial number of the producers supported a Louisville plan. Two cooperatives with a combined producer membership of about 360 dairymen supported a base-excess plan. Three cooperatives with about 790 producer members opposed any type of seasonal price plan. It is appropriate to adopt the seasonal plan most favored by the dairy farmers who would be receiving the returns under the plan.

To provide an incentive for more even production in this market, the Louisville plan deductions should apply to months of high production and the money deducted should be paid out on milk delivered in months of short production. Producer proposals differed as to some of the months for each of these periods. For the months of deductions, all proponents included April through July and one included March. Proposals for paying out the money included payments on milk delivered in September through December, but some proponents included August also.

During the first 14-month period (July 1968–August 1969) under the Eastern Ohio-Western Pennsylvania order, the months of highest average daily production per producer were April through July. The months of lowest daily production were September through December. These are the "takeout" and "payback" months proposed herein. They are also the takeout and payback months used in the Louisville plans under the neighboring Northwestern Ohio, Columbus, Miami Valley, Cincinnati, and Tri-State markets. There would be considerable benefit in keying the seasonal price changes with similar price changes in nearby markets which have production areas overlapping with the milkshed for this market. For this reason, March and August should not be included in the takeout and payback periods.

The adoption of a Louisville plan requires the use of the term "weighted average price" to represent the average value of producer milk before Louisville plan deductions in April, May, June, and July and before the Louisville plan money is added in the computation of the uniform prices for September, October, November, and December. The weighted average price serves as a basis for determining the obligation of handlers on unregulated milk.

### Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

### General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDER

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

DEFINITIONS


Sec.
1036.1 Act.
1036.2 Secretary.
1036.3 Department.
1036.4 Person.
1036.5 Cooperative association.
1036.6 Eastern Ohio-Western Pennsylvania marketing area.
1036.7 Fluid milk product.
1036.8 Route disposition.
1036.9 Distributing plant.
1036.10 Supply plant.
1036.11 Pool plant.
1036.12 Nonpool plant.
1036.13 Handler.
1036.14 Producer-handler.
1036.15 Producer.
1036.16 Producer milk.
1036.17 Other source milk.
1036.18 Reload point.
1036.19 Chicago butter price.
1036.20 Pittsburgh district.
1036.21 Cleveland-Erie district.
1036.22 Filled milk.


MARKET ADMINISTRATOR


1036.25 Designation.
1036.26 Powers.
1036.27 Duties.


REPORTS, RECORDS, AND FACILITIES


1036.30 Reports of receipts and utilization.
1036.31 Producer payroll reports.
1036.32 Other reports.
1036.33 Records and facilities.
1036.34 Retention of records.


CLASSIFICATION


1036.40 Skim milk and butterfat to be classified.
1036.41 Classes of utilization.
1036.42 Shrinkage.
1036.43 Interplant movements.
1036.44 Computation of skim milk and butterfat in each class.
1036.45 Allocation of skim milk and butterfat classified.


MINIMUM PRICES


1036.50 Basic formula price.
1036.51 Class prices.
1036.52 Butterfat differentials to handlers.
1036.53 Location adjustments to handlers.
1036.54 Use of equivalent prices.


APPLICATION OF PRICES


1036.60 Computation of the net pool obligation of each handler.
1036.61 Computation of the uniform price.
1036.62 Obligation of handler operating a partially regulated distributing plant.
1036.63 Notification.
1036.64 Obligation of handler operating an other order plant.


PAYMENTS


1036.70 Time and method of payment.
1036.71 Butterfat differential to producers.
Sec.
1036.72 Location differentials to producers and on nonpool milk.
1036.73 Producer-settlement fund.
1036.74 Payments to the producer-settlement fund.
1036.75 Payments from the producer-settlement fund.
1036.76 Marketing services.
1036.77 Expense of administration.
1036.78 Adjustment of accounts.
1036.79 Termination of obligations.


EFFECTIVE TIME, SUSPENSION, OR TERMINATION


1036.90 Effective time.
1036.91 Suspension or termination.
1036.92 Continuing power and duty of the market administrator.
1036.93 Liquidation after suspension or termination.


MISCELLANEOUS PROVISIONS


1036.100 Separability of provisions.
1036.101 Agents.


DEFINITIONS

**§ 1036.1 Act.**

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

**§ 1036.2 Secretary.**

"Secretary" means the Secretary of Agriculture 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.

**§ 1036.3 Department.**

"Department" means the U.S. Department of Agriculture.

**§ 1036.4 Person.**

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

**§ 1036.5 Cooperative association.**

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members; and

(c) To have all of its activities under the control of its members.

