# Rules and Regulations

## Title 5—ADMINISTRATIVE PERSONNEL

### Chapter I—Civil Service Commission

### PART 213—EXCEPTED SERVICE

#### Department of Health, Education, and Welfare

Section 213.3316 is amended to show that one of the two positions of Confidential Secretary to the Assistant Secretary for Program Coordination no longer is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (1) of paragraph (k) of § 213.3316 is amended as set out below.

**§ 213.3316 Department of Health, Education, and Welfare.**

*    *    *    *    *

(k) *Office of the Assistant Secretary for Program Coordination.* (1) One Confidential Secretary to the Assistant Secretary.

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(5 U.S.C. 3301, 3302, E.O. 10577, 19 F.R. 7521, 3 CFR 1954–58 Comp., p. 218)

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

[F.R. Doc. 68-6911; Filed, June 11, 1968; 8:47 a.m.]

### PART 213—EXCEPTED SERVICE

#### Department of Transportation

Section 213.3394 is amended to show that the position of Confidential Secretary to the Assistant Secretary for Research and Technology is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (11) is added to paragraph (a) of § 213.3394 as set out below.

**§ 213.3394 Department of Transportation.**

(a) *Office of Secretary.* * * *

(11) One Confidential Secretary to the Assistant Secretary for Research and Technology.

*    *    *    *    *

(5 U.S.C. 3301, 3302, E.O. 10577, 19 F.R. 7521, 3 CFR 1954–58 Comp., p. 218)

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

[F.R. Doc. 68-6912; Filed, June 11, 1968; 8:47 a.m.]

## Title 7—AGRICULTURE

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

### PART 966—TOMATOES GROWN IN FLORIDA

#### Order Amending Order Regulating Handling

**§ 966.0 Findings and determinations.**

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations made in connection with the issuance of the order, and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) and the applicable rules of practice and procedure effective thereunder (7 CFR Part 900), a public hearing was held at Orlando, Fla., on December 1, 1967, upon proposed amendments to Marketing Agreement No. 125 and Order No. 966 (7 CFR Part 966; formerly Order No. 45, Part 945) regulating the handling of tomatoes grown in the Florida production area. Upon the basis of the evidence introduced at such hearing, and the record thereof, it is hereby found that:

(1) The said order, as hereby amended, and all the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said order, as hereby amended, regulates the handling of tomatoes produced in the production area in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The said order, as hereby amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act; and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) The said order, as hereby amended, prescribes, so far as practicable, such different terms, applicable to different parts of the production area and to different stages of maturity, as are necessary to give due recognition to the differences in the production and marketing of tomatoes produced in the production area; and

(5) All handling of tomatoes produced in the production area and in the current of commerce between the regulation area and any point outside thereof is in the current of interstate or foreign commerce, or directly burdens, obstructs or affects such commerce.

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

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing or shipping tomatoes covered by this order) who during the representative period (Aug. 1, 1966, through July 31, 1967) handled more than 50 percent of the volume of tomatoes covered by the said order have signed the marketing agreement, as amended, regulating the handling of tomatoes grown in the production area; and

(2) The issuance of this order, amending the order, is approved or favored (i) by at least two-thirds of the producers of tomatoes who participated in a referendum held during the period March 16–23, 1968, and who, during the determined representative period (Aug. 1, 1966, through July 31, 1967) were engaged within the production area in the production of tomatoes for market, and (ii) by producers who participated in the aforesaid referendum and who, during the aforesaid representative period, produced for market at least two-thirds of the volume of such tomatoes produced for market within the production area.

*It is therefore ordered,* That, on and after the effective date hereof, the handling of tomatoes produced in the production area shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

1. Delete § 966.4, *Production area,* and in lieu thereof insert a new § 966.4 as follows:

**§ 966.4 Production area and regulation area.**

(a) "Production area" means the counties of Pinellas, Hillsborough, Polk, Osceola, and Brevard in the State of Florida, and all the counties of that State situated south of such counties.

(b) "Regulation area" means that portion of the State of Florida which is bounded by the Suwannee River, the Georgia border, the Atlantic Ocean, and the Gulf of Mexico.

2. Delete § 966.6, *Handler,* and in lieu thereof insert a new § 966.6 as follows:

**§ 966.6 Handler.**

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier transporting tomatoes for another person) who, as owner, agent, or otherwise, handles fresh tomatoes or causes fresh tomatoes to be handled.

3. Delete § 966.7, *Handle*, and in lieu thereof insert a new § 966.7 as follows:

**§ 966.7 Handle.**

"Handle" or "ship" means to sell, transport or in any other way to place fresh tomatoes, produced in the production area, in the current of commerce between the regulation area and any point outside thereof in the United States, Canada, or Mexico.

4. Amend § 966.22, *Establishment and membership*, to read as follows:

**§ 966.22 Establishment and membership.**

(a) The Florida Tomato Committee, consisting of 12 producer members, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(b) Each person selected as a committee member or alternate shall be an individual who is a producer, or an officer or an employee of a corporate producer, in the district for which selected and a resident of the production area.

