Grade and/or shows a direct microscopic clump count exceeding 200 million per gram shall not be assigned a U.S. Grade.

(60 Stat. 1090; 7 U.S.C. 1624)

Done at Washington, D.C., this 23d day of December 1964.

G. R. GRANGE,
*Deputy Administrator,*
*Agricultural Marketing Service.*

[F.R. Doc. 64-13446; Filed, Dec. 29, 1964; 8:51 a.m.]

## Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

### SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

[Amdt. 5]

### PART 728—WHEAT

### Subpart—Regulations Pertaining to Farm Acreage Allotments, Small Farm Bases and Normal Yield for 1964 and Subsequent Crop Years

TRANSFER OF WHEAT ACREAGE AFFECTED BY A NATURAL DISASTER

The amendments herein are issued pursant to the Agricultural Adjustment Act of 1938, as amended, for the purpose of providing by regulation for the transfer of wheat acreage allotments in counties where, because of a natural disaster, a portion of the farm wheat acreage allotments cannot be timely planted. This amendment is specifically authorized by section 334(k) of the Act, as added by section 202(5) of the Agricultural Act of 1964.

In order that determinations with respect to transfers of acreage for the 1965 crop may be made pursuant to this amendment prior to the end of the wheat planting season, it is essential that this amendment be made effective as soon as possible. Accordingly, it is hereby determined and found that compliance with the notice, public procedure, and 30-day effective date provisions of section 4 of the Administrative Procedure Act (5 U.S.C. 1003) is impracticable and contrary to the public interest and this amendment shall be effective upon the filing of this document with the Director, Office of the Federal Register.

1. Section 728.28 relating to the applicability of regulations is redesignated as § 728.30 and the language "Sections 728.10 to 728.28" at the beginning of paragraph (a) of said section is changed to read "Sections 728.10 to 728.30".

2. An amended § 728.28 is added as follows:

**§ 728.28 Transfer of farm wheat acreage affected by a natural disaster.**

(a) *General authority.* Upon a determination for any year that because of a natural disaster a portion of the farm allotments in a county cannot be timely planted or replanted in such year, a transfer of such acreage may be authorized under section 339(k) of the act. For any year in which a natural disaster within the meaning of section 334(k) of the act occurs, the necessary determinations and designation of affected States and counties and closing date for filing applications for transfer will be published as paragraphs of this section.

(b) *Application for transfer.* The owner or operator of a farm in a county designated for any year under paragraph (a) of this section may file a written application for transfer of wheat acreage, within the farm wheat allotment, for such year to another farm in the same county or in an adjoining county in the same or another State if such acreage cannot be timely planted or replanted because of the natural disaster determined for such year. The application shall be filed with the county committee for the county in which the farm affected by such disaster is located. If the application involves a transfer to an adjoining county, the county committee for the adjoining county shall be consulted before action is taken by the county committee receiving the application.

(c) *Amount of transfer.* The acreage to be transferred shall not exceed the smaller of (1) the farm allotment established less such acreage planted to wheat and not destroyed by the natural disaster, or (2) the acreage requested to be transferred.

(d) *County Committee approval.* The county committee shall approve the transfer if it finds that the following conditions have been met:

(1) All or part of the farm allotment for the farm from which the acreage is to be transferred could not be timely planted or replanted because of the natural disaster and planting was not prohibited by the lease in case of lands owned by the Federal Government.

(2) One or more producers of wheat on the farm from which the acreage is to be transferred will be a bona fide producer engaged in the production of wheat on the farm to which the acreage is to be transferred and will share in the crop or in the proceeds of the wheat. Such sharing shall be in the manner customary in the area in order to establish the status of such producer as a bona fide producer on the farm to which the acreage is to be transferred.

(e) *Cancellation of transfer.* If a transfer is approved under this section and it is later determined that the conditions in paragraph (d) of this section have not been met, the county committee, State committee or the Deputy Administrator may cancel such transfer. Action by the county committee to cancel a transfer shall be subject to the approval of the State committee or its representative.

(f) *Acreage history credits and eligibility as an old wheat farm.* Transferred acreage shall be deemed planted on the farm from which transferred for purposes of determining history credits and eligibility as an old wheat farm whether or not such acreage was actually planted.

(g) *Closing date.* The closing date for filing application for transfers with the county committee shall be December 30 of the calendar year immediately preceding the calendar year in which the crop is harvested in the winter wheat area and June 1 of the calendar year in which the crop is harvested in the spring wheat area.

(h) *Designated States and counties affected by natural disaster.* It is hereby determined that a natural disaster consisting of flood or excessive rainfall in 1964 has prevented timely planting or replanting of a portion of the 1965 farm wheat allotments on some farms in the following designated States and counties: Florida, counties of Calhoun and Liberty

(Secs. 334, 375, 52 Stat. 53, as amended, 66, 78 Stat. 179; 7 U.S.C. 1334, 1375)

*Effective date.* Date of filing this document with the Director, Office of the Federal Register.

Signed at Washington, D.C., on December 23, 1964.

H. D. GODFREY,
*Administrator, Agricultural Stabilization and Conservation Service.*

[F.R. Doc. 64-13407; Filed, Dec. 29, 1964; 8:47 a.m.]

## Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

### SUBCHAPTER B—SUGAR REQUIREMENTS AND QUOTAS

[Sugar Reg. 814.2, Amdt. 1]

### PART 814—ALLOTMENT OF SUGAR QUOTAS, MAINLAND CANE SUGAR AREA

### 1964

*Basis and purpose.* This amendment is issued under section 205(a) of the Sugar Act of 1948, as amended (61 Stat. 922), hereinafter called the "Act," for the purpose of amending Sugar Regulation 814.2 (7 CFR 814.2, 29 F.R. 14163) which established allotments for the Mainland Cane Sugar Area for the calendar year 1964.

This amendment is necessary to revise allotments to make effective: (1) corrections of data used in the determination of allotments and (2) the determination and proration of deficits in allotments.

The corrections of basic data made herein relate only to the Glades County Sugar Growers Cooperative Association and are as follows: 1961–63 average quota marketings of 5,447 tons was corrected to 6,886 tons; 1961–63 new-crop quota marketings of 1,356 tons was corrected to 2,795 tons, and January 1, 1964, effective inventory of 20,120 tons was corrected to 15,875 tons. Corrections of basic data made herein result in revisions of the percentages used in determining allotments.

The quantities of sugar and the percentages, based upon corrected data, and the computation of allotments are set forth in the following table:

