ORIGINAL

Decision No. 53249

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

| In the Matter of the Investigation into the rates, rules, regulations, charges, allow- ances and practices of all common carriers, highway carriers and city carriers relating to the transportation of general commodities (commodities for which rates are provided in Minimum Rate Tariff No. 2). |) Case No. 5432 Order Setting Hearing dated May 31, 1955)) |
|--|---|
| In the Matter of the Application of California Motor Express, Ltd., a corpora- tion, California Motor Transport Co., Ltd., a corporation, Valley Express Co., a corpo- ration, and Valley Motor Lines, Inc., a corporation, for an alternating exception to the classification of drugs and drug items. |)))) Application No.36844))) |
| Merchants Express Corporation and Way's Freight Line (same as above). |) Application No.36904 |
| Associated Freight Lines, Coast Line Truck Service, Inc., Kellogg Express and Draying Co. and Nielson Freight Lines (same as above). |)) Application No,36905) |
| Savage Transportation Co., Inc., (same as above). |) Application No.36947 |
| Interstate Freight Carriers' Conference, Inc. (same as above). | Application No.36948 |
| Highway Transport Express, a corporation, and Highway Transport, Inc., a corporation (same as above). |)) Application No.36951) |
| Shippers Express Company, a corporation (same as above). |)) Application No.36956 |

 Douglas Brookman and Aaron H. Glickman, for applicants in Applications Nos. 36844, 36904 and 36905, Merchants Express of California, and V. Fred Jakobsen, doing business as Transbay Motor Express, respondents in Case No. 5432 and intervenors in all applications.
<u>Charles Waller</u>, for applicant in Application No. 36947.
<u>C. W. Johnson</u>, for applicant in Application No. 36948.
<u>Norman Moon</u>, for applicant in Application No. 36951.
<u>B. F. Williams</u>, for Drug and Toilet Preparation Traffic Conference; <u>George H. Cunningham</u>, for Sterling Drug; David M. Daly, for Bristol-Myers Products Division; <u>O. B. Burt</u>, for Parke, Davis & Company; <u>F. E. Noakes</u>, for Olin Mathiesen Chemical Corporation; <u>Richard G.</u> <u>Stocker</u>, for Chas. Pfiefer & Company, Inc.; and <u>Clifford E. Volte</u>, for Rexall Drug Company; intervenors in support of the applications.

AH

 <u>H. L. Mathewson</u>, for Pacific States Motor Tariff Bureau;
<u>Arlo D. Poe</u> and J. C. Kaspar, for California Trucking Associations, Inc.; James Quintrall, for Western Motor Tariff Bureau; J. J. Deuel and <u>Joseph Q. Joynt</u>, for California Farm Bureau Federation; <u>W. F. McCann</u>, for Johnson and Johnson; <u>Warner Knight</u>, for Warner-Lambert Pharmaceutical Co.; and <u>Gustav V. Sundin</u>, for Cutter Laboratories; interested parties.
<u>Robert A. Lane</u>, for the Commission's staff.

<u>O P I N I O N</u>

Applicants seek authority to establish and maintain an exception rating of third class on drugs and medicines released at a declared valuation of 50 cents per pound for each article.¹ In order that the proposed exception rating might be considered in its over-all aspects, the Commission on May 31, 1955, ordered that the applications be beard on a common record with Case No. 5432.

Public hearing was held February 7, 8, and 9, 1956, before Examiner J. E. Thompson at San Francisco. The evidence consists of 32 exhibits, testimony of 9 witnesses engaged in carrier operations and testimony of 9 witnesses engaged in the manufacture and shipping of drugs and toilet preparations. The evidence in the main relates to the densities, values, containers, ingredients and volume of traffic of numerous articles rated as drugs or medicines and

The proposal reads as follows:

Exception to Western Classification

Drugs or Medicines, N.O.I.B.N. Less Carload Class Rating

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Note 1. The value declared in writing by the shipper or agreed upon in writing as the released value of the property, as the case may be, must be entered on the shipping document as follows: "The agreed or declared value of the property

is hereby specifically stated by the shipper to be not exceeding 50 cents per pound for each article."

Note 2.