5. Amend § 966.24, *Districts*, by deleting District No. 5 to read as follows:

**§ 966.24 Districts.**

For the purpose of determining the basis for selecting committee members the following districts of the production area are hereby initially established:

*District No. 1*. The counties of Broward and Dade in the State of Florida;

*District No. 2*. The counties of Brevard, Glades, Indian River, Martin, Osceola, Okeechobee, Palm Beach, and St. Lucie in the State of Florida;

*District No. 3*. The counties of Charlotte, Collier, Hendry, Lee, and Monroe in the State of Florida; and

*District No. 4*. The counties of De Soto, Hardee, Highlands, Hillsborough, Manatee, Pinellas, Polk, and Sarasota in the State of Florida.

6. In § 966.27, *Nomination*, amend paragraphs (a), (b), and (c) to read as follows:

**§ 966.27 Nomination.**

* * * * *

(a) A meeting or meetings of producers shall be held in each district to nominate members and alternates for the committee. The committee shall hold such meetings or cause them to be held prior to June 15 of each year or by such other date as may be approved by the Secretary pursuant to recommendation of the committee.

(b) At each such meeting at least one nominee shall be designated for each position as member and for each position as alternate on the committee.

(c) Nominations for committee members and alternates shall be supplied to the Secretary in such manner and form as he may prescribe, not later than July 15 of each year, or by such other date as may be approved by the Secretary pursuant to recommendation of the committee.

* * * * *

7. In § 966.32, *Procedure*, amend paragraph (a) to read as follows:

**§ 966.32 Procedure.**

(a) Eight members of the committee shall be necessary to constitute a quorum and the same number of concurring votes shall be required to pass any motion or approve any committee action.

* * * * *

8. Delete § 966.44, *Refunds*, and in lieu thereof insert a new § 966.44 as follows:

**§ 966.44 Excess funds.**

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in subparagraph (2) of this paragraph, to the extent practical it shall be refunded proportionately to the persons from whom it was collected.

(2) The committee, with the approval of the Secretary, may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established: *Provided*, That funds in the reserve shall not exceed approximately one fiscal period's expenses. Such reserve funds may be used (i) to defray any expenses authorized under this part, (ii) to defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses, (iii) to cover deficits incurred during any fiscal period when assessment income is less than expenses, (iv) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, and (v) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination any funds not required to defray the necessary expenses of liquidation, and after reasonable effort by the committee it is found impracticable to return such remaining funds to handlers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

9. In § 966.52, *Issuance of regulations*, amend paragraph (a) by including maturity as a factor of grade or quality, so as to read as follows:

**§ 966.52 Issuance of regulations.**

* * * * *

(a) Limit, in any or all portions of the production area, the handling of particular grades, sizes, qualities (including maturity as a factor of grade or quality), or packs of any or all varieties of tomatoes, during any period; or

* * * * *

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

Effective date: Issued at Washington, D.C., June 7, 1968, to become effective July 12, 1968.

JOHN A. SCHNITTKER,
*Under Secretary*.

[F.R. Doc. 68-6923; Filed, June 11, 1968; 8:48 a.m.]

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

[Milk Order 90]

## PART 1090—MILK IN CHATTANOOGA, TENN., MARKETING AREA

### Order Amending Order

**§ 1090.0 Findings and determinations.**

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record*. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Chattanooga, Tenn., marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the

current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe, with respect to skim milk and butterfat contained in (a) producer milk, (b) other source milk allocated to Class I pursuant to § 1090.46 (a) (3) and (7) and the corresponding steps of § 1090.46(b), and (c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds Class I milk received during the month at such plant from pool plants and other order plants.

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

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

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

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

*Order relative to handling.* It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Chattanooga, Tenn., marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

1. Section 1090.3 is revised to read as follows:

**§ 1090.3 Chattanooga, Tenn., marketing area.**

The Chattanooga, Tenn., marketing area, hereinafter called the "marketing area", means all the territory within the boundaries of the following counties:

IN TENNESSEE

| | |
|---|---|
| Bradley. | Monroe. |
| Hamilton. | Polk. |
| Marion. | Rhea. |
| McMinn. | Sequatchie. |
| Meigs. | |

IN GEORGIA

| | |
|---|---|
| Catoosa. | Murray. |
| Chattooga. | Walker. |
| Dade. | Whitfield. |
| Fannin. | |

2. Section 1090.7(a) is revised to read as follows:

**§ 1090.7 Pool plant.**

* * * * *

(a) Milk distributing plant approved or recognized by a duly constituted health authority for the receiving or processing of Grade A milk and from which Class I milk equal to not less than 50 percent of its receipts of milk from other pool plants and from approved dairy farmers is disposed of during the month on routes and from which Class I milk equal to not less than 15 percent of its total Class I disposition is disposed of during the month on routes in the marketing area;

* * * * *

3. Section 1090.10 is revised to read as follows:

**§ 1090.10 Producer-handler.**

"Producer-handler" means an approved dairy farmer who:

(a) Operates a plant from which Class I milk is disposed of on routes in the marketing area;

(b) Receives no fluid milk products from other dairy farmers or from sources other than pool plants; and

(c) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce the entire volume of fluid milk products handled (excluding receipts from pool plants) and the operation of the processing, packaging, and distribution business are the personal enterprise and risk of such person.