| Processor | Processings of sugar from 1963 crop | | Average quota marketings, 1961–63 | | Ability to market (short tons, raw value) | | | | | Processor's basic allotment [3] | | Processor's adjusted allotment [3] (short tons, raw value) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Short tons, raw value | Percent of total | Short tons, raw value | Percent of total | Effective inventory 1–1–64 | New-crop quota marketings | | Measures used | | Percent of total | Short tons, raw value | |
| | | | | | | Average 1961–63 | "Shares" of difference [1] | Col. (5) plus col. (7) | Percent of total | | | |
| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) |
| Albania Sugar Co | 15,285 | 1.293 | 12,131 | 1.375 | 2,814 | 11,523 | 8,906 | 11,720 | 1.286 | 1.308 | 11,919 | 11,875 |
| Alma Plantation, Ltd | 14,304 | 1.210 | 11,051 | 1.252 | 0 | 10,455 | 8,081 | 8,081 | .887 | 1.154 | 10,516 | 10,477 |
| J. Aron and Co., Inc | 21,275 | 1.799 | 18,378 | 2.083 | 0 | 18,378 | 14,204 | 14,204 | 1.559 | 1.808 | 16,476 | 16,415 |
| Billeaud Sugar Factory | 13,381 | 1.132 | 9,244 | 1.048 | 970 | 8,869 | 6,855 | 7,825 | .859 | 1.061 | 9,668 | 9,632 |
| Breaux Bridge Sugar Coop | 11,331 | .958 | 8,965 | 1.016 | 826 | 8,749 | 6,762 | 7,588 | .833 | .945 | 8,611 | 8,579 |
| Wm. T. Burton Industries, Inc | 10,223 | .864 | 6,140 | .696 | 6,134 | 6,140 | 4,746 | 10,880 | 1.194 | .896 | 8,165 | 8,135 |
| Caire and Graugnard | 8,291 | .701 | 6,777 | .768 | 868 | 5,277 | 4,079 | 4,947 | .543 | .683 | 6,224 | 6,201 |
| Caldwell Sugars Coop., Inc | 21,443 | 1.813 | 17,406 | 1.973 | 932 | 17,406 | 13,453 | 14,385 | 1.579 | 1.798 | 16,384 | 16,324 |
| Catherine Sugar Co., Inc | 4,726 | .400 | 5,879 | .666 | 331 | 5,879 | 4,544 | 4,875 | .535 | .480 | 4,374 | 4,358 |
| Columbia Sugar Co | 11,218 | .949 | 9,261 | 1.050 | 316 | 8,765 | 6,775 | 7,091 | .778 | .935 | 8,520 | 8,489 |
| Cora-Texas Mfg. Co., Inc | 9,499 | .803 | 6,719 | .761 | 4,097 | 4,083 | 3,156 | 7,253 | .796 | .793 | 7,226 | 7,199 |
| Dugas and LeBlanc, Ltd | 20,454 | 1.730 | 16,922 | 1.918 | 0 | 16,881 | 13,047 | 13,047 | 1.432 | 1.708 | 15,564 | 15,507 |
| Duhe and Bourgeois Sugar Co | 16,100 | 1.361 | 14,172 | 1.606 | 934 | 13,245 | 10,237 | 11,171 | 1.226 | 1.383 | 12,603 | 12,557 |
| Erath Sugar Co., Ltd | 11,765 | .995 | 8,285 | .939 | 1,265 | 7,995 | 6,179 | 7,444 | .817 | .948 | 8,639 | 8,607 |
| Evan Hall Sugar Coop., Inc | 33,182 | 2.806 | 28,624 | 3.244 | 0 | 27,883 | 21,551 | 21,551 | 2.365 | 2.805 | 25,561 | 25,467 |
| Florida Sugar Corp | 13,649 | 1.154 | 8,317 | .943 | 5,379 | 3,970 | 3,068 | 8,447 | .927 | 1.066 | 9,714 | 9,678 |
| Frisco Cane Co., Inc | 3,720 | .315 | 3,114 | .353 | 294 | 2,642 | 2,042 | 2,336 | .256 | .311 | 2,834 | 2,824 |
| Glades Co. Sugar Growers Coop., Association | 23,917 | 2.023 | 6,886 | .780 | 15,875 | 2,795 | 2,160 | 18,035 | 1.979 | 1.766 | 16,093 | 16,034 |
| Glenwood Coop., Inc | 23,215 | 1.963 | 19,319 | 2.189 | 0 | 19,319 | 14,932 | 14,932 | 1.639 | 1.943 | 17,706 | 17,641 |
| Helvetia Sugar Coop., Inc | 16,487 | 1.394 | 14,458 | 1.638 | 956 | 13,673 | 10,568 | 11,524 | 1.265 | 1.417 | 12,913 | 12,865 |
| Iberia Sugar Coop., Inc | 26,802 | 2.267 | 19,186 | 2.174 | 6,654 | 19,186 | 14,829 | 21,483 | 2.357 | 2.266 | 20,649 | 20,573 |
| LaFourche Sugar Co | 27,379 | 2.315 | 21,956 | 2.488 | 492 | 21,956 | 16,970 | 17,462 | 1.916 | 2.270 | 20,686 | 20,610 |
| Harry L. Laws and Co., Inc | 14,456 | 1.222 | 10,630 | 1.205 | 776 | 10,463 | 8,087 | 8,863 | .973 | 1.169 | 10,653 | 10,614 |
| Levert-St. John, Inc | 20,940 | 1.771 | 15,023 | 1.702 | 664 | 14,621 | 11,301 | 11,965 | 1.313 | 1.666 | 15,182 | 15,126 |
| Louisa Sugar Coop., Inc | 15,976 | 1.351 | 12,303 | 1.394 | 1,570 | 12,056 | 9,318 | 10,888 | 1.196 | 1.328 | 12,101 | 12,056 |
| Louisiana State Penitentiary | 3,351 | .283 | 3,063 | .347 | 182 | 3,001 | 2,319 | 2,501 | .274 | .294 | 2,679 | 2,669 |
| Meeker Sugar Coop., Inc | 11,025 | .932 | 7,303 | .828 | 4,158 | 5,092 | 3,936 | 8,094 | .888 | .902 | 8,220 | 8,190 |
| Milliken and Farwell, Inc | 19,247 | 1.628 | 14,990 | 1.699 | 0 | 14,840 | 11,470 | 11,470 | 1.259 | 1.568 | 14,289 | 14,236 |
| Okeelanta Sugar Refinery, Inc | 65,981 | 5.580 | 51,246 | 5.808 | 39,915 | 23,703 | 18,320 | 58,235 | 6.391 | 5.788 | 52,744 | 52,550 |
| Osceola Farms Co | 28,922 | 2.446 | 14,439 | 1.636 | 17,422 | 7,511 | 5,805 | 23,227 | 2.549 | 2,305 | 21,005 | 20,928 |
| M. A. Patout and Son, Ltd | 21,557 | 1.823 | 17,126 | 1.941 | 335 | 16,020 | 12,382 | 12,717 | 1.395 | 1.761 | 16,047 | 15,988 |
| Poplar Grove Planting and Refining Co | 12,990 | 1.099 | 9,557 | 1.083 | 2,970 | 9,557 | 7,387 | 10,357 | 1.137 | 1.103 | 10,051 | 10,014 |
| Savoie Industries | 21,496 | 1.818 | 17,495 | 1.983 | 0 | 17,463 | 13,497 | 13,497 | 1.481 | 1.784 | 16,257 | 16,197 |
| St. James Sugar Coop., Inc | 20,968 | 1.773 | 16,350 | 1.853 | 6,679 | 15,132 | 11,696 | 18,375 | 2.016 | 1.838 | 16,749 | 16,687 |
| St. Mary Sugar Coop., Inc | 20,857 | 1.765 | 17,398 | 1.972 | 0 | 17,252 | 13,334 | 13,334 | 1.463 | 1.746 | 15,911 | 15,852 |
| South Coast Corp | 96,200 | 8.135 | 72,077 | 8.168 | 73,230 | 26,640 | 20,590 | 93,820 | 10.296 | 8.574 | 78,131 | 77,843 |
| Southdown, Inc | 60,275 | 5.097 | 49,449 | 5.604 | 28,778 | 32,394 | 25,037 | 53,815 | 5.905 | 5.360 | 48,843 | 48,663 |
| South Florida Sugar Co., Inc | 5,471 | .463 | 692 | .078 | 3,396 | 692 | 535 | 3,931 | .431 | .380 | 3,463 | 3,450 |
| Sterling Sugars, Inc | 39,355 | 3.328 | 30,773 | 3.487 | 1,037 | 30,503 | 23,576 | 24,613 | 2.701 | 3.234 | 29,470 | 29,361 |
| Sugarcane Growers Coop. of Florida | 76,478 | 6.468 | 32,472 | 3.680 | 58,043 | 8,731 | 6,748 | 64,791 | 7.110 | 6.039 | 55,031 | 58,043 |
| J. Supple's Sons Planting Co., Inc | 8,026 | .679 | 6,650 | .754 | 2,052 | 4,528 | 3,500 | 5,552 | .609 | .680 | 6,197 | 6,174 |
| Talisman Sugar Corp | 4,666 | .395 | 623 | .071 | 3,121 | 515 | 398 | 3,519 | .386 | .328 | 2,989 | 3,121 |
| United States Sugar Corp | 204,358 | 17.282 | 166,970 | 18.922 | 122,883 | 68,021 | 52,574 | 175,457 | 19.254 | 18.005 | 164,072 | 163,468 |
| Valentine Sugars, Inc | 18,699 | 1.581 | 16,910 | 1.916 | 7,349 | 9,626 | 7,440 | 14,789 | 1.623 | 1.656 | 15,090 | 15,034 |
| Vida Sugars, Inc | 8,161 | .690 | 6,662 | .755 | 462 | 6,605 | 5,105 | 5,567 | .611 | .687 | 6,260 | 6,237 |
| A. Wilbert's Sons Lbr. and Sh. Co | 14,839 | 1.255 | 11,226 | 1.272 | 468 | 11,226 | 8,677 | 9,145 | 1.003 | 1.208 | 11,008 | 10,968 |
| Young's Industries, Inc | 10,534 | .891 | 7,782 | .882 | 691 | 7,460 | 5,766 | 6,457 | .709 | .853 | 7,773 | 7,744 |
| Total | 1,182,484 | 100.000 | 882,399 | 100.000 | 425,318 | 628,721 | 485,942 | 911,260 | 100.000 | 100.000 | 911,260 | 911,260 |

