

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Department of Labor

Effective upon publication in the FEDERAL REGISTER, the headnote and subparagraphs (1) and (2) of § 6.313(c) are revoked.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] MARY V. WENZEL,
Executive Assistant.

[F.R. Doc. 60-6476; Filed, July 12, 1960; 8:50 a.m.]

Title 7—AGRICULTURE

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

[Amdt. 1]

PART 730—RICE

Marketing Quotas, 1960; Rate of Penalty

The amendment herein is issued under and in accordance with the provisions of the Agricultural Adjustment Act of 1938, as amended, to announce the rate of penalty applicable to excess rice produced in the 1960 crop year.

Under the Act the penalty rate per pound on the farm marketing excess is equal to 65 per centum of the parity price per pound for rice as of June 15 of the calendar year in which the crop is produced.

Since the calculation of the penalty rate is a mathematical determination and since farmers have already planted the 1960 crop of rice on their farms and soon will be making plans to harvest such crop, it is imperative that they be notified of the amendment as soon as possible. Accordingly, it is hereby found that compliance with the notice, procedure, and effective date provisions of the Administrative Procedure Act (5 U.S.C. 1003) is unnecessary and contrary to the public interest, and the amendment shall become effective upon publication in the FEDERAL REGISTER.

Section 730.972 is amended by adding at the end thereof the following sentence: "The rate of penalty applicable to the 1960 crop of rice shall be 3.87 cents per pound, which is 65 per centum of the parity price per pound for rice as of June 15, 1960, which is determined to be 5.96 cents per pound."

(Secs. 356, 375, 52 Stat. 62, as amended; 66, as amended; 7 U.S.C. 1356, 1375)

Issued this 7th day of July 1960.

CLARENCE D. PALMEY,
Acting Administrator,
Commodity Stabilization Service.

[F.R. Doc. 60-6492; Filed, July 12, 1960; 8:52 a.m.]

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

PART 934—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Waiver of Inspection and Certification

Pursuant to the Marketing Agreement and Order No. 34 (7 CFR Part 934; 25 F.R. 4669), regulating the handling of fresh peaches grown in designated counties in Washington, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the Washington Fresh Peach Marketing Committee, the administrative agency established under this marketing agreement and order, has recommended the administrative regulations, hereinafter set forth to effectuate the provisions of this marketing agreement and order. It is found that the proposed regulations are in accordance with the provisions of the marketing agreement and order and will tend to effectuate the declared policy of the act and, accordingly, such regulations are hereby approved.

It is further 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 date hereof beyond the date of publication in the FEDERAL REGISTER (5 U.S.C. 1001-1011), in that (1) shipments of peaches are now being made and limitation of shipment regulations are currently in effect, (2) all shipments of peaches are subject to inspection and certification requirements under § 934.55; and these regulations relieve restrictions with respect to such inspection and certification requirements.

§ 934.110 Waiver of inspection and certification.

(a) *Application.* Any handler (including a grower-handler packing and handling peaches of his own production), whose packing facilities are located in an area where a Washington State Horticultural Division Inspection Office or Federal-State Inspector is not readily available to perform the required inspection may, prior to shipment, apply to the Committee for a permit authorizing a waiver of inspection. Applications shall be made on forms furnished by the Committee and shall contain such information as the Committee may require including: name and address of applicant, location of packing facility, distance of

packing facility from the nearest inspection office, period (by approximate beginning and ending dates) during which applicant expects to ship peaches, estimated quantity of peaches applicant expects to ship to fresh market during such period, manner in which the majority of applicant's fruit will be marketed (i.e., transported by applicant to market, sold at orchard to truckers, etc.), areas or markets to which applicant expects to ship the majority of his peaches. The application shall also contain an agreement by applicant (1) not to ship or handle any peaches unless such peaches meet the grade, size, maturity, container, and all other requirements of the Order in effect at time of handling, (2) to report periodically to the Committee on reporting forms furnished by the Committee the following information on each shipment: quantity, variety, grade, minimum size, container, date of shipment, destination, name and address of buyer or receiver, and such other information as the Committee may specify, (3) to pay applicable assessments on each shipment, and (4) to comply with such other safeguards as the Committee may prescribe.

(b) *Issuance of permit.* Whenever the Committee finds and determines from the information contained in the application or from other proof satisfactory to the Committee that the applicant is entitled to a waiver from the inspection requirements of the order at time of shipment, the Committee shall issue a permit authorizing the applicant to ship peaches in accordance with these administrative regulations and the terms and conditions of such permit.

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

Dated July 8, 1960, to become effective upon publication in the FEDERAL REGISTER.

S. R. SMITH,
Director, Fruit and Vegetable
Division, Agricultural Mar-
keting Service.

[F.R. Doc. 60-6484; Filed, July 12, 1960; 8:51 a.m.]

Title 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER D—REGULATIONS UNDER SOIL BANK ACT

PART 485—SOIL BANK

Subpart—Violations Procedure

MISCELLANEOUS AMENDMENTS

The Soil Bank regulations applicable to violations, 22 F.R. 2411, as amended, are hereby further amended as follows:

1. The third sentence of § 485.276 is amended by inserting "or certified mail" immediately following the words "registered mail."

2. The fifth sentence of § 485.279 is amended by inserting "or certified mail" immediately following the words "registered mail."

(Sec. 124, 70 Stat. 198; 7 U.S.C. 1812)

Issued at Washington, D.C., this 7th day of July 1960.

CLARENCE D. PALMBY,
Acting Administrator,
Commodity Stabilization Service.

[F.R. Doc. 60-6490; Filed, July 12, 1960;
8:52 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE

Area Regulated in Florida

Pursuant to the provisions of sections 1 and 3 of the Act of March 3, 1905, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended, and sections 4 through 7 of the Act of May 29, 1884, as amended (21 U.S.C. 111-113, 115, 117, 120, 121, 123, 125), Part 72, Title 9, Code of Federal Regulations, is hereby amended as follows:

1. Section 72.2 is amended by changing the heading thereof to read as set forth below and by adding the following provisions at the end of said section:

§ 72.2 Splenetic or tick fever in cattle in described territory in Florida, Texas, Puerto Rico, and the Virgin Islands of the United States; restrictions on movement of cattle.

* * * Notice is also hereby given that there is reason to believe that said disease may exist in portions of the State of Florida. Therefore, those portions of the State of Florida described in § 72.5a are hereby regulated, and the movement of cattle therefrom into any other State or Territory or the District of Columbia shall be made only in accordance with the provisions of this part and Part 71 of this chapter.

2. A new § 72.5a is issued to read:

§ 72.5a Area regulated in Florida.

(a) The following portions of the State of Florida are regulated: Hillsborough County, Martin County, and Palm Beach County.

(b) All of the provisions of this part and Part 71 of this chapter which are applicable to quarantined areas shall apply to such regulated areas in the same manner and to the same extent as if they were quarantined.

(Secs. 1, 3, 33 Stat. 1264, as amended, 1265, as amended, secs. 1, 2, 32 Stat. 791, as amended, 792, as amended, secs. 4-7, 23 Stat. 32, as

amended; 21 U.S.C. 111-113, 115, 117, 120, 121, 123, 125)

Effective date. The foregoing amendment shall become effective upon issuance.

The amendment imposes certain further restrictions necessary to prevent the spread of splenetic or tick fever. It must be made effective immediately to accomplish its purpose in the public interest. Accordingly, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 1st day of July 1960.

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

[F.R. Doc. 60-6488; Filed, July 12, 1960;
8:52 a.m.]

SUBCHAPTER K—HUMANE SLAUGHTER OF LIVESTOCK

PART 180—DESIGNATION OF METHODS

Gunshot

Pursuant to the authority conferred by the Humane Slaughter Act of August 27, 1958 (7 U.S.C. 1901 et seq.), § 180.16(b) (1) (ii) of the regulations relating to humane slaughter of livestock (9 CFR 180.16(b) (1) (ii)) is hereby amended to read as follows:

§ 180.16 Mechanical; gunshot.

(b) *Facilities and procedure*—(1) *General requirements for shooting facilities; operator.* * * *

(ii) To assure uniform unconsciousness of the animal with every discharge where small-bore firearms are employed, it is necessary to use either hollow pointed or frangible iron plastic composition projectiles. Firearms must be maintained in good repair. For purposes of protecting employees, inspectors and others, it is desirable that all firearms be equipped with safety devices to prevent injuries from accidental discharge. Aiming and discharging of firearms should be directed away from operating areas.

(Sec. 4, 72 Stat. 863; 7 U.S.C. 1904)

This amendment and the designation made thereby shall become effective upon publication hereof for purposes of section 3 of the Act with respect to United States Government contracts for procurement of livestock products under the Act. Section 3 provides in general that after June 30, 1960, no agency or instrumentality of the United States shall contract for or procure any livestock products produced or processed by any slaughterer or processor which, in any of its plants or in any plants of any slaughterer or processor with which it

is affiliated, slaughters or handles in connection with slaughter livestock by any methods other than methods designated under the act. The method of slaughtering animals by gunshot with hollow pointed bullets was previously designated as humane under the act following the endorsement by the Advisory Committee established under the act of the principle of such slaughter as humane. The amendment designates as a humane method, slaughter by gunshot with frangible iron plastic composition bullets and thus applies the principle to another type of bullet. This designation provides industry with an additional humane slaughter method which will be acceptable for purposes of section 3 of the act. In order to be of maximum benefit to affected persons, the additional method should be made available for adoption by the industry as soon as possible.

The Department has given the matter careful consideration and it does not appear that new information would be made available to the Department by public rule-making procedure. Therefore under Section 4 of the Administrative Procedure Act (5 U.S.C. 1003) it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and unnecessary, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 8th day of July 1960.

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

[F.R. Doc. 60-6489; Filed, July 12, 1960;
8:52 a.m.]

Title 24—HOUSING AND HOUSING CREDIT

Chapter II—Federal Housing Administration, Housing and Home Finance Agency

SUBCHAPTER M—MILITARY AND ARMED SERVICES HOUSING MORTGAGE INSURANCE

PART 292a—ARMED SERVICES HOUSING INSURANCE; ELIGIBILITY REQUIREMENTS OF MORTGAGE

Subpart A—Military Personnel

MAXIMUM MORTGAGE AMOUNT; DOLLAR LIMITATION

Section 292a.8 is amended to read as follows:

§ 292a.8 Maximum mortgage amount; dollar limitation.

(a) The mortgage or mortgages shall involve a total principal obligation in an amount not to exceed an average of \$16,500 per family unit for such part of the project as may be attributable to dwelling use including ranges, refrigerators, shades, screens, and fixtures, less the amount of the Commissioner's estimated value of any usable utilities within the boundaries of the project where

owned by the United States and not provided for out of the proceeds of the mortgage.

(b) Should the financing of housing to be constructed pursuant to a single invitation for bids be accomplished by two or more mortgages, the principal obligation of any single mortgage may exceed an average of \$16,500 per family unit if the sum of the principal obligations of all mortgages for such housing does not exceed an average of \$16,500 per family unit.

(c) No mortgage shall be insured unless it is established by a certificate of the Military or otherwise that the cost of no family unit contracted for after June 7, 1960, and included in the mortgaged property shall exceed \$19,800.

(d) In addition to the dollar limitation prescribed in this section the mortgage amount is subject to other limitations as provided in §§ 292a.7 and 292a.9.

(Sec. 807, 69 Stat. 651; 12 U.S.C. 1748f. Interprets or applies sec. 803, 69 Stat. 647, as amended; 12 U.S.C. 1748b)

Issued at Washington, D.C., July 8, 1960.

JULIAN H. ZIMMERMAN,
Federal Housing Commissioner.

[F.R. Doc. 60-6481; Filed, July 12, 1960; 8:50 a.m.]

Title 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T. D. 6480]

PART I—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DE- CEMBER 31, 1953

Net Operating Loss Carryovers in Certain Corporate Acquisitions

On January 29, 1960, notice of proposed rule making regarding the regulations under section 381 (a), (b), and (c) (1) of the Internal Revenue Code of 1954, relating to net operating loss carryovers in certain corporate acquisitions, was published in the FEDERAL REGISTER (25 F.R. 756). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted, subject to the changes as set forth below. Except as otherwise specifically provided therein, such regulations shall be applicable to taxable years beginning after December 31, 1953, and ending after August 16, 1954.

PARAGRAPH 1. Section 1.381 (a)-1 is changed by revising the last sentence of paragraph (b) (3) (i), the first sentence of paragraph (b) (3) (ii), and paragraph (c).

PAR. 2. Section 1.381 (b)-1 is changed by revising the last sentence of para-

graph (b) (3), and by adding a new subparagraph at the end of paragraph (b).

PAR. 3. Section 1.381 (c) (1)-1 is changed by adding a new sentence at the end of paragraph (a) (1), by adding a new sentence immediately after the first sentence of example (3) of paragraph (b), and by revising example (1) of paragraph (d) (5).

PAR. 4. Paragraph (b) (5) of § 1.381 (c) (1)-2 is revised by placing a new caption at the head thereof.

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: July 7, 1960.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

The following regulations are hereby prescribed under section 381 (a), (b), and (c) (1) of the Internal Revenue Code of 1954, relating to net operating loss carryovers in certain corporate acquisitions:

CARRYOVERS

Sec.

1.381(a) Statutory provisions; carryovers in certain corporate acquisitions; general rule.

1.381(a)-1 General rule relating to carryovers in certain corporate acquisitions.

1.381(b) Statutory provisions; carryovers in certain corporate acquisitions; operating rules.

1.381(b)-1 Operating rules applicable to carryovers in certain corporate acquisitions.

1.381(c) (1) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; net operating loss carryovers.

1.381(c) (1)-1 Net operating loss carryovers in certain corporate acquisitions.

1.381(c) (1)-2 Net operating loss carryovers; two or more dates of distribution or transfer in the taxable year.

AUTHORITY: §§ 1.381(a) to 1.381(c) (1)-2 issued under sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805.

CARRYOVERS

§ 1.381(a) Statutory provisions; carryovers in certain corporate acquisitions; general rule.

SEC. 381. Carryovers in certain corporate acquisitions—(a) General rule. In the case of the acquisition of assets of a corporation by another corporation—

(1) In a distribution to such other corporation to which section 332 (relating to liquidations of subsidiaries) applies, except in a case in which the basis of the assets distributed is determined under section 334 (b) (2); or

(2) In a transfer to which section 361 (relating to nonrecognition of gain or loss to corporations) applies, but only if the transfer is in connection with a reorganization described in subparagraph (A), (C), (D) (but only if the requirements of subparagraphs (A) and (B) of section 354(b) (1) are met), or (F) of section 368(a) (1),

the acquiring corporation shall succeed to and take into account, as of the close of the day of distribution or transfer, the items described in subsection (c) of the distributor or transferor corporation, subject to the conditions and limitations specified in subsections (b) and (c).

§ 1.381(a)-1 General rule relating to carryovers in certain corporate acquisitions.

(a) Allowance of carryovers. Section 381 provides that a corporation which acquires the assets of another corporation in certain liquidations and reorganizations shall succeed to, and take into account, as of the close of the date of distribution or transfer, the items described in section 381(c) of the distributor or transferor corporation. These items shall be taken into account by the acquiring corporation subject to the conditions and limitations specified in sections 381 and 382(b) and the regulations thereunder.

(b) Determination of transactions and items to which section 381 applies—

(1) Qualified transactions. Except to the extent provided in section 381(c) (2), relating to the carryover of unused pension trust deductions in certain liquidations, the items described in section 381(c) are required by section 381 to be carried over to the acquiring corporation (as defined in subparagraph (2) of this paragraph) only in the following liquidations and reorganizations:

(i) The complete liquidation of a subsidiary corporation upon which no gain or loss is recognized in accordance with the provisions of section 332, but only if the basis of the assets distributed to the acquiring corporation is not required by section 334(b) (2) to be the adjusted basis of the stock with respect to which the distribution is made;

(ii) A statutory merger or consolidation qualifying under section 368(a) (1) (A) to which section 361 applies;

(iii) A reorganization qualifying under section 368(a) (1) (C);

(iv) A reorganization qualifying under section 368(a) (1) (D) if the requirements of section 354(b) (1) (A) and (B) are satisfied; and

(v) A mere change in identity, form, or place of organization qualifying under section 368(a) (1) (F).

(2) Acquiring corporation defined. (i) Only a single corporation may be an acquiring corporation for purposes of section 381 and the regulations thereunder. The corporation which acquires the assets of its subsidiary corporation in a complete liquidation to which section 381(a) (1) applies is the acquiring corporation for purposes of section 381. Generally, in a transaction to which section 381(a) (2) applies, the acquiring corporation is that corporation which, pursuant to the plan of reorganization, ultimately acquires, directly or indirectly, all of the assets transferred by the transferor corporation. If, in a transaction qualifying under section 381(a) (2), no one corporation ultimately acquires all of the assets transferred by the transferor corporation, that corporation which directly acquires the assets so transferred shall be the acquiring corporation for purposes of section 381 and the regulations thereunder, even though such corporation ultimately retains none of the assets so transferred. Whether a corporation has acquired all of the assets transferred by the transferor corporation

is a question of fact to be determined on the basis of all the facts and circumstances.

(ii) The application of this subparagraph may be illustrated by the following examples:

Example (1). Y Corporation, a wholly-owned subsidiary of X Corporation, directly acquired all the assets of Z Corporation solely in exchange for voting stock of X Corporation in a transaction qualifying under section 368(a)(1)(C). Y Corporation is the acquiring corporation for purposes of section 381.

Example (2). X Corporation acquired all the assets of Z Corporation solely in exchange for voting stock of X Corporation in a transaction qualifying under section 368(a)(1)(C). Thereafter, pursuant to the plan of reorganization X Corporation transferred all the assets so acquired to Y Corporation, its wholly-owned subsidiary (see section 368(a)(2)(C)). Y Corporation is the acquiring corporation for purposes of section 381.

Example (3). X Corporation acquired all the assets of Z Corporation solely in exchange for the voting stock of X Corporation in a transaction qualifying under section 368(a)(1)(C). Thereafter, pursuant to the plan of reorganization X Corporation transferred one-half of the assets so acquired to Y Corporation, its wholly-owned subsidiary, and retained the other half of such assets. X Corporation is the acquiring corporation for purposes of section 381.

Example (4). X Corporation acquired all the assets of Z Corporation solely in exchange for voting stock of X Corporation in a transaction qualifying under section 368(a)(1)(C). Thereafter, pursuant to the plan of reorganization X Corporation transferred one-half of the assets so acquired to Y Corporation, its wholly-owned subsidiary, and the other half of such assets to M Corporation, another wholly-owned subsidiary of X Corporation. X Corporation is the acquiring corporation for purposes of section 381.

(3) **Transactions and items not covered by section 381.** (i) Section 381 does not apply to partial liquidations, divisive reorganizations, or other transactions not described in subparagraph (1) of this paragraph. Moreover, section 381 does not apply to the carryover of an item or tax attribute not specified in subsection (c) thereof. In a case where section 381 does not apply to a transaction, item, or tax attribute by reason of either of the preceding sentences, no inference is to be drawn from the provisions of section 381 as to whether any item or tax attribute shall be taken into account by the successor corporation.

(ii) If, pursuant to the provisions of subparagraph (2) of this paragraph, a corporation is considered to be the acquiring corporation even though a part of the acquired assets is transferred to one or more corporations controlled by the acquiring corporation, or all the acquired assets are transferred to two or more corporations controlled by the acquiring corporation, then the carryover of any item described in section 381(c) to such controlled corporation or corporations shall be determined without regard to section 381.

Thus, for example, if a parent corporation is the acquiring corporation for purposes of section 381 notwithstanding the fact that, pursuant to the plan of reorganization, it transferred to its wholly-owned subsidiary property ac-

quired from the transferor corporation which the transferor corporation had elected to inventory under the last-in first-out method, then the question whether the subsidiary corporation shall continue to use the same method of inventorying with respect to that property shall be determined without regard to section 381.

(c) **Foreign corporations.** A foreign corporation may be a distributor, transferor, or acquiring corporation for purposes of section 381. Thus, for example, the net operating loss carryovers of a foreign corporation, determined under the provisions of section 172 and subchapter N, chapter 1 of the Code, may be carried over to a domestic acquiring corporation if the domestic corporation acquires the assets of the foreign corporation in a liquidation or reorganization described in section 381(a) and the requirements of § 1.367-1, if applicable, have been complied with.

(d) **Internal Revenue Code of 1939.** Any reference in the regulations under section 381 to any provision of the Internal Revenue Code of 1954 shall, where appropriate, be deemed also to refer to the corresponding provision of the Internal Revenue Code of 1939.

§ 1.381(b) Statutory provisions; carryovers in certain corporate acquisitions; operating rules.

SEC. 381. Carryovers in certain corporate acquisitions. * * *

(b) **Operating Rules.** Except in the case of an acquisition in connection with a reorganization described in subparagraph (F) of section 368(a)(1)—

(1) The taxable year of the distributor or transferor corporation shall end on the date of distribution or transfer.

(2) For purposes of this section, the date of distribution or transfer shall be the day on which the distribution or transfer is completed; except that, under regulations prescribed by the Secretary or his delegate, the date when substantially all of the property has been distributed or transferred may be used if the distributor or transferor corporation ceases all operations, other than liquidating activities, after such date.

(3) The corporation acquiring property in a distribution or transfer described in subsection (a) shall not be entitled to carry back a net operating loss for a taxable year ending after the date of distribution or transfer to a taxable year of the distributor or transferor corporation.

§ 1.381(b)-1 Operating rules applicable to carryovers in certain corporate acquisitions.

(a) **Closing of taxable year—(1) In general.** Except in the case of a reorganization qualifying under section 368(a)(1)(F), the taxable year of the distributor or transferor corporation shall end with the close of the date of distribution or transfer.

(2) **Reorganizations under section 368(a)(1)(F).** In the case of a reorganization qualifying under section 368(a)(1)(F) (whether or not such reorganization also qualifies under any other provision of section 368(a)(1)), the acquiring corporation shall be treated (for purposes of section 381) just as the transferor corporation would have been treated if there had been no reorganization. Thus, the taxable year of the transferor corporation shall not

end on the date of transfer merely because of the transfer; a net operating loss of the acquiring corporation for any taxable year ending after the date of transfer shall be carried back in accordance with section 172(b) in computing the taxable income of the transferor corporation for a taxable year ending before the date of transfer; and the tax attributes of the transferor corporation enumerated in section 381(c) shall be taken into account by the acquiring corporation as if there had been no reorganization.

(b) **Date of distribution or transfer.** (1) The date of distribution or transfer shall be that day on which are distributed or transferred all those properties of the distributor or transferor corporation which are to be distributed or transferred pursuant to a liquidation or reorganization described in paragraph (b)(1) of § 1.381(a)-1. If the distribution or transfer of all such properties is not made on one day, then, except as provided in subparagraph (2) of this paragraph, the date of distribution or transfer shall be that day on which the distribution or transfer of all such properties is completed.

(2) If the distributor or transferor and acquiring corporations file the statements described in subparagraph (3) of this paragraph, the date of distribution or transfer shall be that day as of which (i) substantially all of the properties to be distributed or transferred have been distributed or transferred, and (ii) the distributor or transferor corporation has ceased all operations (other than liquidating activities). Such day also shall be the date of distribution or transfer if the completion of the distribution or transfer is unreasonably postponed beyond the date as of which substantially all the properties to be distributed or transferred have been distributed or transferred and the distributor or transferor corporation has ceased all operations other than liquidating activities. A corporation shall be considered to have distributed or transferred substantially all of its properties to be distributed or transferred even though it retains money or other property in a reasonable amount to pay outstanding debts or preserve the corporation's legal existence. A corporation shall be considered to have ceased all operations, other than liquidating activities, when it ceases to be a going concern and its activities are merely for the purpose of winding up its affairs, paying its debts, and distributing any remaining balance of its money or other properties to its shareholders.

(3) The statements referred to in subparagraph (2) of this paragraph shall specify the day considered to be the date of distribution or transfer and shall specify, as of such date (i) the nature and amount of the total assets which were distributed or transferred and the dates so distributed or transferred, (ii) the nature and amount of the assets not distributed or transferred and the purpose for which they were retained, and (iii) the date on which the distributor or transferor corporation ceased all operations other than liquidating activities. Such statements shall be attached to the

timely filed income tax return of the distributor or transferor corporation for its taxable year ending with such date of distribution or transfer and to the timely filed income tax return of the acquiring corporation for its first taxable year ending after such date, except that, with respect to any income tax return filed before October 11, 1960, any such statement shall be filed before October 11, 1960, with the district director with whom such return is filed.

(4) If—

(i) The last day of the acquiring corporation's taxable year is a Saturday, Sunday, or legal holiday, and

(ii) The day specified in subparagraph (1) or (2) of this paragraph as the date of distribution or transfer is the last business day before such Saturday, Sunday, or holiday,

then the last day of the acquiring corporation's taxable year shall be the date of distribution or transfer for purposes of section 381(b) and this section. For purposes of this subparagraph, the term "business day" means a day which is not a Saturday, Sunday, or legal holiday, and also means a Saturday, Sunday, or legal holiday if the date of distribution or transfer determined under subparagraph (1) or (2) of this paragraph is such Saturday, Sunday, or holiday.

(c) *Return of distributor or transferor corporation.* The distributor or transferor corporation shall file an income tax return for the taxable year ending with the date of distribution or transfer described in paragraph (b) of this section. If the distributor or transferor corporation remains in existence after such date of distribution or transfer, it shall file an income tax return for the taxable year beginning on the day following the date of distribution or transfer and ending with the date on which the distributor or transferor corporation's taxable year would have ended if there had been no distribution or transfer.

(d) *Carryback of net operating losses.* For provisions relating to the carryback of net operating losses of the acquiring corporation, see paragraph (b) of § 1.381(c)(1)-1.

§ 1.381(c)(1) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; net operating loss carryovers.

Sec. 381. *Carryovers in certain corporate acquisitions.* . . .

