

FEDERAL REGISTER

VOLUME 36

• NUMBER 5

Friday, January 8, 1971

• Washington, D.C.

Pages 257-310

Agencies in this issue—

Agricultural Research Service
Atomic Energy Commission
Civil Aeronautics Board
Civil Service Commission
Environmental Protection Agency
Federal Crop Insurance Corporation
Federal Insurance Administration
Federal Maritime Commission
Federal Power Commission
Federal Reserve System
Food and Nutrition Service
General Services Administration
Hazardous Materials Regulations Board
Interim Compliance Panel
(Coal Mine Health and Safety)
Internal Revenue Service
Interstate Commerce Commission
Labor Department
National Highway Safety Bureau
Securities and Exchange Commission
Small Business Administration
Tariff Commission
Treasury Department
Workplace Standards Administration

Detailed list of Contents appears inside.



MICROFILM EDITION FEDERAL REGISTER 35mm MICROFILM

Complete Set 1936-69, 182 Rolls \$1,309

Vol.	Year	Price	Vol.	Year	Price	Vol.	Year	Price
1	1936	\$7	13	1948	\$28	25	1960	\$49
2	1937	12	14	1949	22	26	1961	44
3	1938	8	15	1950	28	27	1962	46
4	1939	14	16	1951	44	28	1963	50
5	1940	14	17	1952	41	29	1964	54
6	1941	21	18	1953	30	30	1965	58
7	1942	37	19	1954	37	31	1966	60
8	1943	53	20	1955	41	32	1967	69
9	1944	42	21	1956	42	33	1968	55
10	1945	47	22	1957	41	34	1969	62
11	1946	47	23	1958	41			
12	1947	24	24	1959	42			

Order Microfilm Edition from Publications Sales Branch
National Archives and Records Service
Washington, D.C. 20408



Area Code 202

Phone 962-8626

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

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

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

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

Contents

AGRICULTURAL RESEARCH SERVICE

Rules and Regulations

- Domestic quarantine; gypsy and brown-tail moths; regulated areas 261
- Hog cholera and other communicable swine diseases; areas quarantined 265

AGRICULTURE DEPARTMENT

See Agricultural Research Service; Federal Crop Insurance Corporation; Food and Nutrition Service.

ATOMIC ENERGY COMMISSION

Notices

- Duke Power Co.; proposed issuance of facility operating license..... 296

CIVIL AERONAUTICS BOARD

Notices

- Eastern Air Lines, Inc., et al.; denial of petition for reconsideration and dismissal of complaint 297

CIVIL SERVICE COMMISSION

Rules and Regulations

- Excepted service:
- Department of the Interior..... 261
 - Department of Justice (2 documents) 261
 - Department of Transportation... 261

Notices

- Industrial relations specialist and Assistant General Counsel for Labor Relations, Post Office Department, Washington, D.C.; manpower shortage..... 298
- Noncareer executive assignments:
- Department of Commerce..... 298
 - Department of Housing and Urban Development..... 298
 - Department of Justice..... 298

ENVIRONMENTAL PROTECTION AGENCY

Proposed Rule Making

- Certain air quality control regions; designations and revisions; consultation with authorities (2 documents) 293

FEDERAL CROP INSURANCE CORPORATION

Rules and Regulations

- Corn, 1969 and succeeding crop years; designation of counties for crop insurance..... 262

FEDERAL INSURANCE ADMINISTRATION

Rules and Regulations

- National flood insurance program:
- Areas eligible; list..... 263
 - Identification of flood-prone areas; list..... 264

FEDERAL MARITIME COMMISSION

Notices

- Publication of discriminatory rates:
- Hapag-Lloyd Aktiengesellschaft and Sea-Land Service, Inc.; re-scheduling of filing dates... 298
 - Seatrains Lines, Inc.; order to show cause..... 299

FEDERAL POWER COMMISSION

Notices

- Pacific Power & Light Co.; application 299

FEDERAL RESERVE SYSTEM

Notices

- Otto Bremer Co. and Otto Bremer Foundation; determinations regarding planned insurance activities of nonbanking subsidiaries under Bank Holding Company Act..... 300

FOOD AND NUTRITION SERVICE

Rules and Regulations

- Food stamp program; definitions; correction 261

GENERAL SERVICES ADMINISTRATION

Rules and Regulations

- Federal procurement; miscellaneous amendments to chapter... 287

HAZARDOUS MATERIALS REGULATIONS BOARD

Proposed Rule Making

- Transportation of hazardous materials; design approvals for radioactive materials packages... 292

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See Federal Insurance Administration.

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

Notices

- Applications for renewal permits; opportunity for public hearing:
- Bethlehem Mines Corp. et al... 300
 - Harrisburg Coal Co. et al..... 300
 - Imperial Coal Co. and Freeman Coal Mining Corp..... 301

INTERNAL REVENUE SERVICE

Rules and Regulations

- Income tax; gain from dispositions of certain depreciable realty 266

Proposed Rule Making

- Income tax; amortization of pollution control facilities; correction 292

Notices

- Granting of relief regarding firearms acquisition, shipments, etc.:
- Bradford, William Ronald..... 295
 - Fillmore, Wayne Edward..... 295
 - Nolte, James August..... 295
 - Parks, Gordon John..... 296

INTERSTATE COMMERCE COMMISSION

Notices

- Motor carrier temporary authority applications..... 308

LABOR DEPARTMENT

See also Workplace Standards Administration.

Rules and Regulations

- Delegations of authority within Workplace Standards Administration (4 documents) .. 285, 287, 288

Notices

- Delegation and redelegation of authority and assignment of responsibility:
- Administrator, Workplace Standards Administration, et al 305
 - Assistant Secretary for Workplace Standards..... 304
- Labor standards applicable to Federal and Federally-assisted construction; guidelines to reflect organizational changes... 304
- Unemployment compensation laws; certification of States and State laws to Secretary of the Treasury (2 documents) 304
- Wage Appeals Board; authority and responsibilities..... 306

(Continued on next page)

NATIONAL HIGHWAY SAFETY BUREAU**Rules and Regulations**

Motor vehicle safety standards; flammability of interior materials 289

SECURITIES AND EXCHANGE COMMISSION**Notices***Hearings, etc.:*

Central Power & Light Co. 301
Continental Vending Machine Corp 301
Paine Webber Municipal Bond Fund, First Series 301

SMALL BUSINESS ADMINISTRATION**Proposed Rule Making**

Size standards; definition of small business for purpose of government procurement for air transportation 294

Notices

Director, Office of Financing, et al.; delegation of authority 302

TARIFF COMMISSION**Notices**

Paper stitchers; receipt of complaint 303

TRANSPORTATION DEPARTMENT

See Hazardous Materials Regulations Board; National Highway Safety Bureau.

TREASURY DEPARTMENT

See also Internal Revenue Service.

Notices

Sheet glass from Belgium; tentative negative determination 296

WORKPLACE STANDARDS ADMINISTRATION**Notices**

Description of organization 307

List of CFR Parts Affected

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

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1971, and specifies how they are affected.

5 CFR		24 CFR		41 CFR	
213 (4 documents)	261	1914	263	1-1	288
7 CFR		1915	264	1-2	288
270	261	26 CFR		50-201	288
301	261	1	266	50-203	288
401	262	PROPOSED RULES:		42 CFR	
9 CFR		1	292	PROPOSED RULES:	
76	265	29 CFR		481 (2 documents)	293
13 CFR		4	285	49 CFR	
PROPOSED RULES:		6	287	571	289
121	294			PROPOSED RULES:	
				173	292

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission PART 213—EXCEPTED SERVICE Department of Justice

Section 213.3310 is amended to show that one position of Chief, Field Office, Anti-Trust Division, is no longer excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (1) of paragraph (d) of § 213.3310 is amended as set out below.

§ 213.3310 Department of Justice.

(d) *Anti-Trust Division.* (1) Chief, Field Office (three positions).

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

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

[F.R. Doc. 71-249; Filed, Jan. 7, 1971; 8:47 a.m.]

PART 213—EXCEPTED SERVICE

Department of Justice

Section 213.3310 is amended to show that three positions of Special Assistant to the Assistant Attorney General for Internal Security are excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (5) of paragraph (p) of § 213.3310 is added as set out below.

§ 213.3310 Department of Justice.

(p) *Internal Security Division.* * * * (5) Three Special Assistants to the Assistant Attorney General.

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

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

[F.R. Doc. 71-248; Filed, Jan. 7, 1971; 8:47 a.m.]

PART 213—EXCEPTED SERVICE

Department of the Interior

Section 213.3312 is amended to show that one position of Deputy Administrator, Alaska Power Administration, is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, paragraph (o) is added to § 213.3312 as set out below.

agraph (o) is added to § 213.3312 as set out below.

§ 213.3312 Department of the Interior.

(o) *Alaska Power Administration.* (1) Deputy Administrator.

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

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

[F.R. Doc. 71-246; Filed, Jan. 7, 1971; 8:47 a.m.]

PART 213—EXCEPTED SERVICE

Department of Transportation

Section 213.3394 is amended to show that the position of Special Assistant to the Assistant Secretary for Safety and Consumer Affairs and a second position of Special Assistant to the Assistant Secretary for Policy and International Affairs are excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (23) is added to paragraph (a) of § 213.3394 as set out below.

§ 213.3394 Department of Transportation.

(a) *Office of the Secretary.* * * * (21) Two Special Assistants to the Assistant Secretary for Policy and International Affairs.

(23) One Special Assistant to the Assistant Secretary for Safety and Consumer Affairs.

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

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

[F.R. Doc. 71-250; Filed, Jan. 7, 1971; 8:47 a.m.]

Title 7—AGRICULTURE

Chapter II—Food and Nutrition Service (Food Stamp Program), Department of Agriculture

SUBCHAPTER C—FOOD STAMP PROGRAM

PART 270—GENERAL INFORMATION AND DEFINITIONS

Definitions

Correction

In F.R. Doc. 70-17531 appearing at page 19737 in the issue of Wednesday,

December 30, 1970, the last line of paragraph (z) in § 270.2 should appear as the sixth line of that paragraph.

Chapter III—Agricultural Research Service, Department of Agriculture

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—Gypsy Moth and Brown-Tail Moth

REGULATED AREAS

Under the authority of § 301.45-2 of the Gypsy Moth and Brown-Tail Moth quarantine regulations, 7 CFR 301.45-2, as amended, a supplemental regulation designating regulated areas, 7 CFR 301.45-2a, is hereby amended as follows:

§ 301.45-2a Regulated areas; suppressive and generally infested areas.

(a) The civil divisions or parts of civil divisions described below are designated as gypsy moth regulated areas within the meaning of the provisions of this subpart; and such regulated areas are hereby divided into generally infested areas or suppressive areas as indicated below:

NEW JERSEY

(1) *Generally infested area.* The entire State.
(2) *Suppressive area.* None.

NEW YORK

(1) *Generally infested area.*
Albany County. The entire county.
Bronx County. The entire county.
Broome County. The towns of Binghamton, Colesville, Conklin, Dickinson, Kirkwood, Sanford, Vestal, and Windsor; and the city of Binghamton.

Chenango County. The towns of Afton, Bainbridge, and Guilford.

Clinton County. The entire county.
Columbia County. The entire county.

Delaware County. The entire county.
Dutchess County. The entire county.

Essex County. The towns of Chesterfield, Crown Point, Elizabethtown, Essex, Jay, Keene, Lewis, Minerva, Moriah, North Hudson, Schroon, Ticonderoga, Westport, Willisboro, and Wilmington.

Franklin County. The towns of Bangor, Belmont, Bombay, Burke, Chateaugay, Constable, Fort Covington, Malone, Moira, St. Regis Indian Reservation, and Westville.

Fulton County. The entire county.
Greene County. The entire county.

Hamilton County. The towns of Arletta, Benson, Hope, Indian Lake, Lake Pleasant, and Wells.

Herkimer County. The towns of Columbia, Danube, Fairfield, Frankfort, German Flatts, Herkimer, Litchfield, Little Falls, Manheim, Newport, Norway, Russia, Salisbury, Schuyler, Stark, Warren, and Winfield; and the city of Little Falls.

Kings County. The entire county.
Madison County. The town of Brookfield.

Montgomery County. The entire county.
Nassau County. The entire county.

New York County. The entire county.

Oneida County. The towns of Bridgewater, Deerfield, Kirkland, Marcy, Marshall, New Hartford, Paris, Sangerfield, Trenton, Westmoreland, and Whitestown; and the city of Utica.

Orange County. The entire county.
Otsego County. The entire county.
Putnam County. The entire county.
Queens County. The entire county.
Rensselaer County. The entire county.
Richmond County. The entire county.
Rockland County. The entire county.
St. Lawrence County. The towns of Brasher, Lawrence, and Massena.

Saratoga County. The entire county.
Schenectady County. The entire county.
Schoharie County. The entire county.
Suffolk County. The entire county.
Sullivan County. The entire county.
Ulster County. The entire county.
Warren County. The entire county.
Washington County. The entire county.
Westchester County. The entire county.

(2) *Suppressive area.*
Jefferson County. The towns of Brownville and Orleans.

PENNSYLVANIA

(1) *Generally infested area.*
Berks County. The entire county.
Bucks County. The entire county.
Carbon County. The entire county.
Centre County. The townships of Haines, Miles, and Penn; and the borough of Millheim.

Chester County. The entire county.
Columbia County. The entire county.
Dauphin County. The entire county.
Delaware County. The entire county.
Lackawanna County. The entire county.
Lancaster County. The entire county.
Lebanon County. The entire county.
Lehigh County. The entire county.
Luzerne County. The entire county.
Monroe County. The entire county.
Montgomery County. The entire county.
Montour County. The entire county.
Northampton County. The entire county.
Northumberland County. The entire county.

Philadelphia County. The entire county.
Pike County. The entire county.
Schuylkill County. The entire county.
Susquehanna County. The entire county.
Sullivan County. The entire county.
Wayne County. The entire county.
Wyoming County. The entire county.

(2) *Suppressive area.* None.

(b) The civil divisions or parts of civil divisions described below are designated as brown-tail moth, regulated areas within the meaning of the provisions of this subpart; and such regulated areas are hereby divided into generally infested areas or suppressive areas as indicated below:

MAINE

(1) *Generally infested area.*

Cumberland County. The towns of Brunswick, Cape Elizabeth, Cumberland, Falmouth, Freeport, Gray, Gorham, Harpswell, North Yarmouth, Pownal, Scarborough, Windham, and Yarmouth; the cities of Portland, South Portland, and Westbrook; and the offshore islands within the Casco Bay area of Cumberland County.

Sagadahoc County. The towns of Arrowsic, Georgetown, Phippsburg, West Bath, and Woolwich; the city of Bath; and the offshore islands within the Casco Bay area of Sagadahoc County.

(2) *Suppressive area.*

York County. The entire county.

MASSACHUSETTS

(1) *Generally infested area.*
Barnstable County. The towns of Barnstable, Dennis, Provincetown, Truro, and Yarmouth.

(2) *Suppressive area.*
Barnstable County. The towns of Brewster, Chatham, Eastham, Harwich, Orleans, and Wellfleet.

NEW HAMPSHIRE

(1) *Generally infested area.* None.
(2) *Suppressive area.*
Belknap County. The entire county.
Carroll County. The towns of Brookfield, Eppingham, Freedom, Moultonborough, Osipee, Sandwich, Tamworth, Wakefield, and Wolfeboro.

Hillsborough County. The entire county.
Merrimack County. The entire county.
Rockingham County. The entire county.
Strafford County. The entire county.

(Secs. 8 and 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33; 7 U.S.C. 161, 162, 150ee; 29 F.R. 16210, as amended; 7 CFR 301.45-2)

This amendment shall become effective January 8, 1971.