**§ 1036.6 Eastern Ohio-Western Pennsylvania marketing area.**

The "Eastern Ohio-Western Pennsylvania marketing area", hereinafter called the "marketing area", means all the territory within the boundaries of the following geographical units, including all waterfront facilities connected therewith and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within the listed geographical units:

(a) In Ohio:

(1) The following counties in their entirety:

| | |
|---|---|
| Ashtabula. | Lake. |
| Belmont. | Mahoning. |
| Carroll. | Monroe. |
| Columbiana. | Portage. |
| Cuyahoga. | Stark. |
| Geauga. | Summit. |
| Harrison. | Trumbull. |
| Holmes. | Tuscarawas. |
| Jefferson. | Wayne. |

(2) The townships of Amherst, Avon, Avon Lake, Black River, Carlisle, Columbia, Eaton, Elyria, Grafton, Ridgeville, and Sheffield in Lorain County;

(3) All of Medina County except the townships of Chatham, Homer, Litchfield, and Spencer;

(4) All of Ashland County except the townships of Ruggles, Sullivan, and Troy; and

(5) The townships of Londonderry, Millwood, and Oxford in Guernsey County.

(b) In Pennsylvania:

(1) The following counties in their entirety:

| | |
|---|---|
| Allegheny. | Fayette. |
| Armstrong. | Greene. |
| Beaver. | Lawrence. |
| Butler. | Mercer. |
| Crawford. | Venango. |
| Erie. | Washington. |

(2) The townships of Ashland, Beaver, Licking, Madison, Perry, Piney, Richland, Salem, and Toby in Clarion County; and

(3) All of Westmoreland County except the boroughs of Bolivar, Donegal, Ligonier, New Florence, and Seward and the townships of Cook, Donegal, Fairfield, Ligonier, and St. Clair.

(c) In West Virginia, the following counties in their entirety:

| | |
|---|---|
| Barbour. | Ohio. |
| Brooke. | Preston. |
| Doddridge. | Randolph. |
| Hancock. | Taylor. |
| Harrison. | Tucker. |
| Lewis. | Tyler. |
| Marion. | Upshur. |
| Marshall. | Wetzel. |
| Monongalia. | |

**§ 1036.7 Fluid milk product.**

"Fluid milk product" means the following products or mixtures in either fluid or frozen form, including such products or mixtures that are flavored, cultured, modified (with added nonfat milk solids), concentrated, or reconstituted: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, cream, and mixtures of cream and milk or skim milk. The term "fluid milk product" shall not include those products and mixtures listed in § 1036.41 (b) and (c)(1).

**§ 1036.8 Route disposition.**

"Route disposition" means a delivery (except to a plant), either directly or through any distribution facility (including disposition from a plant store, vendor or vending machine), of a fluid milk product classified as Class I pursuant to § 1036.41(a)(1).

**§ 1036.9 Distributing plant.**

"Distributing plant" means a plant in which fluid milk products approved by

a duly constituted health authority for fluid consumption, or filled milk, are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1036.10 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted health authority, or filled milk, is transferred or diverted during the month to a pool plant.

§ 1036.11 Pool plant.

"Pool plant" means a plant specified in paragraph (a), (b), or (c) of this section that is not an other order plant or a producer-handler plant.

(a) A distributing plant that has:

(1) Route disposition, except filled milk, during the month of not less than 50 percent (40 percent for each month of April through August) of the total receipts of fluid milk products, except filled milk, that are approved by a duly constituted health authority for fluid consumption and that are physically received at such plant or diverted as producer milk pursuant to § 1036.16 to a nonpool plant; and

(2) Route disposition, except filled milk, in the marketing area during the month of not less than 15 percent of the receipts described in subparagraph (1) of this paragraph.

(b) A supply plant from which during the months of September, October, and November not less than 50 percent, and in all other months not less than 40 percent, of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received (excluding that diverted from other plants) at such plant from dairy farmers and handlers defined in § 1036.13(d) or diverted as producer milk pursuant to § 1036.16 to pool plants and nonpool plants is transferred or diverted to and physically received in the form of fluid milk products, except filled milk, at pool plants qualified under paragraph (a) of this section or disposed of as route disposition in the marketing area.

(c) A plant that was a pool plant under paragraph (b) of this section in each of the immediately preceding months of September through February shall be a pool plant for the months of March through August unless the milk received at the plant does not continue to meet the requirements of a duly constituted health authority or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated as a nonpool plant for such month and each subsequent month through August during which it would not otherwise qualify as a pool plant.

§ 1036.12 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing, or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) Except as provided in paragraphs (c)(2) and (d)(2) of this section, "other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to § 1036.11 and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means:

(1) A nonpool plant that is a distributing plant and is not an other order plant or a producer-handler plant; and

(2) An other order plant with respect to its route disposition in the marketing area that is not priced and pooled pursuant to any order issued pursuant to the Act.

(d) "Unregulated supply plant" means:

(1) A nonpool plant that is a supply plant and is not an other order plant or a producer-handler plant; and

(2) An other order plant with respect to fluid milk products which were received at a pool plant from such a plant and which are not priced and pooled pursuant to any order issued pursuant to the Act.