(c) *Items of the distributor or transferor corporation.* The items referred to in subsection (a) are:

(1) *Net operating loss carryovers.* The net operating loss carryovers determined under section 172, subject to the following conditions and limitations:

(A) The taxable year of the acquiring corporation to which the net operating loss carryovers of the distributor or transferor corporation are first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) In determining the net operating loss deduction, the portion of such deduction attributable to the net operating loss carryovers of the distributor or transferor corporation to the first taxable year of the acquiring corporation ending after the date of distribution or transfer shall be limited to an amount which bears the same ratio

to the taxable income (determined without regard to a net operating loss deduction) of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For the purpose of determining the amount of the net operating loss carryovers under section 172(b)(2), a net operating loss for a taxable year (hereinafter in this subparagraph referred to as the "loss year") of a distributor or transferor corporation which ends on or before the end of a loss year of the acquiring corporation shall be considered to be a net operating loss for a year prior to such loss year of the acquiring corporation. For the same purpose, the taxable income for a "prior taxable year" (as the term is used in section 172(b)(2)) shall be computed as provided in such section; except that, if the date of distribution or transfer is on a day other than the last day of a taxable year of the acquiring corporation—

(i) Such taxable year shall (for the purpose of this subparagraph only) be considered to be 2 taxable years (hereinafter in this subparagraph referred to as the "pre-acquisition part year" and the "post-acquisition part year");

(ii) The pre-acquisition part year shall begin on the same day as such taxable year begins and shall end on the date of distribution or transfer;

(iii) The post-acquisition part year shall begin on the day following the date of distribution or transfer and shall end on the same day as the end of such taxable year;

(iv) The taxable income for such taxable year (computed with the modifications specified in section 172(b)(2)(A) but without a net operating loss deduction) shall be divided between the pre-acquisition part year and the post-acquisition part year in proportion to the number of days in each;

(v) The net operating loss deduction for the pre-acquisition part year shall be determined as provided in section 172(b)(2)(B), but without regard to a net operating loss year of the distributor or transferor corporation; and

(vi) The net operating loss deduction for the post-acquisition part year shall be determined as provided in section 172(b)(2)(B).

§ 1.381(c)(1)-1 Net operating loss carryovers in certain corporate acquisitions.

(a) *Carryover requirement.* (1) Section 381(c)(1) requires the acquiring corporation to succeed to, and take into account, the net operating loss carryovers of the distributor or transferor corporation. To determine the amount of these carryovers as of the close of the date of distribution or transfer, and to integrate them with any carryovers and carrybacks of the acquiring corporation for purposes of determining the taxable income of the acquiring corporation for taxable years ending after the date of distribution or transfer, it is necessary to apply the provisions of section 172 in accordance with the conditions and limitations of section 381(c)(1) and this section. See also section 382(b) and the regulations thereunder.

(2) The net operating loss carryovers and carrybacks of the acquiring corporation determined as of the close of the date of distribution or transfer shall be computed without reference to any net operating loss of a distributor or transferor corporation. The net operating loss carryovers of a distributor or trans-

feror corporation as of the close of the date of distribution or transfer shall be determined without reference to any net operating loss of the acquiring corporation.

(b) *Carryback of net operating losses.* A net operating loss of the acquiring corporation for any taxable year ending after the date of distribution or transfer shall not be carried back in computing the taxable income of a distributor or transferor corporation. However, a net operating loss of the acquiring corporation for any such taxable year shall be carried back in accordance with section 172(b) in computing the taxable income of the acquiring corporation for a taxable year ending on or before the date of distribution or transfer. If a distributor or transferor corporation remains in existence after the date of distribution or transfer, a net operating loss sustained by it for any taxable year beginning after such date shall be carried back in accordance with section 172(b) in computing the taxable income of such corporation for a taxable year ending on or before that date, but may not be carried back or over in computing the taxable income of the acquiring corporation. This paragraph may be illustrated by the following examples:

Example (1). On December 31, 1954, X Corporation merged into Y Corporation in a statutory merger to which section 361 applies, and the charter of Y Corporation continued after the merger. Y Corporation sustained a net operating loss for the calendar year 1955. Y Corporation's net operating loss for 1955 may not be carried back in computing the taxable income of X Corporation but shall be carried back in computing the taxable income of Y Corporation.

Example (2). On December 31, 1954, X Corporation and Y Corporation transferred all their assets to Z Corporation in a statutory consolidation to which section 361 applies. Z Corporation sustained a net operating loss for the calendar year 1955. Z Corporation's net operating loss for 1955 may not be carried back in computing the taxable income of X Corporation or Y Corporation.

Example (3). On December 31, 1954, X Corporation ceased all operations (other than liquidating activities) and transferred substantially all its properties to Y Corporation in a reorganization qualifying under section 368(a)(1)(C). Such properties comprised all of X Corporation's properties which were to be transferred pursuant to the reorganization. In the process of liquidating its assets and winding up its affairs, X Corporation sustained a net operating loss for its taxable year beginning on January 1, 1955. This net operating loss of X Corporation shall be carried back in computing the taxable income of that corporation but may not be carried back or over in computing the taxable income of Y Corporation.

(c) *First taxable year to which carryovers apply.* (1) The net operating loss carryovers available to the distributor or transferor corporation as of the close of the date of distribution or transfer shall first be carried to the first taxable year of the acquiring corporation ending after that date. This rule applies irrespective of whether the date of distribution or transfer is on the last day, or any other day, of the acquiring corporation's taxable year. Thus, such net operating loss carryovers shall first

be used by the acquiring corporation with respect to the computation of its net operating loss deduction under section 172(a), and its taxable income determined under the provisions of section 172(b)(2), for such first taxable year. However, see paragraph (f) of this section.

(2) The net operating loss carryovers available to the distributor or transferor corporation as of the close of the date of distribution or transfer shall be carried to the acquiring corporation without diminution by reason of the fact that the acquiring corporation does not acquire 100 percent of the assets of the distributor or transferor corporation. Thus, if a parent corporation owning 80 percent of all classes of stock of its subsidiary corporation were to acquire its share of the assets of the subsidiary corporation upon a complete liquidation described in paragraph (b)(1)(i) of § 1.381(a)-1, then, subject to the conditions and limitations of this section, 100 percent of the net operating loss carryovers available to the subsidiary corporation as of the close of the date of distribution would be carried over to the parent corporation.

(d) *Limitation on net operating loss deduction for first taxable year ending after date of distribution or transfer.* (1) That part of the acquiring corporation's net operating loss deduction, determined in accordance with sections 172(a) and 381(c)(1), for its first taxable year ending after the date of distribution or transfer which is attributable to the net operating loss carryovers of the distributor or transferor corporation, is limited by section 381(c)(1)(B) and this paragraph to an amount equal to the acquiring corporation's postacquisition part year taxable income. Such postacquisition part year taxable income is the amount which bears the same ratio to the acquiring corporation's taxable income for the first taxable year ending after the date of distribution or transfer (determined under section 63 without regard to any net operating loss deduction but taking into account other items to which the acquiring corporation succeeds under section 381) as the number of days in such first taxable year which follow the date of distribution or transfer bears to the total number of days in such taxable year. Thus, if the date of distribution or transfer is the last day of the acquiring corporation's taxable year, the net operating loss carryovers of the distributor or transferor are allowed in full in computing under section 172(a) the net operating loss deduction of the acquiring corporation for its first taxable year ending after that date. In such instance, the number of days in the first taxable year which follow the date of distribution or transfer is the total number of days in such taxable year.

(2) The limitation provided by section 381(c)(1)(B) applies solely for the purpose of computing the net operating loss deduction of the acquiring corporation under section 172(a) for the acquiring corporation's first taxable year ending

after the date of distribution or transfer. The limitation does not apply for purposes of determining the portion of any net operating loss (whether of the distributor, transferor, or acquiring corporation) which may be carried to any taxable year of the acquiring corporation following its first taxable year ending after the date of distribution or transfer since such determination is made pursuant to section 172(b) and section 381(c)(1)(C). See paragraphs (e) and (f) of this section.

(3) The limitation provided by section 381(c)(1)(B) shall be applied to the aggregate of the allowable net operating loss carryovers of the distributor or transferor corporation without reference to the taxable years in which the net operating losses were sustained by such corporation. If the acquiring corporation has acquired the assets of two or more distributor or transferor corporations on the same date of distribution or transfer, then the limitation provided by section 381(c)(1)(B) shall be applied to the aggregate of the net operating loss carryovers from all of such distributor or transferor corporations.

(4) If the acquiring corporation succeeds to the net operating loss carryovers of two or more distributor or transferor corporations on two or more different dates of distribution or transfer within one taxable year of the acquiring corporation, the limitation to be applied under section 381(c)(1)(B) to the aggregate of such carryovers shall be governed by the rules prescribed in paragraph (b) of § 1.381(c)-2.

(5) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example (1). (i) X Corporation and Y Corporation were organized on January 1, 1956, and make their returns on the calendar year basis. On December 16, 1957, X Corporation transferred all its assets to Y Corporation in a statutory merger to which section 361 applies. The net operating losses and taxable income (computed without the net operating loss deduction) of the two corporations are as follows, the assumption being made that none of the modifications specified in section 172(b)(2)(A) apply to any taxable year:

Taxable year	X Corporation (transferor)	Y Corporation (acquirer)
1956.....	(\$35,000)	(\$5,000)
Ending 12-16-57.....	(30,000)	xxx
1957.....	xxx	36,500

(ii) The aggregate of the net operating loss carryovers of X Corporation carried under section 381(c)(1)(A) to Y Corporation's taxable year ending December 31, 1957, is \$65,000; but pursuant to section 381(c)(1)(B), only \$1,500 of such aggregate amount (\$36,500 $\times$ $\frac{1}{24}$) may be used in computing the net operating loss deduction of Y Corporation for such taxable year under section 172(a). This limitation applies even though Y Corporation's own net operating loss carryover to such year is only \$5,000, with the result that Y Corporation has taxable income under section 63 of \$30,000 for its taxable year ending December 31, 1957, that is, \$36,500 less the sum of \$5,000 and \$1,500.

(iii) For rules determining the portion of any given loss of X Corporation or Y Corporation which may be carried to a taxable year of Y Corporation following its taxable year ending December 31, 1957, see sections 172(b)(2) and 381(c)(1)(C) and paragraph (f) of this section.

Example (2). (i) X Corporation was organized on January 1, 1954, and Y Corporation was organized on January 1, 1956. Each corporation makes its return on the basis of the calendar year. On December 31, 1956, X Corporation transferred all its assets to Y Corporation in a statutory merger to which section 361 applies. The net operating losses and the taxable income (computed without any net operating loss deduction) of the two corporations are as follows, the assumption being made that none of the modifications specified in section 172(b)(2)(A) apply to any taxable year:

Taxable year	X Corporation (transferor)	Y Corporation (acquirer)
1954.....	(\$5,000)	xxx
1955.....	(15,000)	xxx
1956.....	(10,000)	\$20,000
1957.....	xxx	40,000

(ii) The aggregate of the net operating loss carryovers of X Corporation carried under section 381(c)(1)(A) to Y Corporation's taxable year 1957 is \$30,000, and the full amount of such carryovers is allowed in such taxable year to Y Corporation as a deduction under section 172(a), since such amount does not exceed the limitation (\$40,000 $\times$ $\frac{30}{70}$) for such taxable year under section 381(c)(1)(B).

Example (3). (i) X Corporation, Y Corporation, and Z Corporation were organized on January 1, 1954, and each corporation makes its return on the basis of the calendar year. On September 30, 1956, X Corporation and Y Corporation transferred all their assets to Z Corporation in a statutory merger to which section 361 applies. The net operating losses and the taxable income (computed without any net operating loss deduction) of the three corporations are as follows, the assumption being made that none of the modifications specified in section 172(b)(2)(A) apply to any taxable year:

Taxable year	X Corporation (transferor)	Y Corporation (transferor)	Z Corporation (acquirer)
1954.....	(\$5,000)	(\$3,000)	(\$40,000)
1955.....	(4,000)	(2,000)	10,000
Ending 9-30-56.....	(1,000)	(9,000)	xxx
1956.....	xxx	xxx	73,200

(ii) The aggregate of the net operating loss carryovers of X Corporation and Y Corporation carried under section 381(c)(1)(A) to Z Corporation's taxable year 1956 is \$24,000; but, pursuant to section 381(c)(1)(B), only \$18,400 of such aggregate amount (\$73,200 $\times$ $\frac{24}{100}$) may be used in computing the net operating loss deduction of Z Corporation for such taxable year under section 172(a). For this purpose, Z Corporation may not use the total of the aggregate carryovers (\$10,000) from X Corporation plus the aggregate carryovers (\$14,000) from Y Corporation, even though each such aggregate of carryovers is separately less than the limitation (\$18,400) applicable under section 381(c)(1)(B) and this section.

(iii) For rules determining the portion of any given loss of X Corporation, Y Corporation, or Z Corporation which may be carried to a taxable year of Z Corporation following

its taxable year ending December 31, 1956, see sections 172(b)(2) and 381(c)(1)(C) and paragraph (f) of this section.

(e) *Computation of carryovers and carrybacks; general rule.*—(1) *Sequence for applying losses and computation of taxable income.* The portion of any net operating loss which is carried back or carried over to any taxable year is the excess, if any, of the amount of the loss over the sum of the taxable income for each of the prior taxable years to which the loss may be carried under sections 172(b)(1) and 381. In determining the taxable income for each such prior taxable year for this purpose, the various net operating loss carryovers and carrybacks to such prior taxable year are considered to be applied in reduction of the taxable income in the order of the taxable years in which the net operating losses are sustained, beginning with the loss for the earliest taxable year. The application of this rule to the taxable income of the acquiring corporation for any taxable year ending after the date of distribution or transfer involves the use of carryovers of the distributor or transfer corporation, and of carryovers and carrybacks of the acquiring corporation. In such instance, the sequence for the use of loss years remains the same, and the requirement is to begin with the net operating loss of the earliest taxable year, whether or not it is a loss of the distributor, transferor, or acquiring corporation. The taxable income of the acquiring corporation for any taxable year ending after the date of distribution or transfer shall be determined in the manner prescribed by section 172(b)(2), except that, if the date of distribution or transfer is on a day other than the last day of a taxable year of the acquiring corporation, the taxable income of such corporation for the taxable year which includes such date shall be computed in the special manner prescribed by section 381(c)(1)(C) and paragraph (f) of this section.

(2) *Loss year of transferor or distributor considered prior taxable year.* Section 381(c)(1)(C) provides that, for the purpose of determining the net operating loss carryovers under section 172(b)(2), a net operating loss for a loss year of a distributor or transferor corporation which ends on or before the last day of a loss year of the acquiring corporation shall be considered to be a net operating loss for a year prior to such loss year of the acquiring corporation. In a case where the acquiring corporation has acquired the assets of two or more distributor or transferor corporations on the same date of distribution or transfer, the loss years of the distributor or transferor corporations shall be taken into account in the order in which such loss years terminate; if any one of the loss years of a distributor or transferor corporation ends on the same day as the loss year of another distributor or transferor corporation, either loss year may be taken into account before the other.

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(3) *Years to which losses may be carried.* The taxable years to which a net operating loss shall be carried back or carried over are prescribed by section 172(b)(1). Since the taxable year of the distributor or transferor corporation ends with the close of the date of distribution or transfer, such taxable year and the first taxable year of the acquiring corporation which ends after that date shall be considered two separate taxable years to which a net operating loss of the distributor or transferor corporation for any taxable year ending before that date may be carried over. This rule applies even though the taxable year of the distributor or transferor corporation which ends on the date of distribution or transfer is a period of less than twelve months. However, for the purpose of determining under section 172(b)(1) the taxable years to which a net operating loss of the acquiring corporation is carried over or carried back, the first taxable year of the acquiring corporation which ends after the date of distribution or transfer shall be treated as only one taxable year even though such taxable year is considered under section 381(c)(1)(C) and paragraph (f)(2) of this section as two taxable years. The application of this subparagraph may be illustrated by the following example:

Example. X Corporation was organized on January 1, 1954, and thereafter it sustained net operating losses in its calendar years 1954, 1955, and 1956. On June 30, 1957, X Corporation transferred all its assets to Y Corporation, which was organized on January 1, 1955, in a statutory merger to which section 361 applies. In its taxable year ending June 30, 1957, X Corporation sustained a net operating loss. Y Corporation sustained net operating losses in its calendar years 1955, 1956, and 1958, but had taxable income for the year 1957. The years to which these losses of X Corporation and Y Corporation shall be carried, and the sequence in which carried, are as follows:

Loss year	
X 1954	X 1955, X 1956, X 6/30/57, Y 1957, Y 1958.
X 1955	X 1954, X 1956, X 6/30/57, Y 1957, Y 1958, Y 1959.
Y 1955	Y 1956, Y 1957, Y 1958, Y 1959, Y 1960.
X 1956	X 1954, X 1955, X 6/30/57, Y 1957, Y 1958, Y 1959, Y 1960.
Y 1956	Y 1955, Y 1957, Y 1958, Y 1959, Y 1960, Y 1961.
X 6-30-57	X 1955, X 1956, Y 1957, Y 1958, Y 1959, Y 1960, Y 1961.
Y 1958	Y 1955, Y 1956, Y 1957, Y 1959, Y 1960, Y 1961, Y 1962, Y 1963.

(4) *Computation of carryovers in a case where the date of distribution or transfer occurs on last day of acquiring corporation's taxable year.* The computation of the net operating loss carryovers from the distributor or transferor corporation and from the acquiring corporation in a case where the date of distribution or transfer occurs on the last day of a taxable year of the acquiring corporation may be illustrated by the following example:

Example. X Corporation and Y Corporation were organized on January 1, 1955, and each corporation makes its return on the

basis of the calendar year. On December 31, 1956, X Corporation transferred all its assets to Y Corporation in a statutory merger to which section 361 applies. The net operating losses and the taxable income (computed without any net operating loss deduction) of the two corporations are as follows, the assumption being made that none of the modifications specified in section 172(b)(2)(A) apply to any taxable year:

Taxable year	X Corporation (transferor)	Y Corporation (acquirer)
1955	(\$2,000)	(\$11,000)
1956	(3,000)	10,000
1957	xxx	(15,000)

The sequence in which the losses of X Corporation and Y Corporation are applied, and the computation of the carryovers to Y Corporation's calendar year 1958, may be illustrated as follows:

(i) *X Corporation's 1955 loss.* The carryover to 1958 is \$2,000, computed as follows:

Net operating loss	\$2,000
Less:	
X's 1956 taxable income	\$0
Y's 1957 taxable income	0
	0
Carryover	2,000

(ii) *Y Corporation's 1955 loss.* The carryover to 1958 is \$1,000, computed as follows:

Net operating loss	\$11,000
Less:	
Y's 1956 taxable income	\$10,000
Y's 1957 taxable income	0
	10,000
Carryover	1,000

(iii) *X Corporation's 1956 loss.* The carryover to 1958 is \$3,000, computed as follows:

Net operating loss	\$3,000
Less:	
X's 1955 taxable income	\$0
Y's 1957 taxable income	0
	0
Carryover	3,000

(iv) *Y Corporation's 1957 loss.* The carryover to 1958 is \$15,000, computed as follows:

Net operating loss	\$15,000
Less:	
Y's 1955 taxable income	\$0
Y's 1956 taxable income before net operating loss deduction	\$10,000
Minus Y's 1956 net operating loss deduction (i.e., Y's 1955 carryover)	11,000
	0
Carryover	15,000

(v) *Summary of carryovers to 1958.* The aggregate of the net operating loss carryovers to 1958 is \$21,000, computed as follows:

X's 1955 loss	\$ 2,000
Y's 1955 loss	1,000
X's 1956 loss	3,000
Y's 1957 loss	15,000
Total	21,000

(f) *Computation of carryovers and carrybacks when date of distribution or*

transfer is not on last day of acquiring corporation's taxable year—(1) *General rule.* Pursuant to the provisions of section 381(c)(1)(C), the taxable income of the acquiring corporation for its taxable year which is a prior taxable year for purposes of section 172(b)(2) and paragraph (e) of this section shall be determined in the manner prescribed in this paragraph, if the date of distribution or transfer occurs within, but not on the last day of, such taxable year.

(2) *Taxable year considered as two taxable years.* Such taxable year of the acquiring corporation shall be considered as though it were two taxable years, but only for the limited purpose of applying section 172(b)(2). The first of such two taxable years shall be referred to in this section as the preacquisition part year; the second, as the postacquisition part year. For purposes of section 172(b)(2), a net operating loss of the acquiring corporation shall be carried to the preacquisition part year and then to the postacquisition part year, whereas a net operating loss of a distributor or transferor corporation shall be carried to the postacquisition part year and then to the acquiring corporation's subsequent taxable years. In determining under section 172(b)(2) and this paragraph the portion of any net operating loss of a distributor or transferor corporation which is carried to any taxable year of the acquiring corporation ending after the postacquisition part year, the taxable income (as determined under this paragraph) of the postacquisition part year shall be taken into account but the taxable income of the preacquisition part year (as so determined) shall not be taken into account. Though considered as two separate taxable years for purposes of section 172(b)(2), the preacquisition part year and the postacquisition part year are treated as one taxable year in determining the years to which a net operating loss is carried under section 172(b)(1). See paragraph (e)(3) of this section.

(3) *Preacquisition part year.* The preacquisition part year shall begin with the beginning of such taxable year of the acquiring corporation and shall end with the close of the date of distribution or transfer.

(4) *Postacquisition part year.* The postacquisition part year shall begin with the day following the date of distribution or transfer and shall end with the close of such taxable year of the acquiring corporation.

(5) *Division of taxable income.* The taxable income for such taxable year (computed with the modifications specified in section 172(b)(2)(A) but without any net operating loss deduction) of the acquiring corporation shall be divided between the preacquisition part year and the postacquisition part year in proportion to the number of days in each. Thus, if in a statutory merger to which section 361 applies Y Corporation acquires the assets of X Corporation on June 30, 1960, and Y Corporation has taxable income (computed in the manner so prescribed) of \$36,600 for its calendar

year 1960, then the preacquisition part year taxable income would be \$18,200 ($\$36,600 \times \frac{182}{366}$) and the postacquisition part year taxable income would be \$18,400 ($\$36,600 \times \frac{184}{366}$).

(6) *Net operating loss deduction.* After obtaining the taxable income of the preacquisition part year and of the postacquisition part year in the manner described in subparagraph (5) of this paragraph, it is necessary to compute the net operating loss deduction for each such part year. This deduction shall be determined in the manner prescribed by section 172(b)(2)(B) but subject to the provisions of this subparagraph. The net operating loss deduction for the preacquisition part year shall, for purposes of section 172(b)(2) only, be determined in the same manner as that prescribed by section 172(b)(2)(B) but shall be computed without taking into account any net operating loss of the distributor or transferor corporation. Therefore, only net operating loss carryovers and carrybacks of the acquiring corporation to the preacquisition part year shall be taken into account in computing the net operating loss deduction for such part year. The net operating loss deduction for the postacquisition part year shall, for purposes of section 172(b)(2) only, be determined in the same manner as that prescribed by section 172(b)(2)(B) and shall be computed by taking into account all the net operating loss carryovers available to the distributor or transferor corporation as of the close of the date of distribution or transfer, as well as the net operating loss carryovers and carrybacks of the acquiring corporation to the postacquisition part year. The sequence in which the net operating losses of the two corporations shall be applied for purposes of this subparagraph shall be determined in the manner prescribed in paragraph (e) of this section.

(7) *Limitation on taxable income.* In no case shall the taxable income of the preacquisition part year or the postacquisition part year, as computed under this paragraph, be considered to be less than zero.

(8) *Cross reference.* If the acquiring corporation succeeds to the net operating loss carryovers of two or more distributor or transferor corporations on two or more dates of distribution or transfer during the same taxable year of the acquiring corporation, the determination of the taxable income of the acquiring corporation for such year pursuant to section 381(c)(1)(C) shall be governed by the rules prescribed in paragraph (e) of § 1.381(c)(1)-2.

(9) *Illustration.* The application of this paragraph may be illustrated by the following example:

Example—(1) Facts. X Corporation was organized on January 1, 1955, and Y Corporation was organized on January 1, 1954. Each corporation makes its return on the basis of the calendar year. On June 30, 1956, X Corporation transferred all its assets to Y Corporation in a statutory merger to which section 361 applies. The net operating losses and the taxable income (computed without

any net operating loss deduction) of the two corporations are as follows, the assumption being made that none of the modifications specified in section 172(b)(2)(A) apply to any taxable year:

Taxable year	X Corporation (transferor)	Y Corporation (acquirer)
1954.....	xxx	(\$5,000)
1955.....	(\$65,000)	(20,000)
Ending 6-30-56.....	1,000	xxx
1956.....	xxx	36,600

(ii) *Y Corporation's 1954 loss.* The carryover to 1957 is \$0, computed as follows:

Net operating loss.....	\$5,000
Less:	
Y's 1955 taxable income.....	0
Carryover to Y's preacquisition part year.....	5,000
Less:	
Y's preacquisition part year taxable income computed under subparagraph (5) of this paragraph ($\$36,600 \times \frac{182}{366}$).....	\$18,200
Minus Y's net operating loss deduction for preacquisition part year.....	xxx
	18,200
Carryover to Y's postacquisition part year and also to Y 1957.....	0

(iii) *X Corporation's 1955 loss.* The carryover to 1957 is \$45,600, computed as follows:

Net operating loss.....	\$65,000
Less:	
X's 6/30/56 year taxable income.....	1,000
Carryover to Y's postacquisition part year.....	64,000
Less:	
Y's postacquisition part year taxable income computed under subparagraph (5) of this paragraph ($\$36,600 \times \frac{184}{366}$).....	\$18,400
Minus Y's net operating loss deduction for postacquisition part year (i.e., Y's 1954 carryover of \$0 to such part year).....	0
	18,400
Carryover to Y 1957.....	45,600

(iv) *Y Corporation's 1955 loss.* The carryover to 1957 is \$6,800, computed as follows:

Net operating loss.....	\$20,000
Less:	
Y's 1954 taxable income.....	0
Carryover to Y's preacquisition part year.....	20,000
Less:	
Y's preacquisition part year taxable income computed under subparagraph (5) of this paragraph.....	\$18,200
Minus Y's net operating loss deduction for preacquisition part year (i.e., Y's 1954 carryover to such part year).....	5,000
	13,200
Carryover to Y's postacquisition part year.....	6,800

Less:
Y's postacquisition part year taxable income computed under subparagraph (5) of this paragraph \$18,400
Minus Y's net operating loss deduction for postacquisition part year (i.e., Y's 1954 carryover of \$0, and X's 1955 carryover of \$64,000, to such part year)----- 64,000
\$0
Carryover to Y 1957----- 6,800

(v) Summary of carryovers to 1957. The aggregate of the net operating loss carryovers to 1957 is \$52,400, determined as follows:

Y's 1954 loss----- \$0
X's 1955 loss----- 45,600
Y's 1955 loss----- 6,800
Total----- 52,400

(g) Successive acquiring corporations. An acquiring corporation which, in a distribution or transfer to which section 381(a) applies, acquires the assets of a distributor or transferor corporation which previously acquired the assets of another corporation in a transaction to which section 381(a) applies, shall succeed to and take into account, subject to the conditions and limitations of sections 172 and 381, the net operating loss carryovers available to the first acquiring corporation under sections 172 and 381.