[1] The difference between 911,260 tons (basic quota for 1964 established by S.R. 811, effective Jan. 1, 1964, less 150 ton reserve for Louisiana State University) and total Jan. 1, 1964, effective inventories for all processors amounting to 425,318 tons. This difference of 485,942 tons prorated on the basis of each processor's average 1961–63 new-crop marketings.

[2] Determined by weighting "processings", col. (2) by 60 percent; "marketings", col. (4) by 20 percent; and "ability", col. (9) by 20 percent.

[3] Basic allotments adjusted to provide each allottee a minimum allotment equal to his Jan. 1, 1964 effective inventory.

On the basis of written advice from each allottee, the Secretary of Agriculture has determined that 18 allottees are unable to fully utilize 1964 allotments of the Mainland Cane Sugar Area Quota in excess of stated maximum quantities, and that there is a deficit in the allotments of such allottees amounting to 16,166 short tons, raw value, as follows:

| Processor | Short tons, raw value |
|---|---|
| Caldwell Sugar Co., Inc | 3,392 |
| Columbia Sugar Co | 48 |
| Dugas and LeBlanc, Ltd | 507 |
| Duhe & Bourgeois Sugar Co | 668 |
| Erath Sugar Co., Ltd | 298 |
| Evan Hall Sugar Cooperative, Inc | 2,133 |
| Glenwood Cooperative, Inc | 1,539 |
| LaFourche Sugar Co | 1,112 |
| Louisa Sugar Cooperative, Inc | 53 |
| Louisiana State Penitentiary | 12 |
| Louisiana State University | 60 |
| Savoie Industries | 1,697 |
| St. Mary Sugar Cooperative, Inc | 1,080 |
| Sterling Sugars, Inc | 2,650 |
| J. Supple's Sons Planting Co., Inc | 28 |
| Vida Sugars, Inc | 28 |
| A. Wilbert's Sons Lbr. & Shr. Co | 58 |
| Young's Industries, Inc | 803 |
| Total | 16,166 |

Accordingly, a deficit of 16,166 short tons, raw value, is declared and is herein prorated to other allottees, who have indicated they can effectively use additional allotments, on the basis of the processors' basic allotments as revised herein for corrections of data.

It was found after notice and public hearing that this order shall be revised, without further notice or hearing, for the purpose of (1) revising allotments by the substitution of corrected data which have become a part of the official records of the Department and (2) allotting any quantity of an allotment to other allottees when written notification of release by an allottee of any part of an allotment becomes a part of the official records of the Department.

The allotments set forth herein have been established in accordance with findings heretofore made by the Secretary in the course of this proceeding (29 F.R. 14163).

*Effective date.* Because of the limited time remaining in the quota year to which the allotments apply, it is imperative that this amendment become effective at the earliest possible date in order to permit processors to fully utilize the entire quota for the area. Accordingly, it is hereby found that compliance with the 30-day effective date requirement of the Administrative Procedure Act (60 Stat. 237) is impracticable and contrary to the public interest and consequently, this amendment shall be effective when filed for public inspection in the Office of the Federal Register.

*Order.* Pursuant to the authority vested in the Secretary of Agriculture by section 205(a) of the Act: *It is hereby ordered*, That paragraph (a) of § 814.2, be amended to read as follows:

**§ 814.2 Allotment of the 1964 Sugar Quota for the Mainland Cane Sugar Area.**

(a) *Allotments.* The 1964 sugar quota for the Mainland Cane Sugar Area of 911,410 short tons, raw value, is hereby allotted to the following processors in the quantities which appear opposite their respective names:

| Processor | Allotments (Short tons, raw value) |
|---|---|
| Albania Sugar Co., Inc | 12,013 |
| Alma Plantation, Ltd | 10,765 |
| J. Aron & Co., Inc | 16,522 |
| Billeaud Sugar Factory | 9,897 |
| Breaux Bridge Sugar Cooperative, Inc | 8,815 |
| William T. Burton Industries, Inc | 8,358 |
| Caire & Graugnard | 6,371 |
| Caldwell Sugars Cooperative, Inc | 12,932 |
| Catherine Sugar Co., Inc | 4,478 |
| Columbia Sugar Co | 8,441 |
| Cora-Texas Manufacturing Co., Inc | 7,397 |
| Dugas & LeBlanc, Ltd | 15,000 |
| Duhe & Bourgeois Sugar Co | 11,889 |
| Erath Sugar Co., Ltd | 8,309 |
| Evan Hall Sugar Cooperative, Inc | 23,334 |
| Florida Sugar Corp | 9,944 |
| Frisco Cane Co., Inc | 2,902 |
| Glades County Sugar Growers Cooperative, Inc | 16,475 |
| Glenwood Cooperative, Inc | 16,102 |
| Helvetia Sugar Cooperative, Inc | 13,218 |
| Iberia Sugar Cooperative, Inc | 21,138 |
| LaFourche Sugar Co | 19,498 |
| Harry L. Laws & Co., Inc | 10,906 |
| Levert-St. John, Inc | 15,541 |
| Louisa Sugar Cooperative, Inc | 12,003 |
| Louisiana State Penitentiary | 2,657 |
| Louisiana State University | 90 |
| Meeker Sugar Cooperative, Inc | 8,415 |
| Milliken & Farwell, Inc | 14,627 |
| Okeelanta Sugar Refinery, Inc | 53,994 |
| Osceola Farms Co | 21,503 |
| M. A. Patout & Son, Ltd | 16,157 |
| Poplar Grove Planting & Refining Co | 10,289 |
| Savoie Industries | 14,500 |
| St. James Sugar Cooperative, Inc | 17,145 |
| St. Mary Sugar Cooperative, Inc | 14,772 |
| South Coast Corp | 79,981 |
| Southdown, Inc | 50,000 |
| South Florida Sugar Co., Inc | 3,545 |
| Sterling Sugars, Inc | 26,711 |
| Sugar Cane Growers Cooperative of Florida | 58,043 |
| J. Supple's Sons Planting Co., Inc | 6,146 |
| Talisman Sugar Corp | 3,121 |
| United States Sugar Corp | 167,959 |
| Valentine Sugars, Inc | 15,447 |
| Vida Sugars, Inc | 6,209 |
| A. Wilbert's Sons Lbr. & Shr. Co | 10,910 |
| Young's Industries, Inc | 6,941 |
| All other persons | 0 |
| Total | 911,410 |

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153, Interprets or applies secs. 205, 209; 61 Stat. 926, as amended, 928; 7 U.S.C. 1115, 1119)

Issued at Washington, D.C., this 24th day of December 1964.