§ 1036.13 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any person in his capacity as the operator of a partially regulated distributing plant;

(c) Any cooperative association with respect to producer milk which it causes to be diverted for its account from a pool plant of another handler to a nonpool plant;

(d) Any cooperative association with respect to milk of its producer-members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association. The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

(e) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant; and

(f) Any producer-handler.

§ 1036.14 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no fluid milk products from sources other than his own farm production and pool plants;

(c) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1036.15 Producer.

(a) "Producer" means any person, except a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk for fluid consumption in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1036.16 from a pool plant to a nonpool plant or another pool plant.

(b) "Producer" shall not include a person with respect to milk that is physically received at a pool plant as diverted milk from an other order plant if a Class II or Class III classification under this order is designated for such milk and it is subject to the pricing and pooling provisions of another order issued pursuant to the Act.

§ 1036.16 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer which is:

(a) With respect to a handler defined in § 1036.13(a):

(1) Received at the handler's pool plant directly from the producer, excluding receipts of milk diverted from another pool plant;

(2) Received at the handler's pool plant from a handler defined in § 1036.13(d);

(3) Diverted for the handler's account from its pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions set forth in paragraph (d) of this section; or

(4) Diverted for the handler's account from its pool plant to another pool plant, subject to the conditions set forth in paragraph (e) of this section;

(b) With respect to a handler defined in § 1036.13(c), diverted for the handler's account from a pool plant of another handler to a nonpool plant that is not a producer-handler plant, subject to the conditions set forth in paragraph (d) of this section; and

(c) With respect to a handler defined in § 1036.13(d), received by the handler from the producer's farm in excess of the producer's milk that is received by a pool plant operator pursuant to paragraph (a)(2) of this section.

(d) The following conditions shall apply to milk diverted from a pool plant to a nonpool plant that is not a producer-handler plant:

(1) Except as provided in subparagraph (2) of this paragraph, such milk shall be deemed to have been received by the diverting handler at the location of the pool plant from which diverted;

(2) In any month of April through July, the quantity of milk of any producer diverted to nonpool plants that exceeds that physically received at pool plants shall be deemed to have been received by the diverting handler at the location of the nonpool plants to which diverted;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be deemed to have been received at such pool plant and shall not be producer milk;

(4) In any month of August through March, the quantity of milk of any producer diverted to nonpool plants that exceeds that physically received at pool plants shall be deemed to have not been received by the diverting handler and shall not be producer milk;

(5) The diverting handler shall designate the dairy farmers' deliveries that are not producer milk pursuant to this paragraph. If the handler fails to make such designation, no milk diverted by him to a nonpool plant shall be producer milk;

(6) In determining if the diversion limitations specified in this paragraph have been exceeded, the quantity of milk diverted to nonpool plants or physically received at pool plants shall be considered in terms of days of production of the producer; and

(7) Milk diverted to an other order plant shall be producer milk only if a Class II or Class III classification is designated for such milk pursuant to the provisions of another order issued pursuant to the Act and such milk is not subject to the pricing and pooling provisions of such order.

(e) The following conditions shall apply to milk diverted from a pool plant to another pool plant:

(1) Except as provided in subparagraph (2) of this paragraph, such milk shall be deemed to have been received by the diverting handler at the location of the pool plant from which diverted; and

(2) If less than one-half of a producer's milk pooled under this order during the month (such quantity to be considered in terms of days of production of the producer) is physically received at a pool plant from which milk of the producer is diverted to any other plant, such producer's milk diverted to another pool plant shall be deemed to have been received by the diverting handler at the location of the pool plant to which diverted.

### § 1036.17 Other source milk.

"Other source milk" means the skim milk and butterfat contained in or represented by:

(a) Fluid milk products from any source except producer milk, fluid milk products from pool plants, and fluid milk products in inventory at the beginning of the month;

(b) Products, other than fluid milk products and cottage cheese curd, from any source (including those produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(c) Any disappearance of nonfluid products in a form in which they may be converted into a Class I product and which are not otherwise accounted for pursuant to § 1036.33.

### § 1036.18 Reload point.

"Reload point" means a location at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering a plant. A reload operation on the premises of a plant shall be considered a part of the plant operation.

### § 1036.19 Chicago butter price.

"Chicago butter prices" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of 92-score bulk creamery butter at Chicago as reported for the month by the Department.

### § 1036.20 Pittsburgh district.

"Pittsburgh district" means all the territory in the marketing area that is either in West Virginia or within 80 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) of the Pittsburgh, Pa., city hall.

### § 1036.21 Cleveland-Erie district.

"Cleveland-Erie district" means all the territory in the marketing area that is not within the Pittsburgh district.

### § 1036.22 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

## Market Administrator

### § 1036.25 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.

### § 1036.26 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;

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

(d) To recommend amendments to the Secretary.