(h) Illustration. The application of this section may be further illustrated by the following example:

Example—(1) Facts. X Corporation was organized on January 1, 1954, and Y Corporation was organized on January 1, 1955. Each corporation makes its return on the basis of the calendar year. On August 31, 1957, X Corporation transferred all its assets to Y Corporation in a statutory merger to which section 361 applies. The net operating losses and the taxable income of the two corporations for the taxable years involved are set forth in the tabulation below. The taxable income so shown is computed without the modifications required by section 172(b) (2) (A) and without the benefit of any net operating loss deduction. In its calendar year 1957, Y Corporation had a deduction of \$385 which is disallowed by section 172 (b) (2) (A).

Taxable year	X Corporation (transferor)	Y Corporation (acquirer)
1954		
1955	(\$7,000)	xxx
1956	(10,000)	(\$10,000)
Ending 8-31-57	(25,000)	(15,000)
1957	1,000	xxx
1958	xxx	54,750
1959	xxx	(5,000)
	xxx	50,000

(2) Computation of carryovers and carrybacks. The sequence in which the losses of X Corporation and Y Corporation are applied and the computation of the carryovers to Y Corporation's calendar year 1959 may be illustrated as follows:

(i) X Corporation's 1954 loss. The carryover to 1958, which is the last year to which this loss may be carried, is \$0, computed as follows:

Net operating loss----- \$7,000
Less:
X's 1955 taxable income----- \$0
X's 1956 taxable income----- 0
\$0
Carryover to X's 8/31/57-year----- 7,000

Less:
X's 8/31/57-year taxable income----- \$1,000
Carryover to Y's postacquisition part year----- 6,000

Less:
Y's postacquisition part year taxable income computed under paragraph (f) (5) of this section $((\$54,750 + \$365) \times 122/365)$ ----- \$18,422
Minus Y's net operating loss deduction for postacquisition part year----- xxx
18,422
Carryover to Y 1958----- 0

(ii) X Corporation's 1955 loss. The carryover to 1959 is \$0, computed as follows:

Net operating loss----- \$10,000
Less:
X's 1954 taxable income----- \$0
X's 1956 taxable income----- 0
0
Carryover to X's 8/31/57-year----- 10,000

Less:
X's 8/31/57-year taxable income before net operating loss deduction----- \$1,000
Minus X's net operating loss deduction for 8/31/57-year (i.e., X's 1954 carryover)----- 7,000
0
Carryover to Y's postacquisition part year----- 10,000

Less:
Y's postacquisition part year taxable income computed under paragraph (f) (5) of this section----- \$18,422
Minus Y's net operating loss deduction for postacquisition part year (i.e., X's 1954 carryover to such part year)----- 6,000
12,422
Carryover to Y 1958 and Y 1959----- 0

(iii) Y Corporation's 1955 loss. The carryover to 1959 is \$0, computed as follows:

Net operating loss----- \$10,000
Less:
Y's 1956 taxable income----- 0
Carryover to Y's preacquisition part year----- 10,000

Less:
Y's preacquisition part year taxable income computed under paragraph (f) (5) of this section $((\$54,750 + \$365) \times 243/365)$ ----- \$36,693
Minus Y's net operating loss deduction for preacquisition part year----- xxx
36,693
Carryover to Y's postacquisition part year, to Y 1958, and to Y 1959----- 0

(iv) X Corporation's 1956 loss. The carryover to 1959 is \$22,578, computed as follows:

Net operating loss----- \$25,000
Less:
X's 1954 taxable income----- \$0
X's 1955 taxable income----- 0
X's 8/31/57-year taxable income before net operating loss deduction----- \$1,000

Minus X's net operating loss deduction for 8/31/57-year (i.e., X's 1954 carryover of \$7,000 and X's 1955 carryover of \$10,000)----- \$17,000
\$0
Carryover to Y's postacquisition part year----- 25,000

Less:
Y's postacquisition part year taxable income computed under paragraph (f) (5) of this section----- \$18,422
Minus Y's net operating loss deduction for postacquisition part year (i.e., X's 1954 carryover of \$6,000, X's 1955 carryover of \$10,000 and Y's 1955 carryover of \$0, to such part year)----- 16,000
2,422
Carryover to Y 1958----- 22,578

Less:
Y's 1958 taxable income----- 0
Carryover to Y 1959----- 22,578

(v) Y Corporation's 1956 loss. The carryover to 1959 is \$0, computed as follows:

Net operating loss----- \$15,000
Less:
Y's 1955 taxable income----- 0
Carryover to Y's preacquisition part year----- 15,000

Less:
Y's preacquisition part year taxable income computed under paragraph (f) (5) of this section----- \$36,693
Minus Y's net operating loss deduction for preacquisition part year (i.e., Y's 1955 carryover to such part year)----- 10,000
26,693
Carryover to Y's postacquisition part year, to Y 1958, and to Y 1959----- 0

(vi) Y Corporation's 1958 loss. The carryover to 1959 is \$0, computed as follows:

Net operating loss----- \$5,000
Less:
Y's 1955 taxable income¹----- \$0
Y's 1956 taxable income----- 0
0
Carryback to Y's preacquisition part year----- 5,000

Less:
Y's preacquisition part year taxable income computed under paragraph (f) (5) of this section----- \$36,693
Minus Y's net operating loss deduction for preacquisition part year (i.e., Y's 1955 carryover of \$10,000, and Y's 1956 carryover of \$15,000, to such part year)----- 25,000
11,693
Carryback to Y's postacquisition part year and carryover to Y 1959----- 0

¹ Three-year carryback in case of loss years ending after December 31, 1957.

(vii) *Summary of carryovers to 1959.* The aggregate of the net operating loss carryovers to 1959 is \$22,578, computed as follows:

X's 1955 loss.....	\$0
Y's 1955 loss.....	0
X's 1956 loss.....	22,578
Y's 1956 loss.....	0
Y's 1958 loss.....	0
Total.....	22,578

(3) *Net operating loss deduction for 1957.*

(i) The net operating loss deduction available to Y Corporation under section 172(a) for the calendar year 1957, determined in accordance with paragraph (d) of this section, is \$48,300, computed as follows:

Aggregate of the net operating loss carryovers available to the transferor corporation as of the close of August 31, 1957, but limited by paragraph (d) of this section to \$18,300 (Y's 1957 taxable income of \$54,750, computed without any net operating loss deduction, multiplied by 123/605)

Carryover of X's 1954 loss.. \$6,000
Carryover of X's 1955 loss.. 10,000
Carryover of X's 1956 loss.. 25,000

41,000

Aggregate of carryovers, limited as above.....

\$18,300

Carryover of Y's 1955 loss..... 10,000
Carryover of Y's 1956 loss..... 15,000
Carryback of Y's 1958 loss..... 5,000

Net operating loss deduction.. 48,300

(ii) The taxable income under section 63 for 1957 is \$6,450, computed as follows:

Taxable income determined without any net operating loss deduction.. \$54,750
Less:

Net operating loss deduction for 1957, as determined under subdivision (i) of this subparagraph..... 48,300

Taxable income under section 63..... 6,450

(4) *Net operating loss deduction for 1959.* The taxable income under section 63 for 1959 is \$27,422, computed as follows:

Taxable income determined without any net operating loss deduction.. \$50,000
Less:

Net operating loss deduction for 1959 (i.e., the aggregate carryovers determined under subparagraph (2) (vii) of this paragraph)..... 22,578

Taxable income under section 63..... 27,422

(5) *Years to which losses may be carried.* The taxable years to which the losses of X Corporation and Y Corporation may be carried, and the sequence in which carried, are as follows:

Loss year	Carried to
X 1954.....	X 1955, X 1956, X 8/31/57, Y 1957, Y 1958.
X 1955.....	X 1954, X 1956, X 8/31/57, Y 1957, Y 1958, Y 1959.
Y 1955.....	Y 1956, Y 1957, Y 1958, Y 1959, Y 1960.
X 1956.....	X 1954, X 1955, X 8/31/57, Y 1957, Y 1958, Y 1959, Y 1960.
Y 1956.....	Y 1955, Y 1957, Y 1958, Y 1959, Y 1960, Y 1961.
Y 1958.....	Y 1955, Y 1956, Y 1957, Y 1959, Y 1960, Y 1961, Y 1962, Y 1963.

§ 1.381(c)(1)-2 *Net operating loss carryovers; two or more dates of distribution or transfer in the taxable year.*

(a) *In general.* If the acquiring corporation succeeds to the net operating loss carryovers of two or more distributor or transferor corporations on two or more dates of distribution or transfer within one taxable year of the acquiring corporation, the limitation to be applied under section 381(c)(1)(B) to the aggregate of the net operating loss carryovers to that taxable year from all of the distributor or transferor corporations shall be determined by applying the rules prescribed in paragraph (b) of this section, and the taxable income of the acquiring corporation for that taxable year under sections 381(c)(1)(C) and 172(b)(2) shall be determined by applying the rules prescribed in paragraph (c) of this section. For purposes of this section, the term "postacquisition income" means postacquisition part year taxable income determined under paragraph (d)(1) of § 1.381(c)(1)-1 by treating the first date of distribution or transfer as though it were the only date of distribution or transfer during the taxable year of the acquiring corporation.

(b) *Determination of limitation under section 381(c)(1)(B)—(1) In general.* If the acquiring corporation succeeds to the net operating loss carryovers of two or more distributor or transferor corporations on two or more dates of distribution or transfer during the same taxable year of the acquiring corporation, and if the amount of the net operating loss carryovers acquired on the first date of distribution or transfer equals or exceeds the postacquisition income, then the limitation under section 381(c)(1)(B) shall be an amount equal to such postacquisition income. If the amount of the net operating loss carryovers acquired on the first date of distribution or transfer is less than such postacquisition income, then the limitation under section 381(c)(1)(B) shall be determined as provided in subparagraphs (2) through (5) of this paragraph.

(2) *Allocation of postacquisition income among partial postacquisition years.* That part of the taxable year of the acquiring corporation beginning on the day following the first date of distribution or transfer and ending with the close of the taxable year of the acquiring corporation shall be divided into the same number of partial postacquisition years as the number of dates of distribution or transfer on which the acquiring corporation succeeds to net operating loss carryovers during its taxable year. The first partial postacquisition year shall begin with the day following the first date of distribution or transfer and shall end with the close of the second date of distribution or transfer. The second and succeeding partial postacquisition years shall begin with the day following the close of the preceding such partial year and shall end with the close of the succeeding date of distribution or transfer, or, if

there is no such succeeding date, then with the close of the taxable year of the acquiring corporation. The postacquisition income of the acquiring corporation shall be allocated among the partial postacquisition years in proportion to the number of days in each such partial year.

(3) *Two dates of distribution or transfer.* If the acquiring corporation succeeds to the net operating loss carryovers of two distributor or transferor corporations on two dates of distribution or transfer during the same taxable year of the acquiring corporation, and if the amount of the net operating loss carryovers acquired on the first date equals or exceeds the income for the first partial postacquisition year, the limitation provided by section 381(c)(1)(B) shall be the amount of the postacquisition income. If the income for the first partial postacquisition year exceeds the net operating loss carryovers acquired on the first date of distribution or transfer, the limitation provided by section 381(c)(1)(B) shall be the amount of the postacquisition income reduced by the amount of such excess. The application of this subparagraph may be illustrated by the following example:

Example. (1) X Corporation has taxable income (computed without any net operating loss deduction) of \$36,500 for its calendar year 1955. During 1955, X Corporation acquires the assets of Y and Z Corporations in statutory mergers to each of which section 361 applies, the dates of transfer being January 1 and December 1, respectively. The net operating loss carryovers of each transferor corporation and the income for each partial postacquisition year are:

Corporation	Carryovers	Income for partial years	Reduction
Y.....	\$1,000	\$33,400 (\$36,500 × 334/365)	\$32,400
Z.....	50,000	3,000 (\$36,500 × 30/365)	0
	51,000	36,400	32,400

(ii) The limitation provided by section 381(c)(1)(B) equals the postacquisition income of \$36,400 reduced by \$32,400, the excess of the income for the first partial year (\$33,400) over the net operating loss carryovers acquired on the first date of transfer (\$1,000). Accordingly, the limitation is \$4,000 (\$36,400 minus \$32,400). Therefore, although X Corporation acquired carryovers aggregating \$51,000 during 1955, it can utilize only \$4,000 of such carryovers in computing its net operating loss deduction for 1955.

(4) *Three dates of distribution or transfer.* If the acquiring corporation succeeds to the net operating loss carryovers of three distributor or transferor corporations on three dates of distribution or transfer during the same taxable year of the acquiring corporation, and if the amount of the net operating loss carryovers acquired on the first date equals or exceeds the income for the first and second partial postacquisition years, the limitation provided by section 381(c)(1)(B) shall be the amount of the postacquisition income. If the amount of the carryovers acquired on the first date equals or exceeds the income for the first partial postacquisition year but does not equal or exceed the income for the first and second partial postacquisition

years, the limitation shall be the amount of the postacquisition income reduced by the excess of the income for the first and second partial postacquisition years over the amount of carryovers acquired on the first and second dates of distribution or transfer. If the income for the first partial postacquisition year exceeds the carryovers acquired on the first date, the limitation shall be the postacquisition income reduced by the sum of the amount of such excess plus the amount, if any, by which the income for the second partial postacquisition year exceeds the carryovers acquired on the second date. This subparagraph may be illustrated by the following examples:

Example (1). (i) X Corporation has taxable income (computed without any net operating loss deduction) of \$36,500 for its calendar year 1955. During 1955, X Corporation acquires the assets of M, N, and Z Corporations in statutory mergers to each of which section 361 applies, the dates of transfer being January 1, January 31, and December 1, respectively. The net operating loss carryovers of each transferor corporation and the income for each partial postacquisition year are:

Corporation	Carryovers	Income for partial years	Reduction
M.....	\$4,000	\$3,000 (\$36,500×30/365)	\$23,400
N.....	6,000	30,400 (\$36,500×304/365)	0
Z.....	50,000	3,000 (\$36,500×30/365)	23,400
	60,000	36,400	

(ii) Since the carryovers of \$4,000 acquired on the first date of transfer exceed the income for the first partial year (\$3,000), the limitation provided by section 381(c)(1)(B) is the amount of the postacquisition income (\$36,400) reduced by the excess of the income for the first and second partial years (\$33,400) over the carryovers acquired on the first and second dates of transfer (\$10,000). Therefore, the limitation is \$13,000 (\$36,400 less \$23,400).

Example (2). (i) Assume the same facts as in example (1) except that the amount of the net operating loss carryovers acquired from M Corporation is \$1,000. The net operating loss carryovers of each transferor corporation and the income for each partial postacquisition year are:

Corporation	Carryovers	Income for partial years	Reduction
M.....	\$1,000	\$3,000 (\$36,500×30/365)	\$2,000
N.....	6,000	30,400 (\$36,500×304/365)	24,400
Z.....	50,000	3,000 (\$36,500×30/365)	0
	57,000	36,400	26,400

(ii) Since the income for the first partial year (\$3,000) exceeds the \$1,000 of carryovers acquired on the first date by \$2,000, the limitation provided by section 381(c)(1)(B) is the postacquisition income of \$36,400 reduced by such excess and also reduced by the excess of the income for the second partial year (\$30,400) over the carryovers acquired on the second date of transfer (\$6,000). Therefore, the limitation is \$10,000 (\$36,400 less the sum of \$2,000 and \$24,400).

Example (3). (i) Assume the same facts as in example (2) except that the carryovers acquired from N Corporation are \$75,000. The net operating loss carryovers of each transferor corporation and the income for each partial postacquisition year are:

Corporation	Carryovers	Income for partial years	Reduction
M.....	\$1,000	\$3,000 (\$36,500×30/365)	\$2,000
N.....	75,000	30,400 (\$36,500×304/365)	0
Z.....	50,000	3,000 (\$36,500×30/365)	0
	126,000	36,400	2,000

(ii) Since the income for the first partial year (\$3,000) exceeds the \$1,000 of carryovers acquired on the first date by \$2,000, the limitation provided by section 381(c)(1)(B) is the postacquisition income of \$36,400 reduced by \$2,000, or \$34,400. No further reduction is made since the income for the second partial year (\$30,400) does not exceed the carryovers of \$75,000 acquired on the second date of transfer.

(5) **Four or more dates of distribution or transfer.** If the acquiring corporation succeeds to the net operating loss carryovers of four or more distributor or transferor corporations on four or more dates of distribution or transfer during the same taxable year of the acquiring corporation, the limitation provided by section 381(c)(1)(B) shall be determined consistently with the methods prescribed in subparagraphs (3) and (4) of this paragraph. The application of this subparagraph may be illustrated by the following example:

Example. (i) X Corporation has taxable income (computed without any net operating loss deduction) of \$36,500 for its calendar year 1955. During 1955, X Corporation acquires the assets of M, N, O, Y, and Z Corporations in statutory mergers to each of which section 361 applied, the dates of transfer being, respectively, January 1, January 31, March 3, April 2, and December 1. The net operating loss carryovers of each transferor corporation and the income for each partial postacquisition year are:

Corporation	Carryovers	Income for partial years	Reduction
M.....	\$1,000	\$3,000 (\$36,500×30/365)	\$2,000
N.....	4,000	3,100 (\$36,500×31/365)	1,100
O.....	1,000	3,000 (\$36,500×30/365)	14,300
Y.....	10,000	24,300 (\$36,500×243/365)	0
Z.....	20,000	3,000 (\$36,500×30/365)	
	36,000	36,400	17,400

(ii) The limitation provided by section 381(c)(1)(B) equals the postacquisition income of \$36,400 reduced by the sum of (a) the \$2,000 excess of the income for the first partial year (\$3,000) over the carryovers acquired from M Corporation (\$1,000), (b) the \$1,100 excess of the income for the second and third partial years (\$6,100) over the carryovers acquired from N and O Corporations (\$5,000), and (c) the \$14,300 excess of the income for the fourth partial year (\$24,300) over the carryovers acquired from Y Corporation (\$10,000). Accordingly, the limitation is \$19,000 (\$36,400 minus \$17,400). Therefore, although X Corporation acquired carryovers aggregating \$36,000 during 1955, it can utilize only \$19,000 of such carryovers in computing its net operating loss deduction for 1955.

(c) **Determination of taxable income of acquiring corporation under section 381(c)(1)(C)—(1) In general.** If the acquiring corporation succeeds to the net operating loss carryovers of two or more distributor or transferor corporations on two or more dates of distribution or transfer within one taxable year

of the acquiring corporation, then pursuant to section 381(c)(1)(C) the taxable income of the acquiring corporation for its taxable year which is a prior taxable year for purposes of section 172(b)(2) and paragraph (e) of § 1.381(c)(1)-1 shall be determined as provided in this paragraph.

(2) **Division of taxable income.** The taxable income of the acquiring corporation (computed with the modifications specified in section 172(b)(2)(A) but without any net operating loss deduction) shall be allocated proportionately on a daily basis among a preacquisition part year (determined under paragraph (f)(3) of § 1.381(c)(1)-1 by treating the first date of distribution or transfer as though it were the only date of distribution or transfer during the taxable year of the acquiring corporation) and two or more partial postacquisition years (determined as provided in paragraph (b)(2) of this section). The preacquisition part year and each partial postacquisition year shall be considered a separate taxable year, but only for the limited purpose of applying sections 172(b)(2) and 381(c)(1)(C).

(3) **Net operating loss deduction.** The net operating loss deduction of the preacquisition part year and the partial postacquisition years shall be determined consistently with the manner described in paragraph (f)(6) of § 1.381(c)(1)-1 but by taking into account, in the case of any partial postacquisition year, only the net operating loss carryovers and carrybacks of the acquiring corporation and those net operating loss carryovers from a distributor or transferor corporation which become available to the acquiring corporation as of the close of those dates of distribution or transfer which occur before the beginning of that specific partial postacquisition year. The sequence in which the net operating losses of the distributor or transferor and acquiring corporations shall be applied for this purpose shall be determined in the manner described in paragraph (e) of § 1.381(c)(1)-1. Subject to the preceding sentence, the net operating loss carryovers to any specific partial postacquisition year, whether from a distributor, transferor, or acquiring corporation, shall be taken into account in the order of the taxable years in which the net operating losses arose, beginning with the loss for the earliest taxable year.

(4) **Illustration.** The application of this paragraph may be illustrated by the following example:

Example—(1) Facts. X Corporation, which was organized on January 1, 1957, sustained a net operating loss of \$20,000 for its calendar year 1957 and had taxable income (computed without any net operating loss deduction) of \$36,500 for its calendar year 1958. During 1958, X Corporation acquired the assets of Y and Z Corporations in statutory mergers to each of which section 361 applied, the dates of transfer being June 30 and September 30, respectively. None of the modifications specified in section 172(b)(2)(A) apply to any of the corporations for any taxable year. The taxable income (computed without any net operating loss deduction) and net operating losses of Y and Z Corporations (which were organized on January 1,

1957, and January 1, 1954, respectively) are set forth below:

Taxable year	Acquiring corporation X	Transferor corporation Y	Transferor corporation Z
1954	xxx	xxx	(\$30,000)
1955	xxx	xxx	1,000
1956	xxx	xxx	1,000
1957	(\$20,000)	(\$25,000)	1,000
Ending 6-30-58	xxx	1,000	xxx
Ending 9-30-58	xxx	xxx	1,000
1958	36,500	xxx	xxx

The sequence in which the losses of the acquiring corporation and the transferor corporations are applied and the computation of the carryovers to X Corporation's calendar year 1959 are illustrated in the following subdivisions of this example.

(ii) *Computation of taxable income.* X Corporation's taxable income, determined in the manner described in subparagraph (2) of this paragraph, for the preacquisition part year and for the partial postacquisition years is as follows:

Year	Taxable income	Computation
Preacquisition part year	\$18,100	\$36,500 × 181/365
Partial No. 1	9,200	30,500 × 92/365
Partial No. 2	9,200	36,500 × 92/365

(iii) *Z Corporation's 1954 loss.* The carryover to 1959 is \$0, computed as follows:

Net operating loss	\$30,000
Less:	
Z's 1955, 1956, 1957, and 9/30/58-year income	4,000
Net operating loss carryover to Partial No. 2 year	26,000
Less:	
Partial No. 2 year taxable income	9,200
	16,800

The balance of \$16,800 is not carried over to 1959 since X Corporation's taxable year 1958 is the last of the five years to which Z's 1954 loss may be carried under section 172(b)(1).

(iv) *Y Corporation's 1957 loss.* The carryover to 1959 is \$14,800, computed as follows:

Net operating loss	\$25,000
Less:	
Y's 6/30/58-year income	1,000
Net operating loss carryover to Partial No. 1 year	24,000
Less:	
Partial No. 1 year taxable income	9,200
Carryover to Partial No. 2 year	14,800
Less:	
X's Partial No. 2 year taxable income	\$9,200
Minus X's net operating loss deduction for Partial No. 2 year (i.e., Z's 1954 carryover of \$26,000 to such partial year)	26,000
	0
Carryover to 1959	14,800

(v) *X Corporation's 1957 loss.* The carryover to 1959 is \$1,900, computed as follows:

Net operating loss	\$20,000
Less:	
X's preacquisition part year taxable income	18,100
Carryover to Partial No. 1 year	1,900

Less:	
Partial No. 1 year taxable income	\$9,200
Minus X's net operating loss deduction for Partial No. 1 year (i.e., Y's 1957 carryover of \$24,000 to such partial year)	24,000
Carryover to Partial No. 2 year	1,900
Less:	
Partial No. 2 year taxable income	\$9,200
Minus X's net operating loss deduction for Partial No. 2 year (i.e., Z's 1954 carryover of \$26,000, and Y's 1957 carryover of \$14,800, to such partial year)	40,800
Carryover to 1959	1,900
(vi) <i>Summary of carryovers to 1959.</i> The aggregate of the net operating loss carryovers to 1959 is \$16,700, computed as follows:	
Z's 1954 loss	xxx
Y's 1957 loss	\$14,800
X's 1957 loss	1,900
Total	16,700

[F.R. Doc. 60-6452; Filed, July 12, 1960; 8:47 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER N—TRANSPORTATION

PART 208—TRANSPORTATION OF HOUSEHOLD GOODS OF MILITARY AND CIVILIAN PERSONNEL

The Secretary of Defense issued the following on July 1, 1960. This Part 208 supersedes and cancels 32 CFR 1960 Cum. Supp., Parts 206 and 208; Part 208 (25 F.R. 211) and Notice of Suspension of Part 208 (25 F.R. 680) of Title 32.

Sec.	
208.1	Purpose, applicability and objective.
208.2	Definitions.
208.3	Policies.
208.4	Implementation.
208.5	Required action.

AUTHORITY: §§ 208.1 to 208.5 issued under sec. 202, 61 Stat. 500; 5 U.S.C. 171a.

§ 208.1 Purpose, applicability and objective.

(a) This part assigns authority and responsibilities and establishes policies relative to the transportation of household goods of military and civilian personnel of the Department of Defense (1) between points within the United States and (2) between the United States and other areas in through bill of lading service when the transportation is procured and arranged by an agency of the Department of Defense.

(b) The objective of this part is to assure high quality service to military and civilian personnel of the Department of Defense in the transportation of their household goods at the lowest over-all cost to the Government.

§ 208.2 Definitions.

As used herein:

(a) "Lowest over-all cost" means the aggregate of all costs which are known or can reasonably be estimated in connection with a shipment (including accessorial charges and amounts paid by the Government for loss and damage).

(b) "United States" means the forty-eight contiguous states and the District of Columbia.

§ 208.3 Policies.

(a) *Comparative costs among modes of transportation.* Section 303(c) of the Career Compensation Act of 1949, as amended (63 Stat. 802), provides in part that " * * * members of the uniformed services * * * in connection with a change of station (whether temporary or permanent) [shall be entitled] to transportation (including packing, crating, drayage, temporary storage and unpacking) of baggage and household effects, or reimbursement therefor * * * without regard to the comparative costs of the various modes of transportation." However, comparative costs of the various modes of transportation may be disregarded only when all carriers within the mode(s) which would produce the lowest over-all cost to the Government cannot provide the required services satisfactorily. In such instances the next lowest cost mode in which carriers can provide satisfactory service shall be used. The same principle shall apply in shipping household goods of civilian personnel when the transportation is procured and arranged by an agency of the Department of Defense.

(b) *Quality of service.* The quality of service provided by carriers shall be evaluated, in comparison with uniform standards prescribed by the Single Manager for Traffic Management, on the basis of all available information, including, but not limited to, the following:

(1) Reports of inspections of carrier facilities, transportation equipment, and service practices.

(2) Carrier performance reports by military and civilian personnel in connection with the transportation of their household goods.

(3) Official reports and actions by regulatory bodies which serve as factual indicators of carrier performance.

(4) Claims for loss and damage filed against carriers and the Government, and settlements thereof.