4. In § 1090.41(b), subparagraphs (4) and (5) are revised to read as follows:

**§ 1090.41 Classes of utilization.**

* * * * *

(b) * * *

(4) Disposed of and used as livestock feed, or dumped after prior notification to, and opportunity for verification by, the market administrator;

(5) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1090.42(b) (1) but not to exceed the following:

(i) Two percent of producer milk (except that diverted pursuant to § 1090.6) and milk that is received as diverted milk and that is subject to the pricing and pooling provisions of Part 1101 (Knoxville) of this chapter;

(ii) Plus 1.5 percent of fluid milk products (except cream) received in bulk from pool plants of other handlers;

(iii) Plus 1.5 percent of receipts of fluid milk products in bulk from other order plants, exclusive of the quantity for which Class II utilization was requested by the operators of such plants and the handler;

(iv) Plus 1.5 percent of receipts of fluid milk products in bulk from unregulated supply plants, exclusive of the quantity for which Class II utilization was requested by the handler; and

(v) Less 1.5 percent of fluid milk products (except cream) transferred in bulk to pool plants and nonpool plants; and

* * * * *

5. In § 1090.46(a), a new subparagraph (1-a) is added to read as follows:

**§ 1090.46 Allocation of skim milk and butterfat classified.**

* * * * *

(a) * * *

(1-a) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products received from an unregulated supply plant or the pounds of skim milk classified as Class I milk and transferred or diverted during the month to such plant, whichever is less;

* * * * *

6. Section 1090.52(a) is revised to read as follows:

**§ 1090.52 Butterfat differentials to handlers.**

* * * * *

(a) *Class I milk price.* Multiply the Chicago butter price for the preceding month by 0.12; and

* * * * *

7. In § 1090.72, paragraphs (b) and (d) are revised to read as follows:

**§ 1090.72 Computation of uniform prices for base milk and excess milk.**

* * * * *

(b) Divide the total value of excess milk obtained in paragraph (a) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers; and

* * * * *

(d) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b) of this section times the hundredweight of excess milk, from the amount computed pursuant to paragraph (c) of this section;

* * * * *

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

Effective date: August 1, 1968.

Signed at Washington, D.C., on June 7, 1968.

JOHN A. SCHNITTKER,
*Under Secretary.*

[F.R. Doc. 68-6924; Filed, June 11, 1968; 8:47 a.m.]

# Title 10—ATOMIC ENERGY

## Chapter I—Atomic Energy Commission

### MISCELLANEOUS AMENDMENTS TO CHAPTER

On November 22, 1967, the Atomic Energy Commission published in the FEDERAL REGISTER (32 F.R. 16050) proposed amendments of its rules of practice, 10 CFR Part 2, including amendments to Appendix A of that part, Statement of General Policy: Conduct of Proceedings for the Issuance of

Construction Permits for Production and Utilization Facilities for Which a Hearing Is Required Under Section 189a of the Atomic Energy Act of 1954, As Amended (Statement of General Policy), and conforming amendments to 10 CFR Part 50, Licensing of Production and Utilization Facilities and 10 CFR Part 115, Procedures for Review of Certain Nuclear Reactors Exempted from Licensing Requirements. The proposed amendments were intended to expedite the Commission's facility licensing procedures in contested cases and clarify certain provisions in existing regulations.

The proposed amendments to Part 2 reflected in part the recommendations made by a three-member Regulatory Review Panel appointed by the Commission to study contested proceedings involving applications to construct and operate nuclear facilities. A contested proceeding is a proceeding in which there is a controversy between the AEC regulatory staff and the applicant concerning the issuance of the license or any of its terms and conditions, or in which a petition for leave to intervene in opposition to an application for a license has been granted or is pending before the Commission. The Panel's report was submitted on June 15, 1967.

All interested persons were invited to submit written comments and suggestions for consideration in connection with the proposed amendments within 60 days after publication of the notice of proposed rule making in the FEDERAL REGISTER. After careful consideration of the comments received, the Commission has adopted the amendments which follow. Except for minor and clarifying changes to paragraph (a) of section I, Preliminary Matters, and paragraph (e) of section II, Prehearing Conference, of Appendix A of Part 2, the amendments are the same as those set out in the notice of proposed rule making.

Section 2.714(a) of Part 2 now requires a petitioner for leave to intervene in a Commission proceeding to set forth, among other things, his contentions. The amendment of § 2.714(a) which follows requires those contentions to be reasonably specific. It also provides that petitions which set forth contentions relating only to matters outside the jurisdiction of the Commission will be denied. These amendments are designed merely to state more clearly the Commission's longstanding policy of excluding from consideration in licensing hearings matters which are outside the Commission's regulatory jurisdiction. As revised, § 2.714(a) also requires the petition to be filed within such time as may be specified in the notice of hearing, or as permitted by the presiding officer, and continues to provide that a petition which is not timely filed will be dismissed unless the petitioner shows good cause for failure to file it on time.