### § 1036.27 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 funds provided by § 1036.77:

(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 § 1036.76, 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 reports pursuant to §§ 1036.30 through 1036.32, or payments pursuant to §§ 1036.70, 1036.74, 1036.76, 1036.77, and 1036.78;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(h) On or before the 20th day of each month, report to each cooperative association that so requests the class utilization of milk received during the preceding month by each handler from producers who are members of such association, prorating to such receipts the class utilization of all producer receipts of such handler;

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

(j) On or before the dates specified herein, publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate the following:

(1) The 6th day of each month, the Class I price and the Class I butterfat differential for the current month, and the Class II and Class III prices and butterfat differentials for the preceding month; and

(2) The 14th day of each month, the uniform price computed pursuant to § 1036.61 and the butterfat differential computed pursuant to § 1036.71;

(k) Prepare and disseminate to the public such statistics and information as he deems advisable and as do not reveal confidential information;

(l) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1036.45(a)(8) and the corresponding step of § 1036.45(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(m) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1036.45 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in the verification of such report; and

(n) Furnish to each handler operating a pool plant who has shipped fluid milk products to an other order plant the classification to which the skim milk and butterfat in such fluid milk products were allocated by the market administrator of the other order on the basis of the report of the receiving handler; and, as necessary, any changes in such classification arising in the verification of such report.

REPORTS, RECORDS, AND FACILITIES

### § 1036.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, reports of receipts and utilization for such month shall be made to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(a) Each handler operating a pool plant shall report for each of his pool plants:

(1) Receipts of skim milk and butterfat contained in or represented by:

(i) Producer milk, showing in the case of milk received directly from each producer the pounds and butterfat test and the number of days of production involved for each producer;

(ii) Fluid milk products from other pool plants; and

(iii) Other source milk;

(2) Inventories of fluid milk products at the beginning and the end of the month;

(3) The utilization or disposition of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately:

(i) Total route disposition and route disposition in the marketing area, showing separately such disposition of filled milk inside and outside the marketing area; and

(ii) Transfers and diversions to other plants; and

(4) Such other information with respect to the receipts and utilization of skim milk and butterfat as the market administrator may prescribe;

(b) Each cooperative association shall report:

(1) The quantities of skim milk and butterfat contained in milk from producers for which it is the handler pursuant to § 1036.13 (c) and (d), showing:

(i) The quantity of milk delivered to each plant; and

(ii) For each producer the pounds and butterfat test of the milk and the number of days of production involved;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to subparagraph (1) of this paragraph, except that contained in producer milk described in § 1036.16(a)(2); and

(3) Such other information with respect to its receipts and utilization of skim milk and butterfat as the market administrator may prescribe; and

(c) Each handler operating a partially regulated distributing plant shall report as required in paragraph (a) of this section except that receipts of bottling grade milk from dairy farmers shall be reported in lieu of receipts of producer milk. Such report shall include a separate statement showing the amount of reconstituted skim milk in route disposition in the marketing area.

### § 1036.31 Producer payroll reports.

(a) Each handler defined in § 1036.13 (a), (c), and (d) shall report to the market administrator on or before the 25th day after the end of the month, in the detail and on forms prescribed by the market administrator, his producer payroll for such month which shall show for each producer:

(1) His identity;

(2) The quantity of milk received from such producer and the number of days, if less than the entire month, on which milk was received from such producer;

(3) The average butterfat content of such milk; and

(4) The net amount of such handler's payment, together with the price paid and the amount and nature of any deductions.

(b) Each handler operating a partially regulated distributing plant who does not elect to make payments pursuant to § 1036.62(b) shall report to the market administrator on or before the 25th day after the end of the month the same information required of handlers pursuant to paragraph (a) of this section. In such report, payments to dairy farmers delivering milk that is approved by a duly constituted health authority for fluid consumption shall be reported in lieu of payments to producers.

### § 1036.32 Other reports.

(a) Each producer-handler shall report to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler who operates an other order plant shall report total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and shall allow verification of such reports by the market administrator.

### § 1036.33 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 together with such facilities as are necessary for the market administrator to verify or establish the correct data for each month, with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk and milk products (including filled milk) handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products (including filled milk) in inventory at the beginning and end of each month; and

(d) Payments to dairy farmers and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

### § 1036.34 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 3 years to begin at the end of the calendar month to which such books and records pertain. If the market administrator notifies the handler in writing within such 3-year period 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

### § 1036.40 Skim milk and butterfat to be classified.

The skim milk and butterfat required to be reported pursuant to § 1036.30 shall be classified each month pursuant to the provisions of §§ 1036.41 through 1036.45: *Provided*, That such 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.

§ 1036.41 Classes of utilization.

Subject to the conditions set forth in § 1036.43, 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 as provided in paragraph (c) of this section; and

(2) Not accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be skim milk and butterfat used to produce cottage cheese, cottage cheese curd, sour cream, sour cream products (e.g., dips), and yogurt, except as provided in paragraph (c) of this section.