(c) *Qualified carriers.* Only those carriers shall be qualified which:

(1) Are authorized according to law to provide the required services;

(2) Provide adequate evidence of satisfactory transportation equipment and financial responsibility and reliability;

(3) Have made specific arrangements for the use of a satisfactory terminal facility consisting of a warehouse, loading and unloading area, and office sufficiently near the shipping activity or point of origin of the shipment to assure satisfactory service and permit ready inspection of the facility and the household goods stored or serviced therein;

(4) When required, have executed and filed with the appropriate office a house-

hold goods service tender or other document authorized in lieu thereof;

(5) Assume full responsibility for arranging for placing in a satisfactory terminal facility those shipments which require storage in transit at destination; and

(6) Provide high quality service.

(d) *Selection of carrier and distribution of traffic.* (1) Only those carriers shall be used which satisfy the requirements of paragraph (c) of this section at the lowest over-all cost to the Government. Connecting carriers on a joint carriage arrangement must meet all of the requirements for a qualified carrier except paragraph (c) (3) and (5) of this section when they are not terminating carriers.

(2) To the extent practicable, traffic shall be distributed by destination state or other area outside the United States among these carriers in equitable proportions, subject to the following:

(i) Carrier's ability to respond to requirements of the traffic offered for movement. When a carrier is offered a shipment and cannot perform, the carrier shall be charged with the offer in the same manner as if it had performed.

(ii) At each shipping activity, additional shipments shall be offered to a carrier or carriers when it has been determined that it or they provide an exceptionally high quality of service as compared with other carriers serving the activity. Such shipments shall not be charged to normal distribution.

(3) For traffic distribution purposes, carriers under effective common financial or administrative control shall be treated as a single carrier. The service tender, or document in lieu thereof, filed by each carrier shall include: (i) Name(s) of any other carrier(s) serving the same shipping activity which are under effective common financial or administrative control with the filing carrier, or (ii) a statement that the filing carrier is independent in finance and administration from all other carriers serving the same shipping activity.

(4) When consistent with other provisions of this paragraph (d):

(i) A request by the property owner for non-use of a carrier because of specific prior unsatisfactory service shall be honored if another carrier is available to move the shipment at the same over-all cost to the Government.

(ii) A preference for a carrier expressed by the property owner shall be honored.

(5) Traffic shall be distributed according to the originating carrier rather than according to agent. When a joint carriage arrangement is utilized, shipments transported thereunder shall be considered as having been received by each participating carrier qualified to serve the origin point.

(6) Records of traffic distribution shall be maintained by destination state or other area outside the United States.

(e) *None-use of carriers.* (1) Carriers which have indicated in writing a desire to participate in Department of Defense traffic and are not considered to be qualified shall be notified in writing of their deficiencies. Such carriers shall

be provided an opportunity to (i) appeal the decision, or to (ii) receive further consideration after correcting the deficiencies causing the refusal.

(2) Carriers which have been qualified, but which subsequently fail to provide high quality service, fail to meet the other requirements of paragraph (c) of this section, or commit unethical acts, shall be suspended in accordance with criteria and procedures established by the Single Manager for Traffic Management. Such carriers shall be provided an opportunity to (i) appeal the decision, or (ii) request requalification after correcting the deficiencies causing the suspension.

(f) *Use of storage in transit.* When commercial temporary storage is required in connection with transportation, storage-in-transit, as defined in carriers' tariffs, shall be used except when it is clearly evident, after considering such factors as over-all cost, and liability of the carrier versus that of the warehouseman, that the best interests of the Government and the property owner can be served only by the use of contract storage.

(g) *Use of United States carriers.* (1) The contracting carrier shall be a United States organization owned and controlled by citizens of the United States except when the Single Manager for Traffic Management has determined that a United States carrier cannot provide timely movement.

(2) When commercial ocean or air carriers or operators are to be used as a part of through bill of lading service between the United States and other areas, only ships of United States registry engaged in regular berth service or United States flag aircraft shall be used except when the Single Manager for Ocean Transportation or the Single Manager for Airlift Service, respectively, has determined they are not available for timely movement.

§ 208.4 Implementation.

(a) The Single Manager for Traffic Management is assigned authority and responsibility for:

(1) Implementing this part by prescribing, in agreement with the heads of the other military services, uniform joint regulations which will include but not be limited to: (i) Service tenders or other documents authorized in lieu thereof; (ii) standards for quality of service; (iii) procedures for measuring and comparing the quality of service provided by carriers; (iv) criteria and procedures for offering additional shipments and for qualifying, selecting, and suspending carriers; and (v) standards, formulae, and procedures for determining the lowest over-all cost.

(2) Assuring compliance with the above-mentioned regulations. Compliance will be accomplished through command channels of the military services, by appropriate means, including action based on recommendations by representatives of the Military Traffic Management Agency resulting from staff visits to all activities of the military services within the United States which ship household goods.

(3) Negotiating with commercial carriers and operators on all matters incident to the transportation of household goods within the United States and between the United States and other areas in through bill of lading service. Negotiations with commercial air or ocean operators for transportation as a part of through bill of lading service between the United States and other areas, or with air carriers for service within the United States under long term contracts, shall be conducted by the Single Manager for Airlift Service or the Single Manager for Ocean Transportation. The agreement of the Single Manager for Traffic Management shall be secured prior to the initiation of such negotiations.

(b) The service tenders or other documents authorized in lieu thereof referred to in paragraph (a) (1) of this section shall require carriers providing through bill of lading service between the United States and other areas to furnish after the fact reports of shipments to the Single Manager for Traffic Management, the Single Manager for Ocean Transportation, and the Single Manager for Airlift Service, as prescribed by uniform joint regulations.

(c) The Single Manager for Traffic Management shall consult with the Small Business Administration and appropriate representatives of the transportation industry on those portions of joint procedures, standards, criteria and regulations directly affecting the transportation industry prior to their publication.

(d) The Single Manager for Traffic Management shall develop, with the joint participation of the heads of the other military services, all standards, programs and procedures relative to the transportation of household goods. He shall also keep the Single Manager for Ocean Transportation and the Single Manager for Airlift Service informed on plans and other matters involving through bill of lading service between the United States and other areas.

(e) The implementation of this part shall not abrogate the functions and responsibilities of the Single Manager for Airlift Service or the Single Manager for Ocean Transportation, nor, in overseas areas, of the military services or the unified or specified commands.

§ 208.5 Required action.

(a) Joint regulations implementing this part shall be issued and action taken to assure uniformity of application in accordance with the schedule in paragraph (c) of this section. Such regulations, amendments thereto, and reissues thereof shall be coordinated with the Assistant Secretary of Defense (Supply and Logistics) prior to publication, and two copies of such documents shall be forwarded to him within thirty days after publication.

(b) Provisions of all regulations of the Military Departments implementing Parts 206 and 208, 32 CFR 1960 Cum. Supp., shall remain in effect until superseded by the joint regulations implementing this part.

(c) The schedule for implementation of this part is:

(1) September 1, 1960—Completion of printing and distribution of Implementing Regulations.

(2) September 7–December 1, 1960—Conduct conferences with Transportation Officers throughout the United States and overseas areas. Carriers will be invited to similar conferences.

(3) December 1, 1960—Effective date of Implementing Regulations.

MAURICE W. ROCHE,
Administrative Secretary.

JULY 7, 1960.

[F.R. Doc. 60-6461; Filed, July 12, 1960;
8:48 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2150]

[85162]

ALASKA

Revoking Executive Order of September 4, 1902, Which Withdrew Sledge Island for Use of Public Health and Marine Hospital Service

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. The Executive order of September 4, 1902, which withdrew the following-described lands in Alaska, is hereby revoked:

BERING SEA

Sledge Island off the coast of Seward Peninsula, west of Cape Nome, in latitude 64°30' north, longitude 166° west from Greenwich. Containing approximately 900 acres.

2. The lands are withdrawn by Executive Order No. 4257 of June 27, 1925, for use of the United States Coast Guard, for lighthouse purposes.

ROGER ERNST,
Assistant Secretary of the Interior.

JULY 7, 1960.

[F.R. Doc. 60-6446; Filed, July 12, 1960;
8:46 a.m.]

[Public Land Order 2151]

[1880638]

CALIFORNIA

Amending Executive Order No. 8884 of September 3, 1941

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Executive Order No. 8884 of September 3, 1941, which withdrew the following-described public lands in California:

MOUNT DIABLO MERIDIAN

T. 30 S., R. 14 E.,
Sec. 9, lots 1 and 2;
Sec. 10, N½N½ and SW¼NE¼;
Sec. 15, lots 1, 2, 7, and 8.
(465.57 acres)

for use of the War Department in connection with the construction of a reservoir and water pipeline to Camp San Luis Obispo, is hereby amended to delete therefrom the following paragraph added thereto by Executive Order No. 9526 of February 28, 1945:

The jurisdiction granted by this order shall cease at the expiration of the six months' period following the termination of the unlimited national emergency declared by Proclamation No. 2487 of May 27, 1941 (55 Stat. 1647). Thereupon, jurisdiction over the lands hereby reserved shall be vested in the Department of the Interior, and any other department or agency of the Federal Government according to their respective interests then of record. The lands, however, shall remain withdrawn from appropriation as herein provided until otherwise ordered.

2. Executive Order No. 8884 is hereby further amended to substitute the words "Department of the Army" for the words "War Department" wherever they appear.

ROGER ERNST,
Assistant Secretary of the Interior.

JULY 7, 1960.

[F.R. Doc. 60-6447; Filed, July 12, 1960;
8:46 a.m.]

[Public Land Order 2152]

[Anchorage 049973]

ALASKA

Partially Revoking Air Navigation Site Withdrawal No. 209

By virtue of the authority contained in Section 4 of the act of May 24, 1928 (45 Stat. 729; 49 U.S.C. 214), it is ordered as follows:

1. The departmental order of October 5, 1943, which established Air Navigation Site Withdrawal No. 209, is hereby revoked so far as it affects the following-described lands:

SKWENTNA AREA

From the Southwest Corner No. 3 of Air Navigation Site Withdrawal No. 209, which is the point of beginning; thence North, 7,711 feet;
S. 79°11' E., 16,197 feet;
Southerly, 5,600 feet, approximately, along the meander of the Skwentna River;
N. 64° W., 15,400 feet;
South, 6,200 feet;
West, 2,000 feet to the point of beginning.

The tract described contains approximately 1,550 acres.

2. Subject to any valid existing rights and the requirements of applicable law, the lands are hereby opened to settlement and to filing of applications, selections, and locations as are allowable on unsurveyed lands, in accordance with the following:

a. Applications and selections under the nonmineral public land laws, and applications and offers under the mineral leasing laws, may be presented to the Manager mentioned below beginning on the date of this order. Such

applications, selections, and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) Until 10:00 a.m. on October 6, 1960, the State of Alaska shall have a preferred right of application to select the lands in accordance with and subject to the provisions of the act of July 28, 1956 (70 Stat. 709; 48 U.S.C. 46-3b), and section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339; Public Law 85-508).

(3) All valid applications and selections under the nonmineral public land laws, other than from the State of Alaska under paragraph 2a. (2) above, and applications and offers under the mineral leasing laws presented prior to 10:00 a.m. on October 6, 1960, will be considered as simultaneously filed at that hour. Rights under such applications, selections and offers filed after that hour will be governed by the time of filing.

(4) Subject to the applications and claims described in paragraphs 2a. (1) and 2a. (2), the lands shall be subject to settlement under the homestead and Alaska homestead laws beginning at 10:00 a.m. on October 6, 1960.

b. The lands will be open to applications and offers under the mineral leasing laws and to location under the United States mining laws beginning at 10:00 a.m. on October 6, 1960.

3. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

Inquiries concerning the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Anchorage, Alaska.

ROGER ERNST,
Assistant Secretary of the Interior.

JULY 7, 1960.

[F.R. Doc. 60-6448; Filed, July 12, 1960;
8:46 a.m.]

[Public Land Order 2153]

[Idaho 010891]

IDAHO

Partially Revoking Proclamation of November 5, 1906, and Executive Order No. 7986 of October 8, 1938, Affecting Lands in Challis National Forest

By virtue of the authority vested in the President by the Act of June 4, 1897

(30 Stat. 34, 36; 16 U.S.C. 473), and otherwise, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. The Proclamation of November 5, 1906, which established the Lemhi Forest Reserve, the name of which was changed to Lemhi National Forest by the Executive order of July 1, 1908, and Executive Order No. 7986 of October 8, 1938, transferring lands to the Challis and Lemhi National Forests, are hereby revoked so far as they affect the following-described lands now in the Challis National Forest:

BOISE MERIDIAN

T. 10 N., R. 23 E.,
Sec. 10, SE¼.

The area described contains 160 acres.

2. The land is located on the westerly side of the Pahsimeroi Valley at an elevation of about 7,500 feet. The land is mainly of rather smooth surface with broad, open slopes. Soil is sand to fine sand with commingled rock. Vegetative cover is mainly sagebrush with understory of bunchgrass, ricegrass and bluegrass.

3. Subject to any existing valid rights and the requirements of applicable law, the lands described are hereby opened to filing of applications, selections, and locations in accordance with the following:

a. Applications and selections under the nonmineral public land laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications, selections, and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Until 10:00 a.m. on January 7, 1961, the State of Idaho shall have a preferred right of application to select the lands in accordance with and subject to the provisions of subsection (c) of section 2 of the Act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851-852), and the regulations in 43 CFR.

(2) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(3) All valid applications and selections under the nonmineral public land laws presented prior to 10:00 a.m. on January 7, 1961, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

b. The lands have been open to application and offers under the mineral leasing laws, and to location for metalliferous minerals. They will open to location for nonmetalliferous minerals under the United States mining laws beginning at 10:00 a.m. on January 7, 1961.

4. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must en-

close properly corroborated statements in support of their applications, setting forth all facts relevant to their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

Inquiries concerning the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Boise, Idaho.

ROGER ERNST,
Assistant Secretary of the Interior.

JULY 7, 1960.

[F.R. Doc. 60-6449; Filed, July 12, 1960;
8:46 a.m.]

[Public Land Order 2154]

[Montana 027506, 020872]

MONTANA

Order Providing for Opening of Public Lands (Power Site Classification No. 301)

1. In an order of December 3, 1957, published in the FEDERAL REGISTER of December 11, 1957, at page 9894, as Power Site Cancellation No. 126, the Geological Survey cancelled Power Site Classification No. 301 of August 31, 1937, so far as and to the extent that it affects the following-described lands, pursuant to the determination of the Federal Power Commission in DA-149-Montana, issued October 21, 1955, and DA-159-Montana, issued November 8, 1957:

PRINCIPAL MERIDIAN

T. 23 N., R. 16 E.,

Sec. 21, NW¼ and W¼SW¼;

Sec. 28, W¼NW¼;

Sec. 29, SE¼NE¼ and E¼SE¼;

Sec. 32, NE¼NE¼.

The areas described aggregate 480 acres.

2. In DA-149-Montana, the Federal Power Commission determined that the value of the following-described land, reserved in Power Site Classification No. 301, would not be injured or destroyed for purposes of power development by location, entry, or selection under the public-land laws, subject to the provisions of Section 24 of the Federal Power Act, as amended; and subject to the condition that in the event the said tract is required for power purposes; any improvements or structures placed below the 2450-foot contour elevation thereof which should be found to interfere with such development shall be removed or relocated as may be necessary to eliminate interference with power development at no cost to the United States, its permittees or licensees:

PRINCIPAL MERIDIAN

T. 23 N., R. 16 E.,

Sec. 32, lot 3.

Containing 44.84 acres.

3. The lands are on the north bank of the Missouri River, approximately 40 miles southeast of Big Sandy, Montana. Topography is rolling to rough, with vegetation consisting of Western wheatgrass, Blue gramma, sagebrush, and cactus.

4. Subject to any valid existing rights, and the requirements of applicable law, the lands described in this order are hereby opened to filing of applications, selections, and locations, in accordance with the following, such opening as to the lands described in paragraph 2, hereof, being subject further to the provisions of section 24 of the Federal Power Act of 1920, as amended, and to the condition specified in the said paragraph 2, supra:

a. Until 10:00 a.m. on January 7, 1961, the State of Montana shall have a preferred right of application to select the lands in accordance with and subject to the provisions of this order and subsection (c) of section 2 of the act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851, 852), and the regulations in 43 CFR. During this period, the State may also apply for the reservation to it or to any of its political subdivisions of any of the lands required for rights-of-way or material sites, in accordance with section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075; 16 U.S.C. 818), as amended.

b. All valid applications under the nonmineral public land laws other than those coming under subparagraph a., above, presented at or before 10:00 a.m. on January 7, 1961, will be considered as simultaneously filed at that hour. Any rights under such applications filed thereafter will be governed by the time of filing.

c. Applications under subparagraphs a and b above, shall be subject to those from persons having prior existing valid settlement rights, preference rights conferred by existing law, and equitable claims subject to allowance and confirmation.

5. The lands have been open to application and offers under the mineral leasing laws, and to location under the United States mining laws.

6. Persons claiming preferential consideration must submit evidence of their entitlement.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Billings, Montana.

ROGER ERNST,
Assistant Secretary of the Interior.

JULY 7, 1960.

[F.R. Doc. 60-6450; Filed, July 12, 1960;
8:46 a.m.]

[Public Land Order 2155]

[Montana 033062]

MONTANA

Opening Lands Under Section 24 of the Federal Power Act (Power Site Classification No. 301)

1. In DA-164-Montana, issued March 6, 1959, the Federal Power Commission determined that the value of the following-described lands withdrawn in Power Site Classification No. 301 will not be injured or destroyed for purposes of power development by location, entry, or selection under the public land laws, subject to section 24 of the Federal Power Act, as amended, and subject to the condition that in the event the said land is required for power purposes any im-

provements or structures placed thereon which shall be found to interfere with such development shall be removed or relocated as may be necessary to eliminate interference with power development at no cost to the United States, its permittees or licensees:

PRINCIPAL MERIDIAN

T. 23 N., R. 18 E.,
Sec. 34, W $\frac{1}{2}$ NE $\frac{1}{4}$.

The area described contains 80 acres.
2. The lands are located in Fergus County, 18 miles north of Winifred, Montana.

3. Subject to any valid existing rights and the requirements of applicable law, including the provisions of section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075; 16 U.S.C. 818), as amended, and the provisos described in paragraph 1 hereof, and pursuant to authority contained in the said act, the lands are hereby opened to filing of applications, selections and locations in accordance with the following:

a. Applications and selections under the nonmineral public land laws may be presented to the Manager mentioned below beginning on the date of this order. Such applications and selections will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation, will be adjudicated on the facts presented in support of each claim or right. All applications other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) Until 10:00 a.m. on January 7, 1961, the State of Montana shall have a preferred right of application to select the lands in accordance with and subject to the provisions of subsection (c) of section 2 of the act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851-852), and the regulations in 43 CFR. During this period the State may also apply for the reservation to it or to any of its political subdivisions of any of the lands required for rights-of-way or materials sites in accordance with the provisions of section 24 of the Federal Power Act, *supra*.

(3) All valid applications and selections under the nonmineral public land laws presented prior to 10:00 a.m. on January 7, 1961, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

b. The lands have been open to applications and offers under the mineral leasing laws, and to location under the United States mining laws pursuant to the act of August 11, 1955 (69 Stat. 682; 30 U.S.C. 621).

Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims. Detailed rules and regulations governing

applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Billings, Montana.

ROGER ERNST,

Assistant Secretary of the Interior.

JULY 7, 1960.

[F.R. Doc. 60-6451; Filed, July 12, 1960; 8:46 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 11759; FCC 60-814]

PART 3—RADIO BROADCAST SERVICES

Certain Television Broadcast Stations in California and Nevada

In the matter of amendment of § 3.606 Table of Assignments, Television Broadcast Stations (Fresno, Bakersfield, and Santa Barbara, California; Goldfield and Tonopah, Nevada); Docket No. 11759.

1. In the Report and Order adopted in this proceeding on March 24, 1960 (FCC 60-279), we announced, with supporting reasons, our conclusion that the public interest would be served by placing all commercial television stations in Fresno on UHF channels.

2. In a further notice of proposed rule making, adopted on the same day, we invited comments on alternative channel assignments designed to accomplish that objective by appropriate disposition of Channel 12, now assigned to Fresno and occupied by Triangle Publications, Inc. (Radio and Television Division) and the substitution of a UHF assignment to Fresno. The alternatives are:

A. (1) Reserve Channel 12+ for non-commercial educational use at Fresno and at the same time make Channel *18—available for commercial use at Fresno; or

(2) Reassign Channel 12+ from Fresno to Santa Barbara; and

B. Substitute Channel 59 for Channel 30+ at Madera, California, and reassign Channel 30+ from Madera to Fresno.

3. For reasons discussed hereinafter we have concluded that the public interest would best be served by accomplishing deintermixture at Fresno in the following manner:

(a) Deleting Channel 12+ from Fresno.

(b) Reassigning Channel 30+ from Madera to Fresno.

(c) Replacing Channel 30+ at Madera with Channel 59.

4. In response to the Further Notice of March 24, 1960, comments in support of the Commission's proposal to deintermix Fresno were submitted by a number of parties, including Triangle Publications, Inc. (Radio and Television Division) KFRE-TV, Channel 12, Fresno; McClatchy Newspapers, Inc., KMJ-TV, Channel 24, Fresno; O'Neill Broadcast-

ing Company, KJEO, Channel 47, Fresno; Kern County Broadcasting Company, KLYD-TV, Channel 17, Bakersfield; the American Broadcasting Company; and others. Generally the positions taken by these parties correspond with our assessment of the desirability of deintermixing Fresno which is set forth in some detail in our Report and Order of March 24, 1960.

5. A number of individuals living in foothill and mountain communities, generally to the northeast of Fresno and to the east and northwest of the existing site of KFRE-TV oppose the deletion of Channel 12 from Fresno. A few persons, residing in the San Joaquin Valley at Fresno, and in such cities as Turlock (northwest of Fresno), and Kingsburg (southeast of Fresno), also voiced objection to the deintermixture of the Fresno assignments. We have carefully considered their views; and we summarize them as follows:

(1) The best service to the foothill areas is provided by KFRE-TV on Channel 12. In some communities, only marginal service is provided by KJEO and KMJ-TV, operating on Channels 47 and 24, respectively. In others, it is impossible to receive UHF signals from the Fresno UHF stations and persons residing there rely exclusively on KFRE-TV for entertainment, news and information.

(2) In some foothill and mountain communities and in some of the cities and towns to the north and south of Fresno, television sets are equipped to receive VHF signals only; and it would be expensive to convert these receivers for UHF reception.

(3) The all-VHF plan, formerly proposed, would provide better service to persons living in the mountain and foothill areas east of Fresno. In addition, Fresno and the surrounding communities that would be served by the VHF stations are of such size and economic importance as to justify the allocation of VHF facilities to meet their needs. The VHF plan is superior for the further reason that UHF allocations for Fresno will be only a temporary expedient in view of the Commission's experience with UHF television in other areas of the United States.

6. In brief, these parties claim that they presently receive satisfactory service only from KFRE-TV and are not able to receive UHF signals, or, at best, such signals do not come in clearly. This phenomenon can be ascribed to a number of reasons. For example, the parties may not have provided themselves with suitable UHF receiving devices or it may be that the precise areas in which they reside are sufficiently shadowed by intervening terrain to prevent good reception of UHF signals. The latter explanation, however, seems doubtful, since the same persons claim that they receive "excellent" service from KFRE-TV. Though UHF frequencies are more subject to attenuation or blockage by natural or artificial barriers than VHF, the VHF signal could not produce "excellent pictures" if these areas were shadowed by intervening terrain to such an extent as to prevent reception of any UHF signals.

This consideration gives substance to our ultimate determination on this point expressed below.

7. First, however, we consider the problem of providing service to these communities in the foothills east of Fresno through the use of VHF channels at Patterson Mountain. Much study was given to this aspect of the case as a result of comments filed in response to the July 17, 1959, Notice of Further Proposed Rule Making (FCC 59-723). The Patterson Mountain site lies to the east and south of Meadow Lake, roughly 25 miles distant therefrom. The terrain between Patterson Mountain and the communities in the foothill regions rises rather sharply, with intervening ridges of over 6,000 feet. We were apprehensive that instead of gaining service the foothill settlements would lose service under the VHF proposal. We said as much at Paragraph 21 of the Report and Order of March 24, 1960 (FCC 60-279). This, together with other reasons expressed in the March 24, 1960, Report and Order, militated against adoption of the all-VHF plan for Fresno.

8. Paramount in our considerations, of course, was and is the maintenance and expansion of television services to the entire Fresno area, including, of course, the foothill areas; but this, we are assured, cannot be accomplished by maintaining the status quo. Therefore, we feel compelled to take such steps as will promote the public interest as a whole, notwithstanding the possibility that some persons have to make adjustments in the equipment they have on hand. In some instances it may be desirable to utilize translators or UHF co-channel boosters. However, it is reasonable to expect that UHF signals from Fresno stations situated at sites similar to the one used by KFRE-TV and utilizing increased power and improved facilities, which is to be anticipated under improved competitive conditions, will provide direct service to most of foothill communities.

9. The San Joaquin Valley Community Television Association, Inc., a non-profit corporation organized to foster the development of educational television in the San Joaquin Valley, alternatively requests the reservation of Channel 12 or 7, or retention of Channel 18 at Fresno as an educational reservation. We are of the view that under the favorable conditions prevailing in the Fresno area for UHF operation, and with all commercial stations operating on UHF channels in that city, the continued reservation of Channel 18 at Fresno for educational use would serve the public interest and, at the same time, provide interested parties with ample opportunities for establishing an educational station at Fresno. Such a station would be operating in the same frequency band used by all other stations in the area, where antennas and receivers will undoubtedly be specially designed for reception of the UHF signals of the three commercial Fresno stations.

10. The Commission's plan to substitute Channel 59 for Channel 30 at Madera was unopposed. Adoption of this proposal would permit the addition of a UHF channel to Fresno as a substitute

for Channel 12. The assignment of Channel 59 to Madera will provide a suitable replacement for the one being deleted; and the opportunities for establishing a local outlet in that community, at such time as there is a demand for the same, can be fulfilled. In these circumstances, we find it in the public interest to add Channel 30 to Fresno and substitute Channel 59 at Madera.

11. Several of the parties have strongly urged simultaneous deintermixture of Fresno and Bakersfield. These include operators of the Fresno stations; Kern County Broadcasting Company, KLYD-TV, Channel 17, Bakersfield; the American Broadcasting Company; and others. Bakersfield Broadcasting Company, KBAK-TV, Channel 29, Bakersfield, filed a separate petition for rule making on April 20, 1960, RM-177, seeking similar relief. In substance, it is argued that the same considerations which have led us to order deintermixture of Fresno prevail and are applicable to Bakersfield. On June 23, 1960, the Commission adopted a Notice of Proposed Rule Making, Docket No. 13608, and an Order to Show Cause, directed to Marietta Broadcasting, Inc., KERO-TV, Channel 10, Docket No. 13609, which look toward the deintermixture of Bakersfield. This action meets the requests of the above-mentioned parties.