The Director of the Plant Protection Division has determined that infestations of the gypsy moth exist or are likely to exist in the civil divisions or parts of civil divisions listed as regulated areas in paragraph (a), or that it is necessary to regulate such areas because of their proximity to gypsy moth infestations or their inseparability for quarantine enforcement purposes from gypsy moth infested localities. The Director has also determined that infestations of the brown-tail moth exist or are likely to exist in the civil divisions or parts of civil divisions listed as regulated areas in paragraph (b), or that it is necessary to regulate such areas because of their proximity to brown-tail moth infestations or their inseparability for quarantine enforcement purposes from brown-tail moth infested localities.

The Director has further determined that each of the quarantined States, wherein less than the entire State is designated as a regulated area, is enforcing a quarantine or regulation with restrictions on intrastate movement of the regulated articles substantially the same as the restrictions on interstate movement of such articles imposed by the quarantine and regulations in this subpart, and that designation of less than the entire State as a regulated area will otherwise be adequate to prevent the interstate spread of the gypsy moth and brown-tail moth. Accordingly, such civil divisions listed above in paragraph (a) are designated as gypsy moth regulated areas and those listed in paragraph (b) are designated as brown-tail moth regulated areas.

This amendment adds to the gypsy moth regulated area all or parts of the following previously nonregulated counties: Cumberland County in New Jersey; Broome, Chenango, Jefferson, and St. Lawrence Counties in New York; and Chester, Columbia, Dauphin, Delaware, Lancaster, Lebanon, Montour, Northumberland, and Sullivan Counties in Pennsylvania. The gypsy moth regulated area has been extended in some previously regulated counties and some counties

were changed from suppressive to generally infested areas. With the addition of Cumberland County and the nonregulated portions of previously regulated counties in New Jersey, the entire State of New Jersey is now under Federal regulation for gypsy moth.

This amendment adds to the brown-tail moth regulated area parts of the previously nonregulated counties of Cumberland and Sagadahoc in Maine. It also removes from Federal regulation Essex County and a portion of Barnstable County in Massachusetts; and Cheshire, Grafton, and Sullivan Counties and a portion of Carroll County in New Hampshire. Several counties have been changed from generally infested to suppressive areas. This is the first time that suppressive areas have been listed in the brown-tail moth regulated areas.

This document imposes restrictions that are necessary in order to prevent the dissemination of the gypsy moth and the brown-tail moth and should be made effective promptly to accomplish its purpose in the public interest. Accordingly, it is found upon good cause, under the administrative procedure provisions of 5 U.S.C. 553, that notice and other public procedure with respect to the foregoing regulation are impracticable and contrary to the public interest, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Hyattsville, Md., this 31st day of December 1970.

D. R. SHEPHERD,
 Director,
 Plant Protection Division.

[F.R. Doc. 71-138; Filed, Jan. 7, 1971; 8:45 a.m.]

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1969 and Succeeding Crop Years

APPENDIX; COUNTIES DESIGNATED FOR CORN CROP INSURANCE

Pursuant to authority contained in § 401.101 of the above-identified regulations, as amended, the following counties are hereby added to the list of counties published July 16, 1970 (35 F.R. 11365), which were designated for corn crop insurance for the 1971 crop year.

KANSAS

Cheyenne. Thomas.
 Kearny.

NEBRASKA

Adams. Fillmore.
 Clay. Scotts Bluff.

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

[SEAL] FRANK W. NAYLOR, Jr.,
 Acting Manager, Federal
 Crop Insurance Corporation.

[F.R. Doc. 71-235; Filed, Jan. 7, 1971; 8:46 a.m.]

Title 24—HOUSING AND HOUSING CREDIT

Chapter VII—Federal Insurance Administration, Department of Housing and Urban Development

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

List of Designated Areas

Section 1914.4 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1914.4 List of designated areas.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
Arizona	Maricopa	Unincorporated areas.	E 04 013 0000 01 through E 04 013 0000 03	Arizona State Land Department, Fourth Floor Capital Annex East, Phoenix, AZ 85007. Arizona Department of Insurance, Post Office Box 7098, 718 West Glenrosa, Phoenix, AZ 85011.	Flood Control District, Maricopa County, 3325 West Durango St., Phoenix, AZ 85009.	Dec. 31, 1970.
Arkansas	Pope	Russellville	I 05 115 3450 03 through I 05 115 3450 09	Arkansas Soil and Water Conservation Commission, Room 151, State Capitol Bldg., Little Rock, AR 72201. Arkansas Insurance Department, 400 University Tower Bldg., Little Rock, AR 72204.	Office of the City Building Official, City of Russellville, Russellville, AR 72801.	Do.
California	Contra Costa	Martinez	E 06 013 2090 01 through E 06 013 2090 08	Department of Water Resources, Post Office Box 388, Sacramento, CA 95802. California Insurance Department, 107 South Broadway, Los Angeles, CA 90012, and 1407 Market St., San Francisco, CA 94103.	Office of the City Engineer, 525 Henrietta St., Martinez, CA 94553.	Do.
Do.	Los Angeles	Azusa	E 06 037 0230 01 E 06 037 0230 02	do.	Office of the Director of Public Works, City of Azusa, 213 East Foothill Blvd., Azusa, CA 91702.	Do.
Do.	Marin	San Rafael	E 06 041 3410 01 through E 06 041 3410 14	do.	Public Works Office, Room 301, City Hall, 1400 Fifth Ave., San Rafael, CA 94902.	Do.
Do.	San Bernardino	Montclair	E 06 071 2238 01	do.	Office of the City Clerk, 5111 Benito St., Post Office Box 2308, Montclair, CA 91763.	Do.
Do.	do.	San Bernardino	E 06 071 3201 01 through E 06 071 3201 16	do.	Office of the City Clerk, City Hall, City of San Bernardino, San Bernardino, CA 92401.	Do.
Do.	do.	Upland	E 06 071 4000 01 through E 06 071 4000 04	do.	City Administrative Offices, 123 East D St., Upland, CA 91786.	Do.
Louisiana	St. Tammany Parish	Unincorporated areas.	E 22 103 0000 01 through E 22 103 0000 12	State Department of Public Works, Post Office Box 44155, Capitol Station, Baton Rouge, LA 70804. Louisiana Insurance Department, Box 44214, Capitol Station, Baton Rouge, LA 70804.	Department of Planning and Engineering, Suite M3, Courthouse, Covington, LA 70433.	Do.
New Jersey	Cape May	Avalon	I 34 009 0130 03 I 34 009 0130 04	New Jersey Department of Environmental Protection, Division of Water Policy and Supply, Box 1390, Trenton, NJ 08625. Department of Banking and Insurance, State House Annex, Trenton, NJ 08625.	Office of the Borough Clerk, Borough Hall, 32d and Dune Dr., Avalon, NJ 08202.	Do.
Do.	do.	Cape May Point	I 34 009 0550 02	do.	Office of the Cape May Point Building Inspector, Borough Pump House, Light House Ave., Cape May Point, NJ 08212.	Do.
Do.	do.	Sea Isle City	I 34 009 3000 03 I 34 009 3000 04	do.	Office of the City Clerk, City Hall, 4416 Landis Ave., Sea Isle City, NJ 08243.	Do.
Do.	do.	Stone Harbor	I 34 009 3260 03 I 34 009 3260 04	do.	Borough Clerk's Office, Municipal Bldg, 95th and Second Ave., Stone Harbor, NJ 08247.	Do.
Do.	do.	West Wildwood	I 34 009 3630 02	do.	Borough of West Wildwood, 701 West Glenwood Ave., West Wildwood NJ 08260.	Do.
Do.	do.	Wildwood	I 34 009 3670 02	do.	Office of the Treasurer, City of Wildwood, Municipal Bldg, 4400 New Jersey Ave., Wildwood, NJ 08260.	Do.
Ohio	Erie	Vermilion	I 39 043 8400 03 through I 39 043 8400 05	Ohio Department of Natural Resources, Columbus, Ohio 43215. Ohio Department of Insurance, 115 East Rich St., Columbus, OH 43215.	Office of the Clerk of Council, City Hall, Vermilion, Ohio 44089.	Do.
Do.	Lorain	Brownhelm Township	I 39 063 0710 02	do.	Office of the Township Clerk, 8372 Claus Rd., Amherst, OH 44001.	Do.
Oregon	Jackson	Unincorporated areas.	E 41 029 0000 01 through E 41 029 0000 07	Executive Department, State of Oregon, Salem, Ore. 97310. Oregon Department of Commerce, Insurance Division, 158 12th St. N.E., Salem, OR 97310.	Jackson County Planning Department, Courthouse, Medford, OR 97501.	Do.
Do.	Josephine	do.	E 41 033 0000 01 through E 41 033 0000 10	do.	Josephine County Planning Office, 130 Northwest B St., Grants Pass, OR 97526.	Do.
Do.	Lane	do.	E 41 039 0000 01 through E 41 039 0000 05	do.	Office of General Administration, Lane County Courthouse, 125 Eighth Ave. East, Eugene, OR 97401.	Do.
Do.	do.	Springfield	E 41 039 1960 01 through E 41 039 1960 03	do.	Office of the City Manager, 223 North A, Springfield, OR 97477.	Do.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
Texas	Hunt	Greenville	E 48 231 2860 01 through E 48 231 2860 07	Texas Water Development Board, 301 West Second St., Austin, TX 78711. State Board of Insurance, 1110 San Jacinto St., Austin, TX 78701.	Office of the Department of Community Development, City of Greenville, Greenville, Tex. 75401.	Dec. 31, 1970.
Do.	Montgomery	Pinehurst	E 48 330 5357 01	do.	Office of the City Tax Assessor-Collector, Johnson's Butane, 1627 West Strickland Dr., Orange, TX 77630.	Do.
Do.	Tarrant	Arlington	I 48 439 0260 03 through I 48 439 0260 11	do.	Office of the Administrative Assistant, Post Office Box 231, Arlington, TX 76010.	Do.
Wisconsin	Crawford	Prairie du Chien	I 55 023 3890 02 through I 55 023 3890 03	Department of Natural Resources, Post Office Box 459, Madison, WI 53701. Wisconsin Insurance Department, 4802 Sheboygan Ave., Madison, WI 53081.	Municipal Office, 207 West Blackhawk Ave., Prairie du Chien, WI 53701.	Do.
Do.	Pierce	Unincorporated areas.	E 55 003 0000 01	do.	Pierce County Zoning Office, Court House, Ellsworth, WI 54011.	Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended (secs. 408-410, Public Law 91-152, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969)

Issued: December 31, 1970.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[F.R. Doc. 71-145; Filed, Jan. 7, 1971; 8:45 a.m.]

PART 1915—IDENTIFICATION OF FLOOD-PRONE AREAS

List of Flood Hazard Areas

Section 1915.3 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:
§ 1915.3 List of flood hazard areas.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
Arizona	Maricopa	Unincorporated areas.	T 04 013 0000 01 through T 04 013 0000 03	Arizona State Land Department, Fourth Floor Capital Annex East, Phoenix, AZ 85007. Arizona Department of Insurance, Post Office Box 7098, 718 West Glenrosa, Phoenix, AZ 85011.	Flood Control District, Maricopa County, 3325 West Durango St., Phoenix, AZ 85009.	Dec. 31, 1970.
Arkansas	Pope	Russellville	H 05 115 3450 03 through H 05 115 3450 09	Arkansas Soil and Water Conservation Commission, Room 151, State Capitol Bldg., Little Rock, AR 72201. Arkansas Insurance Department, 400 University Tower Bldg., Little Rock, AR 72204.	Office of the City Building Official, City of Russellville, Russellville, Ark. 72801.	July 17, 1970.
California	Contra Costa	Martinez	T 06 013 2090 01 through T 06 013 2090 08	Department of Water Resources, Post Office Box 388, Sacramento, CA 95802. California Insurance Department, 107 South Broadway, Los Angeles, CA 90012, and 1407 Market St., San Francisco, CA 94103.	Office of the City Engineer, 525 Henrietta St., Martinez, CA 94553.	Dec. 31, 1970.
Do.	Los Angeles	Azusa	T 06 037 0230 01 through T 06 037 0230 02	do.	Office of the Director of Public Works, City of Azusa, 213 East Foothill Blvd., Azusa, CA 91702.	Do.
Do.	Marin	San Rafael	T 06 041 3410 01 through T 06 041 3410 14	do.	Public Works Office, Room 301, City Hall, 1400 Fifth Ave., San Rafael, CA 94902.	Do.
Do.	San Bernardino	Montclair	T 06 071 2238 01	do.	Office of the City Clerk, 5111 Benito St., Post Office Box 2308, Montclair, CA 91763.	Do.
Do.	do.	San Bernardino	T 06 071 3201 01 through T 06 071 3201 16	do.	Office of the City Clerk, City Hall, City of San Bernardino, San Bernardino, CA 92401.	Do.
Do.	do.	Upland	T 06 071 4000 01 through T 06 071 4000 04	do.	City Administrative Offices, 123 East D St., Upland, CA 91786.	Do.
Louisiana	St. Tammany Parish	Unincorporated areas.	T 22 103 0000 01 through T 22 103 0000 12	State Department of Public Works, Post Office Box 44155, Capitol Station, Baton Rouge, LA 70804. Louisiana Insurance Department, Box 44214, Capitol Station, Baton Rouge, LA 70804.	Department of Planning and Engineering, Suite M3, Courthouse, Covington, LA 70433.	Do.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
New Jersey	Cape May	Avalon	H 34 009 0130 03 H 34 009 0130 04	New Jersey Department of Environmental Protection, Division of Water Policy and Supply, Box 1390, Trenton, NJ 08625.	Office of the Borough Clerk, Borough Hall, 32d and Dune Dr., Avalon, NJ 08202.	Apr. 17, 1970.
Do	do	Cape May Point	H 34 009 0550 02	do	Office of the Cape May Point Building Inspector, Borough Pump House, Light House Ave., Cape May Point, NJ 08212.	June 27, 1970.
Do	do	Sea Isle City	H 34 009 3000 03 H 34 009 3000 04	do	Office of the City Clerk, City Hall, 4416 Landis Ave., Sea Isle City, NJ 08243.	June 16, 1970.
Do	do	Stone Harbor	H 34 009 3260 03 H 34 009 3260 04	do	Borough Clerk's Office, Municipal Bldg., 95th and Second Ave., Stone Harbor, NJ 08247.	Oct. 16, 1970
Do	do	West Wildwood	H 34 009 3630 02	do	Borough of West Wildwood, 701 West Glenwood Ave., West Wildwood, NJ 08260.	Sept. 8, 1970.
Do	do	Wildwood	H 34 009 3670 02	do	Office of the Treasurer, City of Wildwood, Municipal Bldg., 4400 New Jersey Ave., Wildwood, NJ 08260.	June 5, 1970.
Ohio	Erie	Vermillion	H 39 043 8400 03 through H 39 043 8400 05	Ohio Department of Natural Resources, Columbus, Ohio 43215. Ohio Department of Insurance, 115 East Rich St., Columbus, OH 43215.	Office of the Clerk of Council, City Hall, Vermillion, Ohio 44089.	May 5, 1970.
Do	Lorain	Brownhelm Township	H 39 093 0710 02	do	Office of the Township Clerk, 8372 Claus Rd., Amherst, OH 44001.	Aug. 20, 1970.
Oregon	Jackson	Unincorporated areas.	T 41 029 0000 01 through T 41 029 0000 07	Executive Department, State of Oregon, Salem, Oreg. 97310.	Jackson County Planning Department, Courthouse, Medford, O R 97501.	Dec. 31, 1970.
Do	Josephine	do	T 41 033 0000 01 through T 41 033 0000 10	Oregon Department of Commerce, Insurance Division, 158 12th St. N.E., Salem, O R 97310.	Josephine County Planning Office, 130 Northwest B St., Grants Pass, O R 97526.	Do.
Do	Lane	do	T 41 039 0000 01 through T 41 039 0000 05	do	Office of General Administration, Lane County Courthouse, 125 Eighth Ave. East, Eugene, O R 97401.	Do.
Do	do	Springfield	T 41 039 1960 01 through T 41 039 1960 03	do	Office of the City Manager, 223 North A, Springfield, O R 97477.	Do.
Texas	Hunt	Greenville	T 48 231 2860 01 through T 48 231 2860 07	Texas Water Development Board, 301 West Second St., Austin, TX 78711. State Board of Insurance, 1110 San Jacinto St., Austin, TX 7870 .	Office of the Department of Community Development, City of Greenville, Greenville, Tex. 75401.	Do.
Do	Montgomery	Pinehurst	T 48 339 5357 01	do	Office of the City Tax Assessor-Collector, Johnson's Butane, 1627 West Strickland Dr., Orange, TX 77630.	Do.
Do	Tarrant	Arlington	H 48 439 0260 03 through H 48 439 0260 11	do	Office of the Administrative Assistant, Post Office Box 331, Arlington, TX 76010.	Aug. 6, 1970.
Wisconsin	Crawford	Prairie du Chien	H 55 023 3890 02 H 55 023 3890 03	Department of Natural Resources, Post Office Box 450, Madison, WI 53701. Wisconsin Insurance Department, 4802 Sheboygan Ave., Madison, WI 53081.	Municipal Office, 207 West Blackhawk Ave., Prairie du Chien, WI 53701.	May 22, 1970.
Do	Pierce	Unincorporated areas.	T 55 093 0000 01	do	Pierce County Zoning Office, Court House, Ellsworth, WI 54011.	Dec. 31, 1970.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended (secs. 408-410, Public Law 91-152, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969)