H. D. GODFREY,
*Administrator, Agricultural Stabilization and Conservation Service.*

[F.R. Doc. 64-13418; Filed, Dec. 24, 1964; 2:15 p.m.]

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

## PART 917—FRESH BARTLETT PEARS, PLUMS, AND ELBERTA PEACHES GROWN IN CALIFORNIA

### Changes in Representation of Certain Districts on the Plum Commodity Committee

Notice was published in the FEDERAL REGISTER issue of December 11, 1964 (29 F.R. 16993), that the Department was giving consideration to proposed amendments to the rules and regulations (Subpart—Rules and Regulations; 7 CFR 917.100–917.179) currently in effect pursuant to the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917), regulating the handling of Bartlett pears, plums, and Elberta peaches grown in California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice which was submitted by the Control Committee (established pursuant to said amended marketing agreement and order as the agency to administer the provisions thereof), it is hereby found that the amendment, as hereinafter set forth, of the said rules and regulations is in accordance with the provisions of the said amended marketing agreement and order and will tend to effectuate the declared purposes of the Agricultural Marketing Agreement Act of 1937, as amended. Such amendment is hereby approved; and the said rules and regulations are amended as follows:

1. Delete § 917.118 and substitute therefor the following:

**§ 917.118 Changes in representation of certain districts on the Plum Commodity Committee.**

The representation or membership on the Plum Commodity Committee is changed to provide for:

(a) Three (3) members to represent the area included in the Fresno District;

(b) One (1) member to represent the area included in the Tulare District;

(c) One (1) member to represent the area included in the Kern District and Southern California District;

(d) One (1) member to represent the area included in the Placer District and Colfax District; and

(e) One (1) member to represent all the territory in California not included in the foregoing districts.

Dated, December 24, 1964, to become effective 30 days after publication in the FEDERAL REGISTER.

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

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

[F.R. Doc. 64-13443; Filed, Dec. 29, 1964; 8:50 a.m.]

## PART 971—LETTUCE GROWN IN THE LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

### Approval of Expenses and Rate of Assessment

Notice of rule making regarding proposed expenses and rate of assessment for the fiscal period ending July 31, 1965, and the amended expenses for the fiscal period ending July 31, 1964, to be effective under Marketing Agreement No. 144 and Marketing Order No. 971 (7 CFR Part 971), regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas, was published in the FEDERAL REGISTER December 8, 1964 (29 F.R. 16833). This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). The notice afforded interested persons an opportunity to submit data, views or arguments pertaining thereto not later than 15 days following publication in the FEDERAL REGISTER.

The South Texas Lettuce Committee considered the notice and unanimously recommend a reduction to one-half cent ($0.005) per carton in the rate of assessment for the 1964–65 fiscal period. Their recommendations are approved herein, as prospective revenues from such assessments and available reserves are adequate to cover budgeted expenses.

After consideration of all relevant matters, including the proposal set forth in the aforesaid notice, which was recommended by the South Texas Lettuce Committee, established pursuant to the amended marketing agreement and order, it is hereby found and determined that:

**§ 971.204 Expenses amended.**

(a) The reasonable expenses incurred by the South Texas Lettuce Committee enabling such committee to perform its functions during the fiscal period ended July 31, 1964, amounted to $16,869.82. The budget for such fiscal period shall be and is hereby amended, pursuant to § 971.42(c), and the recommendations of the committee, to approve expenses for $16,869.82. No change in the rate of assessment is necessary.

**§ 971.205 Expenses and rate of assessment.**

(a) The reasonable expenses that are likely to be incurred during the fiscal period August 1, 1964, through July 31, 1965, by the South Texas Lettuce Committee for its maintenance and functioning and for such purposes as the Secretary determines to be appropriate, will amount to $16,975.00.

(b) The rate of assessment to be paid by each handler in accordance with the marketing agreement and this part shall be one-half cent ($0.005) per carton of lettuce handled by him as the first handler thereof during said fiscal period.

It is hereby found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1003) in that: (1) the relevant provisions of the amended marketing agreement and this part require that rates of assessment fixed for a particular fiscal period shall be applicable to all assessable lettuce from the beginning of such period, and (2) the current fiscal period began on August 1, 1964, and the rate of assessment herein fixed will automatically apply to all assessable lettuce beginning with such date.

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

Dated: December 24, 1964.

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

[F.R. Doc. 64-13444; Filed, Dec. 29, 1964; 8:51 a.m.]

# Title 15—COMMERCE AND FOREIGN TRADE

## Subtitle A—Office of the Secretary of Commerce

## PART 3—RULES OF PROCEDURE FOR HANDLING CONTRACT APPEALS

Part 3 is added to Title 15 of the Code of Federal Regulations to read as follows:

Sec.
3.1 Scope and authority.
3.2 Purpose.
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AUTHORITY: The provisions of this Part 3 issued under R.S. 161; 5 U.S.C. 22, Department Order No. 106 (Revised), 25 F.R. 2603, 3-26-60.

### § 3.1 Scope and authority.

(a) The standard forms of construction, supplies and services contracts used within the Department of Commerce contain provisions to the effect that disputes arising thereunder and not disposed of by agreement shall be decided by the contracting officer, subject to appeal by the contractor to the head of the Department, i.e., the Secretary of Commerce. This is a contractual method of resolving disagreement and can be invoked only where and to the extent a contract so provides.

(b) Pursuant to Revised Statutes, section 161 (5 U.S.C. 22) and sections 2 and 4 of Reorganization Plan No. 5 of 1950 (5 U.S.C. 133z-15), the Secretary has established an Appeals Board (Department Order No. 106 (?) 25 F.R. 2603, 3-26-60), within the Office of the Assistant Secretary for Administration, and has delegated to this Board authority to consider and decide disputes under contracts entered into by the several bureaus (other than the Maritime Administration) within the Department. There is no further administrative appeal within the Department of Commerce from decisions of the Board. (The Secretary has also authorized the Board to consider appeals from the public in respect to certain specified administrative and regulatory actions within the Department, e.g., under the Export Control Act, Parts 382 and 383 of this title, Defense Production Act, Regs. 5 under Chap. VI of Title 32A, and Surplus Property Disposal Act, § 401.13, Chap. IV of Title 44.)

(c) The Appeals Board consists of a full-time Chairman and fifteen (15) to twenty (20) departmental officials specially qualified to serve as members and designated as such by the Secretary. The Chairman is the administrative head of the Board and is authorized to assign each matter on appeal to a panel of three (3) Board members. The Chairman may serve as a member of each panel, but in the event of his absence or unavailability for any other reason he may designate another Board member to serve in that capacity.

### § 3.2 Purpose.

It is the purpose of these procedures to provide for impartial, inexpensive, and expeditious handling of contract appeals, consistent with the contract terms and other requirements of law, the orderly conduct of the proceeding, and the necessity for making a complete record.

### § 3.3 How to begin an appeal.

(a) An appeal from the findings of fact and determination of the contracting officer shall be made by notice in writing in the manner and within the time specified in the contract.