1

Ratings named in this item will not apply if consignor declines to declare value or agree to release value in writing in accordance with Note 1. numerous articles rated as toilet preparations. It is the contention of the applicants, and of the shippers appearing as intervenors and interested parties, that the transportation characteristics of drugs are similar, and in many cases identical, with the transportation characteristics of toilet preparations and that all of the articles should be subject to the same rating when shipped at a declared value of 50 cents per pound per article. The evidence in support of the similarity of transportation characteristics of drugs and toilet preparations is voluminous but may be briefly summarized.

There first arises the distinction between the term "drug" and the term "toilet preparation." The shippers for the most part classify articles as drugs or toilet preparations in accordance with definitions in the Federal Food, Drug and Cosmetic Act. Some articles fall within the terms of both the definition of drug and that of cosmetic or toilet preparation. For example, a deodorant that is also represented as an anti perspirant is both a drug and a toilet article as is toothpaste that purports to contain substances for the prevention of caries. The manufacturers, however, are required under federal regulatory laws to list the ingredients on

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Title 21 United States Code. Section 321 (g): The term drug means (1) articles recognized in the official United States Pharmacopoeia, Official Homoeopathic Pharmacopoeia of the United States or Official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2) or (3) but does not include devices or their components, parts or accessories. Section 321 (i): The term cosmetic means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance, and (2) articles intended for use as a component of any of such articles;

except that such term shall not include soap.

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the label of any article that is represented to be beneficial in the diagnosis, cure, mitigation, treatment or prevention of disease. Several shippers stated that often the differentiation between a drug and a toilet preparation is what representations are made on the label rather than the ingredients of the article. It was pointed out that one manufacturer may market an article as a drug and another may market an article of the same formula and ingredients as a toilet preparation. One shipper testified that his company started to market a cream as a toilet preparation and after testing the market, thereupon decided instead to merchandise it as a drug. He said it was the same cream and the only difference was that as a toilet preparation it was sold in a fancier jar and at a higher price and the buyer was required to pay a federal tax on the purchase. It appears that labeling requirements and tax laws are often deciding considerations on whether an article is marketed as a drug or as a toilet preparation. In most cases, once the manufacturer has designated the character of the article for marketing purposes, it continues that designation throughout its internal organization, including its shipping department.

One shipper does not follow this practice. He stated that for shipping purposes, if the article is usable as a toilet preparation he classifies it as such on the shipping documents. Carriers apparently accept whatever designation is made by the shipper.

There are two types of drug items; one is the prescription item or what is known in the trade as the ethical line, and the other is the over-the-counter item or what has been called the patent medicine. In the case of the former, there is little doubt that they should be and are classified as drugs. It is with respect to the latter type that one encounters the situations described above.

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In comparing the shipping characteristics of drugs and toilet preparations it was shown that, on the whole, the over-thecounter type of drug has a counterpart in the toilet preparation category insofar as dimensions of shipping containers and weight per cubic foot are concerned. Generally, drugs in this category have a lower value per pound than do toilet preparations.

The lighter weight drug items are in the ethical line of drugs that are in tablet, capsule or ampoule forms. These items are usually shipped with heavier articles in the ethical line and it would appear from the evidence that the heavier items and the lesser valued items comprise the predominant part of the movement of the ethical line of drugs. An exhibit presented by a manufacturer which deals almost exclusively in that line shows that during five days it shipped from Los Angeles, in intrastate commerce, 155 shipments containing a total of 546 packages. The average density was 24.6 pounds per cubic foot. Of the 155 shipments, 119 or 77 per cent had a density of 20 pounds or greater per cubic foot. Other exhibits show that the over-the-counter drugs generally have somewhat higher densities.

In Decision No. 48402, dated March 24, 1953, in Case No. 4808, which established the present third-class rating on toilet preparations at a released or declared value of 50 cents per pound per article, it is stated.

> "An exhibit submitted by petitioners' rate witness shows the average density of the toilet preparations here involved as 27.1 pounds per cubic foot. This exhibit also discloses that these commodities are predominantly within the density range of 21.9 pounds or greater per cubic foot and thus allow capacity loads to be achieved by the carriers."