Section 2.721(b) of Part 2 has been amended to provide for the appointment of alternates for atomic safety and licensing boards who are qualified in the conduct of administrative proceedings. Section 2.721(b) presently provides for the appointment of technically qualified alternates for the boards.

Certain recommendations of the Regulatory Review Panel, and other perfecting or clarifying changes, are reflected in the amendments to the statement of general policy which follow. Those which may be of particular interest are: (1) a provision that pre-hearing conferences will usually be held in the Washington, D.C., area, but that due regard shall be had for the convenience and necessity of the parties or their representatives; (2) a provision recognizing that requests may be made for a separate hearing on the matter of site selection; (3) a provision indicating that it is desirable for the applicant's summary of the application to discuss the evolution of the proposed reactor design from the design of reactors which have previously been approved or built; (4) a provision encouraging the submission to the atomic safety and licensing board of the applicant's summary of the application, as well as the regulatory staff's safety analysis, at least two weeks prior to the date specified in the notice of hearing for the receipt of petitions for leave to intervene; (5) a provision that atomic safety and licensing boards, in testing the sufficiency of the information contained in the application and in the record, and the adequacy of the regulatory staff's review, to support the proposals of the Director of Regulation in an uncontested proceeding, should be mindful that the applicant, not the regulatory staff, is the proponent of the license; (6) a provision clarifying the point that in contested proceedings, an atomic safety and licensing board may obtain information from the Chairman or Vice Chairman of the Atomic Safety and Licensing Board Panel for the purpose of identifying relevant decisions or statements of Commission policy; and (7) a provision that two members of an atomic safety and licensing board constitute a quorum if one of those members is the member qualified in the conduct of administrative proceedings.

The amendments set out below are a further indication of the Commission's intention to adopt from time to time amendments of its regulations which experience in the operation of atomic safety and licensing boards might indicate as being necessary or desirable.

Pursuant to the Atomic Energy Act of 1954, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Parts 2, 50, and 115, are published as a document subject to codification, to be effective thirty (30) days after publication in the FEDERAL REGISTER.

## PART 2—RULES OF PRACTICE

1. The first sentence of § 2.104(a) is amended by inserting "at least" before "thirty (30) days" where it appears. As amended, the first sentence of § 2.104(a) reads as follows:

**§ 2.104 Notice of hearing.**

(a) In the case of an application on which a hearing is required by the Act or this chapter, or in which the Commission finds that a hearing is required in the public interest, the Secretary will issue a notice of hearing to be published in the FEDERAL REGISTER as required by law at least fifteen (15) days, and in the case of an application concerning a facility, at least thirty (30) days, prior to the date set for hearing in the notice. * * *

* * * * *

2. Paragraph (a) of § 2.714 is amended to read as follows:

**§ 2.714 Intervention.**

(a) Any person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition under oath or affirmation for leave to intervene not later than the time specified in the notice of hearing, or as permitted by the presiding officer. The petition shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by Commission action, and the contentions of the petitioner in reasonably specific detail. A petition which sets forth contentions relating only to matters outside the jurisdiction of the Commission will be denied. A petition for leave to intervene which is not timely filed will be dismissed unless the petitioner shows good cause for failure to file it on time.

* * * * *

3. Paragraph (b) of § 2.721 is amended to read as follows:

**§ 2.721 Atomic safety and licensing boards.**

* * * * *

(b) The Commission may designate a technically qualified alternate or an alternate qualified in the conduct of administrative proceedings, or both, for an atomic safety and licensing board established pursuant to paragraph (a) of this section. If a member of a board becomes unavailable before the hearing commences, the Chairman of the Atomic Safety and Licensing Board Panel may constitute the technically qualified alternate or the alternate qualified in the conduct of administrative proceedings, as appropriate, as a member of the board by notifying the Commission and the alternate who will, as of the date of such notification, serve as a member of the board.

* * * * *

4. Paragraphs (a) and (b) of section I of Appendix A to Part 2 are amended to read as follows:

I. PRELIMINARY MATTERS

(a) A public hearing is announced by the issuance of a notice of hearing signed by the Commission's Secretary, stating the nature of the hearing, its time and place and the issues to be considered. When a hearing is to be held before a board, the notice of hearing will ordinarily designate the chairman and the other members. The time and place of the prehearing conference will ordinarily be stated in the notice of hearing. Subject to the provisions of paragraph (b) below, the prehearing conference will usually be held in the Washington, D.C., area. It is the Commission's policy and practice to hold the evidentiary hearing in the vicinity of the site of the proposed facility. The notice of hearing is published in the FEDERAL REGISTER at least 30 days prior to the date of hearing. In addition, a public announcement is issued by the Commission regarding the date and place of the hearing. The notice of nearing also states the procedures whereby persons may seek to intervene or make a limited appearance, explains the differences between those forms of participation in the proceeding, and states the times and places of the availability, in an appropriate office near the site of the proposed facility, of the notice of hearing, the report of the Advisory Committee on Reactor Safeguards, the applicant's summary of the application, and the staff safety analysis.

(b) In fixing the time and place of the prehearing conference or of any postponed hearing, due regard shall be had for the convenience and necessity of the parties or their representatives, as well as of the board members.