(b) The notice of appeal shall indicate that an appeal is intended, identify the contract and the contracting officer, and the particular findings of fact and determination from which the appeal is taken. It shall be signed by appellant personally, if an individual, or if not, by an authorized officer of the appellant organization or by the appellant's attorney. The supporting statement of claim referred to in § 3.7 may be filed with the notice of appeal or it may be filed as set forth in § 3.7.

### § 3.4 Duties of Contracting Officer and Government Counsel.

(a) Promptly upon receipt of a copy of the notice of appeal, the contracting officer shall notify and request the legal adviser of the agency administering the contract involved to designate a Government counsel to represent the interests of the Government. The Government counsel shall promptly file notice of appearance with the Appeals Board.

(b) Within thirty (30) days after receipt of the notice of appeal, the contracting officer shall compile and transmit to the Government counsel an appeal file consisting of:

(1) The findings of fact and determination and all documents upon which his decision was based;

(2) The invitation for bids, the contract, and all plans and specifications, amendments, change orders, directives, supplemental agreements, and work order records related to the dispute;

(3) Substantive correspondence between the parties;

(4) Map or other descriptive material of the subject matter.

(c) The Government counsel will forward the appeal file to the Board, and so advise the appellant and that it may be examined at the office of the Board or the contracting officer.

### § 3.5 Duties of Board upon receipt of notice of appeal.

Upon receipt of notice of appeal, the Appeals Board shall docket the case by giving it an appropriate number and shall send a notice of receipt and the docket number to the Government counsel, the appellant and his attorney. A copy of the Board rules of procedure will also be sent to appellant and his attorney.

### § 3.6 Service of papers.

A copy of all statements, pleadings, briefs and any other documents and data of whatever nature, except the appeal file, shall be served on the other party at the time of filing with the Appeals Board.

### § 3.7 Appellant's statement of claim.

Within thirty (30) days after the mailing or filing of a notice of appeal appellant shall file with the Appeals Board a concise and detailed statement of the nature and amount of each claim, the reasons why the contracting officer's determination in respect thereto is deemed erroneous, and any documentation upon which he relies.

### § 3.8 Answer.

(a) Within thirty (30) days after receipt of the appellant's statement of claim, Government counsel shall prepare and file with the Appeals Board an answer setting forth the Government's position on each claim and the reasons therefor.

(b) Upon request made within ten (10) days, the Board shall afford the appellant a reasonable opportunity to file a statement in rebuttal of the Government's answer.

### § 3.9 Prehearing conference.

The Appeals Board may require the parties to appear for a conference to consider agreement and simplification of the issues, possible stipulations as to facts and documents, limitation of the number of expert and other witnesses, and any other matters that may assist in the disposition of the appeal.

### § 3.10 Depositions, interrogatories, production of documents.

The Appeals Board may consider requests for permission to take the testimony of any person by deposition, to serve written interrogatories upon the opposing party, and to produce and permit the inspection of designated documents. Such requests shall be approved only to the extent and upon such conditions as the Board in its discretion considers to be consistent with the objective of securing a fair, expeditious and inexpensive determination of the dispute on appeal.

### § 3.11 Settlement.

Whenever at any time it appears that appellant and Government counsel are in agreement as to disposition of the dispute, the Appeals Board may suspend further processing of the appeal in order to permit settlement by the contracting officer or other proper authority.

### § 3.12 Hearings.

(a) The Appeals Board will provide an oral hearing unless waived by both par-

ties, and will give the parties at least thirty (30) days' notice of the time and place of the hearing. Hearings will be held in Washington, D.C., unless there is, in the Board's judgment, a special and substantial justification for holding the hearing elsewhere.

(b) Witnesses at hearings will not be required to testify under oath. However, the presiding officer will call to the attention of each witness that his statements are subject to the provisions of Federal law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any Government department or agency. All witnesses may be examined or cross-examined by the Board members, the parties or their representatives.

(c) Both parties may offer oral and written evidence, subject to exclusion, in the presiding officer's discretion, of irrelevant, immaterial or unnecessarily repetitious evidence. The probative value of all evidence received will be determined by the Board. Testimony at hearings shall be reported verbatim.

(d) Post-hearing briefs may be submitted by either party or required by the Board, and appropriate rebuttal arrangements may also be authorized by the Board.

**§ 3.13 Decisions.**

(a) All decisions of the Appeals Board shall be based solely on the record made before it, and the Board may decide all questions of fact and law arising under the provisions of the contract in question. Under the provisions of the so-called Wunderlich Act, 68 Stat. 81 (1954), 41 U.S.C. sections 321 and 322, a departmental decision on a question of fact arising under a contract disputes clause is declared to be final and conclusive and not subject to judicial review "unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence." A Board decision on a question of law, on the other hand, is subject to full judicial review.

(b) The decision of a majority of the panel in a particular case constitutes the decision of the Board. Decisions will be made in writing and copies furnished to all parties. All decisions will be available to public inspection except those required for good cause to be held confidential to the parties and not cited as precedents.

**§ 3.14 Reconsideration.**

Requests for reconsideration may be made by either party within thirty (30) days from the date of receipt of its copy of the Board's decision. Such requests will be considered only upon a showing of significant error or on the basis that new and material evidence has been discovered. The other party will be afforded a reasonable time to oppose such request for reconsideration, and the Board will as soon as practicable thereafter rule on the request. Failure to request reconsideration shall not be deemed to be a failure to exhaust administrative remedies.

**§ 3.15 Optional accelerated procedure.**

If the amount involved in an appeal is relatively small or the appeal otherwise specially lends itself to expeditious consideration, the Appeals Board may, with the concurrence of the parties, reach a decision on the basis of the available record as furnished by the parties. Such appeals will be decided as soon as practicable without regard to their normal position on the docket and in such summary form as may be appropriate.

**§ 3.16 Extensions of time.**

Upon request, time extensions may be granted by the Appeals Board except with respect to the filing of the notice of appeal.

*Effective date.* The provisions of section 4 of the Administrative Procedure Act (5 U.S.C. 1003) which require notice of proposed rule making, opportunity for public participation, and delay in effective date are not applicable because these rules relate to agency management and public contracts. Accordingly, these regulations shall become effective upon publication in the FEDERAL REGISTER, and except as otherwise directed by the Chairman of the Appeals Board they shall not apply to appeals which have been docketed prior to that date.

Dated: December 22, 1964.

NATHAN OSTROFF,
*Chairman, Appeals Board.*

[F.R. Doc. 64-13414; Filed, Dec. 29, 1964; 8:47 a.m.]

# Title 14—AERONAUTICS AND SPACE

## Chapter I—Federal Aviation Agency

SUBCHAPTER E—AIRSPACE [NEW]

[Airspace Docket No. 64-SO-70]

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

### Alteration of Control Zone

The purpose of this amendment to § 71.171 of the Federal Aviation Regulations is to alter the time of designation of the Winston-Salem, N.C., control zone.

The Winston-Salem control zone is presently designated as a full-time control zone. The United States Department of Commerce intends to discontinue the Weather Bureau Office located at Smith-Reynolds Airport, Winston-Salem, N.C., on or about March 4, 1965.

Therefore, action is taken herein to reduce the time of designation of the control zone to coincide with the operating hours of the Winston-Salem Airport Traffic Control Tower.

Since the change effected by this amendment is less restrictive in nature than the present requirements and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and it shall become effective 0001 e.s.t., March 4, 1965.

In consideration of the foregoing, the following action is taken:

In § 71.171 (29 F.R. 1101, 29 F.R. 16245) the Winston-Salem, N.C., control zone is amended to read:

WINSTON-SALEM, N.C.