Issued: December 31, 1970.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[F.R. Doc. 71-146; Filed, Jan. 7, 1971; 8:45 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

[Docket No. 70-319]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Areas Quarantined

Pursuant to provisions of the Act of May 29, 1884, as amended, the Act of

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

1. In § 76.2, paragraph (e) (15) relating to the State of Alabama is amended to read:

(15) *Alabama.* (i) That portion of Dallas County bounded by a line beginning at the junction of U.S. Highway 80 and the Alabama River; thence, following

U.S. Highway 80 in a southeasterly direction to State Highway 41; thence, following State Highway 41 in a generally southwesterly direction to Cedar Creek; thence, following the north bank of Cedar Creek in a generally northwesterly direction to the Alabama River; thence, following the east bank of the Alabama River in a generally northeasterly direction to its junction with U.S. Highway 80.

(ii) That portion of Covington County bounded by a line beginning at the junction of the Covington-Crenshaw-Coffee County lines; thence, following the Covington-Coffee County line in a southerly direction to U.S. Highway 84; thence,

following U.S. Highway 84 in a south-westerly direction to Secondary Road 11; thence, following Secondary Road 11 in a southwesterly direction to Secondary Road 77; thence, following Secondary Road 77 in a northeasterly direction to the Mount Gilead-Five Points Road; thence, following the Mount Gilead-Five Points Road in a northeasterly direction to Primary Road 43; thence, following Primary Road 43 in a northeasterly direction to the Covington-Crenshaw County line; thence, following the Covington-Crenshaw County line in a generally southeasterly direction to its junction with the Coffee County line.

2. In § 76.2, the reference to the State of Indiana in the introductory portion of paragraph (e) and paragraph (e) (3) relating to the State of Indiana are deleted.

(Secs. 4-7, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791-792, as amended, secs. 1-4, 33 Stat. 1264, 1265, as amended, sec. 1, 75 Stat. 481, secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111, 112, 113, 114g, 115, 117, 120, 121, 128-126, 134b, 134f; 29 F.R. 16210, as amended)

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

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

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

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

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

days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 5th day of January 1971.

F. J. MULHERN,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 71-268; Filed, Jan. 7, 1971;
8:49 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7084]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Gain From Dispositions of Certain Depreciable Realty

On May 12, 1966, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) to conform the regulations to certain provisions of section 231 of the Revenue Act of 1964 (78 Stat. 100), relating to gain from dispositions of certain depreciable realty, was published in the FEDERAL REGISTER (31 F.R. 6966). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment as proposed is hereby adopted, subject to the changes which follow. The amendment does not reflect the amendments made to section 1250 by the Tax Reform Act of 1969 (83 Stat. 487).

PARAGRAPH 1. Paragraph (c) (3) (i) of § 1.170-1 is amended.

PAR. 2. Paragraph (c) (1) of § 1.453-9 is amended.

PAR. 3. Paragraph (c) of § 1.751-1 is amended by revising subparagraphs (4) (ii) and (6) (ii).

PAR. 4. Section 1.1245-2(a) (8) is amended.

PAR. 5. Section 1.1245-6(b) is revised.

PAR. 6. Section 1.1250 is revised.

PAR. 7. Section 1.1250-1 is revised.

PAR. 8. Section 1.1250-2 is amended by revising paragraphs (a), (b), (c) (1) and (2) (iii), and (d) (2), (3) (ii), (4) (ii), and (6).

PAR. 9. Section 1.1250-3 is revised.

PAR. 10. Section 1.1250-4 is amended by revising paragraphs (a), (b) (2), (f), and (g).

PAR. 11. Section 1.1250-5 is revised.

(Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

Approved: December 31, 1970.

EDWIN S. COHEN,
Assistant Secretary
of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) to certain

provisions of section 231 of the Revenue Act of 1964 (78 Stat. 100), relating to gain from dispositions of certain depreciable realty, such regulations are amended as follows:

PARAGRAPH 1. Paragraph (c) (3) (i) and (ii) of § 1.170-1 is amended to read as follows:

§ 1.170-1 Charitable, etc., contributions and gifts; allowance of deduction.

(c) Contribution in property. * * *

(3) Reduction for depreciable property. (i) With respect to a charitable contribution of section 1245 property (as defined in section 1245(a) (3)), or section 1250 property (as defined in section 1250(c)), section 170(e) requires that the amount of the charitable contribution taken into account under section 170 shall be reduced by the amount which would have been treated (but was not actually treated) as gain to which section 1245(a) (1) or 1250(a) (relating to gain from dispositions of depreciable property) applies if the property contributed had been sold at its fair market value (determined at the time of such contribution).

(ii) Section 170(e) applies to charitable contributions of section 1245 property in taxable years beginning after December 31, 1962, except that in respect of section 1245 property which is an elevator or escalator section 170(e) applies to charitable contributions after December 31, 1963. Section 170(e) applies to charitable contributions of section 1250 property after December 31, 1963.

PAR. 2. Section 1.301 is amended by revising subsections (b) (1) (B) (ii) and (d) (2) (B) of section 301 and the historical note to read as follows:

§ 1.301 Statutory provisions; distributions of property.

SEC. 301. Distributions of property. * * *
(b) Amount distributed—(1) General rule. * * *

(B) Corporate distributees. * * *
(ii) The adjusted basis (in the hands of the distributing corporation immediately before the distribution) of the other property received, increased in the amount of gain to the distributing corporation which is recognized under subsection (b) or (c) of section 311, under section 341(f), or under section 1245(a) or 1250(a).

(d) Basis—(1) Noncorporate distributees. * * *

(B) Corporate distributees. * * *
(ii) The adjusted basis (in the hands of the distributing corporation immediately before the distribution) of such property, increased in the amount of gain to the distributing corporation which is recognized under subsection (b) or (c) of section 311, under section 341(f), or under section 1245(a) or 1250(a).

[Sec. 301 as amended by sec. 5 (a) and (b), Rev. Act 1962 (76 Stat. 977); sec. 13(f) (2), Rev. Act 1962 (76 Stat. 1035); sec. 231(b) (2), Rev. Act 1964 (78 Stat. 105); Act of Aug. 22, 1964 (Pub. Law 88-484, 78 Stat. 597)]

PAR. 3. Section 1.301-1 is amended by revising paragraph (d), paragraph (h)

(2) (ii) (b), paragraph (j) (1), example (1) in paragraph (k), and paragraph (n) (2). These revised provisions read as follows:

§ 1.301-1 Rules applicable with respect to distributions of money and other property.

(d) *Distributions of property to corporate shareholders.* If property (other than money and other than the obligations of the distributing corporation) is distributed in kind to a shareholder which is a corporation and the fair market value of such property is greater than the adjusted basis in the hands of the distributing corporation, only the adjusted basis of such property (determined immediately before the distribution and increased for any gain recognized to the distributing corporation under section 311 (b) and (c) and section 1245(a) or 1250(a)) shall be taken into account under section 301(c). Thus, in such a case, the amount of such a dividend in kind under section 301(c) (1) may not exceed such adjusted basis. Similarly, in such cases where the distribution is not out of earnings and profits, the amount of the reduction in basis of the shareholder's stock and the amount of any gain resulting from such distribution are determined by reference to the adjusted basis of the property distributed. If the property distributed is money, the amount of the distribution shall be the amount of such money. If the property distributed consists of the obligations of the distributing corporation, or stock of the distributing corporation treated as property under section 305(b), or rights to acquire such stock treated as property under section 305(b), the amount of such distribution shall be an amount equal to the fair market value of such obligations, stock, or rights. For special rules as to distributions by a foreign corporation of property (other than money, the obligations of the distributing corporation, stock of the distributing corporation treated as property under section 305(b), or rights to acquire such stock treated as property under section 305(b)) after December 31, 1962, to a shareholder which is a corporation, see section 301(b) (1) (C) and paragraph (n) of this section.

(h) *Basis.* * * *

(2) * * *

(ii) * * *

(b) The adjusted basis (in the hands of the distributing corporation immediately before the distribution) of such property increased in the amount of gain to the distributing corporation which is recognized under section 311(b) (relating to distributions of LIFO inventory), section 311(c) (relating to distributions of property subject to liabilities in excess of basis) or section 1245(a) or 1250(a) (relating to gain from dispositions of certain depreciable property);

(j) *Transfers for less than fair market value.* * * *

(1) Where the fair market value of the property equals or exceeds its adjusted basis in the hands of the distributing corporation the amount of the distribution shall be the excess of the adjusted basis (increased by the amount of gain recognized under section 311 (b) or (c) or section 1245(a) or 1250(a) to the distributing corporation) over the amount paid for the property;

(k) *Application of rule respecting transfers for less than fair market value.* * * *

Example (1). On January 1, 1955, A, an individual shareholder of corporation X, purchased property from that corporation for \$20. The fair market value of such property was \$100, and its basis in the hands of corporation X was \$25. The amount of the distribution determined under section 301(b) is \$80. If A were a corporation, the amount of the distribution would be \$5 (assuming that sections 311 (b) and (c), 1245(a), and 1250(a) do not apply), the excess of the basis of the property in the hands of corporation X over the amount received therefor. The basis of such property to corporation A would be \$25. If the basis of the property in the hands of corporation X were \$10, the corporate shareholder, A, would not receive a distribution. The basis of such property to corporation A would be \$20. Whether or not A is a corporation, the excess of the amount paid over the basis of the property in the hands of corporation X (\$20 over \$10) would be a taxable gain to corporation X.

(n) *Distributions of certain property by foreign corporations to corporate shareholders.* * * *

(2) If any deduction is allowable to the recipient under section 245 with respect to a distribution of property described in subparagraph (1) of this paragraph and if the fair market value of the property exceeds its adjusted basis in the hands of the distributing corporation (increased by any gain to the distributing corporation recognized under section 311 (b) or (c), or under section 1245 (a) or 1250(a)), then the amount taken into account under section 301(c) shall be determined under subparagraph (3) of this paragraph. In order to determine such amount—

(i) First, compute the portion, if any, of the adjusted basis of the property (increased by any gain to the distributing corporation recognized under section 311 (b) or (c), or under section 1245(a) or 1250(a)) which is out of earnings and profits of the taxable year (within the meaning of section 316(a) (2)).

(ii) Second, compute the portion, if any, of the adjusted basis of the property (increased by any gain to the distributing corporation recognized under section 311 (b) or (c), or under section 1245(a) or 1250(a)) which is out of earnings and profits accumulated during the portion of the uninterrupted period described in section 245(a) which ends at the beginning of the taxable year.

(iii) Third, compute the portion, if any, of the adjusted basis of the property (increased by any gain to the distributing corporation recognized under section 311 (b) or (c), or under section

1245(a) or 1250(a)) which is out of sources other than earnings and profits of the taxable year and earnings and profits accumulated during the uninterrupted period described in section 245(a).

(iv) Fourth, with respect to each of the portions computed under subdivisions (i), (ii), and (iii) of this subparagraph, determine the proportionate part of the fair market value of the property attributable to such portion. The proportionate part of the fair market value attributable to each portion shall be such fair market value multiplied by the ratio which such portion bears to the sum of all portions.

PAR. 4. Section 1.312 is amended by revising section 312(c) (3) and the historical note to read as follows:

§ 1.312 Statutory provisions; effect on earnings and profits.

Sec. 312. *Effect on earnings and profits.* * * *

(c) *Adjustments for liabilities, etc.* * * *

(3) Any gain to the corporation recognized under subsection (b) or (c) of section 311 or under section 1245(a) or 1250(a).

[Sec. 312 as amended by sec. 13(f) (3), Rev. Act 1962 (76 Stat. 1035); sec. 231(b) (3), Rev. Act 1964 (78 Stat. 105)]

PAR. 5. Section 1.312-3 is amended to read as follows:

§ 1.312-3 Liabilities.

The amount of any reductions in earnings and profits described in section 312 (a) or (b) shall be (a) reduced by the amount of any liability to which the property distributed was subject and by the amount of any other liability of the corporation assumed by the shareholder in connection with such distribution, and (b) increased by the amount of gain recognized to the corporation under section 311 (b) or (c) or under section 1245(a) or 1250(a).

PAR. 6. Paragraph (c) (1) of § 1.453-9 is amended to read as follows:

§ 1.453-9 Gain or loss on disposition of installment obligations.

(c) *Disposition from which no gain or loss is recognized.* (1) (i) Under section 453(d) (4) (A), no gain or loss shall be recognized to a distributing corporation with respect to the distribution of installment obligations if the distribution is made, pursuant to a plan for the complete liquidation of a subsidiary meeting the requirements of section 332, to a corporation in the hands of which no gain or loss is recognized with respect to such distribution. However, if the basis of the property of the liquidating corporation in the hands of the distributee is determined under section 334(b) (2), then the preceding sentence shall not apply to the extent that under section 453(d) (1) gain to the distributing corporation would be considered as gain to which section 1245(a) (1) or 1250(a) relating to gain from dispositions of depreciable property) applies, computed under the principles of paragraph (d) of § 1.1245-6 or

paragraph (c) (6) of § 1.1250-1, whichever is applicable.

(ii) Under section 453(d) (4) (B), no gain or loss shall be recognized to a distributing corporation with respect to the distribution of installment obligations if the distribution is made, pursuant to a plan for the complete liquidation of a corporation which meets the requirements of section 337, under conditions whereby no gain or loss would have been recognized to the corporation had such installment obligations been sold or exchanged on the day of the distribution. The preceding sentence shall not apply to the extent that under section 453(d) (1) gain to the distributing corporation would be considered as gain to which section 1245(a) (1) or 1250(a) applies, computed under the principles of paragraph (d) of § 1.1245-6 or paragraph (c) (6) of § 1.1250-1, whichever is applicable.

PAR. 7. Section 1.751 is amended by revising section 751(c) and the historical note to read as follows:

§ 1.751 Statutory provisions; unrealized receivables and inventory items.