(c) *Class III milk.* Class III milk shall be:

(1) Skim milk and butterfat used to produce frozen desserts and frozen dessert mixes, eggnog, aerated cream products, butter, cheese (excluding cottage cheese and cottage cheese curd), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, any product containing 6 percent or more nonmilk fat (or oil), milk shake mixes containing 12 percent or more total milk solids, and sterilized products in hermetically sealed glass or metal containers;

(2) Skim milk and butterfat in fluid milk products delivered in bulk form to and used at a commercial food processing establishment (other than a milk or filled milk plant) in the manufacture of packaged food products (other than milk products and filled milk) for consumption off the premises;

(3) Skim milk and butterfat in fluid milk products, cottage cheese, cottage cheese curd, sour cream, sour cream products, and yogurt disposed of by a handler for livestock feed;

(4) Skim milk and butterfat in fluid milk products, cottage cheese, cottage cheese curd, sour cream, sour cream products, and yogurt dumped by a handler after notification to, and opportunity for verification by, the market administrator;

(5) Skim milk and butterfat in inventory of fluid milk products at the end of the month;

(6) Skim milk represented by the nonfat milk solids added to a fluid milk product which is in excess of an equivalent volume of such product prior to the addition;

(7) Skim milk and butterfat, respectively, in each pool plant's shrinkage, but not in excess of:

(i) Two percent of producer milk physically received at the plant (except that received from a handler defined in § 1036.13(d));

(ii) Plus 1.5 percent of producer milk received from a handler defined in § 1036.13(d) and of milk diverted to such plant from another pool plant, except that if the plant operator receiving such milk files notice with the market administrator that he is purchasing such milk on the basis of farm weights, the applicable percentage shall be 2 percent;

(iii) Plus 0.5 percent of producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the other plant purchases such milk on the basis of farm weights, no percentage shall apply;

(iv) Plus 1.5 percent of bulk fluid milk products received by transfer from other pool plants;

(v) Plus 1.5 percent of bulk fluid milk products received from other order plants exclusive of the quantity for which Class II or Class III classification was requested by the operators of both plants;

(vi) Plus 1.5 percent of bulk fluid milk products received from unregulated supply plants exclusive of the quantity for which Class II or Class III classification is requested by the handler; and

(vii) Less 1.5 percent of bulk fluid milk products transferred to other plants;

(8) Skim milk and butterfat, respectively, in shrinkage of other source milk assigned pursuant to § 1036.42(b)(2); and

(9) Skim milk and butterfat, respectively, in shrinkage of milk from producers that is diverted from a pool plant to a nonpool plant by a cooperative association acting as a handler pursuant to § 1036.13(c) or in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1036.13(d), but not in excess of 0.5 percent of the receipts of milk from producers, exclusive of such receipts for which farm weights are used as the basis of receipt at the plant to which delivered.

§ 1036.42 Shrinkage.

The market administrator shall allocate shrinkage over each pool plant's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each pool plant; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat, respectively, in:

(1) The net quantity of producer milk and other fluid milk products specified in § 1036.41(b)(7); and

(2) Other source milk exclusive of that specified in § 1036.41(b)(7).

§ 1036.43 Interplant movements.

Skim milk or butterfat in the form of a fluid milk product shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred or diverted from a pool plant to the pool plant of another handler, subject to the following conditions:

(1) The skim milk or butterfat so assigned to each class shall be limited to the amount thereof remaining in such class in the transferee plant after the computations pursuant to § 1036.45(a)(8) and the corresponding step of § 1036.45(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1036.45(a)(3) and the corresponding step of § 1036.45(b), the skim milk and butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor plant received during the month other source milk to be allocated pursuant to § 1036.45(a)(7) or (8) and the corresponding steps of § 1036.45(b), the skim milk and butterfat so transferred or diverted up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(b) As Class I milk, if transferred from a pool plant to a producer-handler;

(c) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is neither an other order plant nor a producer-handler plant, unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(1) The transferring or diverting handler claims classification as Class II or Class III in his report submitted pursuant to § 1036.30;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred or diverted shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any route disposition in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to receipts from other order plants, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant;

(ii) Any route disposition in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant;

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool plants and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred or diverted shall be classified as Class III milk to the extent Class III utilization is available and the remainder as Class II milk; and

(d) As follows, if transferred to an other order plant in excess of receipts from such plant in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred in packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated as a fluid milk product under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, movements in bulk form shall be classified as Class III milk to the extent of the Class III utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for only two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk and butterfat allocated to the other class shall be classified as Class III milk; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1036.41.

**§ 1036.44 Computation of skim milk and butterfat in each class.**

For each month, the market administrator shall correct for mathematical and other obvious errors all reports submitted pursuant to § 1036.30 and shall compute for each handler the total pounds of skim milk and butterfat in each class: *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.