The record shows that it is the usual practice of shippers of both drugs and toilet preparations to tender them in mixed shipments. The containers of the drugs and those of toilet preparations

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usually approximate the same size so that there is no difference in handling one as compared to the other.

The exhibits show that there is as much, if not more, traffic in California in drugs as in toilet preparations.

No one opposed the proposed exception rating. A senior rate expert of the Commission's staff recommended that if the proposal is found by the Commission to be reasonable, the exception rating be incorporated into Minimum Rate Tariff No. 2 because the applicants herein, as a group, provide transportation service between virtually all of the population centers in the State. The spokesman for the California Trucking Associations, Inc., concurred with the rate expert's suggestion and also stated that while the evidence may show that both drugs and toilet preparations should enjoy the same rating when released or declared at a valuation of 50 cents or less per pound per article, the Commission should consider whether the present rating applicable to toilet preparations is too low, and should be increased, as well as considering whether the rating on drugs should be decreased.

<u>Conclusions</u>

It has been shown that at a released or declared valuation of not exceeding 50 cents per pound per article, drugs have similar, if not the same, transportation characteristics generally as do toilet preparations.

The Commission, on a full record, in Decision No. 48402, supra, found that a third-class less carload rating on toilet preparations when shipped under declared or released valuation not exceeding 50 cents per pound per article is justified. The record herein does not contain any evidence showing that conditions

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pertaining to the transportation of toilet preparations have changed since the aforesaid prior proceeding.

Upon consideration of all of the facts and circumstances of record, the Commission is of the opinion and finds that a thirdclass less carload rating on drugs or medicines, when shipped at a declared or released valuation not exceeding 50 cents per pound per article, provides just, reasonable and nondiscriminatory minimum rates for the transportation by common carriers and highway carriers. The rating will be incorporated in Minimum Rate Tariff No. 2 and the applications will be dismissed.

1.4

1. 23. Same

ORDER

Based on the evidence of record and on the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED:

1. That Minimum Rate Tariff No. 2 (Appendix "D" to Decision No. 31605, as amended) be and it is hereby further amended by incorporating therein, to become effective July 15, 1956, the revised pages attached hereto and by this reference made a part hereof, which pages are numbered as follows:

Twenty-second Revised Page 5 cancels Twenty-first Revised Page 5 Fourteenth Revised Page 7 cancels Thirteenth Revised Page 7 Second Revised Page 39-A cancels First Revised Page 39-A

2. That tariff publications authorized to be made by common carriers as a result of the order herein may be made effective not earlier than July 15, 1956, on not less than five days' notice to the Commission and to the public if filed not later than sixty days after the effective date of this order.

3. That common carriers are authorized to depart from the provisions of Article XII, Section 21, of the Constitution of the

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State of California and from the provisions of Section 460 of the Public Utilities Code to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations.

4. That in all other respects said Decision No. 31606, as amended, shall remain in full force and effect.

5. That the applications herein are dismissed.

The effective date of this order shall be twenty days after the date hereof.

, California, this $\underline{19}^{\mathcal{IL}}$ Dated at _____ San Francisco day of 1956sident Commissioners

Commissioner Rex Hardy , being necessarily absent, did not participate in the disposition of this proceeding.