Sec. 751. *Unrealized receivables and inventory items.* * * *

(c) *Unrealized receivables.* For purposes of this subchapter, the term "unrealized receivables" includes, to the extent not previously includible in income under the method of accounting used by the partnership, any rights (contractual or otherwise) to payment for—

- (1) Goods delivered, or to be delivered, to the extent the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or
- (2) Services rendered, or to be rendered.

For purposes of this section and sections 731, 736, and 741, such term also includes section 1245 property (as defined in section 1245(a) (3)) and section 1250 property (as defined in section 1250(c)), but only to the extent of the amount which would be treated as gain to which section 1245(a) or 1250(a) would apply if (at the time of the transaction described in this section or section 731, 736, or 741, as the case may be) such property had been sold by the partnership at its fair market value.

[Sec. 751 as amended by sec. 13(f) (1), Rev. Act 1962 (76 Stat. 1035); sec. 231(b) (6), Rev. Act 1964 (78 Stat. 105)]

PAR. 8. Paragraph (c) of § 1.751-1 is amended by revising subparagraphs (4), (5), and (6) to read as follows:

§ 1.751-1 Unrealized receivables and inventory items.

(c) *Unrealized receivables.* * * *

(4)(i) With respect to any taxable year of a partnership beginning after December 31, 1962, the term "unrealized receivables," for purposes of this section and sections 731, 736, 741, and 751, also includes "potential section 1245 income." With respect to each item of partnership section 1245 property (as defined in sec. 1245(a) (3)), "potential section 1245 income" is the amount which would be treated as gain to which section 1245(a)

(1) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the item of section 1245 property were sold by the partnership at its fair market value. See paragraph (e) (1) of § 1.1245-1. For example, if a partnership would recognize under section 1245(a) (1) gain of \$600 upon a sale of one item of section 1245 property and gain of \$300 upon a sale of its only other item of such property, the potential section 1245 income of the partnership would be \$900.

(ii) With respect to any taxable year of a partnership ending after December 31, 1963, the term "unrealized receivables," for purposes of this section and sections 731, 736, 741, and 751, also includes "potential section 1250 income." With respect to each item of partnership section 1250 property (as defined in section 1250(c)), "potential section 1250 income" is the amount which would be treated as gain to which section 1250(a) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the item of section 1250 property were sold by the partnership at its fair market value. See paragraph (f) (1) of § 1.1250-1.

(iii) For purposes of determining potential section 1245 income or potential section 1250 income, any arm's-length agreement between the buyer and seller, or between the partnership and distributee partner, will generally establish the fair market value of section 1245 property or section 1250 property (as the case may be).

(5) For purposes of subtitle A of the Code, the basis of potential section 1245 income and of potential section 1250 income is zero.

(6)(i) If (at the time of the transaction referred to in subparagraph (4) of this paragraph) a partnership holds section 1245 (or 1250) property and if (a) a partner had a special basis adjustment under section 743(b) in respect of the property, or (b) the basis under section 732 of the property if distributed to the partner would reflect a special basis adjustment under section 732(d), or (c) on the date a partner acquires his partnership interest by way of a sale or exchange (or upon death of another partner) the partnership owned the property and an election under section 754 was in effect with respect to the partnership, then the partner's share of the potential section 1245 (or 1250) income of the partnership in respect of the property shall be determined under subdivision (ii) of this subparagraph.

(ii) The partner's share of the potential section 1245 (or 1250) income of the partnership in respect of the property to which this subdivision applies shall be that amount of gain which the partner would recognize under paragraph (e) (3) of § 1.1245-1 (or paragraph (f) of § 1.1250-1) upon a sale of the property by the partnership, except that, for purposes of this subparagraph (a) the items which are allocated under (or in a manner consistent with the principles provided in) paragraph (e) (3) (ii) of § 1.1245-1 shall be allocated to the

partner in the same manner as his share of partnership property is determined, and (b) the amount of a special basis adjustment under section 732(d) shall be treated as if it were the amount of a special basis adjustment under section 743(b).

PAR. 9. Paragraph (c) (1) of § 1.1245-1 is amended to read as follows:

§ 1.1245-1 General rule for treatment of gain from dispositions of certain depreciable property.

(c) *Other dispositions.* (1) In the case of a disposition of section 1245 property other than by way of a sale, exchange, or involuntary conversion, the gain to which section 1245(a) (1) applies is the amount by which (i) the lower of the fair market value of the property on the date of disposition or the recomputed basis of the property, exceeds (ii) the adjusted basis of the property. If property is transferred by a corporation to a shareholder for an amount less than its fair market value in a sale or exchange, for purposes of applying section 1245 such transfer shall be treated as a disposition other than by way of a sale, exchange, or involuntary conversion.

PAR. 10. Paragraph (a) of § 1.1245-2 is amended by adding a new subparagraph (8). The new provision reads as follows:

§ 1.1245-2 Definition of recomputed basis.

(a) *General rule.* * * *

(8) *Exempt organizations.* In respect of property disposed of by an organization which is or was exempt from income taxes (within the meaning of section 501(a)), adjustments reflected in the adjusted basis (within the meaning of subparagraph (2) of this paragraph) shall include only depreciation or amortization allowed or allowable (i) in computing unrelated business taxable income (as defined in section 512(a)), or (ii) in computing taxable income of the organization (or a predecessor organization) for a period during which it was not exempt or, by reason of the application of section 502, 503, or 504, was denied its exemption.

PAR. 11. Paragraph (d) of § 1.1245-4 is amended by revising so much of subparagraph (4) as precedes subdivision (i) thereof, and by adding new subparagraph (7). These revised and added provisions read as follows:

§ 1.1245-4 Exceptions and limitations.

(d) *Limitation for like kind exchanges and involuntary conversions.* * * *

(4) *Application to disposition of section 1245 property and nonsection 1245 property in one transaction.* For purposes of this paragraph, if both section 1245 property and nonsection 1245 property are acquired as the result of one disposition in which both section 1245 property and nonsection 1245 property

are disposed of, then except as provided in subparagraph (7) of this paragraph—

(7) *Coordination with section 1250.* For purposes of this paragraph, if section 1245 property and section 1250 property are disposed of in one transaction in which the property acquired includes section 1250 property, the allocation rules of paragraph (d) (6) of § 1.1250-3 shall apply.

PAR. 12. Paragraphs (b) and (e) of § 1.1245-6 are amended to read as follows:

§ 1.1245-6 Relation of section 1245 to other sections.

(b) *Nonrecognition sections overridden.* The nonrecognition provisions of subtitle A of the Code, which section 1245 overrides include, but are not limited to, sections 267(d), 311(a), 336, 337, 501(a), and 512(b) (5). See section 1245 (b) for the extent to which section 1245(a) (1) overrides sections 332, 351, 361, 371(a), 374(a), 721, 731, 1031, 1033, 1071, and 1081 (b) (1) and (d) (1) (A). For limitation on amount of adjustments reflected in adjusted basis of property disposed of by an organization exempt from income taxes (within the meaning of section 501(a)), see paragraph (a) (8) of § 1.1245-2.

(e) *Exempt income.* The fact that section 1245 provides for recognition of gain as ordinary income does not change into taxable income any income which is exempt under section 115 (relating to income of states, etc.), 892 (relating to income of foreign governments), or 894 (relating to income exempt under treaties).

PAR. 13. There are inserted immediately after § 1.1249-1 the following new sections:

§ 1.1250 Statutory provisions; gain from dispositions of certain depreciable realty.

Sec. 1250. *Gain from dispositions of certain depreciable realty*—(a) *General rule.* Except as otherwise provided in this section—

(1) *Additional depreciation after December 31, 1969.* If section 1250 property is disposed of after December 31, 1969, the applicable percentage of the lower of—

(A) That portion of the additional depreciation (as defined in subsection (b) (1) or (4)) attributable to periods after December 31, 1969, in respect of the property, or

(B) The excess of—

(i) The amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such property (in the case of any other disposition), over

(ii) The adjusted basis of such property,

shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(c) *Applicable percentage.* For purposes of paragraph (1), the term "applicable percentage" means—

(i) In the case of section 1250 property disposed of pursuant to a written contract which

was, on July 24, 1969, and at all times thereafter, binding on the owner of the property, 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 20 full months;

(ii) In the case of section 1250 property constructed, reconstructed, or acquired by the taxpayer before January 1, 1975, with respect to which a mortgage is insured under section 221(d) (3) or 236 of the National Housing Act, or housing is financed or assisted by direct loan or tax abatement under similar provisions of State or local laws, and with respect to which the owner is subject to the restrictions described in section 1939(b) (1) (B), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 20 full months;

(iii) In the case of residential rental property (as defined in section 167(j) (2) (B)) other than that covered by clauses (i) and (ii), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;

(iv) In the case of section 1250 property with respect to which a depreciation deduction for rehabilitation expenditures was allowed under section 167(k), 100 percent minus 1 percentage point for each full month in excess of 100 full months after the date on which such property was placed in service; and

(v) In the case of all other section 1250 property, 100 percent.

Clauses (i), (ii), and (iii) shall not apply with respect to the additional depreciation described in subsection (b) (4).

(2) *Additional depreciation before January 1, 1970*—(A) *In general.* If section 1250 property is disposed of after December 31, 1963, and the amount determined under paragraph (1) (B) exceeds the amount determined under paragraph (1) (A), then the applicable percentage of the lower of—

(i) That portion of the additional depreciation attributable to periods before January 1, 1970, in respect of the property, or

(ii) The excess of the amount determined under paragraph (1) (B) over the amount determined under paragraph (1) (A),

shall also be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(B) *Applicable percentage.* For purposes of subparagraph (A) the term "applicable percentage" means 100 percent minus 1 percentage point for each full month the property was held after the date on which the property was held for 20 full months.

(b) *Additional depreciation defined.* For purposes of this section—

(1) *In general.* The term "additional depreciation" means, in the case of any property, the depreciation adjustments in respect of such property; except that, in the case of property held more than 1 year, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined for each taxable year under the straight line method of adjustment. For purposes of the preceding sentence, if a useful life (or salvage value) was used in determining the amount allowed as a deduction for any taxable year, such life (or value) shall be used in determining the depreciation adjustments which would have resulted for such year under the straight line method.

(2) *Property held by lessee.* In the case of a lessee, in determining the depreciation adjustments which would have resulted in re-

spect of any building erected (or other improvement made) on the leased property, or in respect of any cost of acquiring the lease, the lease period shall be treated as including all renewal periods. For purposes of the preceding sentence—

(A) The term "renewal period" means any period for which the lease may be renewed, extended, or continued pursuant to an option exercisable by the lessee, but

(B) The inclusion of renewal periods shall not extend the period taken into account by more than two-thirds of the period on the basis of which the depreciation adjustments were allowed.

(3) *Depreciation adjustments.* The term "depreciation adjustments" means, in respect of any property, all adjustments attributable to periods after December 31, 1963, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for exhaustion, wear and tear, obsolescence, or amortization (other than amortization under section 168, 169, or 185). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed.

(4) *Additional depreciation attributable to rehabilitation expenditures.* The term "additional depreciation" also means, in the case of section 1250 property with respect to which a depreciation deduction for rehabilitation expenditures was allowed under section 167(k), the depreciation adjustments allowed under such section to the extent attributable to such property, except that, in the case of such property held for more than 1 year after the rehabilitation expenditures so allowed were incurred, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined under the straight line method of adjustment without regard to the useful life permitted under section 167(k).

(c) *Section 1250 property.* For purposes of this section, the term "section 1250 property" means any real property (other than section 1245 property, as defined in section 1245(a) (3)) which is or has been property of a character subject to the allowance for depreciation provided in section 167.

(d) *Exceptions and limitations*—(1) *Gifts.* Subsection (a) shall not apply to a disposition by gift.

(2) *Transfers at death.* Except as provided in section 691 (relating to income in respect of a decedent), subsection (a) shall not apply to a transfer at death.

(3) *Certain tax-free transactions.* If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of sections 332, 351, 361, 371(a), 374(a), 721, or 731, then the amount of gain taken into account by the transferor under subsection (a) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). This paragraph shall not apply to a disposition to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

(4) *Like kind exchanges; involuntary conversions, etc.*—(A) *Recognition limit.* If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 1031 or 1033, then the amount of gain taken into account by the transferor under subsection

(a) shall not exceed the greater of the following:

(1) The amount of gain recognized on the disposition (determined without regard to this section), increased as provided in subparagraph (B), or

(2) The amount determined under subparagraph (C).

(B) *Increase for certain stock.* With respect to any transaction, the increase provided by this subparagraph is the amount equal to the fair market value of any stock purchased in a corporation which (but for this paragraph) would result in nonrecognition of gain under section 1033(a)(3)(A).

(C) *Adjustment where insufficient section 1250 property is acquired.* With respect to any transaction, the amount determined under this subparagraph shall be the excess of—

(1) The amount of gain which would (but for this paragraph) be taken into account under subsection (a), over

(2) The fair market value (or cost in the case of a transaction described in section 1033(a)(3)) of the section 1250 property acquired in the transaction.

(D) *Basis of property acquired.* In the case of property purchased by the taxpayer in a transaction described in section 1033(a)(3), in applying the last sentence of section 1033(c), such sentence shall be applied—

(1) First solely to section 1250 properties and to the amount of gain not taken into account under subsection (a) by reason of this paragraph, and

(2) Then to all purchased properties to which such sentence applies and to the remaining gain not recognized on the transaction as if the cost of the section 1250 properties were the basis of such properties computed under clause (1).

In the case of property acquired in any other transaction to which this paragraph applies, rules consistent with the preceding sentence shall be applied under regulations prescribed by the Secretary or his delegate.

(E) *Additional depreciation with respect to property disposed of.* In the case of any transaction described in section 1031 or 1033, the additional depreciation in respect of the section 1250 property acquired which is attributable to the section 1250 property disposed of shall be an amount equal to the amount of the gain which was not taken into account under subsection (a) by reason of the application of this paragraph.

(5) *Section 1071 and 1081 transactions.* Under regulations prescribed by the Secretary or his delegate, rules consistent with paragraphs (3) and (4) of this subsection and with subsections (e) and (f) shall apply in the case of transactions described in section 1071 (relating to gain from sale or exchange to effectuate policies of FCC) or section 1081 (relating to exchanges in obedience to SEC orders).

(6) *Property distributed by a partnership to a partner—(A) In general.* For purposes of this section, the basis of section 1250 property distributed by a partnership to a partner shall be deemed to be determined by reference to the adjusted basis of such property to the partnership.

(B) *Additional depreciation.* In respect of any property described in subparagraph (A), the additional depreciation attributable to periods before the distribution by the partnership shall be—

(1) The amount of the gain to which subsection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time and the applicable percentage for the property had been 100 percent, reduced by

(2) If section 751(b) applied to any part of such gain, the amount of such gain to which section 751(b) would have applied if

the applicable percentage for the property had been 100 percent.

(7) *Disposition of principal residence.* Subsection (a) shall not apply to a disposition of—

(A) Property to the extent used by the taxpayer as his principal residence (within the meaning of section 1034, relating to sale or exchange of residence), and

(B) Property in respect of which the taxpayer meets the age and ownership requirements of section 121 (relating to gains from sale or exchange of residence of individual who has attained the age of 65) but only to the extent that he meets the use requirements of such section in respect of such property.

(8) *Disposition of qualified low-income housing.* If section 1250 property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 1039, then—

(A) *Recognition limit.* The amount of gain recognized by the transferor under subsection (a) shall not exceed the greater of—

(1) The amount of gain recognized on the disposition (determined without regard to this section), or

(2) The amount determined under subparagraph (B).

(B) *Adjustment where insufficient section 1250 property is acquired.* With respect to any transaction, the amount determined under this subparagraph shall be the excess of—

(1) The amount of gain which would (but for this paragraph) be taken into account under subsection (a), over

(2) The cost of the section 1250 property acquired in the transaction.