**§ 1036.45 Allocation of skim milk and butterfat classified.**

After making the computations pursuant to § 1036.44, the market administrator shall determine the classification of producer milk for each handler as follows: *Provided*, That the classification of producer milk for which a cooperative association is the handler pursuant to § 1036.13 (c) or (d) shall be determined separately from the operations of any pool plant operated by such cooperative association:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III milk pursuant to § 1036.41(c)(7);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (3)(v) of this paragraph, as follows:

(i) From Class III milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class III milk pursuant to § 1036.41(c)(6) plus 2 percent of the remainder of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which appropriate health approval is not established and receipts of fluid milk products from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

(v) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II and Class III (beginning with Class III), but not in excess of such quantities:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph:

(*a*) For which the handler requests Class III classification; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool handlers, and receipts in bulk from other order plants that were not substracted pursuant to subparagraph (3)(v) of this paragraph; and

(ii) Receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to subparagraph (3)(v) of this paragraph, in excess of similar transfers to such plant, if Class III classification was requested by the operator of such plant and the handler;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in inventory of fluid milk products at the beginning of the month;

(6) Add to the remaining pounds of skim milk in Class III the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3)(iv) and (4)(i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant that are in excess of similar transfers to the same plant and that were not subtracted pursuant to subparagraphs (3)(v) and (4)(ii) of this paragraph:

(i) In series beginning with Class III, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1036.27(b) or the percentage that Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received from pool plants of other handlers according to the classification of such products pursuant to § 1036.43(a);

(10) If the pounds of skim milk remaining exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

MINIMUM PRICES

**§ 1036.50 Basic formula price.**

The basic formula price shall be the price per hundredweight for manufacturing grade milk f.o.b. plants in Wisconsin and Minnesota, as reported on a 3.5 percent butterfat basis by the Department for the month. For the purpose of computing Class I prices from the effective date hereof, the basic formula price shall not be less than $4.33.

**§ 1036.51 Class prices.**

Subject to the provisions of §§ 1036.52 and 1036.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the preceding months plus $1.67 for plants in the Cleveland-Erie district and $1.77 for plants in the Pittsburgh district, plus 20 cents for each district. At a plant outside the marketing area, add to the basic formula price for the preceding month the amount applicable pursuant to this paragraph at the location of the city hall of the following cities that is nearest such plant (by the shortest hard-surfaced highway distance as determined by the market administrator): Canton and Cleveland, Ohio; Erie, Pittsburgh, and Uniontown, Pa.; and Clarksburg, W. Va.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month, but not to exceed an amount computed as follows:

(1) Multiply by 4.2 the Chicago butter price;

(2) Multiply by 8.2 the weighted average of carlot prices per pound of nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 48 cents, and round to the nearest cent.

**§ 1036.52 Butterfat differentials to handlers.**

For milk containing more or less than 3.5 percent butterfat, the class prices calculated pursuant to § 1036.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent at the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I milk.* Multiply the Chicago butter price for the preceding month by 0.12.

(b) *Class II and Class III milk.* Multiply the Chicago butter price for the month by 0.115.

**§ 1036.53 Location adjustments to handlers.**

(a) The Class I price for producer milk and other source milk (for which a location adjustment is applicable) at a plant more than 85 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) from all the cities in § 1036.51(a) shall be reduced 13 cents and an additional 1.5 cents for each 10 miles or fraction thereof in excess of 100 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the city hall of the nearest of the cities listed in § 1036.51(a).

(b) For the purpose of computing location adjustments, receipts of fluid milk products from pool plants at a pool plant shall be assigned any remainder of Class I milk at such plant that is in excess of 92.5 percent of the sum of producer milk receipts at the plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to receipts from plants at which no location adjustment is applicable pursuant to this section and then in sequence beginning with receipts from the plant with the lowest applicable location adjustment.

**§ 1036.54 Use of equivalent prices.**

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

APPLICATION OF PRICES

**§ 1036.60 Computation of the net pool obligation of each handler.**

The net pool obligation of each handler defined in § 1036.13 (a), (c), and (d) for each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class as computed pursuant to § 1036.45(c) by the applicable class price;

(b) Add the amounts obtained from multiplying the overage deducted from each class pursuant to § 1036.45(a)(10) and the corresponding step of § 1036.45 (b) by the applicable class price;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I or Class II price for the current month, as the case may be, by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1036.45(a)(5) and the corresponding step of § 1036.45(b);

(d) Add the amount obtained from multiplying the difference between the Class I price at the pool plant and the Class III price, both for the current month, by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1036.45(a)(3) and the corresponding step of § 1036.45(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1036.45(a)(3) (iv) and (v) and the corresponding steps of § 1036.45(b)(3) the Class I price shall be adjusted to the location of the transferor plant (but not to be less than the Class III price); and

(e) Add the amount obtained from multiplying the Class I price adjusted for the location of the nearest nonpool plants from which an equivalent volume was received, but not to be less than the Class III price, by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1036.45(a)(7) and the corresponding step of § 1036.45(b).