* * * * *

5. Paragraphs (e) and (f) of section I of Appendix A of Part 2 are redesignated paragraphs (f) and (g), respectively, and a new paragraph (e) is added to read as follows:

I. PRELIMINARY MATTERS

* * * * *

(e) It is possible that a party may request the Commission to consider the matter of the suitability of the proposed site separately from, and prior to, other questions relating to the effect of the construction and operation of the facility upon the public health and safety and the common defense and security. If the Commission should grant such a request, the notice of hearing or an appropriate amendment thereto will state the time and place of the separate hearing on the site question.

* * * * *

6. Paragraphs (b) and (e) of section II of Appendix A of Part 2 are amended and a new paragraph (f) is added to read as follows:

II. PREHEARING CONFERENCE

* * * * *

(b) The prehearing conference is usually held approximately two weeks before the opening of the evidentiary hearing. Prehearing conferences are open to the public except under exceptional circumstances involving matters such as those referred to in 10 CFR 2.790 (a) and (b) ("company confidential" information; classified information; and certain privileged information not normally a part of the hearing record).

* * * * *

(e) The applicant, the regulatory staff and other parties will ordinarily provide each other and the board with copies of prepared testimony in advance of the hearing. A schedule may be established at the prehearing conference for exchange of prepared testimony. The applicant ordinarily files a summary of his application, including a summary description of the reactor and his evaluation of the considerations important to safety, and the staff files a safety analysis prior to the hearing. These may constitute the testimony of witnesses sworn at the hearing. It is desirable for the applicant's summary statement to include, as appropriate, a discussion of the evolution of the proposed reactor design, including associated engineered safety features, from the design of reactors which have previously been approved or built. All of these documents and prepared testimony are filed in the Commission's Public Document Room and are available for public inspection.

(f) The conduct of the prehearing conference will be facilitated if the board is provided with the applicant's summary of the application and the staff's safety analysis well in advance of the prehearing conference. Failure of the board to receive those documents at least 2 weeks prior to the date specified in the notice of hearing for the receipt of petitions for leave to intervene may result in a rescheduling of the prehearing conference and the hearing.

7. Subparagraphs (b) (2), (3), and (4) of section III of Appendix A of Part 2 are amended to read as follows:

III. THE HEARING

* * * * *

(b) *Intervention and limited appearances.* * * *

(2) The chairman should inquire of those in attendance whether there are any who wish to participate in the hearing by limited appearance.

(3) The board should rule on each request to participate in the hearing on either basis. The Commission's rules require that a petition for intervention be filed not later than the time specified in the notice of hearing. A board has general authority to extend the time for good cause with respect to allowing intervention.

(4) As required by § 2.714 of 10 CFR Part 2, a person who wishes to intervene must set forth, in a petition for leave to intervene, his interest in the proceeding, how the interest may be affected by Commission action, and his contentions in reasonably specific detail. After consideration of any answers, the board will rule on the petition. Petitions which set forth contentions relating only to matters outside the jurisdiction of the Commission will be denied. In any event, the board should not permit enlarging of the issues, or receive evidence from an intervenor, with respect to matters beyond the jurisdiction of the Commission.

* * * * *

8. Subparagraph (c) (7) of section III of Appendix A of Part 2 is revised to read as follows:

III. THE HEARING

* * * * *

(c) * * *

(7) Objections may be made by counsel to any questions or any line of questioning, and should be ruled upon by the board. The board may admit the testimony, may sustain the objection, or may receive the testimony, reserving for later determination the question of admissibility. In passing on objections, the board, while not bound to view proferred testimony according to its admissibility under strict application of the rules of evidence in judicial proceedings, should exclude testimony that is clearly irrelevant to issues in the case, or that pertains to matters outside the jurisdiction of the board or the Atomic Energy Commission. Examples of matters which are considered irrelevant to the issues in the case or outside the jurisdiction of the board or the Atomic Energy Commission include the thermal effects (as opposed to the radiological effects) of the facility operation on the environment; the effect of the construction of the facility on the recreational, economic or political activities of the area near the site; and matters of aesthetics with respect to the proposed construction. Irrelevant material in prepared testimony submitted in advance under § 2.743(b) may be subject to a motion to strike under the procedures provided in § 2.730.

* * * * *

9. Paragraph (g) of section III of Appendix A of Part 2 is revised to read as follows:

III. THE HEARING

* * * * *

(g) Participation by board members. (1) Boards are neither required nor expected to duplicate the review already performed by the regulatory staff and the ACRS and they are authorized to rely upon the testimony of the regulatory staff and the applicant, and the conclusions of the ACRS, which have not been controverted by any party. The role of the board is to decide whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, to support the findings proposed to be made by the Director of Regulation and the issuance of the provisional construction permit proposed by the Director of Regulation. The board will not conduct a de novo evaluation of the application, but rather, will test the sufficiency of the information contained in the application and the record of the proceeding and the adequacy of the staff's review to support the proposals of the Director of Regulation. In doing so, the board is expected to be mindful of the fact that it is the applicant, not the regulatory staff, who is the proponent of the provisional construction permit. If the board believes that additional information is required in the technical presentation in such a case, it would be expected to request the applicant or staff to supplement the presentation, again being mindful of the fact that it is the applicant, not the regulatory staff, who is the proponent of the provisional construction permit. If a recess should prove necessary to obtain such additional evidence, the recess should ordinarily be postponed until available evidence on all issues has been received.