(C) *Basis of property acquired.* The basis of property acquired by the taxpayer, determined under section 1039(d), shall be allocated—

(1) First to the section 1250 property described in subparagraph (E)(1), in the amount determined under such subparagraph, reduced by the amount of gain not recognized attributable to the section 1250 property disposed of,

(2) Then to any property (other than section 1250 property) to which section 1039 applies, in the amount of its cost, reduced by the amount of gain not recognized except to the extent taken into account under clause (1), and

(3) Then to the section 1250 property described in subparagraph (E)(2), in the amount determined thereunder, reduced by the amount of gain not recognized except to the extent taken into account under clauses (1) and (2).

(D) *Additional depreciation with respect to property disposed of.* The additional depreciation with respect to any property acquired shall include the additional depreciation with respect to the corresponding section 1250 property disposed of, reduced by the amount of gain recognized attributable to such property.

(E) *Property consisting of more than one element.* There shall be treated as a separate element of section 1250 property—

(1) That portion of the section 1250 property acquired the cost of which does not exceed the net amount realized (as defined in section 1039(b)) attributable to the section 1250 property disposed of, reduced by the amount of gain recognized (if any) attributable to such property, and

(2) That portion of the section 1250 property acquired the cost of which exceeds the net amount realized (as defined in section 1039(b)) attributable to the section 1250 property disposed of.

(F) *Allocation rules.* For purposes of this paragraph—

(1) The amount of gain recognized attributable to the section 1250 property disposed of shall be the net amount realized with respect to such property, reduced by the greater of the adjusted basis of the section 1250 property disposed of or the cost of the section 1250 property acquired, but shall not exceed the gain recognized in the transaction, and

(2) If any section 1250 property is treated as consisting of more than one element by reason of the application of subparagraph (E) to a prior transaction, then the amount of gain recognized, the net amount realized, and the additional depreciation, with respect to each such element shall be allocated in accordance with regulations prescribed by the Secretary or his delegate.

(e) *Holding period.* For purposes of determining the applicable percentage under this section, the provisions of section 1223 shall not apply, and the holding period of section 1250 property shall be determined under the following rules:

(1) *Beginning of holding period.* The holding period of section 1250 property shall be deemed to begin—

(A) In the case of property acquired by the taxpayer, on the day after the date of acquisition, or

(B) In the case of property constructed, reconstructed, or erected by the taxpayer, on the first day of the month during which the property is placed in service.

(2) *Property with transferred basis.* If the basis of property acquired in a transaction described in paragraph (1), (2), (3), or (5) of subsection (d) is determined by reference to its basis in the hands of the transferor, then the holding period of the property in the hands of the transferee shall include the holding period of the property in the hands of the transferor.

(3) *Principal residence.* If the basis of property acquired in a transaction described in paragraph (7) of subsection (d) is determined by reference to the basis in the hands of the taxpayer of other property, then the holding period of the property acquired shall include the holding period of such other property.

(4) *Qualified low-income housing.* The holding period of any section 1250 property acquired which is described in subsection (d)(8)(E)(i) shall include the holding period of the corresponding element of section 1250 property disposed of.

(f) *Special rules for property which is substantially improved—(1) Amount treated as ordinary income.* If, in the case of a disposition of section 1250 property, the property is treated as consisting of more than one element by reason of paragraph (3), then the amount taken into account under subsection (a) in respect of such section 1250 property as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231 shall be the sum of the amounts determined under paragraph (2).

(2) *Ordinary income attributable to an element.* For purposes of paragraph (1), the amount taken into account for any element shall be the sum of—

(A) The amount (if any) determined by multiplying—

(1) The amount which bears the same ratio to the lower of the amounts specified in subparagraph (A) or (B) of subsection (a)

(1) For the section 1250 property as the additional depreciation for such element attributable to periods after December 31, 1969, bears to the sum of the additional depreciation for all elements attributable to periods after December 31, 1969, by

(2) The applicable percentage for such element, and

(B) The amount (if any) determined by multiplying—

(1) The amount which bears the same ratio to the lower of the amounts specified in subsection (a) (2) (A) (1) or (1) for the section 1250 property as the additional depreciation for such element attributable to periods before January 1, 1970, bears to the sum of the additional depreciation for all elements attributable to periods before January 1, 1970, by

(ii) The applicable percentage for such element.

For purposes of this paragraph, determinations with respect to any element shall be made as if it were a separate property.

(3) *Property consisting of more than one element.* In applying this subsection in the case of any section 1250 property, there shall be treated as a separate element—

(A) Each separate improvement,

(B) If, before completion of section 1250 property, units thereof (as distinguished from improvements) were placed in service, each such unit of section 1250 property, and

(C) The remaining property which is not taken into account under subparagraphs (A) and (B).

(4) *Property which is substantially improved.* For purposes of this subsection—

(A) *In general.* The term "separate improvement" means each improvement added during the 36-month period ending on the last day of any taxable year to the capital account for the property, but only if the sum of the amounts added to such account during such period exceeds the greatest of—

(i) 25 percent of the adjusted basis of the property,

(ii) 10 percent of the adjusted basis of the property, determined without regard to the adjustments provided in paragraphs (2) and (3) of section 1016(a), or

(iii) \$5,000.

For purposes of clauses (1) and (ii), the adjusted basis of the property shall be determined as of the beginning of the first day of such 36-month period, or of the holding period of the property (within the meaning of subsection (e)), whichever is the later.

(B) *Exception.* Improvements in any taxable year shall be taken into account for purposes of subparagraph (A) only if the sum of the amounts added to the capital account for the property for such taxable year exceeds the greater of—

(i) \$2,000, or

(ii) 1 percent of the adjusted basis referred to in subparagraph (A) (ii), determined, however, as of the beginning of such taxable year.

For purposes of this section, if the amount added to the capital account for any separate improvement does not exceed the greater of clause (i) or (ii), such improvement shall be treated as placed in service on the first day of a calendar month, which is closest to the middle of the taxable year.

(C) *Improvement.* The term "improvement" means, in the case of any section 1250 property, any addition to capital account for such property after the initial acquisition or after completion of the property.

(g) *Special rules for qualified low-income housing—*(1) *Amount treated as ordinary income.* If, in the case of a disposition of section 1250 property, the property is treated as consisting of more than one element by reason of the application of subsection (d) (8) (E), and gain is recognized in whole or in part, then the amount taken into account under subsection (a) as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231 shall be the sum of the amounts determined under paragraph (2).

(2) *Ordinary income attributable to an element.* For purposes of paragraph (1), the amount taken into account for any element

shall be the amount determined by multiplying—

(A) The amount which bears the same ratio to the lower of the additional depreciation or the gain recognized for the section 1250 property disposed of as the additional depreciation for such element bears to the sum of the additional depreciation for all elements disposed of, by

(B) The applicable percentage for such element.

For purposes of this paragraph, determinations with respect to any element shall be made as if it were a separate property.

(h) *Adjustments to basis.* The Secretary or his delegate shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (a).

(i) *Application of section.* This section shall apply notwithstanding any other provision of this subtitle.

[Sec. 1250 as added by sec. 231(a), Rev. Act 1964 (78 Stat. 100), as amended by sec. 521 (b), (c), and (d), sec. 704(b), and sec. 910 (b), Tax Reform Act 1969 (83 Stat. 652, 653, 654, 670, 720, 721, and 722)]

§ 1.1250-1 Gain from dispositions of certain depreciable realty.

(a) [Reserved]

(b) *Dispositions before January 1, 1970—*(1) *Ordinary income.* In general, section 1250(a) (2) provides that, upon a disposition of an item of section 1250 property after December 31, 1963, and before January 1, 1970, the applicable percentage of the lower of—

(i) The additional depreciation (as defined in § 1.1250-2) attributable to periods before January 1, 1970, in respect of the property, or

(ii) The excess of the amount realized on a sale, exchange, or involuntary conversion (or the fair market value of the property on any other disposition) over the adjusted basis of the property,

shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231 (that is, shall be recognized as ordinary income). The amount of such gain shall be determined separately for each item (see subparagraph (2) (ii) of this paragraph) of section 1250 property. For relation of section 1250 to other provisions, see paragraph (c) of this section.

(2) *Meaning of terms.* (i) For purposes of section 1250, the term "disposition" shall have the same meaning as in paragraph (a) (3) of § 1.1245-1. "Section 1250 property" is, in general, depreciable real property other than section 1245 property. See paragraph (e) of this section. For purposes of this paragraph, the term "applicable percentage" means 100 percent minus 1 percentage point for each full month the property was held after the date on which the property was held 20 full months. See paragraph (d) (2) of this section. If, however, the property is considered to have two or more elements with separate holding periods (for example, because units thereof are placed in service on different dates, or improvements are made to the property), see the special rules of § 1.1250-5.

(ii) For purposes of applying section 1250, the facts and circumstances of each

disposition shall be considered in determining what is the appropriate item of section 1250 property. In general, a building is an item of section 1250 property, but in an appropriate case more than one building may be treated as a single item. For manner of determining whether an expenditure shall be treated as an addition to the capital account of an item of section 1250 property or as a separate item of section 1250 property, see paragraph (d) (2) (iii) of § 1.1250-5.

(3) *Sale, exchange, or involuntary conversion before January 1, 1970.* (i) In the case of a disposition of section 1250 property by a sale, exchange, or involuntary conversion before January 1, 1970, the gain to which section 1250(a) (2) applies is the applicable percentage for the property multiplied by the lower of (a) the additional depreciation in respect of the property or (b) the excess (referred to as "gain realized") of the amount realized over the adjusted basis of the property.

(ii) The provisions of this subparagraph may be illustrated by the following example:

Example. Section 1250 property, which has an adjusted basis of \$200,000, is sold for \$290,000 before January 1, 1970. At the time of the sale the additional depreciation in respect of the property is \$130,000 and the applicable percentage is 60 percent. Since the gain realized (\$90,000, that is, amount realized, \$290,000, minus adjusted basis, \$200,000) is lower than the additional depreciation (\$130,000), the amount of gain recognized as ordinary income under section 1250(a) (2) is \$54,000 (that is, 60 percent of \$90,000). The remaining \$36,000 (\$90,000 minus \$54,000) of the gain may be treated as gain from the sale or exchange of property described in section 1231.

(4) *Other dispositions before January 1, 1970.* (i) In the case of a disposition of section 1250 property before January 1, 1970, other than by way of a sale, exchange, or involuntary conversion, the gain to which section 1250(a) (2) applies is the applicable percentage for the property multiplied by the lower of (a) the additional depreciation in respect of the property, or (b) the excess (referred to as "potential gain") of the fair market value of the property on the date of disposition over its adjusted basis. If property is transferred by a corporation to a shareholder for an amount less than its fair market value in a sale or exchange, for purposes of applying section 1250 such transfer shall be treated as a disposition other than by way of a sale, exchange, or involuntary conversion.

(ii) The provisions of this subparagraph may be illustrated by the following example:

Example. Assume the same facts as in the example in subparagraph (3) (ii) of this paragraph except that the property is distributed by a corporation to a stockholder before January 1, 1970, in complete liquidation of the corporation, and that at the time of the distribution the fair market value of the property is \$370,000. Since the additional depreciation (\$130,000) is lower than the potential gain of \$170,000 (that is, fair market value, \$370,000, minus adjusted

basis, \$200,000), the amount of gain recognized as ordinary income under section 1250 (a)(2) is \$78,000 (that is, 60 percent of \$130,000) even though, in the absence of section 1250, section 336 would preclude recognition of gain to the corporation.

(5) *Instances of nonapplication.* (i) Section 1250(a)(2) does not apply to losses. Thus, section 1250(a)(2) does not apply if a loss is realized upon a sale, exchange, or involuntary conversion of property, all of which is considered section 1250 property, nor does the section apply to a disposition of such property other than by way of sale, exchange, or involuntary conversion if at the time of the disposition the fair market value of such property is not greater than its adjusted basis.

(ii) In general, in the case of section 1250 property with a holding period under section 1223 of more than one year, section 1250(a)(2) does not apply if for periods after December 1, 1963, there are no "depreciation adjustments in excess of straight line" (as computed under section 1250(b) and paragraph (b) of § 1.1250-2).

(iii) In a case in which section 1250 property (including each element thereof, if any) has a holding period under § 1.1250-4 (or paragraph (a)(2)(ii) of § 1.1250-5) of at least 10 years, section 1250(a)(2) does not apply. If within the 10-year period preceding the date the property is disposed of, an element is added to the property by reason, for example, of an addition to capital account, see § 1.1250-5.

(6) *Allocation rule.* In the case of a sale, exchange, or involuntary conversion of section 1250 property and nonsection 1250 property in one transaction before January 1, 1970, the total amount realized upon the disposition shall be allocated between the section 1250 property and the other property in proportion to their respective fair market values. Such allocation shall be made in accordance with the principles set forth in paragraph (a)(5) of § 1.1245-1 (relating to allocation between section 1245 property and nonsection 1245 property).

(c) *Relation of section 1250 to other provisions.*—(1) *General.* The provisions of section 1250 apply notwithstanding any other provision of subtitle A of the Code. See section 1250(i). Thus, unless an exception or limitation under section 1250(d) and § 1.1250-3 applies, gain under section 1250(a) is recognized notwithstanding any contrary nonrecognition provision or income characterizing provision. For example, since section 1250 overrides section 1231 (relating to property used in the trade or business), the gain recognized under section 1250 (a) upon a disposition will be treated as ordinary income and only the remaining gain, if any, from the disposition may be considered as gain from the sale or exchange of a capital asset if section 1231 is applicable. See the example in paragraph (b)(3)(ii) of this section.

(2) *Nonrecognition sections overridden.* The nonrecognition provisions of subtitle A of the Code which section 1250 overrides include, but are not limited to,

sections 267(d), 311(a), 336, 337, 501(a), and 512(b)(5). See section 1250(d) for the extent to which section 1250(a) overrides sections 332, 351, 361, 371(a), 374(a), 721, 731, 1031, 1033, 1039, 1071, and 1081 (b)(1) and (d)(1)(A). For amount of additional depreciation in respect of property disposed of by an organization exempt from income taxes (within the meaning of section 501(a)), see paragraph (d)(6) of § 1.1250-2.

(3) *Exempt income.* The fact that section 1250 provides for recognition of gain as ordinary income does not change into taxable income any income which is exempt under section 115 (relating to income of States, etc.), 892 (relating to income of foreign governments), or 894 (relating to income exempt under treaties).

(4) *Treatment of gain not recognized under section 1250.* Section 1250 does not prevent gain which is not recognized under section 1250 from being considered as gain under another provision of the Code, such as, for example, section 1239 (relating to gain from sale of depreciable property between certain related persons). Thus, for example, if section 1250 property which has an adjusted basis of \$10,000 is sold for \$17,500 in a transaction to which section 1239 applies, and if \$5,000 of the gain would be recognized under section 1250(a) then the remaining \$2,500 of the gain would be treated as ordinary income under section 1239.

(5) *Normal retirement of asset in multiple asset account.* Section 1250(a) does not require recognition of gain upon normal retirements of section 1250 property in a multiple asset account as long as the taxpayer's method of accounting, as described in paragraph (e)(2) of § 1.167(a)-8 (relating to accounting treatment of asset retirements), does not require recognition of such gain.

(6) *Installment method.* Gain from a disposition to which section 1250(a) applies may be reported under the installment method if such method is otherwise available under section 453 of the Code. In such case, the income (other than interest) on each installment payment shall be deemed to consist of gain to which section 1250(a) applies until all such gain has been reported, and the remaining portion (if any) of such income shall be deemed to consist of other gain. For treatment of amounts as interest on certain deferred payments, see section 483.