**§ 1036.61 Computation of the uniform price.**

For each month, the market administrator shall compute a uniform price per hundredweight as follows:

(a) Combine into one total the values computed pursuant to § 1036.60 for all handlers who filed the reports pursuant to § 1036.30 for the month, except those in default of payments required pursuant to § 1036.74 for the preceding month;

(b) Add or subtract for each one-tenth percent that the average butterfat content of milk specified in paragraph (f) of this section is less or more, respectively, than 3.5 percent the amount obtained by multiplying such difference by the butterfat differential pursuant to § 1036.71, and multiply the result by the total hundredweight of such milk;

(c) Add an amount equal to the total value of the minus location differentials computed pursuant to § 1036.72(a);

(d) Subtract an amount equal to the total value of the plus location differential computed pursuant to § 1036.72(a);

(e) Add an amount equal to one-half the unobligated balance in the producer-settlement fund;

(f) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1036.60(e);

(g) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price", and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(h) For the months specified in paragraphs (i) and (j) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (e) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (f)(2) of this section by the weighted average price;

(i) Subtract for each of the months of April, May, June, and July the amount obtained by multiplying the hundredweight of producer milk specified in paragraph (f)(1) of this section by a rate that is equal to 6 percent of the average basic formula price (computed to the nearest cent) for the preceding calendar year but not to exceed 25 cents;

(j) Add for each of the months of September, October, and November one-fourth of the total amount subtracted pursuant to paragraph (i) of this section for the preceding period of April through July, and add for the month of December the remainder of such total amount plus any interest earned on such total amount;

(k) Divide the amount resulting from the computations pursuant to paragraphs (h), (i), and (j) of this section by the hundredweight of producer milk specified in paragraph (f)(1) of this section; and

(i) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

**§ 1036.62 Obligation of handler operating a partially regulated distributing plant.**

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1036.30 and 1036.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) The obligation that would have been computed pursuant to § 1036.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1036.60(e) and a credit in the amount specified in § 1036.74(b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified below in this subparagraph. If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1036.30 a similar report for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1036.11 (b) and (c), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation, deduct the sum of:

(i) The gross payments made by such handler for milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph; and

(ii) Payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat in the plant's route disposition in the marketing area;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant (not to be less than the Class III price), subtract its value at the weighted average price applicable at such location (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant (not to be less than the Class III price), less the value of such skim milk at the Class III price.

**§ 1036.63 Notification.**

On or before the 14th day of each month the market administrator shall notify each handler who submitted a report for the preceding month pursuant to § 1036.30 of:

(a) The classification pursuant to § 1036.45 of skim milk and butterfat in producer milk received by such handler during the month and the value of such milk pursuant to § 1036.60; and

(b) The uniform price for the month pursuant to § 1036.61;

(c) The amount due such handler pursuant to § 1036.75 and the amount to be paid by such handler pursuant to §§ 1036.74, 1036.76, and 1036.77.

**§ 1036.64 Obligation of handler operating an other order plant.**

Each handler who operates an other order plant that is regulated under an order providing for individual-handler pooling shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(a) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to the route disposition in each marketing area; and

(b) Compute the value of the quantity of reconstituted skim milk assigned in paragraph (a) of this section to route disposition in this marketing area at the Class I price under this part applicable at the location of the other order plant (not to be less than the Class III price) and substract its value at the Class III price.

PAYMENTS

**§ 1036.70 Time and method of payment.**

(a) Except as provided in paragraph (b) of this section, each handler shall make payment for producer milk as follows:

(1) To each producer, on or before the 18th day of the following month, the uniform price per hundredweight for his deliveries of producer milk during the month adjusted pursuant to §§ 1036.71, 1036.72, and 1036.76, subject to the following:

(i) Minus payments made pursuant to paragraph (c) of this section;

(ii) Less proper deductions authorized in writing by the producer; and

(iii) If by such date the handler has not received full payment from the market administrator pursuant to § 1036.75 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator;

(b) (1) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, each handler shall pay to the cooperative association for producer milk on or before the 16th day of each month, in lieu of payments pursuant to paragraph (a) of this section, an amount equal to the gross sum due for all milk received from certified members, less amounts owing by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer, and submit to the cooperative association written information which shows for each such member-producer (i) the total pounds of milk received from him during the preceding month, (ii) the total pounds of butterfat contained in such milk, (iii) the number of days on which milk was received, and (iv) the amounts withheld by the handler in payment for supplies sold. The foregoing payment and submission of information shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association;

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination;

(c) Upon written request filed with him on or before the 15th day of the month by a producer, or by a cooperative association which collects payments pursuant to paragraph (b) of this section, each handler shall make payment as follows:

(1) On or before the last day of the month, to each such producer who has not discontinued delivery of milk to such handler, an amount not less than the value of milk received from such producer during the first 15 days of such month computed at the Class III price for the preceding month for milk of 3.5 percent butterfat content, without deduction for hauling; and

(2) On or before the 27th day of the month, to the cooperative association, for milk received during the first 15 days of the month from certified members specified in the request for payment, an amount not less than the aggregate value of such milk at the Class III price for the preceding month for milk of 3.5 percent butterfat content, without deduction for hauling; and

(d) On or before the 15th day after the end of each month, each handler shall pay a cooperative association for milk received by him as a transfer from a pool plant operated by such cooperative association or as a diversion from a pool plant for the account of such cooperative association at not less than the prices applicable pursuant to § 1036.51.