Twenty-second Revised Page ... 5 Cancels Inventy-first Revised Page ... 5

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MINIMUM RATE TARIFF NO. 2

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| INDEX OF COMMODITIES (Continued) | | | |
|----------------------------------|----------------|------------------------------|---|
| COMMODITY | Item Number | COMMODITY | Item Number |
| Candles (M) | 723-726 | Compounds, paint, lacquer | |
| Candy | 360 | or varnish reducing, | |
| Canned Goods and Other | | removing or thinning | 377 |
| Articles as described in | 320,610, | Compound, radiator or | |
| Item No. 610 | 620,630 | cleaning (M) | 723-726 |
| Cants, Wheel, wooden | 660,690 | Compound, rust preventing | 123-120 |
| Cants, wooden | 365 | | R00 R06 |
| Caps, column | 660,690 | or removing (M) | 723-726 |
| Caps, Sand Line | 365 | Compound, type cleaning | |
| Carriers (used packages) | | | 723-726 |
| Cases (Built-in Fixtures) | 330 | Compound, waterproofing | |
| | 660,690 | (M) | 723-726 |
| Casing, Door and Window | | Confectionery | 360 |
| Panel | 660,690 | Containers, Aluminum | |
| Casing Shoes | 365 | Bulk Shipping | 330 |
| Castings, Swing Post | 365 | Containers, Beverage | 600 |
| Catchers, Tubing | 365 | Cooler Closets | 660,690 |
| Catsup | (1) | Corn | $(1), 652, 652\frac{1}{2},$ |
| Cement, pipe fitting (M) | 723-726 | | 654 |
| Cereal and Nuts combined | 360 | Corn Cobs | 652,6522,654 |
| Coreal Food | 360 | Cornice Brackets | 660,690 |
| Cercal Food Preparations | 655,656 | Corn, Kaffir | 652,6522,654 |
| Cereals, cooked | 655,656 | Corn Steep Water | |
| Chaff | | Countershafts, Oil Well | 652,6522,654 |
| Chap Sticks | 2052,0522,054 | | 365 |
| | 395 | Covers, cotton cloth | 335 |
| Charcoal (M) | 6522,654 | Covers, Guy Wire | 660,690 |
| Cheese (including cottage | | Covers, Thief Hole | 365 |
| and pot cheese) (11) | 315,605 | Cow Peas | 6522,654 |
| Chests of Drawers | 660,690 | Cranes, Derrick | 365 |
| Chili, ground | (1) | Cross Arms, wooden | 660,690 |
| China Closets | 660,690 | Crystals, Citrus Fruit | |
| Chloride of Lime Bleach | 1730 | Juice | 360 |
| Chocolate | 1360 | Cupboards | 660,690 |
| Chocolate Coating | 360 | Cylinders, Well Pump | 365 |
| Chops | 652,6522,654 | | |
| Chowders | (1) | Darso | 652,6522,654 |
| Citrus Fruit Juice | | Derrick Cranes | 365 |
| Powders or Crystals | 360 | Derricks | 365 |
| Clamps | 365 | Dessert Preparations | 360 |
| Clamps, Disconnecting, | | Disinfectants | |
| Drilling, Drive or Gas | | Distillers' Grains | 730 |
| Packing | 365 | | 652,6522,654 |
| Clay, Fire (M) | | Doors Drain Ding Galaget | 660,690 |
| Clippings | 365 | Drain Pipe Solvent | 730 |
| | 652,6522,651 | Dressing, Automobile Top (M) | 723-726 |
| Clothing, staple work | 333 | Dressing, Belt (M) | 723-726 |
| Coating, Chocolate | 360 | Dressing, Salad | (1) 365 395 (1) |
| Cocoa | 360 | Drill Bitheads | 365 |
| Cocoanut, prepared | (1) | # Drugs | 1737 |
| Coffee | 360 | Dry Milk Solids Durra | 1 AEO AEOL 401 |
| Coffee, extract of | | Dust, Elevator | 652,6522,654 652,6522,654 |
| (condensed coffee), dry | 334,360 | Earths, Infusorial or | |
| Coffee Substitutes | 360 | Diatomaceous | 650 |
| Colorings, Confectioners | 360 | Egg Yolk | (1) |
| Columns | 660,690 | Eggs, Shelled | 360 |
| Compound, anti-freeze (M) | 723-726 | Egyptian Wheat | 652,6522.654 |
| Compound, carbon removing(M) | 723-726 | Elevator Dust | 652,6522,654 |
| | | | 222 (22 (22 (22 (22 (22 (22 (22 (22 (22 |

| Compound, cleaning (M) Compounds, Bleaching, Cleaning, Scouring, Washing Compound, electrical insulating (M) Compounds, Flavoring Compounds, Food Curing, Preserving or Seasoning Compounds, Lard Compound, malt, milk and coccoa Compound, milk and coccoa Compound, milk and coccoa Compounds, Oil Well Drilling Mud Compound, paint thinning(M) | 723-726 3342,730 723-726 360 360 360,375 375 365 723-726 | Elevators, Pipe or Sucker Rod Emmer Engines (M) Ether (M) Explosives Exterminators, vermin (M) Extracts Extracts, coffee (con- densed coffee), dry Extracts, Malt Farina Foed, Animal Feed, Barley Hay Feed, Bean Straw (M) | 365 652,652 ¹ / ₂ ,654 365 723-726 337 723-726 360 334,360 600 652,652 ¹ / ₂ ,654 (1),652,652 ¹ / ₂ , 654 652 ¹ / ₂ ,654 |
|---|--|---|--|
| 10. 510." | and Other Ar | 19 ticles as described in ication of rates is limited | |