(d) *Applicable percentage.*—(1) [Reserved]

(2) *Definition for purposes of section 1250(a)(2).* For purposes of section 1250 (a)(2), the term "applicable percentage" means—

(i) In case of property with a holding period of 20 full months or less, 100 percent;

(ii) In case of property with a holding period of more than 20 full months but less than 10 years, 100 percent minus 1 percentage point for each full month the property is held after the date on which the property is held 20 full months; and

(iii) In case of property with a holding period of at least 10 years, zero.

(3) *Holding period.* For purposes of this paragraph, the holding period of property shall be determined under the rules of § 1.1250-4, and not under the rules of section 1223, notwithstanding that the property was acquired on or before December 31, 1963. In the case of a disposition of section 1250 property which consists of 2 or more elements (within the meaning of paragraph (c) of § 1.1250-5), the holding period for each element shall be determined under the rules of paragraph (a)(2)(ii) of § 1.1250-5.

(4) *Full month.* For purposes of this paragraph, the term "full month" (or "full months") means the period beginning on a date in 1 month and terminating on the date before the corresponding date in the next succeeding month (or in another succeeding month), or, if a particular succeeding month does not have such a corresponding date, terminating on the last day of such particular succeeding month.

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

Example (1). Property is purchased on January 17, 1959. Under paragraph (b)(1) of § 1.1250-4, its holding period begins on January 18, 1959, and thus at any time during the period beginning on October 17, 1960, and ending on November 16, 1960, the property is considered held 21 full months and has an applicable percentage under section 1250(a)(2) of 99 percent. On and after January 17, 1969, the property has a holding period of at least 120 full months (10 years) and, therefore, the applicable percentage under section 1250(a)(2) for the property is zero. Accordingly, no gain would be recognized under section 1250(a)(2) upon disposition of the property. If, however, the property consists of two or more elements, see the special rules of § 1.1250-5.

Example (2). Property is purchased on January 31, 1968. Under paragraph (b)(1) of § 1.1250-4 its holding period begins on February 1, 1968, and thus at any time during the period beginning on February 29, 1968, and ending on March 30, 1968, the property is considered held 1 full month. At any time during the period beginning on March 31, 1970, and ending on April 29, 1970, the property is considered held 26 full months. At any time during the period beginning on April 30, 1970, and ending on May 30, 1970, the property is considered held 27 full months.

(e) *Section 1250 property.*—(1) *Definition.* The term "section 1250 property" means any real property (other than section 1245(a)(3) and § 1.1245-3) which is or has been property of a character subject to the allowance for depreciation provided in section 167. See section 1250(c).

(2) *Character of property.* For purposes of subparagraph (1) of this paragraph, the term "is or has been property of a character subject to the allowance for depreciation provided in section 167" shall have the same meaning as when used in paragraph (a)(1) and (3) of § 1.1245-3. Thus, if a father uses a house in his trade or business during a period after December 31, 1963, and then gives the house to his son as a gift for the son's

personal use, the house is section 1250 property in the hands of the son. For exception to the application of section 1250(a) upon disposition of a principal residence, see section 1250(d) (7).

(3) *Real property.* (i) For purposes of subparagraph (1) of this paragraph, the term "real property" means any property which is not personal property within the meaning of paragraph (b) of § 1.1245-3. The term section 1250 property includes three types of depreciable real property. The first type is intangible real property. For purposes of this paragraph, a leasehold of land or of section 1250 property is intangible real property, and accordingly such a leasehold is section 1250 property. However, a fee simple interest in land is not depreciable, and therefore is not section 1250 property. The second type is a building or its structural components within the meaning of paragraph (c) of § 1.1245-3. The third type is all other tangible real property except (a) "property described in section 1245(a) (3) (B)" as defined in paragraph (c) (1) of § 1.1245-3 (relating to property used as an integral part of a specified activity or as a specified facility), and (b) property described in section 1245 (a) (3) (D). An elevator or escalator (within the meaning of section 1245(a) (3) (C)) is not section 1250 property.

(ii) The provisions of this subparagraph may be illustrated by the following example:

Example. A owns and leases to B for a single lump-sum payment of \$100,000 property consisting of land and a fully equipped factory building thereon. If 30 percent of the fair market value of such property is properly allocable to the land, 25 percent to section 1250 property (the building and its structural components), and 45 percent to section 1245 property (the equipment), then 55 percent of B's leasehold is section 1250 property.

(4) *Coordination with definition of section 1245 property.* (i) Property may lose its character as section 1250 property and become section 1245 property. Thus, for example, if section 1250 property of the third type described in subparagraph (3) (i) (a) of this paragraph is converted to use as an integral part of manufacturing, the property would lose its character as section 1250 property and would become section 1245 property. However, once property in the hands of a taxpayer is section 1245 property, it can never become section 1250 property in the hands of such taxpayer. See also paragraph (a) (4) and (5) of § 1.1245-2.

(ii) [Reserved]

(f) *Treatment of partnerships and partners.* If a partnership disposes of section 1250 property, the amount of gain recognized under section 1250(a) by the partnership and by a partner shall be determined in a manner consistent with the principles provided in paragraph (e) of § 1.1245-1. Thus, for example, a partner's distributive share of gain recognized by the partnership under section 1250(a) shall be determined in the same manner as his distributive share of gain recognized by the partnership under section 1245(a) (1) is determined, and, if required, additional depreciation in respect of section 1250 property shall be allocated

to the partner in the same manner as the adjustments reflected in the adjusted basis of section 1245 property are allocated to the partner. For a further example, if on the date a partner acquires his partnership interest by way of a sale or exchange the partnership owns section 1250 property and an election under section 754 (relating to optional adjustment to basis of partnership property) is in effect with respect to the partnership, then such partner's additional depreciation in respect of such property on such date is deemed to be zero. For limitation on the amount of gain recognized under section 1250(a) in respect of a partnership and for the amount of additional depreciation in respect of partnership property after certain transactions, see paragraph (f) of § 1.1250-3. For treatment of section 1250 property as an unrealized receivable, see section 751(c).

§ 1.1250-2 Additional depreciation defined.

(a) *In general.*—(1) *Definition for purposes of section 1250(b) (1).* Except as otherwise provided in paragraph (e) of this section, for purposes of section 1250(b) (1), the term "additional depreciation" means—

(i) In the case of property which at the time of disposition has a holding period under section 1223 of not more than 1 year, the "depreciation adjustments" (as defined in paragraph (d) of this section) in respect of such property for periods after December 31, 1963, and

(ii) In the case of property which at the time of disposition has a holding period under section 1223 of more than 1 year, the depreciation adjustments in excess of straight line for periods after December 31, 1963, computed under paragraph (b) (1) of this section.

(2) [Reserved]

(3) *Allocation to periods after December 31, 1963.* With respect to a taxable year beginning in 1963 and ending in 1964, the amount of depreciation adjustments or of depreciation adjustments in excess of straight line (as the case may be) shall be ascertained by applying the principles of paragraph (c) (3) of § 1.167 (a)-8 (relating to determination of adjusted basis of retired asset), and the amount determined in such manner shall be allocated on a daily basis in order to determine the portion thereof which is attributable to a period after December 31, 1963.

(b) *Computation of depreciation adjustments in excess of straight line.*—

(1) *General rule.* For purposes of paragraph (a) (1) of this section, depreciation adjustments in excess of straight line shall be, in the case of any property, the excess of (i) the sum of the "depreciation adjustments" (as defined in paragraph (d) of this section) in respect of the property attributable to periods after December 31, 1963, over (ii) the sum such adjustments would have been for such periods if such adjustments had been determined for the entire period the property was held under the straight line method of depreciation (or, if applicable, under the lease-renewal-period provision in paragraph (c) of this sec-

tion). Depreciation in excess of straight line may arise, for example, if the declining balance method, the sum of the years-digits method, or the units of production method is used, or for another example, if the cost of a leasehold improvement or of a leasehold is depreciated over a period which does not take into account certain renewal periods referred to in paragraph (c) of this section. For computations of depreciation adjustments in excess of straight line (or a deficit therein) both on an annual basis and on the basis of the entire period the property was held, see subparagraph (6) of this paragraph.

(2) [Reserved]

(3) *General rule for computing useful life and salvage value.* For purposes of computing under subparagraph (1) (ii) of this paragraph the sum the depreciation adjustments would have been under the straight line method, if a useful life (or salvage value) was used in determining the amount allowed as a depreciation adjustment for any taxable year, such life (or value) shall be used in determining the amount such depreciation adjustment would have been for such taxable year under the straight line method. If, however, for any taxable year a method of depreciation was used as to which a useful life was not taken into account such as, for example, the units of production method, or as to which salvage value was not taken into account in determining the annual allowances, such as, for example, the declining balance method or the amortization of a leasehold improvement over the term of a lease, then, for the purpose of determining the amount such depreciation adjustment would have been under the straight line method for such taxable year—

(i) There shall be used the useful life (or salvage value) which would have been proper if depreciation had actually been determined under the straight line method throughout the period the property was held, and

(ii) Such useful life (or such salvage value) shall be determined by taking into account for each taxable year the same facts and circumstances as would have been taken into account if the taxpayer had used such method throughout the period the property was held.

(4) [Reserved]

(5) *Property held before January 1, 1964.* In the case of property held before January 1, 1964—

(i) For purposes of computing under subparagraph (1) (ii) of this paragraph the sum the depreciation adjustments would have been under the straight line method, the adjusted basis of the property on such date shall be the amount such adjusted basis would have been if depreciation deductions allowed or allowable before such date had been determined under the straight line method computed in accordance with subparagraph (3) of this paragraph, and

(ii) The depreciation adjustments in excess of straight line in respect of the property computed under subparagraph (1) of this paragraph, but without regard to this subdivision, shall be reduced by the amount of depreciation

adjustments less than straight line for periods before January 1, 1964, that is, by the excess (if any) of the sum the depreciation adjustments would have been for periods before January 1, 1964, under the straight line method, over the sum of the depreciation adjustments attributable to periods before such date.

(6) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). A calendar year taxpayer sells section 1250 property on January 1, 1968, which he purchased for \$10,000 on January 1, 1963. For the period of 1963 through 1967 he computed depreciation deductions in respect of the property under the declining balance method using a rate of 200 percent of the straight line rate and a proper useful life of 10 years. Under such method salvage value is not taken into account in computing annual allowances. For purposes of applying subparagraph (3) of this paragraph, if the taxpayer had used the straight line method for such period, he would have used a salvage value of \$1,000, and the depreciation under the straight line method would have been \$900 each year, that is, one-tenth of \$10,000 minus \$1,000. As of January 1, 1968, the additional depreciation for the property is \$1,123, as computed in the table below:

Year	Actual depreciation	Straight line	Additional depreciation (deficit)
1963	\$2,000	\$900	
1964	1,600	900	\$700
1965	1,280	900	380
1966	1,024	900	124
1967	819	900	(81)
Sum for periods after Dec. 31, 1963	4,723	3,600	1,123

Example (2). Assume the same facts as in example (1) except that the taxpayer sells the section 1250 property on January 1, 1970. Assume further that as of January 1, 1968, the taxpayer elects under section 167 (e) (1) to change to the straight line method. On that date the adjusted basis of the property is \$3,277 (\$10,000 minus \$6,723). He redetermines the remaining useful life of the property to be 8 years and its salvage value to be \$77, and thus takes depreciation deductions for 1968 and 1969 of \$400 (the amount allowable) for each such year, that is, one-eighth of \$3,200 (that is, \$3,277 minus \$77). For purposes of applying subparagraph (3) of this paragraph, if he had used the straight line method throughout the period he held the property, the adjusted basis of the property on January 1, 1968, would have been \$5,500 (\$10,000 minus \$4,500), and the depreciation which would have resulted under such method for 1968 and 1969 would have been \$678 for each such year, that is, one-eighth of \$5,423 (\$5,500 minus \$77). As of January 1, 1970, the additional depreciation for the property is \$567, as computed in the table below:

Years	Depreciation	Straight line	Additional depreciation (deficit)
1964 through 1967	\$4,723	\$3,600	\$1,123
1968	400	678	(278)
1969	400	678	(278)
Sum for periods after Dec. 31, 1963	5,523	4,956	567

(c) *Property held by lessee—(1) Amount depreciation would have been.* For purposes of paragraph (b) of this section, in case of a leasehold which is section 1250 property, in determining the amount the depreciation adjustments would have been under the straight line method in respect of any building or other improvement (which is section 1250 property) erected or made on the leased property, or in respect of any cost of acquiring the lease, the lease period shall be treated as including all renewal periods. See section 1250(b) (2). For determination of the extent to which a leasehold is section 1250 property, see paragraph (e) (3) of § 1.1250-1.

(2) *Renewal period.* (i) For purposes of this paragraph, the term "renewal period" means any period for which the lease may be renewed, extended, or continued pursuant to an option or options exercisable by the lessee (whether or not specifically provided for in the lease) except that the inclusion of one or more renewal periods shall not extend the period taken into account by more than two-thirds of the period on the basis of which the depreciation adjustments were allowed.

(ii) In respect of the cost of any building erected (or other improvement made) on the leased property by the lessee, or in respect of the portion of the cost of acquiring a leasehold which is attributable to an existing building (or other improvement) on the leasehold at the time the lessee acquires the leasehold, the inclusion of one or more renewal periods shall not extend the period taken into account to a period which exceeds the useful life remaining, at the time the leasehold is disposed of, of such building (or such other improvement). Determinations under this subdivision shall be made without regard to the proper period under section 167 or 178 for depreciating or amortizing a leasehold acquisition cost or improvement.

(iii) The provisions of this subparagraph may be illustrated by the following example:

Example. Assume that a leasehold improvement with a useful life of 30 years is properly amortized on the basis of a 10-year initial lease term. The lease is renewable for an additional 9 years. The period taken into account is 16½ years, that is, 10 years plus two-thirds of 10 years. If, however, the leasehold improvement were disposed of at the end of 12 years, and if its remaining useful life were only 3 years, then the period taken into account would be 15 years.

(d) *Depreciation adjustments—(1) General.* For purposes of this section, the term "depreciation adjustments" means, in respect of any property, all adjustments reflected in the adjusted basis of such property on account of deductions described in subparagraph (2) of this paragraph allowed or allowable (whether in respect of the same or other property) to the taxpayer or to any other person. For cases where the taxpayer can establish that the amount allowed for any period was less than the amount allowable, see subparagraph (4) of this paragraph. For determination of adjusted basis of property

in a multiple asset account, see paragraph (c) (3) of § 1.167(a)-8. The term "depreciation adjustments" as used in this section does not have the same meaning as the term "adjustments reflected in the adjusted basis" as defined in paragraph (a) (2) of § 1.1245-2.

(2) *Deductions.* The deductions described in this subparagraph are allowances (and amounts treated as allowances) for depreciation or amortization (other than amortization under section 168, 169 (as enacted by section 704(a), Tax Reform Act of 1969 (83 Stat. 667)), or 185). Thus, for example, such deductions include a reasonable allowance for exhaustion, wear, and tear (including a reasonable allowance for obsolescence) under section 167, the periodic deductions referred to in § 1.162-11 in respect of a specified sum paid for the acquisition of a leasehold and in respect of the cost to a lessee of improvements on property of which he is the lessee. However, such deductions do not include deductions for the periodic payment of rent.

(3) *Depreciation of other taxpayers or in respect of other property.* (i) The depreciation adjustments (reflected in the adjusted basis) referred to in subparagraph (1) of this paragraph (a) are not limited to adjustments with respect to the property disposed of, nor to those allowed or allowable to the taxpayer disposing of such property, and (b) except as provided in subparagraph (4) of this paragraph, are taken into account, whether allowed or allowable in respect of the same or other property and whether to the taxpayer or to any other person. For manner of determining the amount of additional depreciation after certain dispositions, see paragraph (e) of this section.