12. We now turn to a consideration of our proposal to reassign Channel 12 from Fresno to Santa Barbara and to the pleadings supporting and opposing adoption of this alternative use of that channel. A number of parties strongly support this plan, contending that (1) Santa Barbara needs and can support an additional television station; (2) the distant VHF television stations, located principally in Los Angeles, cannot be relied upon to provide satisfactory service to the Santa Barbara area; (3) a second local television outlet would afford the public a greater variety of programs and enhance the opportunities for originating local programs and coverage of events of local interest; (4) there is assurance from interested parties that the channel would be applied for and a new station promptly constructed; and (5) Channel 12 can be assigned to Santa Barbara in compliance with the Commission's rules.

13. The opponents, including Key Television, Inc., licensee of KEYT, Channel 3, Santa Barbara, Thomas B. Friedman, and Arenze Broadcasters, licensee of Radio Station KCOY, Santa Maria, argue that (1) the public interest would be served better by retaining and reserving Channel 12 at Fresno or reassigning the same to Bakersfield; (2) the use of Channel 12 at Santa Barbara is not technically feasible, due to potential interference (between the Santa Barbara station operating on Channel 12 and the co-channel Mexican station being constructed at Tijuana) caused by "ducting", "average terrain conditions" (over water path) between Santa Barbara and Tijuana, and "tropospheric propagation characteristics" present in the area; (3) the use of Channel 10 at Santa Barbara would be undesirable for similar reasons, since KFSD-TV operates on Channel 10 at San Diego and the

same propagation conditions exist between that City and Santa Barbara as exist between Santa Barbara and Tijuana; (4) since the potential use of Channel 10 and 12 at Santa Barbara is not technically feasible, Santa Barbara could never become a three station market, with separate outlets for each of the three major television networks; (5) there is no need for an additional station in Santa Barbara, because the area to be served by such a station presently receives multiple services from both Los Angeles and San Diego television stations; (6) Santa Barbara is principally a residential and resort city and cannot support a second television station; (7) the operators of KEYT have sustained heavy operating losses since its inception, with a current loss for 1959 of more than \$75,000.00, and the authorization of a second station may lead to the elimination of all local service in Santa Barbara, due to economic considerations; and (8) there is a greater need for the facility in Santa Maria or Lompoc-Santa Maria, since these communities now receive only fringe service from KEYT, Channel 3, Santa Barbara, and KSBY-TV, Channel 6, San Luis Obispo and the assignment of Channel 12 would provide a first local service to the communities in question.

14. Our review of all the foregoing arguments and contentions indicates to us the need for further study of the manner in which it would best serve the public interest to reassign Channel 12. An immediate decision in that regard is not in any event necessary to achieve the primary purpose of the instant proceeding, which is to deintermix the Fresno market and to place all television broadcast operations in that market on UHF channels at the earliest practicable date. To that end we confine our action herein to the deletion of Channel 12 from Fresno.

15. In order to facilitate our further review of the best manner in which Channel 12 can be utilized elsewhere we are adopting today a Further Notice of Proposed Rule Making in Docket No. 13608 which looks toward the deintermixture of Bakersfield, California, by the removal from Bakersfield of Channel 10, the only VHF channel assigned to Bakersfield. Owing to the fact that spacing considerations would permit the use of Channel 12 in the same markets to which Channel 10 could be reassigned, subject to any necessary clearances with the Government of Mexico, we deem it desirable to consolidate for consideration in Docket No. 13608 the available alternative possibilities for the use in a new community of both Channels 10 and 12. The comments filed in the instant proceeding (Docket No. 11759) which contain arguments favoring or opposing the assignment of Channel 12 to particular communities (Santa Barbara, Santa Maria, and Lompoc-Santa Maria were mentioned), will be further considered and dealt with in Docket No. 13608.

16. We now direct attention to the comments filed herein by Triangle. Triangle is now licensed for operation on Television Station KFRE-TV, Channel 12 at Fresno. Triangle's transmitter is located some 30 miles northeast of

Fresno at Meadow Lake. In its pleadings, Triangle recognizes that the Commission's proposal for deintermixture of Fresno is fully consistent with its long-range allocations policy; and that the deletion of Channel 12 and the substitution of Channel 30 may well be in the public interest. It further acknowledges that it can operate on Channel 30 and provide a good signal to the residents of Fresno and the surrounding area. Triangle urges prompt and speedy effectuation of the Commission's all-UHF plan; and it consents to shift its operation to Channel 30.

17. Triangle attaches four conditions to its construction of Channel 30+ facilities and the abandonment of its procedural rights relating to its continued operation on Channel 12. First, Triangle requests that its license for KFRE-TV be renewed, on Channel 30 (instead of on Channel 12, as previously specified in its application for renewal, BRCT-265), subject to certain steps appropriate to the issuance of authorization to Triangle to make necessary changes in transmitting equipment and related facilities. We herein: (1) grant Triangle's pending application for renewal of license on Channel 12+; (2) order, pursuant to Triangle's expression of consent, that, effective immediately, the renewed license be modified to specify operation on Channel 30+ in lieu of Channel 12+; and (3) authorize and direct Triangle to make necessary changes in transmitting equipment and other facilities upon the submission and approval of necessary engineering specifications.

18. Second, Triangle requests a waiver of § 3.685(e) of the Commission's rules to permit utilization of a directional antenna, the general specification for the same having been set forth in its Engineering Statement of April 29, 1960. We have examined Figure 8, which shows the potential power gain in db in the horizontal plane for a station operating on Channel 30 and utilizing "beam tilting" as shown on this Figure. We find the ratio of minimum to maximum radiation in the horizontal plane to be substantially less than 10 decibels and, therefore, in accord with the Commission's rules. Under these circumstances, a waiver of our rules, as requested by Triangle, will not be necessary.

19. Third, it requests "that Triangle be authorized to continue to operate KFRE-TV with its presently authorized Channel 12 facilities until such time as the construction and installation of the UHF facilities shall have been completed and licensed for regular operation on Channel 30 or 18, and for such further time as the Commission may deem desirable and in the public interest * * *". We are of the view that Triangle should be allowed to operate on Channel 12+ during such reasonable time as may be required to complete construction on Channel 30+; and we herein grant temporary authority for this purpose. This will provide a continuity of service to the public and be in the public interest. We are of the further view, however, that once construction of the station has been completed and it is readied for operation on Channel 30+, and Triangle is

licensed for operation on the same, it would not be in the public interest for Triangle to continue to utilize Channel 12+ at Fresno.

20. Fourth, Triangle requests that upon cessation of KFRE-TV's operation on Channel 12+, that channel be deleted from Fresno and no other channel be assigned to the area, so that the area will continue to be all-UHF. Our actions herein, including the deletion of Channel 12+ from Fresno, the reassignment of Channel 30+ to Fresno, and the steps initiated toward KFRE's shift from Channel 12+ to Channel 30+ all rest upon our considered judgment, after several years of continuing study of the matter in this proceeding; that the public interest would best be served by placing all television operations at Fresno in the UHF band. The merits of this course have been subjected to more than the usual amount of painstaking consideration, including detailed proceedings inaugurated in July 1959, in which we very closely examined the alternative course of providing enough VHF channel assignments at Fresno to accommodate three commercial stations and one non-commercial station there. Having arrived at this point of final decision on the basis of such thorough review of all available alternatives, we foresee no prospect of recurring to VHF channel assignments at Fresno, except in the highly improbable circumstance of the abandonment of the use of UHF channels for television broadcasting.

21. We do not, in any event, having gone to some lengths to deintermix this market, contemplate again intermixing the market by the assignment of VHF channels there. These circumstances, we believe, furnish the assurances sought by Triangle concerning the possibilities of the future assignment of one or more VHF channels to Fresno. It would, of course, be improper for the Commission, to attempt at any stage to make commitments binding for all time with respect to any particular allocation of frequency space. It is clear, moreover, that any attempt to place restraints upon responses by the Commission to future circumstances not now foreseen would be beyond the Commission's lawful powers. Subject to this clarification, the Commission is unaware at this stage of any circumstances which would make it desirable in the public interest, once having deintermixed this market, to intermix it again by the assignment to Fresno of one or more VHF channels.

22. The course of action projected in paragraphs 16 through 21 above conforms with the conditions attached by Triangle to its consent to the shift of KFRE-TV from Channel 12+ to Channel 30+. In embarking upon this course, we deem it appropriate to note that the steps contemplated thereunder are taken without prejudice to whatever measures the Commission might separately find it appropriate to take upon the conclusion of further inquiry into alleged practices of Triangle which raise questions concerning Triangle's compliance with section 317 and other provisions of the Communications Act of 1934 and the Commission's rules. Be-

cause of the importance we attach to minimizing further delay in deintermixing Fresno, we find that, notwithstanding the pendency of this other matter, it is in the public interest to proceed now as contemplated in paragraphs 16 to 21. The shift of KFRE from Channel 12+ to Channel 30+ at Fresno constitutes the final step necessary to deintermixing Fresno. Our actions taken and contemplated herein, which are directed to those objectives and are unrelated to the separate questions concerning Triangle's compliance with the Communications Act and the Commission's Rules, cannot affect such decisions or actions as the Commission may find it appropriate to take after all relevant facts relating to the latter have been established and considered.

23. The actions herein are taken pursuant to authority found in sections 4 (i) and (j), 303, 307, 309 and 316 of the Communications Act of 1934, as amended.

24. In view of the foregoing: It is ordered, That effective August 12, 1960, § 3.606 of the rules of the Commission, Table of Assignments, Television Broadcast Stations, is amended insofar as the communities named are concerned, to read as follows:

City	Channel No.
Fresno, Calif.-----	*18-, 24, 30+, 47, 53
Madera, Calif.-----	59

25. It is further ordered, That the application of Triangle Publications, Inc. (Radio and Television Division) for renewal of the license of KFRE-TV (BRCT-265) on Channel 12+ is granted; and,

26. It is further ordered, That, effective immediately, the aforesaid renewed license is modified to specify operation of KFRE-TV on Channel 30+ in lieu of Channel 12+, subject, however, to the filing and approval of necessary engineering data as hereinafter ordered; and,

27. It is further ordered, That Triangle Publications, Inc. (Radio and Television Division) file with the Commission on or before August 3, 1960, all necessary engineering data relative and pertinent to the construction of facilities for the operation of KFRE-TV on Channel 30+ at the site presently specified for the transmitter of Television Station KFRE-TV at Meadow Lake in accordance with the general specifications set forth in the Engineering Statement of April 29, 1960, attached to its Comments in the instant Docket, filed May 2, 1960; and,

28. It is further ordered, That, upon notification of approval by the Commission of the engineering data filed pursuant to paragraph 27 hereof, Triangle Publications, Inc. (Radio and Television Division) proceed promptly and with reasonable dispatch to take all steps necessary to construct and install the facilities so approved and ready them for commencement of operation of KFRE-TV on Channel 30+ no later than April 15, 1961, upon customary notification to the Commission of completion of construction and receipt of authorization to commence operations on Channel 30+; and,

29. It is further ordered, That Triangle Publications, Inc. (Radio and Television

Division) be and hereby is granted temporary authority to continue to operate Television Station KFRE-TV on Channel 12+ at Fresno until April 15, 1961; and that the temporary authority granted herein shall not be extended unless it is shown that, owing to causes not within Triangle's control, it is impossible for Triangle to commence operation on Channel 30+ by that date; and further, that if such showing is made, this temporary authority for operation of KFRE-TV on Channel 12+ may be extended only for such further time as may be reasonably necessary to complete steps required for commencement of its operation on Channel 30+; and,

30. *It is further ordered*, That the pending applications of Triangle Publications, Inc. (Radio and Television

Division) for renewal of the licenses for Auxiliary Stations KD-5052 (BRTP-320) and KMR-56 (BRTS-165) are granted; and,

31. *It is further ordered*, That the actions taken in paragraphs 25 through 30 hereof, shall be without prejudice to whatever measures the Commission may find it appropriate to take, if any, in connection with its pending inquiry into compliance by Triangle Publications, Inc. (Radio and Television Division) with section 317 of the Communications Act of 1934 and the Commission's rules; and,

32. *It is further ordered*, That all other proposals or requests for alternative or other relief sought herein which are inconsistent with the decisions reached

and the actions taken in this proceeding are denied; and,

33. *It is further ordered*, That this proceeding is terminated.

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

Adopted: July 7, 1960.

Released: July 8, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,¹

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-6482; Filed, July 12, 1960;
8:51 a.m.]

¹ Dissenting statement of Commissioner
Cross filed as part of the original document.

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Part 19]

SMELTING AND REFINING WAREHOUSES

Withdrawal of Products From Bonded Smelting and Refining Warehouses

Notice is hereby given that, under the authority of section 312, Tariff Act of 1930, the Treasury Department is considering an amendment to § 19.18 of the Customs regulations relating to smelting and refining warehouses.

By the President's Proclamation No. 3257 of September 22, 1958 (3 CFR, 1958 Supp., p. 39; T.D. 54705), import quotas were established on dutiable lead and zinc, including the dutiable lead and zinc content of lead-bearing and zinc-bearing ores. So long as a quota is open such merchandise may be tendered for admission under the quota by filing with the appropriate collector of customs duty-paid consumption entries covering the imported merchandise, or in the case of such merchandise entered for storage in customs bonded warehouses of classes 2, 3, or 4 by filing with the collector withdrawals for consumption for the lead and zinc contained in the ores.

In the case of lead-bearing ores taken into a bonded smelting and refining warehouse, there to be smelted or refined, or both, special provision is made in the Proclamation (clause numbered (2) of item 391) that whenever in any three-month period beginning October 1, 1958, and January 1, April 1, July 1, and October 1 in any subsequent year:

(2) The dutiable lead content (as shown on the warehouse withdrawal for consumption in accordance with the applicable customs regulations) of lead-bearing ores, flue dust, or mattes, the product of such country, with respect to which duty was collected under section 312 of the Tariff Act of 1930, upon withdrawal for consumption from customs bonded warehouse of "metal producible" within the meaning of the said section 312, are determined by the Secretary of the Treasury of the United States to have reached the aggregate quantity specified below for such country, no lead-bearing ores, flue dust, or mattes the product of such country may be entered, or withdrawn from warehouse, for consumption during the remainder of such period; and no article may be withdrawn for consumption from any customs bonded warehouse during the remainder of such period if by reason of such withdrawal duty would become collectible under section 312 of the Tariff Act of 1930 in cancellation of a bond charge covering any lead-bearing ore, flue dust, or matte the product of such country: * * *

Similar provisions appear with respect to zinc-bearing ores.

The Department has not authorized the filing of warehouse withdrawals from

bonded smelting warehouses of lead and zinc either for consumption or for exportation until the lead or zinc is in the form of a smelted or refined product.

It has been suggested to the Bureau of Customs that this procedure be modified by permitting withdrawals for consumption to be filed so long as there is on hand in the bonded smelter or refinery a quantity of metal contained in ores or crude metals in their condition as entered, or in any intermediate stage, or of smelted or refined products, which in total are equivalent to the quantity of metal covered by the withdrawal papers. Under this suggestion withdrawal papers would be accepted even though the total quantity of smelted or refined products physically on hand in the plant was less than the quantity specified in the withdrawal papers, provided however that the total metal in the plant in all forms, e.g., ores, intermediates and smelted and refined products, was at least as great as the quantity specified in the withdrawal.

It is proposed to amend § 19.18 of the Customs regulations by adding at the end of the last sentence the following: "However, duty-paid warehouse withdrawals for consumption may be filed with regard to metal which will be physically withdrawn in the form of smelted or refined products whether at the time of the filing of the withdrawal papers the dutiable metal covered by the bond charge being cancelled by the withdrawal is in the form of ores, concentrates, crude metals, or intermediate products. If the warehouse withdrawal for consumption covers a product which does not sustain the full wastage applicable (see § 19.22) prior to being physically released from customs custody, a proportionate part only of such wastage may be allowed. The warehouse withdrawal and delivery permit shall (1) describe the smelted or refined products to be withdrawn in terms of the condition in which they will be when released from customs custody upon presentation of the delivery permit; (2) state the estimated amount of the dutiable metal contained in the products, and (3) the warehouse withdrawal shall specify the applicable wastage. A quantity of dutiable metal equivalent to the smelted or refined products covered by each withdrawal for consumption must be actually on hand at the plant at the time of filing the withdrawals; but neither the actual ability to withdraw smelted or refined products from the warehouse nor the actual physical condition described in the withdrawal will be required as of the time of filing the withdrawal."

Prior to the final adoption of the amendment to the regulations herein proposed, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing to the Commissioner of Customs, Washington 25, D.C., within 45 days from

the date of publication of this notice in the FEDERAL REGISTER.

No hearing will be held.

[SEAL]

RALPH KELLY,
Commissioner of Customs.

Approved: July 7, 1960.

A. GILMORE FLUES,
Acting Secretary of the Treasury.
[F.R. Doc. 60-6475; Filed, July 12, 1960;
8:50 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 51]

UNITED STATES STANDARDS FOR GRADES OF FLORIDA GRAPE- FRUIT¹

Notice of Proposed Rule Making

Notice is hereby given that the United States Department of Agriculture is considering the revision of United States Standards for Florida Grapefruit pursuant to the authority contained in the Agricultural Marketing Act of 1946 (secs. 202-208, 60 Stat. 1087, as amended; 7 U.S.C. 1621-1627).

Proposed changes are designed to make the standards more applicable to current marketing practices. Following are the more important changes proposed:

(1) In the U.S. No. 1 Bright grade the amount of surface permitted to be affected by discoloration would be increased from one-tenth to one-fifth of the surface;

(2) The U.S. No. 1 Bronze grade would be changed to require that all fruit must show some discoloration and more than 30 percent of the fruit shall have more than one-third of the surface affected by discoloration. The predominating discoloration on each fruit must be of rust mite type;

(3) The U.S. No. 1 Russet grade would be changed to require that more than 30 percent of the fruit shall have in excess of one-third of the surface affected by any type of discoloration;

(4) In the U.S. No. 2 grade the definitions of shape and texture would be changed to require slightly better shape and texture; and,

(5) The Application of tolerances would be changed to permit any package which contains 10 pounds or less to have four times the tolerance for defects and at least two defective fruits would be permitted provided that the lot aver-

¹Packing 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.

ages within the tolerance. En route or at destination 10 percent of the packages may have more than one fruit affected by decay provided that the lot averages within the tolerance.

A number of changes in definitions and phraseology are also proposed in the interest of clarity.

All persons who desire to submit written data, views, or arguments for consideration in connection with the proposed standards should file the same with the Chief, Fresh Products Standardization and Inspection Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, South Building, Washington 25, D.C., not later than August 1, 1960.

The proposed standards, as revised, are as follows:

GRADES	
Sec.	
51.750	U.S. Fancy.
51.751	U.S. No. 1.
51.752	U.S. No. 1 Bright.
51.753	U.S. No. 1 Golden.
51.754	U.S. No. 1 Bronze.
51.755	U.S. No. 1 Russet.
51.756	U.S. No. 2.
51.757	U.S. No. 2 Bright.
51.758	U.S. No. 2 Russet.
51.759	U.S. No. 3.
UNCLASSIFIED	
51.760	Unclassified.
TOLERANCES	
51.761	Tolerances.
APPLICATION OF TOLERANCES	
51.762	Application of tolerances.
STANDARD PACK	
51.763	Standard Pack.
DEFINITIONS	
51.764	Similar varietal characteristics.
51.765	Well colored.
51.766	Firm.
51.767	Well formed.
51.768	Mature.
51.769	Smooth texture.
51.770	Injury.
51.771	Discoloration.
51.772	Fairly well colored.
51.773	Fairly smooth texture.
51.774	Damage.
51.775	Fairly firm.
51.776	Slightly misshapen.
51.777	Slightly rough texture.
51.778	Serious damage.
51.779	Slightly colored.
51.780	Misshapen.
51.781	Slightly spongy.
51.782	Very serious damage.
51.783	Diameter.

AUTHORITY: §§ 51.750 to 51.783 issued under secs. 202-208, 60 Stat. 1087, as amended; 7 U.S.C. 1621-1627.

GRADES
§ 51.750 U.S. Fancy.
 "U.S. Fancy" consists of grapefruit of similar varietal characteristics which are well colored, firm, well formed, mature, and of smooth texture, and which are free from ammoniation, bird pecks, bruises, buckskin, cuts which are not healed, decay, growth cracks, scab, sprayburn, and free from injury caused by green spots or oil spots, pitting, scale, scars, thorn scratches, and from damage caused by dirt or other foreign materials, dryness or mushy condition,

sprouting, sunburn, disease, insects, or mechanical or other means.

(a) In this grade not more than one-tenth of the surface in the aggregate may be affected by discoloration. (See § 51.761.)

§ 51.751 U.S. No. 1.

"U.S. No. 1" consists of grapefruit of similar varietal characteristics which are fairly well colored, firm, well formed, mature, and of fairly smooth texture, and which are free from bruises, cuts which are not healed, buckskin, or similar type of discoloration, decay, growth cracks, sprayburn, and free from damage caused by ammoniation, bird pecks, dirt or other foreign materials, dryness or mushy condition, green or oil spots, pitting, scab, scale, scars, sprouting, sunburn, thorn scratches, disease, insects, or mechanical or other means.

(a) In this grade not more than one-third of the surface in the aggregate may be affected by discoloration. (See § 51.761.)

§ 51.752 U.S. No. 1 Bright.

The requirements for this grade are the same as for U.S. No. 1 except that the fruit may have not more than one-fifth of its surface, in the aggregate affected by discoloration. (See § 51.761.)

§ 51.753 U.S. No. 1 Golden.

The requirements for this grade are the same as for U.S. No. 1 except that not more than 30 percent, by count, of the fruits shall have in excess of one-third of their surface in the aggregate affected by discoloration. (See § 51.761.)

§ 51.754 U.S. No. 1 Bronze.

The requirements of this grade are the same as for U.S. No. 1 except that all fruit must show some discoloration, and more than 30 percent, by count, of the fruit shall have more than one-third of the surface, in the aggregate, affected by discoloration. The predominating discoloration on each fruit must be of rust mite type. (See § 51.761.)

§ 51.755 U.S. No. 1 Russet.

The requirements of this grade are the same as for U.S. No. 1 except that more than 30 percent, by count, of the fruit shall have in excess of one-third of the surface, in the aggregate, affected by any type of discoloration. (See § 51.761.)

§ 51.756 U.S. No. 2.

"U.S. No. 2" consists of grapefruit of similar varietal characteristics which are mature, fairly firm, not more than slightly misshapen or of slightly rough texture, and which are free from bruises, cuts which are not healed, decay, growth cracks and free from serious damage, caused by ammoniation, bird pecks, buckskin, dirt or other foreign materials, dryness, or mushy condition, green spots or oil spots, pitting, scab, scale, scars, sprayburn, sprouting, sunburn, thorn scratches, disease, insects, mechanical or other means.

(a) Each grapefruit may be only slightly colored.

(b) In this grade not more than one-half of the surface in the aggregate, may

be affected by discoloration. (See § 51.761.)

§ 51.757 U.S. No. 2 Bright.

The requirements for this grade are the same as for U.S. No. 2 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration. (See § 51.761.)

§ 51.758 U.S. No. 2 Russet.

The requirements for this grade are the same as for U.S. No. 2 except that more than 10 percent, by count, of the fruits shall have in excess of one-half of their surface in the aggregate affected by discoloration. (See § 51.761.)

§ 51.759 U.S. No. 3.

"U.S. No. 3" consists of grapefruit of similar varietal characteristics which are mature, which may be misshapen, slightly spongy, rough but not seriously lumpy for the variety or seriously cracked, which are free from cuts which are not healed, and from decay, and from very serious damage caused by bruises, growth cracks, ammoniation, bird pecks, caked melanose, buckskin, dryness or mushy condition, pitting, scab, scale, sprayburn, sprouting, sunburn, thorn punctures, disease, insects, mechanical or other means. The fruit may be poorly colored but not more than 25 percent of the surface of each fruit may be of a solid dark green color. (See § 51.761.)

UNCLASSIFIED

§ 51.760 Unclassified.

"Unclassified" consists of grapefruit which has not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.

TOLERANCES

§ 51.761 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified:

(a) **U.S. Fancy Grade.** 10 percent of the fruits in any lot may fail to meet the requirements of this grade, but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping point: *Provided*, That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for decay enroute or at destination. None of the foregoing tolerances shall apply to wormy fruit.

(b) **U.S. No. 1 and U.S. No. 1 Bright Grades.** 10 percent of the fruits in any lot may fail to meet the requirements of the grade other than for discoloration but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping point: *Provided*, That an additional tolerance of 2½ percent, or a total of not more than 3 percent,

shall be allowed for decay enroute or at destination. In addition, 10 percent of the fruits in any lot may fail to meet the requirements relating to discoloration. None of the foregoing tolerances shall apply to wormy fruit.

(c) *U.S. No. 1 Golden and U.S. No. 1 Bronze Grades.* 10 percent of the fruits in any lot may fail to meet the requirements of the grade, but not more than one-half of this amount, or 5 percent shall be allowed for very serious damage, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping point: *Provided*, That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. No part of any tolerance shall be allowed to reduce or to increase the percentage of fruits having in excess of one-third of their surface in the aggregate affected by discoloration which is required in the grade, but individual containers may vary not more than 10 percent from the percentage required: *Provided*, That the entire lot averages within the percentage specified. None of the foregoing tolerances shall apply to wormy fruit.

(d) *U.S. No. 1 Russet Grade.* 10 percent of the fruits in any lot may fail to meet the requirements of this grade but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping point: *Provided*, That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. No part of any tolerance shall be allowed to reduce the percentage of fruits having in excess of one-third of their surface in the aggregate affected by discoloration which is required in this grade, but individual containers may have not more than 10 percent less than the percentage required: *Provided*, That the entire lot averages within the percentage specified. None of the foregoing tolerances shall apply to wormy fruit.

(e) *U.S. No. 2 and U.S. No. 2 Bright Grades.* 10 percent of the fruits in any lot may fail to meet the requirements of the grade other than for discoloration but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage other than that caused by dryness or mushy condition, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping point: *Provided*, That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. In addition, 10 percent of the fruits in any lot may fail to meet the requirements relating to discoloration. None of the foregoing tolerances shall apply to wormy fruit.