Within a 5-mile radius of Smith-Reynolds Airport (latitude 36°08'00" N., longitude 80°-13'20" W.), effective from 0700 to 2300 hours, local time daily.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a))

Issued in East Point, Ga., on December 18, 1964.

PAUL H. BOATMAN,
*Acting Director,*
*Southern Region.*

[F.R. Doc. 64-13391; Filed, Dec. 29, 1964; 8:45 a.m.]

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[Docket No. 6403; Amdt. Nos. 91-11; 127-1; 129-1; 135-2; 141-1; 171-1]

[Special Civil Air Regulations 330, 389B, 395B, 397, 399D, 407, 411B, 426, 430, 431, 433, 446B, 448A, 450A, 454A, 456]

[Special Federal Aviation Regulations 12, 13, 14, and 15]

## PART 91—GENERAL OPERATING AND FLIGHT RULES

## PART 127—CERTIFICATION AND OPERATION OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

## PART 129—OPERATIONS OF FOREIGN AIR CARRIERS

## PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS OF SMALL AIRCRAFT

## PART 141—PILOT SCHOOLS

## PART 171—NON-FEDERAL NAVIGATION FACILITIES

### Miscellaneous Amendments

The purpose of these amendments is to complete the remainder of the Agency's recodification program. The program was first announced in Draft Release 61-25, published in the FEDERAL REGISTER on November 15, 1961 (26 F.R. 10698).

All Civil Air Regulations in Chapter I of Title 14 of the Code of Federal Regulations will have been replaced with the issue of Part 121 of the Federal Aviation Regulations. That part is being issued separately and will become effective at the same time as these amendments.[1]

The recodification of the regulations in Chapter III (Regulations of the Administrator) of Title 14 and the Special Civil Air Regulations is completed with the issue of the following miscellaneous amendments to Chapter I of Title 14. No regulations of the FAA will remain in Chapter III. Henceforth, all Federal Aviation Regulations and Special Federal Aviation Regulations will be contained in Chapter I of Title 14 of the Code of Federal Regulations.

Section 406.17(a) of the Regulations of the Administrator provided authority for the operation of a "true light" as an aid to air navigation. Under the Federal Aviation Regulations, such a pro-

[1] To be published in the FEDERAL REGISTER of Thursday, December 31, 1964.

vision belongs in Part 171—"Non-Federal Navigation Facilities". Therefore, a new Subpart D is being added to Part 171, recodifying § 406.17(a) of the Regulations of the Administrator.

This addition to Part 171 completes the recodification of Part 406 and enables the Agency to delete the Regulations of the Administrator in Chapter III of Title 14 of the Code of Federal Regulations. All other parts in this chapter have been previously recodified. Those sections of Part 406 neither heretofore recodified nor being recodified in Part 121 have been determined to be surplusage. Their substance either duplicates other provisions in the Federal Aviation Regulations or is advisory only.

In an attempt to limit the use of "special" regulations to those occasions of temporary or peculiar regulatory need, this amendment deletes certain Special Civil Air Regulations (SRs) of indefinite duration and incorporates them into the Federal Aviation Regulations:

1. SR 330 is being recodified by including its substance in a new § 141.31, "Special Flight Instruction for Military Personnel of a Foreign Government".

2. SR 389B is being recodified by including its substance in a new § 91.47, "Emergency exits for airplanes carrying passengers for hire".

3. SR 411B, as applicable to foreign air carriers, is being recodified by including its substance in a new § 129.23, "Transport category cargo service airplanes: increased zero fuel and landing weights".

4. SR 448A, except for paragraph (2), is being recodified by including its substance in a new § 91.8, "Prohibition Against Interference with Crewmembers".

5. SR 456 is being recodified by including its substance in a new § 91.103, "Operation of Civil Aircraft of Cuban Registry".

Part 121 of the Federal Aviation Regulations will contain the substance of SR 411B as it applies to air carriers other than foreign air carriers.

Because the applicability of neither SR 389B nor SR 448A(1) was restricted to operation within the United States but in effect, extended throughout air commerce, § 91.1 is being amended to except new §§ 91.47 and 91.8 from applicability only within the United States. Also included within this exception are two other sections already in Part 91. These sections, §§ 91.19 and 91.45 as originally recodified, were limited in applicability by § 91.1, to within the United States. The applicability provisions of those Civil Air Regulations from which these sections were recodified were not so limited. The effect of the new exception in § 91.1(c), is to relieve the four specified sections from the geographic limitation of § 91.1(a). It should also be noted that this exception is limited to aircraft of U.S. registry. Clarifying provisions are being added to new § 91.1 (c) to assure that, for the purposes of the excepted sections, there can be no regulatory conflict for U.S. registered aircraft operating in foreign countries or over the high seas. In addition, the word order in § 91.1(a) is being revised to show more clearly that the exception refers only to the limitation of the part's applicability to operations within the United States.

Paragraph (2) of SR 448A dealt with the prohibition against carrying a dangerous weapon while on board air carrier aircraft. Since its applicability extended only to air carrier aircraft, SR 448A(2) is being recodified by adding §§ 121.585 (to be issued separately) and a new 135.64. Section 127.227(c) already reflects SR 448A(2). Since SR 448A(1), which was the basis for paragraphs (a) and (b) of § 127.227, is hereby being recodified as § 91.8, § 127.227 is being amended to delete those paragraphs. In addition, § 127.139 is being clarified by adding to it a definition, taken from CAM 40.241–1, of "directly in charge". This definition reflects the sense in which the term is used in this section and in § 121.378, where it will also be added.

The following Special Civil Air Regulations are being deleted, because each has accomplished its intended purpose and is no longer necessary: 395B 430; 431; and 433. Because the geographic applicability of § 91.19 is being extended by amendment of § 91.1, SR 446B may now be deleted. SR 450A has not been recodified since it will lapse of its own force on February 1, 1965. In addition, SR 397, which in effect was an exemption from the Civil Air Regulations, rather than a regulation, is being deleted. In its place the Agency is issuing separately, a grant of exemption from the Federal Aviation Regulations for aircraft and airmen engaged in operations conducted for the United States Forest Service.

Certain Special Civil Air Regulations are being redesignated as Special Federal Aviation Regulations (SFARs). These are former SRs 399D, 407, 426, and 454A.

Of these, the first deals with the maximum certificated weight for airplanes operated in Alaska by Alaskan air carriers, air taxi operators, and the Department of the Interior. This regulation becomes SFAR 12 and its expiration date remains October 25, 1965.

SR 407 provides for approval of modified Douglas DC–3 and Lockheed L–18 type airplanes, and SR 426 provides for performance credit for transport category airplanes equipped with standby power. The present expiration date of each is indefinite. They are being redesignated as SFAR 13 and 14, respectively. One reason for not recodifying them into the basic FARs is that the need for each regulation has diminished over the years and is now quite limited. In addition, neither SR belonged in any one part of the Federal Aviation Regulations. In light of these peculiarities and since a special regulation does not differ in legal effect from any other regulation, the Agency determined to redesignate SR 407 as SFAR 13 and SR 426 as SFAR 14.

SR 454A provides for operation over certain areas of Florida and adjacent waters. In view of the significant tie of this regulation with National Defense interests and the international political atmosphere, either of which could change on very short notice, the Agency finds that National Defense and safety in air commerce are best served by redesignating SR 454A as SFAR 15.

In addition, it is no longer necessary to use the word "[New]" when referring to a part of the Federal Aviation Regulations. This is possible because all Civil Air Regulations in Chapter I of Title 14, with the issue of Part 121, have now been replaced by Federal Aviation Regulations.

None of these amendments impose an additional burden on any person. Some are clarifying in nature, while most simply restate the substance of the specified regulations. Because of this I find that notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Title 14 is amended by striking out the Regulations of the Administrator in Chapter III and by amending Chapter I as follows, effective April 1, 1965.