(ii) The provisions of this subparagraph may be illustrated by the following example:

Example. On January 1, 1966, a calendar year taxpayer purchases for \$100,000 a building for use in his trade or business. He takes depreciation deductions of \$20,000 (the amount allowable), of which \$3,000 is additional depreciation, and transfers the building to his son as a gift on January 1, 1968. Since the exception for gifts in section 1250 (d) (1) applies, the taxpayer does not recognize gain under section 1250(a) (2). In the son's adjusted basis of \$80,000 for the building there is reflected \$3,000 of additional depreciation. On January 1, 1969, after taking a depreciation deduction of \$10,000 (the amount allowable), of which \$1,000 is additional depreciation, the son sells the building. At the time of the sale the additional depreciation is \$4,000 (\$3,000 allowed the father plus \$1,000 allowed the son).

(4) *Depreciation allowed or allowable.* (i) For purposes of subparagraph (1) of this paragraph, generally all deductions (described in subparagraph (2) of this paragraph) allowed or allowable shall be taken into account. See section 1016 (a) (2) and the regulations thereunder for the meaning of "allowed" and "allowable." However, if a taxpayer can establish by adequate records or other sufficient evidence that the amount allowed for any period was less than the amount allowable for such period, the amount to

be taken into account for such period shall be the amount allowed. The preceding sentence shall not apply for purposes of computing under paragraph (b) (1) (ii) of this section the amount such deductions would have been under the straight line method.

(ii) The provisions of subdivision (i) of this subparagraph may be illustrated by the following example:

Example. In the year 1969 it becomes necessary to determine the additional depreciation in respect of section 1250 property, the adjusted basis of which reflects a depreciation adjustment of \$1,000 with respect to depreciation deductions allowable for the calendar year 1965 under the sum of the years-digits method. Under paragraph (b) (1) (ii) of this section, the depreciation which would have resulted under the straight line method for 1965 is \$800. If the taxpayer can establish by adequate records or other sufficient evidence that he did not take, and was not allowed, any deduction for depreciation in respect of the property in 1965, then, for purposes of computing the depreciation adjustments in excess of straight line in respect of the property, the amount to be taken into account for 1965 as allowed or allowable is zero, and the amount to be taken into account in computing deductions which would have resulted under the straight line method in 1965 is \$800. Thus, in effect, there is a deficit in additional depreciation for 1965 of \$800.

(5) *Retired or demolished property.* Depreciation adjustments referred to in subparagraph (1) of this paragraph generally do not include adjustments in respect of retired or demolished portions of an item of section 1250 property. If a retired or demolished portion is replaced in a disposition described in section 1250 (d) (4) (A) (relating to like kind exchanges and involuntary conversions), see paragraph (d) (7) of § 1.1250-3.

(6) *Exempt organization.* In respect of property disposed of by an organization which is or was exempt from income taxes (within the meaning of section 501(a), the depreciation adjustments (reflected in the adjusted basis) referred to in subparagraph (1) of this paragraph shall include only adjustments allowed or allowable (i) in computing unrelated business taxable income (as defined in section 512(a)), or (ii) in computing taxable income of the organization for a period during which it was not exempt or, by reason of the application of section 502, 503, or 504, was denied its exemption.

(e) *Additional depreciation immediately after certain acquisitions—*(1) *Zero.* If on the date a person acquires property his basis for the property is determined solely (i) by reference to its cost (within the meaning of sec. 1012), (ii) by reason of the application of section 301(d) (relating to basis of property received in corporate distribution) or section 334(a) (relating to basis of property received in a liquidation in which gain or loss is recognized), or (iii) under the rules of section 334 (b) (2) or (c) (relating to basis of property received in certain corporate liquidations), then on such date the additional depreciation for the property is zero.

(2) *Transactions referred to in section 1250(d).* In the case of property

acquired in a disposition described in section 1250(d) (relating to exceptions and limitations to application of section 1250), additional depreciation shall be computed in accordance with the rules prescribed in § 1.1250-3.

(f) *Records to be kept and information to be filed—*(1) *Records to be kept.* In any case in which it is necessary to determine the additional depreciation of an item of section 1250 property, the taxpayer shall have available permanent records of all the facts necessary to determine with reasonable accuracy the amount of such additional depreciation, including the following—

(i) The date, and the manner in which, the property was acquired,

(ii) The taxpayer's basis on the date the property was acquired and the manner in which the basis was determined,

(iii) The amount and date of all adjustments to the basis of the property allowed or allowable to the taxpayer for depreciation adjustments referred to in paragraph (d) (1) of this section and the amount and date of any other adjustments by the taxpayer to the basis of the property, and

(iv) In the case of section 1250 property which has an adjusted basis reflecting depreciation adjustments referred to in paragraph (d) (1) of this section taken by the taxpayer with respect to other property, or by another taxpayer with respect to the same or other property, the information described in subdivisions (i), (ii), and (iii) of this subparagraph with respect to such other property or such other taxpayer.

(2) *Information to be filed.* If a taxpayer acquires in a transaction (other than a like kind exchange or involuntary conversion described in section 1250(d) (4)) section 1250 property which has a basis reflecting depreciation adjustments referred to in paragraph (d) (1) of this section allowed or allowable to another taxpayer, then the taxpayer shall file with its income tax return or information return for the taxable year in which the property is acquired a statement showing all information described in subparagraph (1) of this paragraph. See section 6012 (relating to persons required to make returns of income) and part III of subchapter A of chapter 61 of the Code (relating to information returns).

§ 1.1250-3 Exceptions and limitations.

(a) *Exception for gifts—*(1) *General rule.* Section 1250(d) (1) provides that no gain shall be recognized under section 1250(a) upon a disposition by gift. For purposes of this paragraph, the term "gift" shall have the same meaning as in paragraph (a) of § 1.1245-4. For reduction in amount of charitable contribution in case of a gift of section 1250 property, see section 170(e) and paragraph (c) (3) of § 1.170-1.

(2) *Disposition in part a sale or exchange and in part a gift.* Where a disposition of property is in part a sale or exchange and in part a gift, the disposition shall be subject to the provisions of § 1.1250-1 and the gain to which section 1250(a) applies, shall be computed under that section.

(3) *Treatment of property in hands of transferee.* If property is disposed of in a transaction which is a gift—

(i) The additional depreciation for the property in the hands of the transferee immediately after the disposition shall be an amount equal to (a) the amount of the additional depreciation for the property in the hands of the transferor immediately before the disposition, minus (b) the amount of any gain (in case the disposition is in part a sale or exchange and in part a gift) which would have been taken into account under section 1250(a) by the transferor upon the disposition if the applicable percentage had been 100 percent,

(ii) For purposes of computing the applicable percentage, the holding period under section 1250(e) (2) of property received as a gift in the hands of the transferee includes the transferor's holding period,

(iii) In case of a disposition which is in part a sale or exchange and in part a gift, if the adjusted basis of the property in the hands of the transferee exceeds its adjusted basis immediately before the transfer, the excess is an addition to capital account under paragraph (d) (2) (ii) of § 1.1250-5 (relating to property with 2 or more elements), and

(iv) If the property disposed of consists of two or more elements within the meaning of paragraph (c) of § 1.1250-5, see paragraph (e) (1) of § 1.1250-5 for the amount of additional depreciation and holding period for each element in the hands of the transferee.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). (i) On May 15, 1967, Smith transfers section 1250 property to his son for \$45,000. In the hands of Smith the property had an adjusted basis of \$40,000 and a fair market value of \$70,000. Thus, the gain realized is \$5,000 (amount realized, \$45,000, minus adjusted basis, \$40,000), and Smith has made a gift of \$25,000 (fair market value, \$70,000, minus amount realized, \$45,000).

(ii) Smith's holding period for the property is 80 full months and, thus, the applicable percentage under section 1250(a) (2) is 40 percent. The additional depreciation for the property is \$10,000. Since the gain realized (\$5,000) is lower than the additional depreciation (\$10,000), Smith recognized as ordinary income under section 1250(a) (2) gain of \$2,000 (that is, applicable percentage, 40 percent, multiplied by gain realized, \$5,000) and the \$3,000 remaining portion of the gain realized may be treated as gain from the sale of property described in section 1231.

(iii) On the date the son receives the property, the additional depreciation for the property in his hands is \$5,000, that is, the additional depreciation for the property in the hands of the father immediately before the transfer (\$10,000), minus the gain which would have been recognized under section 1250(a) (2) upon the transfer if the applicable percentage had been 100 percent (\$5,000); for purposes of computing applicable percentage his holding period is his father's holding period of 80 full months; and under § 1.1015-4 his unadjusted basis for the property is \$45,000, that is, the amount he paid (\$45,000) plus the excess (zero) of his father's adjusted basis over such amount.

(iv) The son sells the property for \$80,000 on March 15, 1968, 10 full months after he received it from his father. Thus, his holding period is 90 full months (his father's holding period of 80 full months plus the 10 full months the son actually owned the property) and the applicable percentage under section 1250(a)(2) is 30 percent. Assume that no depreciation was allowed or allowable to the son. Thus, the son's adjusted basis and additional depreciation for the property on the date of the sale is the same as on the date he received it. Accordingly, the gain realized is \$35,000 (selling price of \$80,000, minus adjusted basis of \$45,000). Since the additional depreciation (\$5,000) is lower than the gain realized (\$35,000), the son recognizes as ordinary income under section 1250(a)(2) gain of \$1,500, that is, applicable percentage (30 percent) multiplied by additional depreciation (\$5,000).

Example (2). Assume the same facts as in example (1), except that the son sells the property on June 15, 1969, 25 full months after he received it from his father. Thus, his holding period is 105 full months (his father's holding period of 80 full months plus the 25 full months the son actually owned the property) and the applicable percentage under section 1250(a)(2) is 15 percent. Assume further that on the date of the sale the adjusted basis of the property is \$39,000, and that for the period the son actually owned the property there is a deficit in additional depreciation of \$2,000. Accordingly, the gain realized is \$41,000 (selling price of \$80,000, minus adjusted basis of \$39,000), and the additional depreciation for the property is \$3,000 (that is, the additional depreciation for the property in the hands of the son on the date he received it, as determined in example (1), \$5,000, minus the amount of the deficit in additional depreciation for the period the son actually owned the property, \$2,000). Since the additional depreciation (\$3,000) is lower than the gain realized (\$41,000), the son recognizes as ordinary income under section 1250(a)(2) gain of \$450, that is, applicable percentage (15 percent) multiplied by additional depreciation (\$3,000).

(b) *Exception for transfers at death—*

(1) *General rule.* Section 1250(d)(2) provides that, except as provided in section 691 (relating to income in respect of a decedent), no gain shall be recognized under section 1250(a) upon a transfer at death. For purposes of this paragraph, the term "transfer at death" shall have the same meaning as in paragraph (b) of § 1.1245-4.

(2) *Treatment of transferee.* (i) If as of the date a person acquires property from a decedent such person's basis is determined, by reason of the application of section 1014(a), solely by reference to the fair market value of the property on the date of the decedent's death or on the applicable date provided in section 2032 (relating to alternate valuation date), then (a) on the date of death the additional depreciation for the property is zero, and (b) for purposes of computing applicable percentage the holding period of the property under section 1250(e)(1)(A) is deemed to begin on the day after the date of death.

(ii) If property is acquired in a transfer at death to which section 1250(d)(2) applies, the amount of the additional depreciation for the property in the hands of the transferee immediately after the transfer shall be the amount (if any) of the additional depreciation in respect of

the property allowed the transferee before the decedent's death, but only to the extent that the basis of the property (determined under section 1014(a)) is required to be reduced under the second sentence of section 1014(b)(9) (relating to adjustments to basis where property is acquired from a decedent prior to his death) by depreciation adjustments referred to in paragraph (d)(1) of § 1.1250-2 which give rise to such additional depreciation. For treatment of such property as having a special element with additional depreciation so computed, see paragraph (c)(5)(i) of § 1.1250-5 (relating to property with two or more elements). For purposes of determining applicable percentage, such special element shall have a holding period which includes the transferee's holding period for such property for the period before the decedent's death.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). On March 6, 1966, Smith dies owning an item of section 1250 property. On March 7, 1968, the executor distributes the property to Smith's son pursuant to a specific bequest of the property in Smith's will. Under section 1014(a)(2) and paragraph (a)(2) of § 1.1014-4, the unadjusted basis of the property in the hands of the son is its fair market value on March 6, 1966 (the date Smith died), and the son is considered to have acquired the property on such date. Under section 1250(e)(1)(A), the son's holding period for the property begins on March 7, 1966 (the day after the day he is considered to have acquired the property). Thus, on March 7, 1968 (the date the property was distributed to the son), the holding period for the property is 24 full months, and the applicable percentage under section 1250(a)(2) is 96 percent. On such date, the additional depreciation for the property includes any additional depreciation in respect of the property for the period the property was possessed by the estate.

Example (2). H purchases section 1250 property in 1965 which he immediately conveys to himself and W, his wife, as tenants by the entirety. Under local law each spouse is entitled to one-half the income from the property. H and W file joint income tax returns for calendar years 1965, 1966, and 1967. Over the 3 years, depreciation allowed in respect of the property was \$4,000 (the amount allowable) of which \$500 is additional depreciation. One-half of these amounts are allocable to W. Thus, depreciation deductions of \$2,000, of which \$250 is additional depreciation, are allowable to W. On January 1, 1968, H dies and the entire value of the property at the date of death is included in H's gross estate. Since W's basis for the property (determined under section 1014(a)) is reduced (under the second sentence of section 1014(b)(9)) by the \$2,000 depreciation deductions allowed W before H's death of which \$250 is additional depreciation, the additional depreciation for the property in the hands of W immediately after H's death is \$250.

(c) *Limitation for certain tax-free transactions—*(1) *General.* Section 1250(d)(3) provides that upon a transfer of property described in subparagraph (2) of this paragraph, the amount of gain taken into account by the transferor under section 1250(a) shall not exceed the amount of gain recognized to the transferor on the transfer (determined

without regard to section 1250). For purposes of this subparagraph, in case of a transfer of both section 1250 property and nonsection 1250 property in one transaction, the amount realized from the disposition of the section 1250 property shall be deemed to consist of that portion of the fair market value of each property acquired which bears the same ratio to the fair market value of such acquired property as the amount realized from the disposition of the section 1250 property bears to the total amount realized. The preceding sentence shall be applied solely for purposes of computing the portion of the total gain (determined without regard to section 1250) which shall be recognized as ordinary income under section 1250(a). Section 1250(d)(3) does not apply to a disposition of property to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by chapter 1 of the Code.

(2) *Transfers covered.* The transfers described in this subparagraph are transfers of property in which the basis of the property in the hands of the transferee is determined by reference to its basis in the hands of the transferor by reason of the application of any of the following provisions:

(i) Section 332 (relating to distributions in complete liquidation of an 80 percent or more controlled subsidiary corporation). For application of section 1250(d)(3) to such a complete liquidation, the principles of paragraph (c)(3) of § 1.1245-4 shall apply.

(ii) Section 351 (relating to transfer to a corporation controlled by transferor).

(iii) Section 361 (relating to exchanges pursuant to certain corporate reorganizations).

(iv) Section 371(a) (relating to exchanges pursuant to certain receivership and bankruptcy proceedings).

(v) Section 374(a) (relating to exchanges pursuant to certain railroad reorganizations).

(vi) Section 721 (relating to transfers to a partnership in exchange for a partnership interest).

(vii) Section 731 (relating to distributions by a partnership to a partner). For special carryover basis rule, see section 1250(d)(6)(A) and paragraph (f)(1) of this section.