* * * * *

10. Paragraphs (a) and (b) of section V of Appendix A of Part 2 are amended to read as follows:

V. GENERAL

(a) Two members, being a majority of the board, constitute a quorum, if one of those members is the member qualified in the conduct of administrative proceedings. The vote of a majority controls in any decision by a board, including rulings during the course of a hearing as well as formal orders and the initial decision. A dissenting member is of course, free to express his dissent and the reasons for it in a separate opinion for the record.

(b) The Commission may designate a technically qualified alternate or an alternate qualified in the conduct of administrative proceedings, or both, for a board. The alternates will receive copies and become familiar with the application and other documents filed by the parties prior to the start of the hearing. It is expected that an alternate will be constituted by the Chairman of the Atomic Safety and Licensing Board Panel as a member of the board in situations where a technically qualified member of the board, or the member qualified in the conduct of administrative proceedings, becomes unavailable for further service prior to the start of the hearing.

* * * * *

11. Paragraph (b) of section VI of Appendix A of Part 2 is amended to read as follows:

VI. PROCEDURES APPLICABLE TO CONTESTED PROCEEDINGS

* * * * *

(b) Issues to be decided by board:

The board will, if the proceeding becomes a contested proceeding, make findings on the issues specified in the notice. In a contested proceeding, the board will determine:

(1) * * *
(2) * * *
(3) * * *
(4) * * *

In considering those issues, however, the board will, as to matters not in controversy, be neither required nor expected to duplicate the review already performed by the Commission's regulatory staff and the ACRS; the board is authorized to rely upon the testimony of the regulatory staff and the applicant, and the conclusions of the ACRS, which are not controverted by any party.

* * * * *

12. Paragraph (d) of section VI of Appendix A of Part 2 is amended to read as follows:

VI. PROCEDURES APPLICABLE TO CONTESTED PROCEEDINGS

* * * * *

(d) Participation by board members:

In contested proceedings, the board will determine controverted matters as well as decide whether the findings required by the Act and the Commission's regulations should be made. Thus, in such proceedings, the board will determine the matters in controversy and may be called upon to make technical judgments of its own on those matters. As to matters which are not in controversy, boards are neither required nor expected to duplicate the review already performed by the regulatory staff and the ACRS and they are authorized to rely upon the testimony of the regulatory staff and the applicant, and the conclusions of the ACRS, which are not controverted by any party. Thus, the board need not evaluate those matters already evaluated by the staff which are not in controversy.

* * * * *

13. Paragraphs (f) and (g) of section VI of Appendix A of Part 2 are redesignated paragraphs (g) and (h), respectively; a new paragraph (f) is added and redesignated paragraph (h) is amended to read as follows:

VI. PROCEDURES APPLICABLE TO CONTESTED PROCEEDINGS

* * * * *

(f) Briefs and oral argument:

If, at the close of the hearing, the board should have uncertainties with respect to the matters in controversy because of a need for a clearer understanding of the evidence which has already been presented, it is expected that the board would normally invite further argument from the parties—oral or written or both—before issuing its initial decision. If the uncertainties arise from lack of sufficient information in the record, it is expected that the board would normally require further evidence to be submitted in writing with opportunity for the other parties to reply or reopen the hearing for the taking of further evidence, as appropriate; as to either of such courses, it is expected that the applicant would normally be afforded the opportunty to make the final submission.

* * * * *

(h) The intra-agency consultation and communications referred to in section V(c) are not permitted in contested proceedings. A board may, however, obtain information from the Chairman or Vice Chairman of the Atomic Safety and Licensing Board Panel for the purpose of identifying relevant decisions or statements of Commission policy.

## PART 50—LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

14. Paragraph (b) of § 50.58 of Part 50 is amended to read as follows:

**§ 50.58 Hearings and report of the Advisory Committee on Reactor Safeguards.**

* * * * *

(b) The Commission will hold a hearing after at least 30 days' notice and publication once in the FEDERAL REGISTER on each application for a construction permit for a production or utilization facility which is of a type described in § 50.21(b) or § 50.22 or which is a testing facility. When a construction permit has been issued for such a facility following the holding of a public hearing and an application is made for an operating license or for an amendment to a construction permit or operating license, the Commission may hold a hearing after at least 30 days' notice and publication once in the FEDERAL REGISTER or, in the absence of a request therefor by any person whose interest may be affected, may issue an operating license or an amendment to a construction permit or operating license without a hearing, upon 30 days' notice and publication once in the FEDERAL REGISTER of its intent to do so. If the Commission finds that no significant hazards consideration is presented by an application for an amendment to a construction permit or operating license, it may dispense with such notice and publication and may issue the amendment.