1. By striking out Special Civil Air Regulations 330, 389B, 395B, 397, 411B, 430, 431, 433, 446B, 448A, 450A, and 456.

2. By amending Part 91 "General Operating and Flight Rules" as follows:

A. By amending § 91.1 to read as follows:

**§ 91.1 Applicability.**

(a) This part prescribes rules governing the operation of aircraft (other than moored balloons, kites, unmanned rockets, and unmanned free balloons) within (except as provided in paragraphs (b) and (c) of this section) the United States.

(b) Each person operating an aircraft of U.S. registry in air commerce over the high seas shall comply with Annex 2 (Rules of the Air) to the convention on International Civil Aviation.

(c) Sections 91.8, 91.19, 91.45, and 91.47 also govern the operation of aircraft of U.S. registry outside of the United States so far as these sections are not inconsistent with applicable regulations of any foreign country or Annex 2 to the convention on International Civil Aviation.

B. By adding a new § 91.8 to read as follows:

**§ 91.8 Prohibition against interference with crewmembers.**

(a) No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of his duties aboard an aircraft being operated in air commerce.

(b) No person may attempt to cause or cause the flight crew of an aircraft being operated in air commerce to divert its flight from its intended course or destination.

C. By adding a new § 91.47 to read as follows:

**§ 91.47 Emergency exits for airplanes carrying passengers for hire.**

(a) Notwithstanding any other provision of this chapter, no person may operate a large airplane (type certificated under the Civil Air Regulations before April 9, 1957) in passenger-carrying operations for hire, with more than the number of occupants allowed under Civil Air Regulation § 4b.362 (a), (b), and (c), as in effect on December 20, 1951. However, an airplane type listed in the following table may be operated with up

to the listed number of occupants (including crewmembers) and the corresponding number of exits (including emergency exits and doors) approved for the emergency exit of passengers:

| Airplane type | Maximum number of occupants including crewmembers | Corresponding number of exits authorized for passenger use |
|---|---|---|
| B-307 | 61 | 4 |
| B-377 | 96 | 9 |
| C-46 | 67 | 4 |
| CV-240 | 53 | 6 |
| CV-340 and CV-440 | 53 | 6 |
| DC-3 | 35 | 4 |
| DC-3 (Super) | 39 | 5 |
| DC-4 | 86 | 5 |
| DC-6 | 87 | 7 |
| DC-6B [1] | 112 | 11 |
| L-18 | 17 | 3 |
| L-049, L-649, L-749 | 87 | 7 |
| L-1049 (series) | 96 | 9 |
| M-202 | 53 | 6 |
| M-404 | 53 | 7 |
| Viscount 700 series | 53 | 7 |

[1] The DC-6A, if converted to a passenger transport configuration, is governed by the maximum number applicable to DC-6B.

(b) Additional occupants may be carried if there are additional exits comparable to at least a Type II or Type IV exit as prescribed in § 25.807, but not more than eight additional occupants may be carried for each additional exit. In the case of exits not comparable to at least a Type II or Type IV exit, the Administrator may authorize a lesser number of additional occupants, after considering the type, size, and location of the exit and other pertinent factors.

(c) For airplanes having a ratio (as computed from the table in paragraph (a) of this section) of maximum number of occupants to number of exits greater than 14:1, and for airplanes that do not have at least one full-size door-type exit in the side of the fuselage in the rear part of the cabin, the first additional exit must be a floor-level exit not less than 24 inches wide, by 48 inches high, and located in the side of the fuselage in the rear part of the cabin. However, no person may operate an airplane under this section carrying more than 115 occupants unless there is such an exit on each side of the fuselage.

(d) The Administrator reduces the maximum number of occupants authorized by the table whenever the number of approved exits is less than shown in the table, after taking into account the effectiveness of the remaining exits for emergency evacuation. However, the maximum number of occupants is reduced by at least eight for each eliminated exit, and in no case may the resulting ratio of occupants to exits be greater than 14:1. In addition, there must be at least one exit on each side of the fuselage, regardless of the number of occupants.

D. By adding a new § 91.103 to read as follows:

**§ 91.103 Operation of civil aircraft of Cuban registry.**

No person may operate a civil aircraft of Cuban registry outside of controlled airspace.

E. By adding to the distribution table:

| *Former section* | *Revised section* |
|---|---|
| SR 389B | 91.47 |
| SR 448A (less paragraph (2)) | 91.8 |
| SR 456 | 91.103 |

3. By amending Part 127 "Certification and Operations of Scheduled Air Carriers with Helicopters" as follows:

A. By amending § 127.139 to read as follows:

**§ 127.139 Certificate requirements.**

(a) Each person who is directly in charge of maintenance, preventive maintenance, or alteration, and each person performing required inspections must hold an appropriate airman certificate.

(b) For the purposes of this section, a person "directly in charge" is each person assigned to a position in which he is responsible for the work of a shop or station that performs maintenance, preventive maintenance, alterations, or other functions affecting aircraft airworthiness. A person who is "directly in charge" need not physically observe and direct each worker constantly but must be available for consultation and decision on matters requiring instruction or decision from higher authority than that of the persons performing the work.

B. By amending § 127.227 to read as follows:

**§ 127.227 Prohibition against carriage of weapons.**

No person may, while on board a helicopter being operated under this Part, carry on or about his person a deadly or dangerous weapon, either concealed or unconcealed. This section does not apply to—

(a) Officials or employees of a municipality or a State, or of the United States, who are authorized to carry arms; or

(b) Crewmembers and other persons authorized by the air carrier to carry arms.

C. By amending the distribution table as applicable to SR 448A to read:

| *Former section* | *Revised section* |
|---|---|
| SR 448A, paragraph (2) | 127.227 |

D. By adding to the distribution table:

| *Former section* | *Revised section* |
|---|---|
| 40.241-1 | 127.139 |

4. By amending Part 129 "Operations of Foreign Air Carriers" as follows:

A. By adding a new § 129.23 to read as follows:

**§ 129.23 Transport category cargo service airplanes: increased zero fuel and landing weights.**

(a) Notwithstanding the applicable structural provisions of the transport category airworthiness regulations, but subject to paragraphs (b) through (g) of this section, a foreign air carrier may operate (for cargo service only) any of the following transport category airplanes (certificated under Part 4b of the Civil Air Regulations effective before March 13, 1956) at increased zero fuel and landing weights—

(1) DC-6A, DC-6B, DC-7B, and DC-7C; and

(2) L-1049 B, C, D, E, F, G, and H, and the L-1649A when modified in accordance with supplemental type certificate SA 4-1402.

(b) The zero fuel weight (maximum weight of the airplane with no disposable fuel and oil) and the structural landing weight may be increased beyond the maximum approved in full compliance with applicable rules only if the Administrator finds that—

(1) The increase is not likely to reduce seriously the structural strength;

(2) The probability of sudden fatigue failure is not noticeably increased;

(3) The flutter, deformation, and vibration characteristics do not fall below those required by applicable regulations; and

(4) All other applicable weight limitations will be met.

(c) No zero fuel weight may be increased by more than five percent, and the increase in the structural landing weight may not exceed the amount, in pounds, of the increase in zero fuel weight.

(d) Each airplane must be inspected in accordance with the approved special inspection procedures, for operations at increased weights, established and issued by the manufacturer of the type of airplane.

(e) A foreign air carrier may not operate an airplane under this section unless the country of registry requires the airplane to be operated in accordance with the passenger-carrying transport category performance operating limitations in Part 121 or the equivalent.

(f) The Airplane Flight Manual for each airplane operated under this section must be appropriately revised to include the operating limitations and information needed for operation at the increased weights.