(f) *U.S. No. 2 Russet Grade.* 10 percent of the fruits in any lot may fail to meet the requirements of this grade but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage other than that caused

by dryness or mushy condition, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping point: *Provided*, That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. No part of any tolerance shall be allowed to reduce the percentage of fruits having in excess of one-half of their surface in the aggregate affected by discoloration which is required in this grade, but individual containers may have not more than 10 percent less than the percentage required: *Provided*, That the entire lot averages within the percentage specified. None of the foregoing tolerances shall apply to wormy fruit.

(g) *U.S. No. 3 Grade.* 15 percent of the fruits in any lot may fail to meet the requirements of this grade but not more than one-third of this amount, or 5 percent, shall be allowed for defects other than dryness or mushy condition, and not more than one-fifth of this amount, or 1 percent, shall be allowed for decay at shipping point: *Provided*, That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. None of the foregoing tolerances shall apply to wormy fruit.

APPLICATION OF TOLERANCES

§ 51.762 Application of tolerances.

The contents of individual packages are subject to the following limitations: *Provided*, That the averages for the entire lot are within the tolerances specified for the grade.

(a) A package which contains more than 10 pounds shall have not more than one and one-half times a specified tolerance of 10 percent and not more than double a specified tolerance of less than 10 percent except that at least one decayed or very seriously damaged fruit may be permitted in any package.

(b) A package which contains 10 pounds or less, shall have not more than four times the tolerances specified, except that at least defective fruits may be permitted: *Provided*, That not more than one fruit which is seriously damaged by dryness or mushy condition or very seriously damaged by other means may be permitted in any package; and en route or at destination not more than 10 percent of the packages may have more than one fruit affected by decay.

STANDARD PACK

§ 51.763 Standard pack.

(a) Fruits shall be fairly uniform in size, unless specified as uniform in size, and when packed in boxes or cartons, shall be arranged according to the approved and recognized methods. Each wrapped fruit shall be fairly well enclosed by its individual wrapper.

(b) All such containers shall be tightly packed and well filled but the contents shall not show excessive or unnecessary bruising because of overfilled packages. When grapefruits are packed in standard nailed boxes, each box shall have a minimum bulge of 2 inches, except that boxes packed with grapefruit of a size

80 or smaller need only have a bulge of 1½ inches. When packed in cartons or in wire-bound boxes, each container shall be at least level full at time of packing.

(c) "Fairly uniform in size" means that not more than 10 percent, by count, of the fruit in any container are outside the ranges of diameters given in the following table for various packs:

TABLE I—DIAMETER IN INCHES

Pack	Minimum	Maximum
36's	5	5½
45's or 46's	4½	5½
54's or 56's	4½	4½
64's	4½	4½
70's or 72's	3½	4½
80's	3½	4½
96's	3½	4½
112's	3½	4
126's or 128's	3½	3½

(d) "Uniform in size" means that not more than 10 percent, by count, of the fruits in any container vary more than the following amounts:

64 size and smaller—not more than ⅛ inch in diameter.

54 size and larger—not more than ⅛ inch in diameter.

(e) In order to allow for variations, other than sizing, incident to proper packing, not more than 5 percent of the packages in any lot may fail to meet the requirements of standard pack.

DEFINITIONS

§ 51.764 Similar varietal characteristics.

"Similar varietal characteristics" means that the fruits in any container are similar in color and shape.

§ 51.765 Well colored.

"Well colored" means that the fruit is yellow in color with practically no trace of green color.

§ 51.766 Firm.

"Firm" means that the fruit is not soft, or noticeably wilted or flabby, and the skin is not spongy or puffy.

§ 51.767 Well formed.

"Well formed" means that the fruit has the shape characteristic of the variety.

§ 51.768 Mature.

"Mature" shall have the same meaning currently assigned that term in sections 601.16, 601.17 and 601.18 of the Florida Citrus Code of 1949, as amended (Ch. 28090 and 29760, Laws of Florida, 1953 and 1955) or as the definition of such term may hereafter be amended.

§ 51.769 Smooth texture.

"Smooth texture" means that the skin is thin and smooth for the variety and size of the fruit.

§ 51.770 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 slightly detracts from the appearance, or the edible or shipping quality of the fruit. The following specific defects shall be considered as injury:

(a) Green spots or oil spots, when more than slightly detracting from the appearance of the fruit.

(b) Scale when more than a few adjacent to the "button" at the stem end, or when more than 6 scattered on the other portions of the fruit;

(c) Scars which are depressed, not smooth, or which detract from the appearance of the fruit to a greater extent than the maximum amount of discoloration allowed in the grade; and,

(d) Thorn scratches when the injury is not slight, not well healed, or more unsightly than the discoloration allowed in the grade.

§ 51.771 Discoloration.

"Discoloration" means russeting of a light shade of golden brown caused by rust mite or other means. Lighter shades of discoloration caused by scars or other means may be allowed on a greater area, or darker shades may be allowed on a lesser area, provided no discoloration caused by melanose or other means may detract from the appearance of the fruit to a greater extent than the shade and amount of discoloration allowed for the grade.

§ 51.772 Fairly well colored.

"Fairly well colored" means that, except for an aggregate area of green color which does not exceed the area of a circle 1 inch in diameter, the yellow or orange color predominates over the green color.

§ 51.773 Fairly smooth texture.

"Fairly smooth texture" means that the skin is fairly thin and not coarse for the variety and size of the fruit.

§ 51.774 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 fruit. The following specific defects shall be considered as damage:

(a) Ammoniation, when not occurring as light speck type similar to melanose;

(b) Dryness or mushy condition when affecting all segments more than one-fourth inch at the stem end, or more than the equivalent of this amount, by volume, when occurring in other portions of the fruit;

(c) Green spots or oil spots, when more than materially detracting from the appearance of the fruit;

(d) Scab when it cannot be classed as discoloration or materially detracts from the shape or texture;

(e) Scale, when occurring as a blotch and its size exceeds the area of a circle $\frac{3}{4}$ inch in diameter, or when occurring as a ring and its size exceeds the area of a circle $1\frac{1}{4}$ inches in diameter on a grapefruit of 70-size. Smaller sizes shall have lesser areas of scale and larger sizes may have greater areas: *Provided*, That no scale shall be permitted which detracts from the appearance to a greater extent than a blotch $\frac{3}{4}$ inch in diameter or a ring $1\frac{1}{4}$ inches in diameter on a 70-size grapefruit;

(f) Scars which are not smooth, or scars which are deep, or scars which are shallow or fairly shallow and detract from the appearance of the fruit to a greater extent than the amount of discoloration allowed in the grade;

(g) Sunburn when the area affected exceeds 25 percent of the fruit surface, or when the skin is materially flattened, dry, darkened or hard; and,

(h) Thorn scratches when the injury is not well healed, or concentrated light colored thorn injury which has caused the skin to become hard and the aggregate area exceeds the area of a circle one-fourth inch in diameter, or slight scratches when light colored and concentrated and the aggregated area exceeds the area of a circle 1 inch in diameter, or dark or scattered thorn injury which detracts from the appearance of the fruit to a greater extent than the amounts specified above.

§ 51.775 Fairly firm.

"Fairly firm" means that the fruit may be slightly soft, but not bruised, and the skin is not spongy or puffy.

§ 51.776 Slightly misshapen.

"Slightly misshapen" means that the fruit has fairly good shape characteristic of the variety and is not more than slightly elongated or pointed or otherwise deformed.

§ 51.777 Slightly rough texture.

"Slightly rough texture" means that the skin may be slightly thick but not excessively thick, materially ridged or grooved.

§ 51.778 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 fruit. The following specific defects shall be considered as serious damage:

(a) Ammoniation when scars are cracked, or when dark and aggregating more than one-half inch in diameter, or when light colored and aggregating more than one inch in diameter;

(b) Buckskin when detracting from the appearance of the fruit to a greater extent than the amount of discoloration allowed;

(c) Dryness or mushy condition when affecting all segments more than one-half inch at the stem end, or more than the equivalent of this amount, by volume, when occurring in other portions of the fruit;

(d) Green spots or oil spots when the aggregate area exceeds the area of a circle one inch in diameter on a grapefruit of 70-size. Smaller sizes shall have lesser areas of green spots or oil spots and larger sizes may have greater areas: *Provided*, That the appearance of the grapefruit is not affected to a greater extent than the area permitted on a 70-size grapefruit;

(e) Scab when it cannot be classed as discoloration, or when seriously detracting from the shape or texture;

(f) Scale, when occurring as a blotch and its size exceeds the area of a circle one inch in diameter, or when occurring as a ring and its size exceeds the area of a circle $1\frac{1}{2}$ inches in diameter on a grapefruit of 70-size. Smaller sizes shall have lesser areas of scale and larger sizes may have greater areas: *Provided*, That no scale shall be permitted which detracts from the appearance to a greater extent than a blotch one inch in diameter or a ring $1\frac{1}{2}$ inches in diameter on a 70-size grapefruit;

(g) Scars which are not fairly smooth, or scars which are very deep, or scars which are not very deep but which detract from the appearance of the fruit to a greater extent than the amount of discoloration allowed in the grade;

(h) Sprayburn which seriously detracts from the appearance of the fruit, or is hard, or when more than $1\frac{1}{4}$ inches in diameter in the aggregate has a light brown discoloration;

(i) Sunburn which affects more than one-third of the fruit surface, or is hard, or the fruit is decidedly one-sided, or when more than $1\frac{1}{4}$ inches in diameter in the aggregate has a light brown discoloration; and,

(j) Thorn scratches when the injury is not well healed, or concentrated light colored thorn injury which has caused the skin to become hard and the aggregate area exceeds the area of a circle one-half inch in diameter, or slight scratches when light colored and concentrated and the aggregate area exceeds the area of a circle $1\frac{1}{2}$ inches in diameter, or dark or scattered thorn injury which detracts from the appearance of the fruit to a greater extent than the amounts specified above.

§ 51.779 Slightly colored.

"Slightly colored" means that except for two inches in the aggregate of green color, the remainder of the fruit surface shows some yellow color.

§ 51.780 Misshapen.

"Misshapen" means that the fruit is decidedly elongated, pointed, or flat sided.

§ 51.781 Slightly spongy.

"Slightly spongy" means that the fruit is puffy or slightly wilted but not flabby.

§ 51.782 Very serious damage.

"Very 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 very seriously detracts from the appearance, or the edible or shipping quality of the fruit. The following specific defects shall be considered as very serious damage:

(a) Growth cracks that are seriously weakened, gummy or not healed;

(b) Ammoniation when aggregating more than 2 inches in diameter, or which has caused serious cracks;

(c) Bird pecks, when not healed;

(d) Caked melanose when more than 25 percent in the aggregate of the surface of the fruit is caked.

(e) Buckskin when rough and aggregating more than 50 percent of the surface of the fruit;

(f) Dryness or mushy condition when affecting all segments more than one-half inch at the stem end, or more than the equivalent of this amount, by volume, when occurring in other portions of the fruit;

(g) Scab when aggregating more than 25 percent of the surface;

(h) Scale when covering more than 20 percent of the surface;

(i) Sprayburn when seriously affecting more than one-third of the fruit surface;

(j) Sunburn when seriously affecting more than one-third of the fruit surface; and,

(k) Thorn punctures when not healed or the fruit is seriously weakened.

§ 51.783 Diameter.

"Diameter" means the greatest dimension measured at right angles to a line from stem to blossom end.

Dated: July 8, 1960.

F. R. BURKE,
Acting Deputy Administrator,
Marketing Service.

[F.R. Doc. 60-6487; Filed, July 12, 1960;
8:51 a.m.]

17 CFR Part 511

UNITED STATES STANDARDS FOR GRADES OF FLORIDA ORANGES AND TANGELOS¹

Notice of Proposed Rule Making

Notice is hereby given that the United States Department of Agriculture is considering the revision of United States Standards for Florida Oranges and Tangelos (7 CFR 51.1140 to 51.1186) pursuant to the authority contained in the Agricultural Marketing Act of 1946 (secs. 202-208, 60 Stat. 1087, as amended; 7 U.S.C. 1621-1627).

Proposed changes are designed to make the standards more applicable to current marketing practices. Following are the more important changes proposed:

(1) In the U.S. No. 1 Bright grade the amount of surface permitted to be affected by discoloration would be increased from one-tenth to one-fifth of the surface;

(2) The U.S. No. 1 Bronze grade would be changed to require that all fruit must show some discoloration, and more than 30 percent of the fruit shall have more than one-third of the surface affected by discoloration. The predominating discoloration on each fruit must be of rust mite type;

(3) The U.S. No. 1 Russet grade would be changed to require that more than 30 percent of the fruit shall have in excess of one-third of the surface affected by any type of discoloration; and,

(4) The Application of Tolerances would be changed to permit any package which contains 10 pounds or less to have four times the tolerance for defects and at least two defective fruits would be permitted, provided that the lot averages within tolerance. En route or at destination 10 percent of packages may have two fruits or 6 percent (whichever is the larger amount) affected by decay, provided that the lot averages within the tolerance.

A number of changes in definitions and phraseology are also proposed in the interest of clarity.

All persons who desire to submit written data, views or arguments for consideration in connection with the proposed standards should file the same with the Chief, Fresh Products Standardization and Inspection Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, South Building, Washington 25, D.C., not later than August 1, 1960.

The proposed standards, as revised, are as follows:

GENERAL	
Sec.	General.
51.1140	General.
GRADES	
51.1141	U.S. Fancy.
51.1142	U.S. No. 1 Bright.
51.1143	U.S. No. 1.
51.1144	U.S. No. 1 Golden.
51.1145	U.S. No. 1 Bronze.
51.1146	U.S. No. 1 Russet.
51.1147	U.S. No. 2 Bright.
51.1148	U.S. No. 2.
51.1149	U.S. No. 2 Russet.
51.1150	U.S. No. 3.
UNCLASSIFIED	
51.1151	Unclassified.
TOLERANCES	
51.1152	Tolerances.
APPLICATION OF TOLERANCES	
51.1153	Application of tolerances.
STANDARD PACK	
51.1154	Standard pack.
DEFINITIONS	
51.1155	Similar varietal characteristics.
51.1156	Well colored.
51.1157	Firm.
51.1158	Well formed.
51.1159	Mature.
51.1160	Smooth texture.
51.1161	Injury.
51.1162	Discoloration.
51.1163	Fairly smooth texture.
51.1164	Damage.
51.1165	Fairly well colored.
51.1166	Reasonably well colored.
51.1167	Fairly firm.
51.1168	Slightly misshapen.
51.1169	Slightly rough texture.
51.1170	Serious damage.
51.1171	Misshapen.
51.1172	Slightly spongy.
51.1173	Very serious damage.
51.1174	Diameter.

STANDARDS FOR INTERNAL QUALITY OF COMMON SWEET ORANGES (CITRUS SINENSIS (L.) OSBECK)

51.1175	U.S. Grade AA Juice (Double A).
51.1176	U.S. Grade A Juice.
51.1177	Maximum anhydrous citric acid permissible for corresponding total soluble solids.

Sec.
51.1178 Method of juice extraction.

AUTHORITY: §§ 51.1140 to 51.1178 issued under secs. 202-208, 60 Stat. 1087, as amended; 7 U.S.C. 1621-1627.

GENERAL

§ 51.1140 General.

The standards contained in this subpart apply only to the common or sweet orange group and varieties belonging to the Mandarin group, except tangerines, and to the citrus fruit commonly known as "tangelo"—a hybrid between tangerine or mandarin orange (*Citrus reticulata*) with either the grapefruit of pomelo (*C. paradisi* and *C. grandis*). Separate U.S. Standards apply to tangerines. The standards for internal quality contained in §§ 51.1175 through 51.1178 apply only to common sweet oranges (*Citrus sinensis* (L.) Osbeck).

GRADES

§ 51.1141 U.S. Fancy.

"U.S. Fancy" consists of oranges of similar varietal characteristics which are well colored, firm, well formed, mature, and of smooth texture, and which are free from ammoniation, bird pecks, bruises, buckskin, creasing, cuts which are not healed, decay, growth cracks, scab, split navels, sprayburn, and undeveloped or sunken segments, and are free from injury caused by green spots or oil spots, pitting, rough and excessively wide or protruding navels, scale, scars, thorn scratches, and from damage caused by dirt or other foreign materials, dryness or mushy condition, sprouting, sunburn, riciness or woodiness of the flesh, disease, insects, or mechanical or other means.

(a) In this grade not more than one-tenth of the surface, in the aggregate, may be affected by discoloration. (See § 51.1152.)

(b) If any lot of U.S. Fancy fruit also meets the internal specifications of "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" it may be so specified in accordance with the facts. (See §§ 51.1175-51.1178.)

§ 51.1142 U.S. No. 1 Bright.

The requirements for this grade are the same as for U.S. No. 1 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration. (See § 51.1152.)

(a) If any lot of U.S. No. Bright fruit also meets the internal specifications of "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" it may be so specified in accordance with the facts. (See §§ 51.1175-51.1178.)

§ 51.1143 U.S. No. 1.

"U.S. No. 1" consists of oranges of similar varietal characteristics which are firm, well formed, mature, and of fairly smooth texture, and which are free from bruises, cuts which are not healed, buckskin or similar type of discoloration, decay, growth cracks, sprayburn, undeveloped or sunken segments, and free from damage caused by ammoniation, bird pecks, creasing, dirt or other foreign materials, dryness or mushy condition, green spots or oil spots, pitting,

¹Packing 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.

scab, scale, scars, split or rough or protruding navels, sprouting, sunburn, thorn scratches, riciness or woodiness of the flesh, disease, insects, or mechanical or other means.

(a) Oranges of the early and mid-season varieties shall be fairly well colored.

(b) With respect to Valencia and other late varieties, not less than 50 percent, by count, of the oranges shall be fairly well colored and the remainder reasonably well colored.

(c) In this grade not more than one-third of the surface, in the aggregate, may be affected by discoloration. (See § 51.1152.)

(d) If any lot of U.S. No. 1 fruit also meets the internal specifications of "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" it may be so specified in accordance with the facts. (See §§ 51.1175-51.1178.)

§ 51.1144 U.S. No. 1 Golden.

The requirements for this grade are the same as for U.S. No. 1 except that not more than 30 percent, by count, of the fruits shall have in excess of one-third of their surface, in the aggregate, affected by discoloration. (See § 51.1152.)

(a) If any lot of U.S. No. 1 Golden fruit also meets the internal specifications of "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" it may be so specified in accordance with the facts. (See §§ 51.1175-51.1178.)

§ 51.1145 U.S. No. 1 Bronze.

The requirements of this grade are the same as for U.S. No. 1 except that all fruit must show some discoloration, and more than 30 percent, by count, of the fruit shall have more than one-third of the surface, in the aggregate, affected by discoloration. The predominating discoloration on each fruit must be of rust mite type. (See § 51.1152.)

(a) If any lot of U.S. No. 1 Bronze fruit also meets the internal specifications of "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" it may be so specified in accordance with the facts. (See §§ 51.1175-51.1178.)

§ 51.1146 U.S. No. 1 Russet.

The requirements of this grade are the same as for U.S. No. 1 except that more than 30 percent, by count, of the fruit shall have in excess of one-third of the surface, in the aggregate, affected by any type of discoloration. (See § 51.1152.)

(a) If any lot of U.S. No. 1 Russet fruit also meets the internal specifications of "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" it may be so specified in accordance with the facts. (See §§ 51.1175-51.1178.)

§ 51.1147 U.S. No. 2 Bright.

The requirements for this grade are the same as for U.S. No. 2 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration. (See § 51.1152.)

(a) If any lot of U.S. No. 2 Bright fruit also meets the internal specifications

of "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" it may be so specified in accordance with the facts. (See §§ 51.1175-51.1178.)

§ 51.1148 U.S. No. 2.

"U.S. No. 2" consists of oranges of similar varietal characteristics which are mature, fairly firm, not more than slightly misshapen, of not more than slightly rough texture, and which are free from bruises, cuts which are not healed, decay, growth cracks, and are free from serious damage caused by ammoniation, bird pecks, buckskin, creasing, dirt or other foreign materials, dryness or mushy condition, green spots or oil spots, pitting, scab, scale, scars, split or rough or protruding navels, sprayburn, sprouting, sunburn, thorn scratches, undeveloped or sunken segments, riciness or woodiness of the flesh, disease, insects, or mechanical or other means.

(a) Each orange of this grade shall be reasonably well colored.

(b) In this grade not more than one-half of the surface, in the aggregate, may be affected by discoloration. (See § 51.1152.)

(c) If any lot of U.S. No. 2 fruit also meets the internal specifications of "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" it may be so specified in accordance with the facts. (See §§ 51.1175-51.1178.)

§ 51.1149 U.S. No. 2 Russet.

The requirements for this grade are the same as for U.S. No. 2 except that more than 10 percent, by count, of the fruits shall have in excess of one-half of their surface, in the aggregate, affected by discoloration. (See § 51.1152.)

(a) If any lot of U.S. No. 2 Russet fruit also meets the internal specifications of "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" it may be so specified in accordance with the facts. (See §§ 51.1175-51.1178.)

§ 51.1150 U.S. No. 3.

"U.S. No. 3" consists of oranges of similar varietal characteristics which are mature, which may be misshapen, slightly spongy, rough but not seriously lumpy for the variety or seriously cracked, which are free from cuts which are not healed, and from decay, and from very serious damage caused by bruises, growth cracks, ammoniation, bird pecks, caked melanose, buckskin, creasing, dryness, or mushy condition, pitting, scab, scale, split navels, sprayburn, sprouting, sunburn, thorn punctures, riciness or woodiness of the flesh, disease, insects, or mechanical or other means.

(a) Each fruit may be poorly colored but not more than 25 percent of the surface of each fruit may be of a solid dark green color. (See § 51.1152.)

(b) If any lot of U.S. No. 3 fruit also meets the internal specifications of "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" it may be so specified in accordance with the facts. (See §§ 51.1175-51.1178.)

UNCLASSIFIED

§ 51.1151 Unclassified.

"Unclassified" consists of oranges which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.

TOLERANCES

§ 51.1152 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified:

(a) *U.S. Fancy grade.* 10 percent of the fruits in any lot may fail to meet the requirements of this grade, but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping point: *Provided*, That an additional tolerance of $2\frac{1}{2}$ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. None of the foregoing tolerances shall apply to wormy fruit.

(b) *U.S. No. 1 grade.* 10 percent of the fruits in any lot may fail to meet the requirements of this grade, other than for discoloration, but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping point: *Provided*, That an additional tolerance of $2\frac{1}{2}$ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. In addition, 10 percent of the fruits in any lot may have discoloration in excess of one-third of the fruit surface. None of the foregoing tolerances shall apply to wormy fruit.

(c) *U.S. No. 1 Bright grade.* 10 percent of the fruits in any lot may fail to meet the requirements of this grade, other than for discoloration, but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping point: *Provided*, That an additional tolerance of $2\frac{1}{2}$ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. In addition, 10 percent of the fruits in any lot may fail to meet the requirements relating to discoloration. None of the foregoing tolerances shall apply to wormy fruit.

(d) *U.S. No. 1 Golden and U.S. No. 1 Bronze grades.* 10 percent of the fruits in any lot may fail to meet the requirements of the grade, but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping

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point: *Provided*, That an additional tolerance of $2\frac{1}{2}$ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. No part of any tolerance shall be allowed to reduce or to increase the percentage of fruits having in excess of one-third of their surface, in the aggregate, affected by discoloration which is required in the grade, but individual containers may vary not more than 10 percent from the percentage required: *Provided*, That the entire lot averages within the percentages specified. None of the foregoing tolerances shall apply to wormy fruit.

(e) *U.S. No. 1 Russet grade*. 10 percent of the fruits in any lot may fail to meet the requirements of this grade, but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping point: *Provided*, That an additional tolerance of $2\frac{1}{2}$ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. No part of any tolerance shall be allowed to reduce the percentage of fruits having in excess of one-third of their surface, in the aggregate, affected by discoloration which is required in this grade, but individual containers may have not more than 10 percent less than the percentage required: *Provided*, That the entire lot averages within the percentage specified. None of the foregoing tolerances shall apply to wormy fruit.

(f) *U.S. No. 2 and U.S. No. 2 Bright grades*. 10 percent of the fruits in any lot may fail to meet the requirements of the grade, other than for discoloration, but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage other than that caused by dryness or mushy condition, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping point: *Provided*, That an additional tolerance of $2\frac{1}{2}$ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. In addition, 10 percent of the fruits in any lot may fail to meet the requirements relating to discoloration. None of the foregoing tolerances shall apply to wormy fruit.

(g) *U.S. No. 2 Russet grade*. 10 percent of the fruits in any lot may fail to meet the requirements of this grade, but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage other than that caused by dryness or mushy condition, and not more than one-twentieth of the tolerance, or one-half of one percent, shall be allowed for decay at shipping point: *Provided*, That an additional tolerance of $2\frac{1}{2}$ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. No part of any tolerance shall be allowed to reduce the percentage of fruits having in excess of one-half of their surface, in the aggregate, affected by discolora-

tion which is required in this grade, but individual containers may have not more than 10 percent less than the percentage required: *Provided*, That the entire lot averages within the percentage specified. None of the foregoing tolerances shall apply to wormy fruit.

(h) *U.S. No. 3 grade*. 15 percent of the fruits in any lot may fail to meet the requirements of this grade, but not more than one-third of this amount, or 5 percent, shall be allowed for defects other than that caused by dryness or mushy condition, and not more than one-fifth of this amount, or 1 percent, shall be allowed for decay at shipping point: *Provided*, That an additional tolerance of 2 percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. None of the foregoing tolerances shall apply to wormy fruit.

APPLICATION OF TOLERANCES

§ 51.1153 Application of tolerances.

The contents of individual packages are subject to the following limitations: *Provided*, That the averages for the entire lot are within the tolerances specified for the grade:

(a) A package which contains more than 10 pounds shall have not more than one and one-half times a specified tolerance of 10 percent and not more than double a specified tolerance of less than 10 percent except that at least one decayed or very seriously damaged fruit may be permitted in any package.

(b) A package which contains 10 pounds or less, shall have not more than four times the tolerances specified, except that at least two defective fruits may be permitted: *Provided*, That not more than one fruit which is seriously damaged by dryness or mushy condition or very seriously damaged by other means may be permitted in any package; and en route or at destination not more than 10 percent of the packages may have more than two fruits or more than 6 percent (whichever is the larger amount) affected by decay.

STANDARD PACK

§ 51.1154 Standard pack.

(a) Fruit shall be fairly uniform in size, unless specified as uniform in size. When packed in boxes, fruit shall be arranged according to the approved and recognized methods and shall meet the applicable standard size requirements of this section. Each wrapped fruit shall be fairly well wrapped.

(b) All packages shall be tightly packed and well filled but the contents shall not show excessive or unnecessary bruising because of overfilled packages.

(c) When packed in standard $1\frac{1}{2}$ bushel nailed boxes, each container shall show a minimum bulge of $1\frac{1}{4}$ inches.