EFFECTIVE JULY 15, 1956

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Correction No. 683

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Fourteenth Revie Page. 7 Cancels Thirteenth Revised Page. 7

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MINIMUM RATE TARIFF NO. 2

| CONMODITY | Item | | Item |
|--------------------------|------------------------------|---|-----------------------------|
| Lime, Chlorinated | Number . | COMMODITY | Number |
| iners | 730 362 | 36007 . 707 | ma ma ma |
| iners. Polished Rod | 3655 | Meal, Velvet Bean | 6522,653,654 |
| ines, Measuring | - 365 | Meats, cooked, cured or preserved Meat other than fresh | (2) |
| | 305 | Meat other than fresh | 350 |
| Lipsticks, medicated | | Meat Substitutes | 360 |
| (chap sticks) | 395 | Mechanics Tools (M) | 365 |
| iquid, cigar or cigar- | | Medicine Cabinets | 660,690 |
| etto lighter (11) | 723-726 | /wedicines | 395 |
| Liquors; Malt | 360;600 | liddlings | 652,652,654 |
| Liquorz, Vinous | 360,600 | Military toilet kits | 395 |
| | 200,000 | Wilk (condensed or ovaporated) liquid | |
| "man cont Canno Window | 702.706. | ovaporated) liquid | (1) |
| Lubricant, Grease Binder | 723-726 | Milk and cocoa compound | 375 6522,654 |
| Lumber, | 660,690,700 | Milk; dried | 6522,654 |
| Lye, Concentrated | 730 | Milk, Malted | 360,375 |
| | • | Milk; sour skim | 6522,654 |
| Macaroni (M) | 653,654 | Milk, sterilizod | (1) |
| Macaroni, except canned | 360 | Milo Maizo | ALD ACAL AN |
| Macaroni (prepared) | (1) | | 652,6522,654 |
| Machines, Cil Well | | Mince Meat | |
| LL WOLL AND A CONTRACTOR | 200 | Molasses | $(1), 652\frac{1}{2}, 654$ |
| Pulling | 365 | Molding, Carponters' | 660,690 |
| Machines, Rotary | | Molding, Casing | 660,690 |
| Drilling | 365 | Mud Mixer Parts | 365 |
| Naize | 652,6522,654 | Mustard | 360 |
| Malt | 652,6522,654 | Mustard (prepared) | (1) |
| Malt, milk and cocoa | | (he chan and | ~~/ |
| compound | 360,375 - | Needlon | 260. |
| Lalt Sprouts | | Noodles | 360. |
| Laited milk | 652;6522,654 | Noodles (M) | 653,654 |
| | 360,375 | Nuts, cdible, shelled | 360 |
| Mantel Shelves | 660,690 | ; | · · · |
| Margarine | (11)315,605 | Oats | 652,652;654 |
| Mash [*] | 652,6522;654 | Oats, rolled | 652;652;654 |
| Meal, Alfalfa | 652; 653; 654 | Offal | 652,6522,654 |
| Moal, Babassu Nut | 6523;653;654 | Cil, cooking | 730_1 |
| Meal; Bean Straw | 6522;653;654 | | LED LEL |
| Meal; Clover | 6520 652 652 | Oil; Fish (M) | 6522,654 |
| Loal; Cocoanut | 6522;653;651 6522;653;651 | Oil; Olive | (1) |
| | 10222,000,0004 | Oil, (other than | _ |
| Meal; Copra | 0525,053,054 | medicinal) (1) | 723-726 |
| Loal; Corn Gorm | 16522;653,654 | Oil, petroleum | - |
| Meal; Corn Oil (11) | 10522,054 | medicinal (11) | 723-726 |
| Meal, Cottonseod | 6522;653;651 | Oil, Salad | (1), 730 |
| Meal; Fish | 6522,653,654 | Olives | |
| Mal; Flaxsood | 653-651 | | |
| Meal; Gluton | 653;654 | Onion Chips | (1) |
| | 652;652;654 | Onion Powder | (1). |
| Meal; (Grain) | 652,6522,654 | Ornamonts, Gable | 660,690 |
| Meal; Homp Soed | 6522,653,654 | Outfits, insect | - |
| Noal, Kapok Seed | 6522;653;654 | destroying (M) | 723-726 |
| Meal; Linseed | 6522;653,654 | Outfits, Oil, Water | , 2* (- |
| Moal; Meat | 6522,654 | or Gas Well | 365 |
| Moal; Mesquite (M) | 6523;654 | | כסכ |
| Meal; Palm | 6502 650 6rt | Outfits, Wire Line | |
| | 6522,653,654 | Pumping | 365 |
| Keal, Palm Kernel | 6522;653,654 | | , |
| Meal, Peanut | 6522,653,654 | Packors | 365 |
| Meal, Perilla | 653,654 | Paint, asphaltic (M) | 723-726 |
| Moal, Perilla Seed | 6522;653;654 | Paint; liquid (M) | 723-726 |
| Meal, Rape Seed | 6522,653,654 | | |
| Meal, Rice | 6522,654 | Paint, liquid or paste Paneling | 377. 660,690 |
| | 11 17 6 75 - 17 19 11 | | |