### § 1036.71 Butterfat differential to producers.

The uniform price shall be increased or decreased for each one-tenth percent that the butterfat content of such milk is above or below 3.5 percent, respectively, at the rate (rounded to the nearest one-tenth cent) determined by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1036.45 by the respective butterfat differential for each class and dividing the sum of the resulting amounts by the total pounds of butterfat in producer milk.

### § 1036.72 Location differentials to producers and on nonpool milk.

(a) The uniform price for producer milk shall be adjusted as follows:

(1) At all plants, reduced according to the location of the plant at the rates set forth in § 1036.53; and

(2) Additionally, at plants at which the Pittsburgh district Class I price is applicable, increased 10 cents.

(b) For the purpose of computations pursuant to § 1036.74(b), the weighted average price shall be adjusted at the rates set forth in § 1036.53 that are applicable at the location of the nonpool plant from which other source milk was received.

### § 1036.73 Producer-settlement fund.

(a) The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments pursuant to §§ 1036.62, 1036.64, and 1036.74 and out of which he shall make all payments pursuant to § 1036.75: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

(b) All amounts subtracted pursuant to §1036.61(i) shall be deposited in the producer-settlement fund and set aside as an obligated balance until withdrawn for the purpose of effectuating § 1036.61(j).

### § 1036.74 Payments to the producer-settlement fund.

On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in paragraph (a) of this section exceed the amounts specified in paragraph (b) of this section:

(a) The net pool obligation pursuant to § 1036.60 for such handler; and

(b) The sum of:

(1) The value of such handler's producer milk at the applicable uniform price; and

(2) The value at the weighted average price applicable at the location of the plants from which received (not to be less than the value at the Class III price) of other source milk for which a value is computed pursuant to § 1036.60(e).

### § 1036.75 Payments from the producer-settlement fund.

On or before the 17th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1036.74(b) exceeds the amount computed pursuant to § 1036.74(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

### § 1036.76 Marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments for producer milk received during the month shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe (except on such handler's own farm production) and shall pay such deductions to the market administrator not later than the 16th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall 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 producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 16th day after the end of each month, pay over such deductions to the association rendering such services.

### § 1036.77 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 16th day after the end of the month 3 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1036.45(a) (3) and (7) and the corresponding steps of § 1036.45(b); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk received during the month at such plant from pool plants and other order plants.

### § 1036.78 Adjustment of accounts.

(a) *Payments.* Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in monies due the market administrator from such handler, 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 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.

(2) *Overdue accounts.* Any unpaid obligation of a handler or of the market administrator pursuant to § 1036.74, § 1036.75, § 1036.76, § 1036.77, or paragraph (a) of this section shall be increased one-half of 1 percent on the first day of the calendar month next following the due date of such obligation, and on the first day of each calendar month thereafter until such obligation is paid.

### § 1036.79 Termination of obligations.

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 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the skim milk and butterfat involved in such obligation, unless within such 2-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 months during which the skim milk and butterfat, with respect to which the obligation exists, were received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producers or association of producers, 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 2-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 2-year period with respect to such obligation shall not begin to run until the first day of the calendar 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 2 years after the end of the calendar month during which the skim milk and butterfat involved in the claim were received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff 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.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

**§ 1036.90 Effective time.**

The provisions of this part or any amendment thereto shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

**§ 1036.91 Suspension or termination.**

The Secretary shall suspend or terminate any or all provisions of this part whenever he finds that they obstruct or do not tend to effectuate the declared policy of the Act. This part shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.

**§ 1036.92 Continuing power and duty of the market administrator.**

(a) If, upon the suspension or termination of any or all of the provisions of this part, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by 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, persons 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 discharged by the Secretary;

(2) From time to time account for all receipts and disbursements and deliver all funds or property on hand together with the books and records of the market administrator, or such other person, to such person as the Secretary shall direct; and

(3) If so directed by the Secretary, execute such assignment 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 other person pursuant thereto.

**§ 1036.93 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 the outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

**§ 1036.100 Separability of provisions.**

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

**§ 1036.101 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.

Signed at Washington, D.C., on June 9, 1970.

JOHN C. BLUM,
*Deputy Administrator,*
*Regulatory Programs.*

[F.R. Doc. 70-7385; Filed, June 15, 1970; 8:45 a.m.]