(g) Each airplane operated at an increased weight under this section must, before it is used in passenger service, be inspected under the special inspection procedures for return to passenger service established and issued by the manufacturer and approved by the Administrator.

B. By adding to the distribution table:

| *Former section* | *Revised section* |
|---|---|
| SR 411B | 129.23 |

5. By amending Part 135 "Air Taxi Operators and Commercial Operators of Small Aircraft" to add a new § 135.64 to read as follows:

**§ 135.64 Prohibition against carriage of weapons.**

No person may, while aboard an aircraft being operated by an air taxi operator, carry on or about his person a deadly or dangerous weapon, either concealed or unconcealed. This section does not apply to—

(a) Officials or employees of a municipality or a State, or of the United States, who are authorized to carry arms; or

(b) Crewmembers and other persons authorized by the air taxi operator to carry arms.

6. By amending Part 141 "Pilot Schools" as follows:

A. By adding a new § 141.31 to read as follows:

**§ 141.31 Special flight instruction for military personnel of a foreign government.**

Notwithstanding any other provision of this chapter, a pilot school certificated under this part with a flying school rating may train personnel of any foreign government in maneuvers that are not within the approved airplane operating limitations if—

(a) An official request is made to the Administrator by an accredited representative of the foreign government;

(b) The Administrator finds that the training can be accomplished with a standard of safety equal to that maintained by the United States Air Force or Navy;

(c) The training is accomplished in accordance with appropriate United States Air Force or Navy Technical Orders; and

(d) No airplane is used to show compliance with an acrobatic maneuver required in a flight test for the issue of an airman certificate or rating, against which it has been placarded.

B. By adding to the distribution table:

| *Former section* | *Revised section* |
|---|---|
| SR 330 | 141.31 |

7. By amending Part 171 "Non-Federal Navigation Facilities" as follows:

A. By redesignating Subpart D as Subpart E and § 171.61 as § 171.71.

B. By adding a new Subpart D to read as follows:

### Subpart D—True Lights

**§ 171.61 Authority to operate a true light.**

(a) An applicant who certifies that he will, in accordance with applicable requirements of the FAA, establish, maintain, and operate a light as an aid to air navigation, is issued an air navigation certificate, authorizing him to operate that light as a "true light".

(b) An application for authority to operate a true light is made on Form FAA-114 "Certification and Lawful Authority to Operate a True Light".

C. By adding to the distribution table:

| *Former section* | *Revised section* |
|---|---|
| 406.17 (less (b)) | 171.61 |

8. By redesignating Special Civil Air Regulation 399D, "Provisional Certificated Maximum Weights for Certain Airplanes Operated by Alaskan Air Carriers, Air Taxi Operators in Alaska, and the Department of the Interior" as Special Federal Aviation Regulation (SFAR) 12, to be effective until October 25, 1965.

9. By redesignating Special Civil Air Regulation 407, "Basis for Approval of Modification of Airplane Types Douglas DC-3 and Lockheed L-18", as Special Federal Aviation Regulation (SFAR) 13, to be effective indefinitely.

10. By redesignating Special Civil Air Regulation 426, "Performance Credit for Transport Category Airplanes Equipped with Standby Power", as Special Federal Aviation Regulation (SFAR) 14, to be effective indefinitely.

11. By redesignating Special Civil Air Regulation 454A, "Special Operating Rule Within Certain Areas of the State of Florida and Over Waters Adjacent Thereto", as Special Federal Aviation Regulation SFAR) 15, to be effective indefinitely.

(Secs. 307, 313(a), 314, 501, 601–610, 902(c), 1102, 1110, and 1202, Federal Aviation Act of 1958, 49 U.S.C. 1348, 1354(a), 1355, 1401, 1421–1430, 1472(c), 1502, 1510, 1522)

Issued in Washington, D.C., on December 23, 1964.

N. E. HALABY,
*Administrator.*

[F.R. Doc. 64-13376; Filed, Dec. 29, 1964; 8:45 a.m.]

## Chapter III—Federal Aviation Agency

## PART 406—CERTIFICATION PROCEDURES

### Recodification

CROSS REFERENCE: For a document affecting Part 406, see Chapter I of this title, F.R. Doc. 64-13376.

# Title 17—COMMODITY AND SECURITIES EXCHANGES

## Chapter II—Securities and Exchange Commission

[Release No. 33-4749]

## PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

### Delivery of Prospectuses by Dealers

On September 15, 1964, in Securities Act Release No. 4726 (29 F.R. 13486, September 30, 1964), the Securities and Exchange Commission published its proposal to adopt Rules 425A (17 CFR 230.425A) and 174 (17 CFR 230.174) under the Securities Act of 1933. Rule 425A was proposed in order that dealers will be apprised more readily of their obligation to deliver a prospectus in transactions in securities as to which a registration statement has become effective under the Act. Rule 174 shortens or eliminates the statutory prospectus delivery requirements of section 4(3) of the Act for a dealer who is not an underwriter continuing to act as such or a dealer participating in a distribution in a transaction in securities constituting an unsold allotment to or subscription by such dealer in three instances.

In effect the dealer's transaction exemption in section 4(3) [1] of the Act requires all dealers, whether or not they participate in the initial distribution of a registered security, to deliver a prospectus for a designated period in connection with all transactions in such registered security in which any means or instrumentalities of interstate commerce or the mails are used, excepting only unsolicited brokers' transactions.[2]

It should be noted that a prospectus must be delivered by an underwriter continuing to act as such and by a dealer effecting transactions in securities constituting the whole or part of an unsold allotment to or subscription by such dealer as a participant in the distribution. This obligation of underwriters and dealers continue so long as they are participating in a distribution no matter how much time has elapsed since the commencement of the offering. Otherwise, a dealer effecting transactions in such securities is required to deliver a prospectus for 40 days after the registration statement becomes effective or the date the security is first bona fide offered to the public, whichever is later. However, if the issuer has not made a previous offering under an effective Securities Act registration statement, the aforementioned 40 day period is extended to 90 days.

A number of helpful comments were received in response to the above release. After further consideration of the matter and consideration of all of the comments received, the Commission has adopted the rules with certain additions and modifications.

As adopted, Rule 425A requires a statement on the cover of a prospectus stating the date on which the relevant 40 or 90 day period will expire. The rule as proposed has been revised to make clear that the statement may be set forth on the outside front or back cover page or the inside front cover page of the prospectus. The proposed rule has also been revised to provide that the statement is not required if, pursuant to Rule 174, dealers are not required to deliver a prospectus pursuant to the provisions of section 4(3)(B) of the Act or if the exemptive provisions of section 4(3) are not applicable pursuant to the provisions of section 24(d) of the Investment Company Act of 1940. Section 24(d) provides that the exemption provided by section 4(3) is not applicable in transactions in a security issued by a face-amount certificate company or in a redeemable security issued by an open-end management company or unit investment trust, if any other security of the same class is currently being offered or sold by the issuer or by an underwriter in a distribution which is not exempted from section 5 of the Act, except as otherwise provided by Commission rule or regulation.

It was pointed out in a number of comments that issuers do not always know the exact date when an offering will begin at the time a registration statement becomes effective. Therefore, the rule as adopted provides that the expi-

[1] Prior to the 1964 Amendments to the Securities Acts this exemption was contained in the third unnumbered clause of Section 4(1). The amendments to the Securities Act and the background of Rules 425A and 174 are more fully described in Securities Act Release No. 4726.

[2] The definition of "dealer" in the Securities Act of 1933 includes brokers. The brokers' transaction exemption in Section 4(4) of the Act (designated Section 4(2) prior to the 1964 Amendments) applies to brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter market but not the solicitation of such orders.