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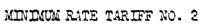
| Meal, Safflow | er Sood | 653,654 | Parts, Boiler (M) | 365 |
|--------------------------------|-------------------------|---|---|----------|
| Meal; Sesame : | Soed | 6523,653,654 | Parts; Mud Mixer | 365 |
| Mcal, Soya Be Mcal, Sunflow | | 6522,653,654 | Paste; Alimentary Paste, Confectioners | 360 |
| Moal; Tucum N | ut | 6522;653;654 | Paste, Tomato Peanut Butter | (1) (1) |
| | vion. Doci: | 100 No. 53 | · | |
| (l) Sec 1 | tem No. 61 | oods and Other A O." | · | <u> </u> |
| (1) See 1 (1) Den | "Canned G tem No. 61 | oods and Other A O." les on which app | 249 articles as described in | <u> </u> |

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Second Revised Tage 39-A Cancels First Revised Page 39-A

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| Item No. | SECTION NO. 1-RULES AND REGULATIONS OF GENERAL APPLICATION (Concluded) | | | | |
|----------------------------|--|-----------------|--|--|--|
| | EXCEPTIONS TO WESTERN CLASSIFICATION AND EXCEPTION SHEET (Concluded) | Class Rating | | | |
| | <pre>*TOILET FREPARATIONS, DRUGS, MEDICINES AND OTHER ARTICLES, value declared in writing by the shipper, or agreed upon in writing as the released value of the property, not exceeding 50 cents per pound (see Notes 1 and 2), viz.: Brushes, tooth, Bath salts or crystals, bubble bath or water softening compounds, medicated or perfumed, Bay Rum, bDrugs, not otherwise in- for exceeding 50 cents per pound (see Notes 1 and 2), wiz.:</pre> | | | | |
| *395-B Cancels 395-A | dexed by name in the Western Classification, Glycerine, unmedicated, in metal containers in boxes (not subject to Item No. 300), prepared and repre- sented as a remedy, medi- cine or lubricant for the human body, Lipsticks, medicated (chap sticks), prepared and represented as a remedy, medicine or lubricant for the human body, | | | | |
| | <pre>Less Carload</pre> | 3 | | | |
| LOO-A Cancels LOO | Vermouth or Wine, domestic, having a declared value of not more than \$2.00 per gallon, less carload | <u>l</u> , | | | |
| | * Change) Decision No. 53249 6 Reduction) | | | | |
| | EFFECTIVE JULY 15, 1956 | | | | |
| Corneo | Issued by the Public Utilities Commission of the State of California, San Francisco, California. Correction No. 685 | | | | |
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