## PART 115—PROCEDURES FOR REVIEW OF CERTAIN NUCLEAR REACTORS EXEMPTED FROM LICENSING REQUIREMENTS

15. Paragraph (b) of § 115.46 of Part 115 is amended to read as follows:

**§ 115.46 Hearings and reports of the Advisory Committee on Reactor Safeguards.**

* * * * *

(b) The Commission will hold a hearing after at least 30 days' notice and publication once in the FEDERAL REGISTER on each application for authorization to construct a nuclear reactor subject to this part. When a construction authorization has been issued for such a nuclear reactor following the holding of a public hearing and an application is made for an operating authorization or for an amendment to a construction authorization or operating authorization, the Commission may hold a hearing after at least 30 days' notice and publication once in the FEDERAL REGISTER or, in the absence of a request therefor by any person whose interest may be affected, may issue an operating authorization or an amendment to a construction authorization or operating authorization without a hearing, upon 30 days' notice and publication once in the FEDERAL REGISTER of its intent to do so. If the Commission finds that no significant hazards consideration is presented by an application for an amendment of a contruction authorization or operating authorization, it may dispense with such notice and publication and may issue the amendment.

(Sec. 161, 68 Stat. 948; 42 U.S.C. 2201)

Dated at Germantown, Md., this 20th day of May 1968.

For the Atomic Energy Commission.

F. T. HOBBS,
*Acting Secretary.*

[F.R. Doc. 68-6867; Filed, June 11, 1968; 8:45 a.m.]

# Title 14—AERONAUTICS AND SPACE

## Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 68-CE-8-AD; Amdt. 39-609]

## PART 39—AIRWORTHINESS DIRECTIVES

### Bellanca Models 14-19-3A and 17-30 Airplanes

An airworthiness directive was adopted on May 29, 1968, and made effective immediately as to all known owners of Bellanca Models 14-19-3A and 17-30 Airplanes. This airworthiness directive was issued because there have been instances in which vibration of the horizontal tail surfaces of these airplanes has occurred at speeds as low as 206 miles per hour, which can result in the loss of control and possible structural damage. In order to prevent this condition, the directive prohibits operation of the subject airplanes in excess of 180 miles per hour (156 knots), and requires the installation of a placard reading "Never exceed speed 180 m.p.h. (156 knots) IAS". Bellanca Service Letter No. 45, dated May 29, 1968, relates to this subject.

Since it was found that immediate corrective action was required, notice and public procedure thereon was impractical and contrary to the public interest and good cause existed for making the airworthiness directive effective immediately as to the owners of Bellanca Models 14-19-3A and 17-30 Airplanes by individual airmail letters dated May 29, 1968. These conditions still exist and the airworthiness directive is hereby published in the FEDERAL REGISTER as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

BELLANCA. Applies to Models 14-19-3A and 17-30 Airplanes.

Compliance: Required as indicated, unless already accomplished.

To prevent vibration of horizontal tail surfaces, accomplish the following:

(A) Effective immediately, operation of the airplane in excess of 180 miles per hour (156 knots) is prohibited.

(B) Within 10 hours' time in service after the effective date of this airworthiness directive, install a placard adjacent to the airspeed indicator, in full view of the pilot, with the following wording:

"NEVER EXCEED SPEED 180 M.P.H. (156 KNOTS) IAS".

NOTE: Bellanca Service Letter No. 45, dated May 29, 1968, relates to this subject.

This amendment becomes effective June 14, 1968, for all persons except those to whom it was made effective by airmail letter dated May 29, 1968.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Kansas City, Mo., on June 4, 1968.

EDWARD C. MARSH,
*Director, Central Region.*

[F.R. Doc. 68-6900; Filed, June 11, 1968; 8:47 a.m.]

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[Docket No. 68-SO-39; Amdt. 39-610]

## PART 39—AIRWORTHINESS DIRECTIVES

### Piper Model PA-28R-180 Series Airplanes

There is a possibility that cracks exist in the flange radius of the Gear Retraction Fittings, Part Nos. 67031-00 (L.H.) and 67031-01 (R.H.) caused by over torqueing the AN3-17A Bolt and AN23-17 Clevis Bolt. Since failure of this fitting could cause collapse of the main landing gear, an airworthiness directive is being issued to require replacement of the Gear Retraction Fittings, Part Nos. 67031-00 (L.H.) and 67031-01 (R.H.) with new fittings, Part Nos. 67031-02 (L.H.) and 67031-03 (R.H.) on Piper Model PA-28R-180 Series Airplanes.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

PIPER. Applies to Model PA-28R-180 Series Airplanes, Serial Nos. 28-30004 to 28-30358 inclusive, 28-30361 to 28-30390 inclusive, 28-30392 to 28-30401 inclusive, 28-30403 to 28-30416 inclusive, 28-30418 to 28-30420 inclusive, 28-30423 to 28-30426 inclusive, 28-30428 to 28-30443 inclusive, 28-30445 to 28-30448 inclusive, 28-30451 to 28-30457 inclusive, 28-30459 to 28-30461 inclusive, 28-30462, 28-30464, 28-30466 to 28-30468 inclusive, 28-30470, 28-30472, 28-30473, 28-30477 to 28-30480 inclusive, 28-30483 to 28-30485 inclusive, 28-30489, 28-30492, 28-30493, 28-30496, 28-30497, 28-30500, 28-30502, 28-30504, 28-30521, 28-30523 and 28-30525.