(d) "Standard size" means that not more than 10 percent, by count, of the fruits in any container are below the minimum diameters given in the applicable one of the following Tables 1, 2, 3

and 4 for the various packs, types of fruit, and size of boxes:

TABLE 1

Oranges other than Temples, packed in $1\frac{1}{2}$ bushel boxes:

Size and count:	Minimum diameter in inches
98's.....	$3\frac{1}{16}$
125's or 126's.....	$3\frac{3}{16}$
150's.....	3
175's or 176's.....	$2\frac{1}{16}$
216's.....	$2\frac{1}{16}$
252's.....	$2\frac{1}{16}$
288's or 294's.....	$2\frac{1}{16}$
324's.....	$2\frac{1}{16}$

TABLE 2

Temple oranges and tangelos packed in $\frac{1}{2}$ bushel regular, wirebound boxes:

Size and count:	Minimum diameter in inches
56's.....	$3\frac{1}{16}$
64's.....	$3\frac{3}{16}$
72's.....	$3\frac{1}{16}$
80's.....	3
96's.....	$2\frac{1}{16}$
125's.....	$2\frac{1}{16}$
150's.....	$2\frac{1}{16}$
175's.....	$2\frac{1}{16}$

TABLE 3

Temple oranges and tangelos packed in $\frac{1}{2}$ bushel flat, wirebound boxes:

Size and count:	Minimum diameter in inches
54's.....	$3\frac{1}{16}$
66's.....	$3\frac{3}{16}$
80's.....	3
90's.....	$2\frac{1}{16}$
100's.....	$2\frac{1}{16}$
108's.....	$2\frac{1}{16}$
120's.....	$2\frac{1}{16}$
130's.....	$2\frac{1}{16}$
156's.....	$2\frac{1}{16}$

TABLE 4

Temple oranges and tangelos packed in $\frac{1}{2}$ bushel half-strap boxes:

Size and count:	Minimum diameter in inches
48's.....	$3\frac{1}{16}$
60's.....	$3\frac{1}{16}$
76's.....	$3\frac{1}{16}$
90's.....	$2\frac{1}{16}$
106's.....	$2\frac{1}{16}$
120's.....	$2\frac{1}{16}$
144's.....	$2\frac{1}{16}$
168's.....	$2\frac{1}{16}$

(e) "Fairly uniform in size" means that not more than 10 percent, by count, of the fruits in any container vary more than the following amounts:

(1) Five-sixteenths inch in diameter for 150 size and smaller oranges, other than Temples, packed in $1\frac{1}{2}$ bushel boxes, and for 76 size and smaller Temple oranges and tangelos packed in $\frac{1}{2}$ bushel boxes; and,

(2) Six-sixteenths inch in diameter for 126 size and larger oranges, other than Temples, packed in $1\frac{1}{2}$ bushel boxes, and for 72 size and larger Temple oranges and tangelos packed in $\frac{1}{2}$ bushel boxes.

(f) "Uniform in size" means that not more than 10 percent, by count, of the fruits in any container vary more than the following amounts:

(1) Four-sixteenths inch in diameter for 150 size and smaller oranges, other

than Temples, packed in 1½ bushel boxes, and for 76 size and smaller Temple oranges and tangelos packed in ¾ bushel boxes; and,

(2) Five-sixteenths inch in diameter for 126 size and larger oranges, other than Temples, packed in 1½ bushel boxes, and for 72 size and larger Temple oranges and tangelos packed in ¾ bushel boxes.

(g) In order to allow for variations, other than sizing, incident to proper packing, not more than 5 percent of the packages in any lot may fail to meet the requirements of standard pack.

DEFINITIONS

§ 51.1155 Similar varietal characteristics.

"Similar varietal characteristics" means that the fruits in any container are similar in color and shape.

§ 51.1156 Well colored.

"Well colored" means that the fruit is yellow or orange in color with practically no trace of green color.

§ 51.1157 Firm.

"Firm" as applied to common oranges and tangelos means that the fruit is not soft, or noticeably wilted or flabby; as applied to oranges of the Mandarin group (Satumas, King, Mandarin), "firm" means that the fruit is not extremely puffy, although the skin may be slightly loose.

§ 51.1158 Well formed.

"Well formed" means that the fruit has the shape characteristic of the variety.

§ 51.1159 Mature.

(a) "Mature," for other than Temple oranges, shall have the same meaning currently assigned that term in sections 601.19 and 601.20 of the Florida Citrus Code of 1949, as amended (Ch. 25149, Laws of Florida, 1949) or as the definition of such term may hereafter be amended;

(b) "Mature" for Temple oranges shall have the same meaning currently assigned that term in sections 601.21 and 601.22 of the Florida Citrus Code of 1949, as amended (Ch. 26492, Laws of Florida, 1951) or as the definition of such term may hereafter be amended; and,

(c) "Mature" for tangelos shall have the same meaning currently assigned that term in sections 601.231 and 601.232 of the Florida Citrus Code of 1949, as amended (Ch. 29757, Laws of Florida, 1955) or as the definition of such term may hereafter be amended.

§ 51.1160 Smooth texture.

"Smooth texture" means that the skin is thin and smooth for the variety and size of the fruit.

§ 51.1161 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 slightly

detracts from the appearance, or the edible or shipping quality of the fruit. The following specific defects shall be considered as injury:

(a) Green spots or oil spots when more than slightly detracting from the appearance of the individual fruit;

(b) Rough and excessively wide or protruding navels when protruding beyond the general contour of the orange; or when flush with the general contour but with the opening so wide, considering the size of the fruit, and the navel growth so folded and ridged that it detracts noticeably from the appearance of the orange;

(c) Scale when more than a few adjacent to the "button" at the stem end, or when more than 6 scattered on other portions of the fruit;

(d) Scars which are depressed, not smooth, or which detract from the appearance of the fruit to a greater extent than the maximum amount of discoloration allowed in the grade; and,

(e) Thorn scratches when the injury is not slight, not well healed, or more unsightly than discoloration allowed in the grade.

§ 51.1162 Discoloration.

"Discoloration" means russetting of a light shade of golden brown caused by rust mite or other means. Lighter shades of discoloration caused by superficial scars or other means may be allowed on a greater area, or darker shades may be allowed on a lesser area, provided no discoloration caused by melanose or other means may detract from the appearance of the fruit to a greater extent than the shade and amount of discoloration allowed for the grade.

§ 51.1163 Fairly smooth texture.

"Fairly smooth texture" means that the skin is fairly thin and not coarse for the variety and size of the fruit.

§ 51.1164 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 fruit. The following specific defects shall be considered as damage:

(a) Ammoniation when not occurring as light speck type similar to melanose;

(b) Creasing when causing the skin to be materially weakened;

(c) Dryness or mushy condition when affecting all segments of the fruit more than one-fourth inch at the stem end, or more than the equivalent of this amount, by volume, when occurring in other portions of the fruit;

(d) Green spots or oil spots when more than 5 in number, or when the aggregate area of all spots exceeds the area of a circle three-fourths inch in diameter on an orange 3 inches in diameter. Smaller sizes shall have a lesser number or lesser areas of green spots or oil spots and larger sizes may have a larger number or

greater areas: *Provided*, That the appearance of the orange is not affected to a greater extent than the number or area permitted on an orange 3 inches in diameter;

(e) Scab when it cannot be classed as discoloration, or materially detracts from the shape or texture;

(f) Scale when occurring as a blotch and its size exceeds the area of a circle five-eighths inch in diameter on an orange 3 inches in diameter. Smaller sizes shall have lesser areas of scale and larger sizes may have greater areas: *Provided*, That no scale shall be permitted which detracts from the appearance to a greater extent than a blotch five-eighths inch in diameter on an orange 3 inches in diameter;

(g) Scars which are not smooth, or scars which are deep, or scars which are shallow or fairly shallow and detract from the appearance of the fruit to a greater extent than the amount of discoloration allowed in the grade;

(h) Split or rough or protruding navels when any split is unhealed, or more than three well-healed splits at the navel, or any split which is more than one-fourth inch in length, or three-cornered, star-shaped, or other irregular navels when the opening is so wide, considering the size of the orange, and the navel growth so folded and ridged that it detracts materially from the appearance of the orange; or navels which flare, bulge, or protrude beyond the general contour of the orange to the extent that they are subject to mechanical injury in the process of proper grading, or handling, or packing;

(i) Sunburn when the area affected exceeds 25 percent of the fruit surface, or when the skin is materially flattened, dry, darkened, or hard;

(j) Thorn scratches when the injury is not well healed, or concentrated light colored thorn injury which has caused the skin to become hard and the aggregate area exceeds the area of a circle one-fourth inch in diameter, or slight scratches when light colored and concentrated and the aggregate area exceeds the area of a circle 1 inch in diameter, or dark or scattered thorn injury which detracts from the appearance of the fruit to a greater extent than the amounts specified above; and,

(k) Riciness or woodiness when the flesh of the fruit is so ricey or woody that excessive pressure by hand is required to extract the juice.

§ 51.1165 Fairly well colored.

"Fairly well colored" means that, except for an aggregate area of green color which does not exceed the area of a circle 1 inch in diameter, the yellow or orange color predominates over the green color.

§ 51.1166 Reasonably well colored.

"Reasonably well colored" means that the yellow or orange color predominates over the green color on at least two-thirds of the fruit surface, in the aggregate.

§ 51.1167 Fairly firm.

"Fairly firm" as applied to common oranges and tangelos, means that the fruit may be slightly soft, but not bruised; as applied to oranges of the Mandarin group (Satsumas, King, Mandarin), means that the skin of the fruit is not extremely puffy or extremely loose.

§ 51.1168 Slightly misshapen.

"Slightly misshapen" means that the fruit is not of the shape characteristic of the variety but is not appreciably elongated or pointed or otherwise deformed.

§ 51.1169 Slightly rough texture.

"Slightly rough texture" means that the skin is not of smooth texture but is not materially ridged, grooved, or wrinkled.

§ 51.1170 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 fruit. The following specific defects shall be considered as serious damage:

(a) Ammoniation when scars are cracked, or when dark and the aggregate area exceeds the area of a circle three-fourths inch in diameter, or when light colored and the aggregate area exceeds the area of a circle $1\frac{1}{4}$ inches in diameter;

(b) Buckskin when aggregating more than 25 percent of the fruit surface, or the fruit texture is seriously affected;

(c) Creasing when so deep or extensive that the skin is seriously weakened;

(d) Dryness or mushy condition when affecting all segments of the fruit more than one-half inch at the stem end, or more than the equivalent of this amount, by volume, when occurring in other portions of the fruit;

(e) Green spots or oil spots when seriously detracting from the appearance of the individual fruit;

(f) Scab when it cannot be classed as discoloration, or when seriously detracting from the shape or texture;

(g) Scale when it seriously detracts from the appearance of the individual fruit;

(h) Scars which are not fairly smooth, or scars which are very deep, or scars which are not very deep but which detract from the appearance of the fruit to a greater extent than the amount of discoloration allowed in the grade;

(i) Split or rough or protruding navels when any split is unhealed, or one well-healed split at each corner of irregular navels when any one is more than one-half inch in length, or when aggregating more than 1 inch in length, or when more than four in number; or navels which protrude beyond the general contour of the orange to the extent that they are subject to mechanical injury during the process of proper grad-

ing, or handling, or packing; or irregular navels when the opening is so wide, considering the size of the orange, and the navel growth so badly folded and ridged that it detracts seriously from the appearance of the orange;

(j) Sprayburn which seriously detracts from the appearance of the fruit, or is hard, or when light brown in color and the aggregate area exceeds the area of a circle $1\frac{1}{4}$ inches in diameter;

(k) Sunburn which affects more than one-third of the fruit surface, or is hard, or the fruit is decidedly one-sided, or when light brown in color and the aggregate area exceeds the area of a circle $1\frac{1}{4}$ inches in diameter;

(l) Thorn scratches when the injury is not well healed, or concentrated light colored thorn injury which has caused the skin to become hard and the aggregate area exceeds the area of a circle one-half inch in diameter, or slight scratches, when light colored and concentrated and the aggregate area exceeds the area of a circle $1\frac{1}{2}$ inches in diameter, or dark or scattered thorn injury which detracts from the appearance of the fruit to a greater extent than the amounts specified above;

(m) Undeveloped or sunken segments in navel oranges when such segments are so sunken or undeveloped that they are readily noticeable; and,

(n) Riciness or woodiness when the flesh of the fruit is so ricey or woody that excessive pressure by hand is required to extract the juice.

§ 51.1171 Misshapen.

"Misshapen" means that the fruit is decidedly elongated, pointed or flat-sided.

§ 51.1172 Slightly spongy.

"Slightly spongy" means that the fruit is puffy or slightly wilted but not flabby.

§ 51.1173 Very serious damage.

"Very 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 very seriously detracts from the appearance, or the edible or shipping quality of the fruit. The following specific defects shall be considered as very serious damage:

(a) Growth cracks that are seriously weakened, gummy or not healed;

(b) Ammoniation when aggregating more than 2 inches in diameter, or which has caused serious cracks;

(c) Bird pecks when not healed;

(d) Caked melanose when more than 25 percent, in the aggregate, of the surface of the fruit is caked;

(e) Buckskin when rough and aggregating more than 50 percent of the surface of the fruit;

(f) Creasing when so deep or extensive that the skin is very seriously weakened;

(g) Dryness or mushy condition when affecting all segments of the fruit more than one-half inch at the stem end, or more than the equivalent of this

amount, by volume, when occurring in other portions of the fruit;

(h) Scab when aggregating more than 25 percent of the surface of the fruit;

(i) Scale when covering more than 20 percent of the surface of the fruit;

(j) Split navels when not healed or the fruit is seriously weakened;

(k) Sprayburn when seriously affecting more than one-third of the fruit surface;

(l) Sunburn when seriously affecting more than one-third of the fruit surface;

(m) Thorn punctures when not healed or the fruit is seriously weakened; and,

(n) Riciness or woodiness when the flesh of the fruit is so ricey or woody that excessive pressure by hand is required to extract the juice.

§ 51.1174 Diameter.

"Diameter" means the greatest dimension measured at right angles to a line from stem to blossom end.

STANDARDS FOR INTERNAL QUALITY OF COMMON SWEET ORANGES (CITRUS SINENSIS (L.) OSBECK)

§ 51.1175 U.S. Grade AA Juice (Double A).

Any lot of oranges, the juice content of which meets the following requirements, may be designated "U.S. Grade AA Juice (Double A)":

(a) Each lot of fruit shall contain an average of not less than 5 gallons of juice per standard packed box of one and three-fifths bushels.

(b) The average juice content for any lot of fruit shall have not less than 10 percent total soluble solids, and not less than one-half of 1 percent anhydrous citric acid, or more than the permissible maximum acid specified in Table 5 of § 51.1177.

§ 51.1176 U.S. Grade A Juice.

Any lot of oranges, the juice content of which meets the following requirements, may be designated "U.S. Grade A Juice":

(a) Each lot of fruit shall contain an average of not less than four and one-half gallons of juice per standard packed box of one and three-fifths bushels.

(b) The average juice content for any lot of fruit shall have not less than 9 percent total soluble solids, and not less than one-half of 1 percent anhydrous citric acid, or more than the permissible maximum acid specified in Table 5 of § 51.1177.

§ 51.1177 Maximum anhydrous citric acid permissible for corresponding total soluble solids.

For determining the grade of juice, the maximum permissible anhydrous citric acid content in relation to corresponding total soluble solids in the fruit is set forth in the following Table 5 together with the minimum ratio of total soluble solids to anhydrous citric acid:

TABLE 5

[7 CFR Part 51]

UNITED STATES STANDARDS FOR
GRADES OF FLORIDA TANGE-
RINES¹

Notice of Proposed Rule Making

Notice is hereby given that the United States Department of Agriculture is considering the revision of United States Standards for Florida Tangerines (7 CFR §§ 51.1810 to 51.1836) pursuant to the authority contained in the Agricultural Marketing Act of 1946 (secs. 202-208, 60 Stat. 1087, as amended; 7 U.S.C. 1621-1627).

The proposed changes are designed to make the standards more applicable to current marketing practices. Following are the important changes proposed:

(1) In the U.S. No. 1 grade a new definition of "fairly well colored" increases the amount of green color permitted and requires the remainder of the surface to have yellow or better ground color with some tangerine blush; and,

(2) The Application of Tolerances would be changed to permit any package which contains 10 pounds or less to have four times the tolerance for defects and at least two defective fruits would be permitted provided that the lot averages within the tolerance.

A number of changes in definitions and phraseology are also proposed in the interest of clarity.

All persons who desire to submit written data, views or arguments for consideration in connection with the proposed standards should file the same with the Chief, Fresh Products Standardization and Inspection Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, South Building, Washington 25, D.C., not later than August 1, 1960.

The proposed standards, as revised, are as follows:

GRADES

Sec.	
51.1810	U.S. Fancy.
51.1811	U.S. No. 1.
51.1812	U.S. No. 1 Bronze.
51.1813	U.S. No. 1 Russet.
51.1814	U.S. No. 2.
51.1815	U.S. No. 2 Russet.
51.1816	U.S. No. 3.

UNCLASSIFIED

51.1817	Unclassified.
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TOLERANCES

51.1818	Tolerances.
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APPLICATION OF TOLERANCES

51.1819	Application of tolerances.
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STANDARD PACK

51.1820	Standard pack.
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¹Packing 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.

DEFINITIONS

Sec.	
51.1821	Mature.
51.1822	Firm.
51.1823	Well formed.
51.1824	Damage.
51.1825	Highly colored.
51.1826	Discoloration.
51.1827	Fairly well colored.
51.1828	Bronzed russetting.
51.1829	Fairly firm.
51.1830	Fairly well formed.
51.1831	Serious damage.
51.1832	Reasonably well colored.
51.1833	Very serious damage.
51.1834	Diameter.

AUTHORITY: §§ 51.1810 to 51.1834 issued under secs. 202-208, 60 Stat. 1087, as amended; 7 U.S.C. 1621-1627.

GRADES

§ 51.1810 U.S. Fancy.

"U.S. Fancy" consists of tangerines which are mature, firm, and well formed, and which are free from soft bruises, bird pecks, unhealed skin-breaks, and decay and free from damage caused by ammoniation, creasing, dryness or mushy condition, green spots or oil spots, pitting, scale, sprouting, sprayburn, sunburn, unsightly discoloration, buckskin, melanose, scars, scab, dirt or other foreign materials, disease, insects, or mechanical or other means.

(a) Each fruit in this grade shall be highly colored.

(b) In this grade not more than one-tenth of the fruit surface, in the aggregate, may have a light shade of brown discoloration caused by rust mite, or an equivalent of this amount in appearance when the fruit is discolored by any cause. (See § 51.1818.)

§ 51.1811 U.S. No. 1.

"U.S. No. 1" consists of tangerines which are mature, firm, and well formed, and which are free from soft bruises, bird pecks, unhealed skin-breaks, and decay, and free from damage caused by ammoniation, creasing, dryness or mushy condition, green spots or oil spots, pitting, scale, sprouting, sprayburn, sunburn, unsightly discoloration, buckskin, melanose, scars, scab, dirt or other foreign materials, disease, insects, or mechanical or other means.

(a) Each fruit in this grade shall be fairly well colored.

(b) In this grade not more than one-third of the fruit surface, in the aggregate, may have a light shade of brown discoloration caused by rust mite, or an equivalent of this amount in appearance when the fruit is discolored by any cause. (See § 51.1818.)

§ 51.1812 U.S. No. 1 Bronze.

The requirements for this grade are the same as for U.S. No. 1 except for discoloration. In this grade at least 75 percent, by count, of the fruits shall show some discoloration, and more than 20 percent, by count, of the fruits shall have more than one-third of their surface affected with bronzed russetting: *Provided*, That no discoloration that ex-

Total soluble solids (average percent)	Maximum anhydrous citric acid (average percent)	Minimum ratio of total soluble solids to anhydrous citric acid
9.0	0.947	9.50-1
9.1	.963	9.45-1
9.2	.979	9.40-1
9.3	.995	9.35-1
9.4	1.011	9.30-1
9.5	1.027	9.25-1
9.6	1.043	9.20-1
9.7	1.060	9.15-1
9.8	1.077	9.10-1
9.9	1.094	9.05-1
10.0	1.111	9.00-1
10.1	1.128	8.95-1
10.2	1.146	8.90-1
10.3	1.164	8.85-1
10.4	1.182	8.80-1
10.5	1.200	8.75-1
10.6	1.218	8.70-1
10.7	1.237	8.65-1
10.8	1.256	8.60-1
10.9	1.275	8.55-1
11.0	1.294	8.50-1
11.1	1.306	8.50-1
11.2	1.318	8.50-1
11.3	1.329	8.50-1
11.4	1.341	8.50-1
11.5	1.353	8.50-1
11.6	1.365	8.50-1
11.7	1.376	8.50-1
11.8	1.388	8.50-1
11.9	1.400	8.50-1
12.0	1.412	8.50-1
12.1	1.424	8.50-1
12.2	1.435	8.50-1
12.3	1.447	8.50-1
12.4	1.459	8.50-1
12.5	1.471	8.50-1
12.6	1.482	8.50-1
12.7	1.494	8.50-1
12.8	1.506	8.50-1
12.9	1.517	8.50-1
13.0	1.530	8.50-1
13.1	1.541	8.50-1
13.2	1.553	8.50-1
13.3	1.565	8.50-1
13.4	1.576	8.50-1
13.5	1.588	8.50-1
13.6	1.600	8.50-1
13.7	1.612	8.50-1
13.8	1.624	8.50-1
13.9	1.635	8.50-1
14.0	1.647	8.50-1
14.1	1.659	8.50-1
14.2	1.671	8.50-1
14.3	1.682	8.50-1
14.4	1.694	8.50-1
14.5	1.705	8.50-1
14.6	1.718	8.50-1
14.7	1.729	8.50-1
14.8	1.741	8.50-1
14.9	1.753	8.50-1
15.0	1.765	8.50-1
15.1	1.776	8.50-1
15.2	1.788	8.50-1
15.3	1.800	8.50-1
15.4	1.812	8.50-1
15.5	1.824	8.50-1
15.6 or more		8.50-1

§ 51.1178 Method of juice extraction.

The juice used in the determination of solids, acid, and juice content shall be extracted from representative samples as thoroughly as possible with a reamer or by hand, and shall be strained through a double thickness of cheese cloth of sufficiently fine mesh to prevent the passage through it of juice cells, pulp or seeds.

Dated: July 8, 1960.

F. R. BURKE,
Acting Deputy Administrator,
Marketing Services.

[P.R. Doc. 60-6485; Filed, July 12, 1960;
8:51 a.m.]

ceeds the amount allowed in the U.S. No. 1 grade shall be permitted unless such discoloration is caused by thrip, wind scars, or rust mite. (See § 51.1818.)

§ 51.1813 U.S. No. 1 Russet.

The requirements for this grade are the same as for U.S. No. 1 except for discoloration. In this grade at least 75 percent, by count, of the fruits shall show some discoloration, and more than 20 percent, by count, of the fruits shall have more than one-third of their surface affected by discoloration. (See § 51.1818.)

§ 51.1814 U.S. No. 2.

"U.S. No. 2" consists of tangerines which are mature, fairly firm, and fairly well formed, and which are free from soft bruises, bird pecks, unhealed skin-breaks, and decay, and free from serious damage caused by ammoniation, creasing, dryness or mushy condition, green spots or oil spots, pitting, scale, sprouting, sprayburn, sunburn, unsightly discoloration, buckskin, melanose, scars, scab, dirt or other foreign materials, disease, insects, or mechanical or other means.

(a) Each fruit in this grade shall be reasonably well colored.

(b) In this grade not more than two-thirds of the fruit surface, in the aggregate, may be affected with light brown discoloration, or may have the equivalent of this amount in appearance when the fruit has lighter or darker shades of discoloration. (See § 51.1818.)

§ 51.1815 U.S. No. 2 Russet.

The requirements for this grade are the same as for U.S. No. 2 except that more than 20 percent, by count, of the fruits shall have in excess of two-thirds of their surface, in the aggregate, affected by light brown discoloration. (See § 51.1818.)

§ 51.1816 U.S. No. 3.

"U.S. No. 3" consists of tangerines which are mature, not flabby and not seriously lumpy, and which are free from unhealed bird pecks, unhealed skin-breaks, and decay, and free from very serious damage caused by bruises, ammoniation, creasing, dryness or mushy condition, pitting, scale, sprouting, sprayburn, sunburn, unsightly discoloration, melanose, scars, scab, dirt or other foreign materials, disease, insects, or mechanical or other means. (See § 51.1818.)

UNCLASSIFIED

§ 51.1817 Unclassified.

"Unclassified" consists of tangerines which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.

TOLERANCES

§ 51.1818 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the follow-

ing tolerances, by count, are provided as specified:

(a) *U.S. Fancy, U.S. No. 1, U.S. No. 1 Bronze, U.S. No. 1 Russet, U.S. No. 2 and U.S. No. 2 Russet grades.* 10 percent of the fruits in any lot may fail to meet the requirements of the grade other than for discoloration, but not more than one-half of this amount, or 5 percent, shall be allowed for very serious damage other than that caused by dryness or mushy condition, and not more than one-twentieth of the tolerance, or one-half of 1 percent, shall be allowed for decay at shipping point: *Provided*, That an additional tolerance of $2\frac{1}{2}$ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. In addition, 10 percent of the fruits in any lot may fail to meet the requirements relating to discoloration but not more than 2 percent shall be allowed for serious damage by unsightly discoloration.

(b) *U.S. No. 3 grade.* 15 percent of the fruits in any lot may fail to meet the requirements of this grade, but not more than one-third of this amount, or 5 percent, shall be allowed for defects other than that caused by dryness or mushy condition, and not more than one-fifteenth of the tolerance, or 1 percent, shall be allowed for decay at shipping point: *Provided*, That an additional tolerance of 2 percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination.

APPLICATION OF TOLERANCES

§ 51.1819 Application of tolerances.

The contents of individual packages are subject to the following limitations: *Provided*, That the averages for the entire lot are within the tolerances specified for the grade.

(a) A package which contains more than 10 pounds shall have not more than one and one-half times a specified tolerance of 10 percent and not more than double a specified tolerance of less than 10 percent, except that at least one decayed or very seriously damaged fruit may be permitted in any package.

(b) A package which contains 10 pounds or less shall have not more than four times the tolerance specified, except that at least two defective fruits may be permitted: *Provided*, That not more than one decayed or very seriously damaged fruit shall be allowed in any package.

STANDARD PACK

§ 51.1820 Standard pack.