Compliance required within the next 50 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent failure of the gear retraction fittings, which could cause collapse of the main landing gear, accomplish the following:

(a) Place the aircraft on jacks (to preclude the possibility of the main gear collapsing when retraction fittings are removed and replaced).

(b) Remove the existing retraction fittings (Part No. 67031-00 L.H., and Part No. 67031-01 R.H.) and replace with Part No. 67031-02 (L.H.) and Part No. 67031-03 R.H.). Add bushing Part No. 65003-48 to the retraction fittings and torque to 20-25 inch pounds. Also, replace Part No. 400 679 Clevis Bolt (AN23-17) with Part No. 424 181 Clevis Pin (AN393-25), using existing washers. Safety with Part No. 424 051 Cotter Pin (AN380-2-2).

NOTE: Insure that the turnbuckle is not altered from its original position or it will be necessary to rerig the gear down lock system.

(c) Perform retraction test and insure proper operation.

Piper Service Bulletin No. 274, dated June 3, 1968, covers this same subject.

This amendment becomes effective June 14, 1968.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1423)

Issued in East Point, Ga., on June 5, 1968.

GORDON A. WILLIAMS, Jr.,
*Acting Director, Southern Region.*

[F.R. Doc. 68-6901; Filed, June 11, 1968; 8:47 a.m.]

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[Airspace Docket No. 68-EA-21]

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

### Alteration of Control Zone and Transition Area

On page 5220 of the FEDERAL REGISTER for March 30, 1968, the Federal Aviation Administration published proposed regulations which would alter the Albany, N.Y., and Schenectady, N.Y., control zones and Albany, N.Y., transition area.

Interested parties were given 30 days after publication in which to submit written data or views. No objections to the proposed regulations have been received.

In view of the foregoing, the proposed regulations are hereby adopted effective 0901 G.m.t. July 25, 1968.

(Sec. 307(a), Federal Aviation Act of 1958; 72 Stat. 749; 49 U.S.C. 1348)

Issued in Jamaica, N.Y., on May 27, 1968.

WAYNE HENDERSHOT,
*Acting Director, Eastern Region.*

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations by deleting in the description of the Albany, N.Y., control zone "and within 2 miles each side of the Albany VOR 094° radial extending from the 5-mile radius zone to 6 miles east of the VOR" and insert in lieu thereof "; within 2 miles each side of the Albany ILS localizer south course extending from the 5-mile radius zone to 5 miles south of the localizer and within 2 miles each side of the Albany VOR 182° radial extending from the 5-mile radius zone to 5.5 miles south of the VOR."

2. Amend § 71.171 of Part 71 of the Federal Aviation Regulations by inserting in the description of the Schenectady, N.Y., control zone after the words "Schenectady RBN" the coordinates "42°51'15" N., 73°55'45" W.," following the words "7 miles northeast of the RBN;" insert "within 2 miles each side of the Schenectady VOR 030° radial extending from the 5-mile radius zone to 7 miles northeast of the VOR";

3. Amend § 71.181 of Part 71 of the Federal Aviation Regulations by deleting in the description of the Albany, N.Y., 700-foot floor transition area "the Albany VOR 013°" through the words "VOR; within a 7-mile radius" and substitute in lieu thereof "a 019° bearing from the Runway 19 ILS OM extending from the 9-mile radius area to 12 miles north of the OM; within the arc of a 12-mile radius circle centered on the Albany VOR extending from the Albany VOR 021° radial clockwise to the Albany VOR 274° radial; within a 9-mile radius;" delete the words "from the 7-mile radius area to 12 miles west" and insert in lieu thereof "from the 9-mile radius area to 12 miles west"; delete "from the 7-mile radius area to 9 miles northwest" and insert in lieu thereof "from the 9-mile radius area to 11 miles northwest".

[F.R. Doc. 68-6879; Filed, June 11, 1968; 8:46 a.m.]

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[Airspace Docket No. 68-EA-10]

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

### Alteration of Transition Area

On page 5222 of the FEDERAL REGISTER for March 30, 1968, the Federal Aviation Administration published proposed regulations which would alter the Wrightstown, N.J., transition area.

Interested parties were given 30 days after publication in which to submit written data or views. No objections to the proposed regulations have been received.

In view of the foregoing, the proposed regulations are hereby adopted effective 0901 G.m.t. July 25, 1968.

(Sec. 307(a), Federal Aviation Act of 1958; 72 Stat. 749; 49 U.S.C. 1348)

Issued in Jamaica, N.Y., on May 27, 1968.

WAYNE HENDERSHOT,
*Acting Director, Eastern Region.*

Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to delete in the description of the Wrightstown, New Jersey Transition Area the words "within a 5-mile radius of Colts Neck Airport (latitude 40°16'35" N., longitude 74°10'55" W.); within 2 miles each side of the Colts Neck VOR 004° radial extending from the Colts Neck 5-mile radius area to 8 miles north of the VOR" and insert in lieu thereof "within 2 miles each side of the Colts Neck VOR 167° radial extending from the Monmouth County Airport 5-mile radius area to the VOR"; delete the words "and