The tangerines in each container shall be packed in accordance with recognized methods. Each container shall be well filled and properly marked to indicate the size of the fruit. When the figures used to indicate size of fruit vary from the actual number of tangerines in the container, as in the case of fractional parts of boxes, the figures indicating size shall be followed by the letter "s" or the word "size", as, for example, "210's", or "210 size". Containers which are not so marked shall not be regarded as meeting requirements of "standard pack".

(a) Fruit in each container shall be of a size not less than the minimum diameters specified in Table I for the various packs. Packs other than those listed shall have a minimum diameter not less than that specified for the nearest count.

TABLE I

Pack:	Diameter in inches (minimum)
100-----	2 $\frac{1}{16}$
120-----	2 $\frac{1}{8}$
150-----	2 $\frac{3}{16}$
176-----	2 $\frac{1}{2}$
210-----	2 $\frac{3}{8}$
246-----	2 $\frac{1}{2}$
294-----	2

(b) In order to allow for variations incident to proper sizing, not more than 10 percent, by count, of the fruits in any lot may be below the minimum size for the count as specified in Table I.

DEFINITIONS

§ 51.1821 Mature.

"Mature" shall have the same meaning currently assigned that term in sections 601.21 and 601.22 of the Florida Citrus Code of 1949, as amended (Ch. 26492, Laws of Florida, 1951) or as the definition of such term may hereafter be amended.

§ 51.1822 Firm.

"Firm" means that the flesh is not soft and the fruit is not badly puffy and that the skin has not become materially separated from the flesh of the tangerine.

§ 51.1823 Well formed.

"Well formed" means that the fruit has the characteristic tangerine shape and is not deformed.

§ 51.1824 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 fruit. The following specific defects shall be considered as damage:

(a) Ammoniation when it is not speck-type similar to melanose, provided that no ammoniation shall be permitted that detracts from the appearance of the individual fruit to a greater extent than the amount of discoloration allowed for the grade;

(b) Creasing when it materially detracts from the appearance or shipping quality of the fruit;

(c) Dryness or mushy condition when mushy or distinctly dry to a depth of more than one-eighth inch in all segments at the stem end, or the equivalent of this amount, by volume, of mushy condition or dryness when occurring in any portion of the fruit;

(d) Green spots or oil spots when the appearance is affected to a greater extent than 10 green spots caused by scale, each of which is equivalent to the area of a circle one-eighth inch in diameter;

(e) Pitting when materially detracting from the appearance or shipping quality of the individual fruit;

(f) Scale when occurring as a blotch and the aggregate area exceeds the area of a circle three-eighths inch in diameter, or any scale that detracts from the appearance of the individual fruit to a greater extent than the area permitted for a blotch. "Blotch" refers to actual scale and not the discolored area caused by scale;

(g) Sprayburn when causing the skin to become hard or when it materially detracts from the appearance of the fruit;

(h) Sunburn when causing the skin to become hard or when it materially detracts from the appearance of the fruit;

(i) Unsightly discoloration when the color or the pattern, or a combination of color and pattern, causes the fruit to have an unattractive appearance;

(j) Buckskin when it detracts from the appearance of the fruit to a greater extent than the amount of discoloration allowed for the grade;

(k) Melanose when not small smooth speck-type, or any speck-type that detracts from the appearance of the fruit to a greater extent than the amount of discoloration allowed in the grade. Melanose that exceeds the amount allowed in the U.S. 1 grade is not permitted in the U.S. No 1 Bronze grade;

(l) Scars when not smooth, or when causing any noticeable depression, or when detracting from the appearance of the fruit to a greater extent than the amount of discoloration allowed for the grade; and,

(m) Scab when not smooth, or when it affects shape, or when it detracts from the appearance of the fruit to a greater extent than the amount of discoloration allowed for the grade. Scab injury that exceeds the amount allowed in the U.S. 1 grade is not permitted in the U.S. No. 1 Bronze grade.

§ 51.1825 Highly colored.

"Highly colored" means that the ground color of each fruit is a deep tangerine color with practically no trace of yellow color.

§ 51.1826 Discoloration.

"Discoloration" includes discoloration caused by rust mite, melanose, scars, scab, or any other means. Shades of discoloration which blend with the ground color of the fruit may be allowed on a larger area than that specified in the grade for light brown discoloration, and shades of discoloration which are more in contrast with the ground color shall be restricted to a lesser area: *Provided*, That no discoloration may detract from the appearance to a greater extent than the amount of light brown discoloration specified for the grade. Tangerines which show discoloration caused by melanose, scab, or any cause other than by thrip, wind scars, or by rust mite shall not be permitted in the U.S. No. 1 Bronze grade when such discoloration exceeds the amount allowed in the U.S. No. 1 grade. (§ 51.1828.)

§ 51.1827 Fairly well colored.

"Fairly well colored" means that the surface of the fruit may have green color which does not exceed the aggregate area

of a circle 1 1/4 inches in diameter and that the remainder of the surface has a yellow or better ground color with some portion of the surface showing reddish tangerine blush.

§ 51.1828 Bronzed russetting.

"Bronzed russetting" means russetting caused by thrip, wind scars, or by rust mite, or similar russetting which is not readily distinguishable from that caused by rust mite. Discoloration caused by melanose, scab, etc., are not considered as "bronzed russetting" within the meaning of these standards but are regarded as defects when they exceed the amounts permitted in the U.S. No. 1 grade and are not permitted in the U.S. No. 1 Bronze grade.

§ 51.1829 Fairly firm.

"Fairly firm" means that the flesh may be slightly soft but is not bruised or badly puffy, and that the skin has not become seriously separated from the flesh of the tangerine.

§ 51.1830 Fairly well formed.

"Fairly well formed" means that the fruit may not have the shape characteristic of the variety but that it is not badly deformed.

§ 51.1831 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 fruit. The following specific defects shall be considered as serious damage:

(a) Ammoniation when scars are cracked, or when dark and the aggregate area exceeds the area of a circle one-half inch in diameter, or when light colored and the aggregate area exceeds the area of a circle 1 inch in diameter;

(b) Creasing when it causes the skin to be seriously weakened;

(c) Dryness or mushy condition when mushy or distinctly dry to a depth of more than one-fourth inch in all segments at the stem end, or the equivalent of this amount, by volume, of mushy condition or dryness when occurring in any portion of the fruit;

(d) Green spots or oil spots when the appearance is affected to a greater extent than 25 green spots, caused by scale, each of which is equivalent to the area of a circle one-eighth inch in diameter;

(e) Pitting when seriously detracting from the appearance or shipping quality of the fruit;

(f) Scale when occurring as a blotch and the aggregate area exceeds the area of a circle one-half inch in diameter, or any scale that detracts from the appearance of the fruit to a greater extent than the area permitted for a blotch. "Blotch" refers to actual scale and not the discoloration caused by scale;

(g) Sprayburn when it has caused the skin to become hard, or when it seriously detracts from the appearance of the fruit;

(h) Sunburn when it has caused the skin to become hard or when it seriously

detracts from the appearance of the fruit;

(i) Unsightly discoloration when the color or the pattern, or a combination of both, causes the fruit to have a distinctly unattractive appearance;

(j) Buckskin when it detracts from the appearance of the fruit to a greater extent than the amount of discoloration allowed for the grade;

(k) Melanose when badly caked and the aggregate area exceeds the area of a circle one-half inch in diameter, or when lightly caked and the aggregate area exceeds the area of a circle 1 inch in diameter, or when unsightly, or when it detracts from the appearance of the fruit to a greater extent than the amount of discoloration allowed for the grade;

(l) Scars when not fairly smooth, or when causing any materially depressed areas, or when detracting from the appearance to a greater extent than the amount of discoloration allowed for the grade. Scars which are not fairly smooth, or which are materially depressed, are not permitted in either U.S. No. 2 or U.S. No. 2 Russet grades; and,

(m) Scab when not fairly smooth or when it materially detracts from the shape of the fruit, or when it detracts from the appearance to a greater extent than the maximum amount of discoloration allowed for the grade.

§ 51.1832 Reasonably well colored.

"Reasonably well colored" means that a good yellow or reddish tangerine color shall predominate over the green color on at least one-half of the fruit surface in the aggregate, and that each fruit shall show practically no lemon color.

§ 51.1833 Very serious damage.

"Very 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 very seriously detracts from the appearance, or the edible or shipping quality of the fruit. The following specific defects shall be considered as very serious damage:

(a) Ammoniation when scars are badly cracked, or when dark and the aggregate area exceeds the area of a circle 1 inch in diameter, or when light colored and it detracts from the appearance of the fruit to a greater extent than the area permitted for dark ammoniation;

(b) Creasing when causing the skin to be seriously weakened;

(c) Dryness or mushy condition when mushy or distinctly dry to a depth of more than one-fourth inch in all segments at the stem end, or the equivalent of this amount, by volume, of mushy condition or dryness when occurring in any portion of the fruit;

(d) Pitting when it very seriously detracts from the appearance or the shipping quality of the fruit;

(e) Scale when it very seriously detracts from the appearance of the fruit;

(f) Sprayburn when it very seriously detracts from the appearance of the fruit;

(g) Sunburn when it very seriously detracts from the appearance of the fruit;

(h) Unsightly discoloration when the fruit has a very objectionable appearance caused by any means. The color or the pattern of the discoloration, or a combination of both, or a combination of defects may cause the fruit to have a very unsightly appearance;

(i) Melanose when caked to the extent that the appearance of the fruit is very seriously affected;

(j) Scars when so deep, rough, or unsightly that the appearance of the fruit is very seriously injured; and,

(k) Scab when it causes the fruit to be very seriously injured.

§ 51.1834 Diameter.

"Diameter" means the greatest dimension measured at right angles to a line from stem to blossom end.

Dated: July 8, 1960.

F. R. BURKE,
Acting Deputy Administrator,
Marketing Services.

[F.R. Doc. 60-6486; Filed, July 12, 1960;
8:51 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 608]

[Airspace Docket No. 60-WA-176]

RESTRICTED AREAS

Modification

Pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 608.43 of the regulations of the Administrator, the substance of which is stated below.

The Wilmington, Ohio, Restricted Area (R-109), is an area of 2,383 square miles located southeast of Dayton and southwest of Columbus, Ohio. Time of use is designated as continuous, and the designated altitude extends from the surface to unlimited. It is designated for the purpose of intensive instrument and experimental training, although actual operations therein consist primarily of research and development flight tests. The Federal Aviation Agency has under consideration modification of the boundary of Restricted Area R-109 as follows: Beginning at latitude 39°30'00" N., longitude 83°02'00" W.; thence to latitude 38°48'30" N., longitude 83°02'00" W.; thence to latitude 38°58'30" N., longi-

tude 84°05'00" W.; thence to latitude 39°15'45" N., longitude 84°05'00" W.; thence to latitude 39°30'00" N., longitude 83°47'00" W.; thence to point of beginning. This area would be divided by a line from west to east extending from latitude 39°12'30" N., longitude 84°05'00" W.; to latitude 39°08'20" N., longitude 83°02'00" W. The area south of this line would be designated as Restricted Area R-109 and would extend from the surface to Flight Level 600 during the period from 0800 to 2200 EST, Monday through Saturday. The area would encompass 1,098 square miles. The area north of this line would be designated as Restricted Area R-109A and would extend from 3,000 feet MSL to Flight Level 600 during the period from 0800 to 2200 EST, Monday through Saturday. The area would encompass 1,140 square miles. This reduction in size and modification of configuration of the Wilmington, Ohio, Restricted Area (R-109) is the result of a review of the requirements of Wright Air Development Center and other users of the airspace in the Dayton/Columbus/Wilmington area. It would result in a reduction of 145 square miles of reserved airspace and a reduction of approximately 58% in the time of use of the present restricted area. This would provide adequate protection for aircraft conducting flight test activities for Wright Air Development Center, Dayton, Ohio, and would furnish maximum availability of the area for use by other aircraft.

If these actions are taken, the Wilmington, Ohio, Restricted Areas (R-109) and (R-109A) would be designated as follows:

1. Wilmington, Ohio, Restricted Area (R-109) (Huntington Chart)

Description by geographical coordinates. Beginning at latitude 39°08'20" N., longitude 83°02'00" W., thence to latitude 38°48'30" N., longitude 83°02'00" W., thence to latitude 38°58'30" N., longitude 84°05'00" W., thence to latitude 39°12'30" N., longitude 84°05'00" W., thence to the point of beginning.

Designated altitudes. Surface to Flight Level 600.

Time of designation. 0800 to 2200 EST, Monday through Saturday.

Controlling agency. Federal Aviation Agency, Indianapolis, Ind., Air Route Traffic Control Center.

2. Wilmington, Ohio, Restricted Area (R-109A) (Huntington Chart)

Description by geographical coordinates. Beginning at latitude 39°30'00" N., longi-

tude 83°02'00" W., thence to latitude 39°08'20" N., longitude 83°02'00" W., thence to latitude 39°12'30" N., longitude 84°05'00" W., thence to latitude 39°15'45" N., longitude 84°05'00" W., thence to latitude 39°30'00" N., longitude 83°47'00" W., thence to the point of beginning.

Designated altitudes. 3,000 feet MSL to Flight Level 600.

Time of designation. 0800 to 2200 EST, Monday through Saturday.

Controlling agency. Federal Aviation Agency, Indianapolis, Ind., Air Route Traffic Control Center.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within thirty days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on July 7, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-6440; Filed, July 12, 1960;
8:45 a.m.]

Notices

INTERSTATE COMMERCE COMMISSION

[Notice 346]

MOTOR CARRIER TRANSFER PROCEEDINGS

JULY 8, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 63250. By order of June 29, 1960, the Transfer Board approved the transfer to Nelson's Express, Inc., Millersburg, Pa., of Certificate in No. MC 76449, issued November 4, 1940, to George W. Nelson, doing business as Nelson's Express, Millersburg, Pa., authorizing the transportation of: general commodities, with the usual exceptions including household goods and commodities in bulk, between Harrisburg, Pa., and Orwin, Pa.; service is authorized to and from the intermediate points of Millersburg, Muir, and Halifax, Pa., and those between Millersburg and Orwin. Allan Shaffer, 108 Market Street, Harrisburg, Pa., for applicants.

[SEAL]

HAROLD D. McCoy,
Secretary.

[F.R. Doc. 60-6466; Filed, July 12, 1960;
8:48 a.m.]

[MC-C-3024]

NATIONAL AUTOMOBILE TRANSPORTERS ASSN.

Petition for Declaratory Order

JULY 8, 1960.

Petition for declaratory order under section 5(d) of Administrative Procedure Act.

Petitioner: National Automobile Transporters Association, Suite 208, 1000 Connecticut Avenue, NW., Washington 6, D.C. and 2356 First National Building, Detroit 26, Mich. Petitioner's attorneys: Carney D. Matheson, George S. Dixon, and Walter N. Bieneman, 2150 Guardian Building, Detroit 26, Mich.

By petition dated June 27, 1960, petitioner states that it is a voluntary association of motor carriers, both common and contract, engaged under appropriate grants of authority by this Commission,

in interstate or foreign commerce, in the transportation of motor vehicle traffic, namely, passenger automobiles, commercial vehicles and closely related wheeled commodities, throughout the Continental United States. Petitioner states that from the inception of Commission regulation of the motor carrier industry under Part II of the Act, all grants of authority covering the transportation of motor vehicle traffic, with but few exceptions, have contained restrictive or qualifying language limiting the authorized motor carrier service to "initial movements" or "secondary movements," or "subsequent movements," or both "initial and secondary or subsequent movements." The meaning of "initial movements" and "secondary or subsequent movements" is defined and explained in Administrative Ruling No. 75 issued July 15, 1938.

This petitioner seeks a ruling as to whether a motor carrier holding initial authority only from A to D may transport the said traffic to B, a non-service point intermediate to D, there load it on a rail flat car, for handling in trailer-on-flat-car or "piggy-back" service to C, another non-service point intermediate to D, where it would take possession of the shipment and move it to destination, without first obtaining specific authority either to serve B and C or to operate from C to D.

Petitioner prays that an order may be entered by the Commission: (a) Accepting this petition for filing; (b) ordering an investigation of this subject matter; (c) providing an opportunity for all interested parties to express their views and present evidence at an oral hearing; (d) providing for the issuance of a declaratory order interpreting Administrative Ruling 75 and the grants of authority issued pursuant thereto in conformity with the views of this Association; and (e) granting such other and further relief as may be deemed necessary or proper.

The above-entitled petition has been referred to Examiner William R. Tyers for hearing on the 27th day of July A.D. 1960, at 8:30 o'clock a.m. United States standard time, 9:30 o'clock a.m. District of Columbia daylight saving time, at the Offices of the Interstate Commerce Commission, Washington, D.C.

By the Commission.

[SEAL]

HAROLD D. McCoy,
Secretary.

[F.R. Doc. 60-6467; Filed, July 12, 1960;
8:49 a.m.]

[No. MC-C-2972]

ROCK ISLAND MOTOR TRANSIT CO. ET AL.

Petition for Declaratory Order

JULY 8, 1960.

Petition for a declaratory order for the determination of respondent's oper-

ating authority pursuant to the provisions of section 204, Interstate Commerce Act, part II.

Petitioners: The Rock Island Motor Transit Co., Des Moines, Iowa, and U. J. Haas and Cyril H. Wissel, doing business as H & W Motor Express Company, Dubuque, Iowa, and Burlington Truck Lines, Inc., Chicago, Ill. vs. Respondent: Watson Brothers Transportation Co., Inc., Omaha, Nebr. Petitioners attorneys: D. C. Nolan, 405 Iowa State Bank Building, Iowa City, Iowa, and James M. Adams, 796 South Pearl Street, Galesburg, Ill., and A. B. Howland and J. H. Martin, 500 Bankers Truck Building, Des Moines, Iowa.

By petition filed April 11, 1960, petitioners aver: Respondent, Watson Brothers Transportation Co., Inc., is now and has been, for sometime past, the exact length of time thereof these petitioners do not have exact knowledge, engaged in the transporting of general commodities between such Iowa points as Davenport, Bettendorf, and Riverdale, on the one hand, and Iowa City, Newton, Des Moines, Council Bluffs, and Sioux City, on the other, and between Sioux City, on the one hand, and Des Moines, Newton, Iowa City, Davenport, and Bettendorf, on the other; and between Council Bluffs on the one hand, and Atlantic, Des Moines, Newton, Iowa City, Davenport, and Bettendorf, on the other, without having had issued to it certificates of authority by the Iowa State Commerce Commission for the performance of such interstate operations. These Petitioners are informed and believe and therefore allege the fact to be that said respondent, in the conducting of the aforesaid intrastate operations, between said Iowa points, have attempted a simulated interstate operation by either transporting such traffic from the aforesaid Iowa points across either the state line at Moline or Rock Island, Ill., or at Omaha, Nebr., and then carrying such traffic and freight back across the said state line into Iowa to the aforesaid Iowa points and places, or by billing such traffic via Rock Island or Moline, Ill., or Omaha, Nebr., in lieu of physically transporting the same in and out of the States of Illinois or Nebraska. Petitioners pray:

1. That the Interstate Commerce Commission find and determine, after notice and hearing, that the motor carrier operations being conducted by the Respondent between the points and places in Iowa, as set forth above, are not bona fide and are a subterfuge to escape the jurisdiction of the State of Iowa and the Iowa State Commerce Commission;

2. That the Commission find that the simulated interstate operations being conducted by the Respondent between the points and places in Iowa as set forth above are a wrongful use and an abuse of Respondent's Interstate Certificates;

3. That the Commission find that the Interstate Operating Certificates held by Respondent were not contemplated to

nor do they authorize it to conduct the aforesaid operations between points solely within the State of Iowa by either moving said traffic over and back across the State line between Iowa and Illinois or between Iowa and Nebraska, or by billing the same from a point outside the State of Iowa;

4. That the Respondent be Ordered and Directed by the Commission to cease and desist from conducting the above-described operations solely within the State of Iowa and that upon failure of said Respondent to desist from such operations that its Interstate Certificates be cancelled, and for such other and further orders as may be found necessary in the premises. Any person or persons desiring to participate in this proceeding, may, within 30 days from the publication of this notice in the FEDERAL REGISTER, file an appropriate pleading.

By the Commission.

[SEAL] HAROLD D. McCoy,
Secretary.

[F.R. Doc. 60-6468; Filed, July 12, 1960;
8:49 a.m.]

[Notice 331]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

July 8, 1960.

The following publications are governed by the Interstate Commerce Commission's general rules of practice including special rules (49 CFR 1.241) governing notice of filing of applications by motor carriers of property or passengers or brokers under sections 206, 209 and 211 of the Interstate Commerce Act and certain other proceedings with respect thereto.

All hearings will be called at 9:30 o'clock a.m., United States standard time (or 9:30 o'clock a.m., local daylight saving time), unless otherwise specified.

APPLICATIONS ASSIGNED FOR ORAL HEARING OR PRE-HEARING CONFERENCE

MOTOR CARRIERS OF PROPERTY

No. MC 4405 (Sub No. 357), filed June 6, 1960. Applicant: DEALERS TRANSIT, INC., 13101 South Torrence Avenue, Chicago 33, Ill. Applicant's attorney: James W. Wrape, Sterick Building, Memphis, Tenn. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, except those designed to be drawn by passenger automobiles, in initial movements, in truckaway service, from Elba, Ala., to points in Alaska, Arizona, California, Idaho, Montana, New Mexico, Oregon, Nevada, Washington, and Wyoming.

HEARING: September 23, 1960, at the Hotel Thomas Jefferson, Birmingham, Ala., before Examiner Donald R. Sutherland.

No. MC 4761 (Sub No. 16), filed March 18, 1960. Applicant: LOCK CITY TRANSPORTATION COMPANY (a Corporation), 327 Sixth Avenue, Menominee, Mich. Applicant's attorney: Edward Solie, 715 First National Bank Building, Madison 3, Wis. Authority sought to operate as a *common carrier*, by motor

vehicle, over irregular routes, transporting: *Sulphur Dioxide*, in bulk, in tank vehicles, from Marinette, Wis., to Alpine (Talladega County), Ala., and Claremore, Okla.

HEARING: September 23, 1960, at the Wisconsin Public Service Commission, Madison, Wis., before Examiner Maurice S. Bush.

No. MC 8989 (Sub No. 192) filed May 19, 1960. Applicant: HOWARD SOBER, INC., 2400 West St. Joseph Street, Lansing, Mich. Applicant's attorney: Albert F. Beasley, 15th and K Streets NW., Washington 5, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automobiles, trucks and buses*, as described in Ex Parte No. MC 45, *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, in truckaway and driveaway service, from Bloomington, Ill., to points in the United States, including points in Alaska and Hawaii, and *damaged or rejected shipments* of the above-described commodities, on return.

NOTE: Applicant states power generating units and power generating recharger accompanying vehicles in a shipment for use with such vehicles.

HEARING: September 26, 1960, at the Pick-Congress Hotel, Chicago, Ill., before Examiner Maurice S. Bush.

No. MC 10115 (Sub No. 7), filed May 16, 1960. Applicant: CALVIN D. ZIMMERMAN, Mifflin, Pa. Applicant's attorney: John A. R. Welsh, Mifflintown, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bulk crude clay*, in dump trailers, between Clearfield, Pa., and points within a twenty-five (25) miles radius thereof, and the plant site of American Vitrified Products Company, located at or near Flagtown, Somerset County, N.J.

HEARING: September 22, 1960, at the Pennsylvania Public Utility Commission, Harrisburg, Pa., before Examiner Charles J. Murphy.

No. MC 19105 (Sub No. 14) filed May 12, 1960. Applicant: FORBES TRANSPORTER COMPANY, INC., South Goldsboro Street Extension, P.O. Box 346, Wilson, N.C. Applicant's attorney: James E. Wilson, Perpetual Building, 1111 E Street NW., Washington 4, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, packing-house products, and commodities used by packing houses* as described in Appendix I to descriptions in Motor Carrier Certificates, 61 M.C.C. 209, 272-273, as amended at 61 M.C.C. 766, 767, between Wilson, N.C., and points within five miles thereof on the one hand, and on the other, points in Virginia, the District of Columbia, Maryland, Delaware, New Jersey, Connecticut, New York, Pennsylvania, Massachusetts, and Rhode Island.

HEARING: October 4, 1960, in the U.S. Court Rooms, Uptown Post Office Building, Raleigh, N.C., before Examiner Donald R. Sutherland.

No. MC 19201 (Sub No. 118), filed June 22, 1960. Applicant: PENNSYLVANIA TRUCK LINES, INC., 110 South Main

Street, Pittsburgh, Pa. Applicant's attorney: Robert H. Griswold, Commerce Building, P.O. Box 432, Harrisburg, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Flour*, in bulk, in pneumatically equipped hopper-type vehicles, between Philadelphia, Pa., on the one hand, and, on the other, points in Delaware and New Jersey, and points in Pike, Wayne, Lackawanna, Luzerne, Columbia, Montour, Northumberland, Schuylkill, Northampton, Berks, Bucks, Montgomery, Delaware, Chester, Lancaster, York, Lebanon, Dauphin, Cumberland, Perry, Adams, Carbon, Monroe, Lehigh, and Philadelphia Counties, Pa., and points in Dorchester, Talbot, Caroline, Queen Annes, Kent, Cecil, Harford, Baltimore, Carroll, Howard and Anne Arundel Counties, Md. RESTRICTION: The service to be performed by applicant shall be limited to shipments having a prior or subsequent movement by rail.

NOTE: Applicant holds contract carrier authority in Permit No. MC 118779 and Subs thereunder. Applicant indicates it is controlled by the Pennsylvania Railroad Company. Dual operations and common control may be involved.

HEARING: September 14, 1960, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner John B. Mealy.

No. MC 31600 (Sub No. 479), filed June 28, 1960. Applicant: P. B. MUTRIE MOTOR TRANSPORTATION, INC., Calvary Street, Waltham 54, Mass. Applicant's attorney: Wilmer B. Hill, Transportation Building, Washington 6, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic granules*, dry, in bulk, in tank or hopper type vehicles, from Ledyard, Conn., to Roanoke, Va., and *rejected shipments*, on return.

HEARING: September 19, 1960, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Harold P. Boss.

No. MC 41255 (Sub No. 33), filed May 9, 1960. Applicant: GRUBB MOTOR LINES, INC., P.O. Drawer 567, Lexington, N.C. Applicant's attorney: James E. Wilson, Perpetual Building, 1111 E Street NW., Washington 4, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, crated and uncrated, as defined by the Commission, from points in Davidson County, N.C., to points in Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont, and Maine, and *rejected shipments of new furniture*, on return.

HEARING: October 3, 1960, in the U.S. Court Rooms, Uptown Post Office Building, Raleigh, N.C., before Examiner Donald R. Sutherland.

No. MC 43442 (Sub No. 14), filed June 23, 1960. Applicant: TRANSPORTATION SERVICE, INC., 1946 Bagley Avenue, Detroit 16, Mich. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the