(3) *Treatment of property in hands of transferee.* In the case of a transfer described in subparagraph (2) (other than subdivision (vii) thereof) of this paragraph—

(i) The additional depreciation for the property in the hands of the transferee immediately after the disposition shall be an amount equal to (a) the amount of the additional depreciation for the property in the hands of the transferor immediately before the disposition, minus (b) the amount of additional depreciation necessary to produce an amount equal to the gain taken into account under section 1250(a) by the transferor upon the disposition (taking into account the applicable percentage for the property),

(ii) For purposes of computing applicable percentage, the holding period under section 1250(e)(2) of the property in the hands of the transferee includes the transferor's holding period.

(iii) If the adjusted basis of the property in the hands of the transferee exceeds its adjusted basis immediately before the transfer, the excess is an addition to capital account under paragraph (d)(2)(ii) of § 1.1250-5 (relating to property with 2 or more elements), and

(iv) If the property disposed of consists of 2 or more elements within the meaning of paragraph (c) of § 1.1250-5, see paragraph (e)(1) of § 1.1250-5 for the amount of additional depreciation and the holding period for each element in the hands of the transferee.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). (i) Green transfers section 1250 property on March 1, 1968, to a corporation, which is not exempt from taxation, in exchange for cash of \$9,000 and stock in the corporation worth \$91,000, in a transaction qualifying under section 351. Thus, the amount realized is \$100,000 (\$9,000 plus \$91,000). The property has an applicable percentage under section 1250(a)(2) of 60 percent, an adjusted basis of \$40,000, and additional depreciation of \$20,000. The gain realized is \$60,000, that is, amount realized (\$100,000) minus adjusted basis (\$40,000). Since the additional depreciation (\$20,000) is lower than the gain realized (\$60,000), the amount of gain which would be treated as ordinary income under section 1250(a)(2) would be \$12,000 (60 percent of \$20,000) if the limitation provided in section 1250(d)(3) did not apply. Since under section 351(b) gain in the amount of \$9,000 would be recognized to the transferor without regard to section 1250, the limitation provided in section 1250(d)(3) limits the gain taken into account by the transferor under section 1250(a)(2) to \$9,000.

(ii) The amount of additional depreciation for the property in the hands of the transferee immediately after the transfer is \$5,000, that is, the amount of additional depreciation before the transfer (\$20,000) minus the amount of additional depreciation necessary to produce an amount equal to the gain recognized under section 1250(a)(2) upon the transfer (\$15,000, that is, \$9,000 of gain recognized divided by 60 percent, the applicable percentage). (If the property is subsequently disposed of, and for the period after the initial transfer there is additional depreciation in respect of the property, then at the time of the subsequent disposition the additional depreciation will exceed \$5,000. If, however, for the period after the initial transfer there was a deficit in additional depreciation, then at the time of the subsequent disposition the additional depreciation would be less than \$5,000.)

Example (2). (1) Assume the same facts as in example (1) except that the additional depreciation is \$10,000. Since additional depreciation (\$10,000) is lower than the gain realized (\$60,000), the amount of gain which would be treated as ordinary income under section 1250(a)(2) would be \$6,000 (60 percent of \$10,000) if the limitation provided in section 1250(d)(3) did not apply. Since under section 351(b) gain in the amount of \$9,000 would be recognized to the transferor without regard to section 1250, the limitation under section 1250(d)(3) does not prevent treatment of the entire \$6,000 as ordinary income under section 1250(a)(2). The \$3,000 remaining portion of the \$9,000 gain may be

treated as gain from the sale of property described in section 1231.

(ii) Immediately after the transfer, the amount of additional depreciation is zero, that is, the amount of additional depreciation before the transfer (\$10,000) minus the amount of additional depreciation necessary to produce an amount equal to the gain taken into account under section 1250(a)(2) upon the transfer (\$10,000) that is, \$6,000 divided by 60 percent.

(d) *Limitation for like kind exchanges and involuntary conversions.*—(1) *Limitation on gain.* (i) Under section 1250(d)(4)(A), if property is disposed of and gain (determined without regard to section 1250) is not recognized in whole or in part under section 1031 (relating to like kind exchanges) or section 1033 (relating to involuntary conversions), then the amount of gain taken into account by the transferor under section 1250(a) shall not exceed the greater of the two limitations set forth in subdivisions (ii) and (iii) of this subparagraph. Immediately after the transfer the basis of the acquired property shall be determined under subparagraph (2), (3), or (4) (whichever is applicable) of this paragraph, and its additional depreciation shall be computed under subparagraph (5) of this paragraph. The holding period of the acquired property for purposes of computing applicable percentage, which is determined under section 1250(e)(1), does not include the holding period of the property disposed of. In the case of a disposition of section 1250 property and other property in one transaction, see subparagraph (6) of this paragraph. In case of a disposition described in section 1250(d)(4)(A) of a portion of this item of property, see subparagraph (7) of this paragraph.

(ii) For purposes of this subparagraph, the first limitation is the sum of—

(a) The amount of gain recognized on the disposition under section 1031 or 1033 (determined without regard to section 1250), plus

(b) An amount equal to the cost of any stock purchased in a corporation which (without regard to section 1250) would result in nonrecognition of gain under section 1033(a)(3)(A).

(iii) For purposes of this subparagraph, the second limitation is the excess (if any) of—

(a) The amount of gain which would (without regard to section 1250(d)(4)) be taken into account under section 1250(a), over

(b) The fair market value (or cost in the case of a transaction described in section 1033(a)(3)) of the section 1250 property acquired in the transaction.

(iv) The provisions of this subparagraph may be illustrated by the following example:

Example. A taxpayer receives \$96,000 of insurance proceeds upon the destruction of section 1250 property by fire. If section 1250(d)(4)(A) did not apply to the disposition, \$16,000 of gain would be recognized under section 1250(a). In acquisitions qualifying under section 1033(a)(3)(A), he uses \$90,000 of the proceeds to purchase property similar or related in service or use to the property destroyed, of which \$42,000 is for one item of section 1250 property and \$48,000 is for

one piece of land, and \$5,000 of the proceeds to purchase stock in the acquisition of control of a corporation owning property similar or related in service or use to the property destroyed. The taxpayer properly elects under section 1033(a)(3)(A) and the regulations thereunder to limit recognition of gain (determined without regard to section 1250) to \$1,000, that is, the excess of the amount realized from the conversion (\$96,000) over the cost of the property acquired in acquisitions qualifying under section 1033(a)(3)(A) (\$95,000, that is, \$90,000 plus \$5,000). The amount of gain recognized under section 1250(a) is \$6,000, determined in the following manner:

The first limitation:

(a) Amount of gain recognized under section 1033(a)(3), determined without regard to section 1250(a)	\$1,000
(b) Fair market value of stock in a corporation which qualifies under section 1033(a)(3)(A)	5,000
(c) Sum of (a) plus (b)	6,000

The second limitation:

(d) Amount of gain which would be recognized under section 1250 (a) if section 1250(d)(4) did not apply	16,000
(e) Cost of section 1250 property acquired in transaction	42,000
(f) Excess of (d) over (e)	0

Since the first limitation (\$6,000) exceeds the second limitation (zero), the amount of gain recognized under section 1250(a) is \$6,000. The balance (\$10,000) of the gain realized (\$16,000) is not recognized.

(2) *Basis of property purchased upon involuntary conversion into money.* (i) If section 1250 property is purchased in a compulsory or involuntary conversion to which section 1033(a)(3) applies, and if by reason of the application of section 1250(d)(4)(A) all or part of the gain computed under section 1250(a) is not taken into account, then the basis of the section 1250 property and other purchased property shall be determined under the rules prescribed in this subparagraph. See section 1250(d)(4)(D).

(ii) The total basis of all purchased property, the acquisition of which results in the nonrecognition of any part of the gain realized upon the transaction, shall be (a) its cost, reduced by (b) the portion of the total gain realized which was not recognized. To the extent that section 1250(d)(4)(A)(i) prevents the purchase of stock from resulting in nonrecognition of gain, the basis of purchased stock is its cost.

(iii) If purchased property consists of both section 1250 property and other property, the total basis computed under subdivision (ii) of this subparagraph shall be allocated between the section 1250 property (treated as a class) and the other property (treated as a class) in proportion to their respective costs, except that for purposes of this subdivision (but not subdivision (iv) of this subparagraph) the cost of the section 1250 property shall be deemed to be the excess of (a) its actual cost, over (b) the gain not taken into account under section 1250(a) by reason of the application of section 1250(d)(4)(A).

(iv) If the property acquired consists of more than one item of section 1250

property (or of more than one item of other property), the total basis of the section 1250 property (or of the other property), as computed under subdivisions (ii) and (iii) of this subparagraph, shall be allocated to each item of section 1250 property (or other property) in proportion to their respective actual costs.

(v) The provisions of this subparagraph may be illustrated by the following examples:

Example (1). Assume the same facts as in the example in subparagraph (1)(iv) of this paragraph. Assume further that the portion of the gain realized which was not recognized under section 1033(a)(3) or 1250(a) upon the transaction is \$60,000, of which the gain computed under section 1250(a) which is not taken into account by reason of the application of section 1250(d)(4)(A) is \$10,000, that is, the excess of the gain which would have been recognized under section 1250(a) if section 1250(d)(4)(A) did not apply (\$16,000) over the gain recognized under section 1250(a) (\$6,000). In such example \$95,000 of proceeds were used to purchase property in acquisitions qualifying under section 1033(a)(3)(A) of which \$42,000 was for section 1250 property, \$48,000 for land, and \$5,000 for stock in a corporation. The basis of each acquired property is determined in the following manner:

(a) Under subdivision (ii) of this subparagraph, the total basis of the acquired properties (other than the stock) is \$30,000, that is, their cost (\$90,000, of which \$42,000 is for section 1250 property and \$48,000 is for land), reduced by the portion of the total gain realized which was not recognized (\$60,000).

(b) Under subdivision (iii) of this subparagraph, such total basis is allocated between the section 1250 property and the land in proportion to their respective costs, and for this purpose the cost of the section 1250 property is considered to be \$32,000, that is, its actual cost (\$42,000) minus the gain not recognized under section 1250(a) by reason of the application of section 1250(d)(4)(A) (\$10,000). Thus, the basis of the section 1250 property is \$12,000 ($\frac{32}{90}$ of \$30,000), and the basis of the land is \$18,000 ($\frac{58}{90}$ of \$30,000).

(c) The basis of the purchased stock is its cost of \$5,000. See last sentence of subdivision (ii) of this subparagraph.

Example (2). Assume the same facts as in example (1) except that the section 1250 property purchased for \$42,000 consists of 2 items of such property (\$10,500 for C, and \$31,500 for D), and that the land purchased for \$48,000 consists of 2 pieces of land (\$12,000 for X, and \$36,000 for Y). Under subdivision (iv) of this subparagraph, the total basis for each class of property is allocated between the individual properties of such class in proportion to their respective actual costs. Thus, the total basis of \$12,000, as determined in example (1), for the section 1250 property is allocated as follows:

To C: $\$12,000 \times (\$10,500/\$42,000)$ ----	\$3,000
To D: $\$12,000 \times (\$31,500/\$42,000)$ ----	9,000
Total -----	12,000

The total basis of \$18,000, as determined in example (1), for the land is allocated as follows:

To X: $\$18,000 \times (\$12,000/\$48,000)$ ----	\$4,500
To Y: $\$18,000 \times (\$36,000/\$48,000)$ ----	13,500
Total -----	18,000

(3) *Basis of property acquired upon involuntary conversion into similar property.* If property is involuntarily convert-

ed into property similar or related in service or use in a transaction to which section 1033(a)(1) applies, and if by reason of the application of section 1250(d)(4)(A) all or part of the gain computed under section 1250(a) is not taken into account, then—

(i) The total basis of the acquired property shall be determined under the first sentence of section 1033(c), and

(ii) If more than one item of property is acquired, such total basis shall be allocated to the individual items of property acquired in accordance with the principles prescribed in subparagraph (2)(iii) and (iv) of this paragraph, except that an amount equivalent to the fair market value of each item of property on the date acquired shall be treated as its actual cost.

(4) *Basis of property acquired in like kind exchange.* If section 1250 property is transferred in an exchange described in section 1031(a) or (b), and if by reason of the application of section 1250(d)(4)(A) all or part of the gain computed under section 1250(a) is not taken into account, then—

(i) The total basis of the property (including nonsection 1250 property) acquired of the type permitted to be received under section 1031 without recognition of gain or loss shall be determined under section 1031(d), and

(ii) If more than one item of property of such type was received, such total basis shall be allocated to the individual items of property of such type in accordance with the principles prescribed in subparagraph (2)(iii) and (iv) of this paragraph, except that an amount equivalent to the fair market value of each such item of property on the date received shall be treated as its actual cost.

(5) *Additional depreciation for property acquired in like kind exchange or involuntary conversion.* (i) If property is disposed of in a transaction described in section 1031 or 1033, and if by reason of the application of section 1250(d)(4)(A) all or part of the gain computed under section 1250(a) is not taken into account, then the additional depreciation for the acquired property immediately after the transaction (as computed under section 1250(d)(4)(E)) shall be an amount equal to the amount of gain computed under section 1250(a) which was not taken into account by reason of the application of section 1250(d)(4)(A).

(ii) In case more than one item of section 1250 property is acquired in the transaction, the additional depreciation computed under subdivision (i) of this subparagraph shall be allocated to each such item of section 1250 property in proportion to their respective adjusted bases.

(iii) The provisions of this subparagraph may be illustrated by the following examples:

Example (1). (a) On January 15, 1969, section 1250 property X is condemned and proceeds of \$100,000 are received. On such date, X's adjusted basis is \$25,000, the additional depreciation is \$10,000, and the applicable percentage under section 1250(a)(2) is 70 percent. Since the additional depreciation (\$10,000) is less than the gain realized (\$75,000, that is, \$100,000 minus \$25,000) the

amount of gain computed under section 1250(a)(2) (without regard to section 1250(d)(4)(A)) is \$7,000, that is, 70 percent of \$10,000.

(b) On March 1, 1969, all the proceeds are used to purchase section 1250 property Y in a transaction qualifying under section 1033(a)(3)(A) for nonrecognition of gain. Accordingly, the gain not recognized by reason of the application of section 1033(a)(3)(A) is \$75,000, of which \$7,000 is gain computed under section 1250(a)(2) which is not taken into account by reason of the application of section 1250(d)(4)(A). See subparagraph (1) of this paragraph.

(c) Immediately after the transaction, Y's basis is \$25,000, that is, its cost (\$100,000) minus the total gain realized which was not recognized (\$75,000), and the additional depreciation (as computed under section 1250(d)(4)(E)) is \$7,000, that is, the amount of gain not taken into account under section 1250(a)(2) by reason of the application of section 1250(d)(4)(A).

(d) On December 15, 1969, before any depreciation deductions were allowed or allowable in respect of Y, Y is sold for \$90,000. Under section 1250(e)(1), the holding period of Y is 9 months, and thus, under section 1250(a)(2), the applicable percentage is 100 percent. Since the additional depreciation (\$7,000) is less than the gain realized (\$65,000, that is \$90,000 minus \$25,000), the amount of gain recognized under section 1250(a)(2) as ordinary income is \$7,000, that is, 100 percent of \$7,000.

Example (2). Assume the same facts as in example (1), except that property Y was purchased on June 15, 1962, and that 90 full months thereafter, or December 15, 1969, it is sold for \$35,000. Thus the applicable percentage under section 1250(a)(2) is 30 percent. Assume further that at the time of such sale Y's adjusted basis is \$5,000 and additional depreciation in respect of Y for periods after it was acquired is \$2,500. Thus, the additional depreciation at the time of the sale is \$9,500, that is, the sum of the additional depreciation in respect of Y attributable to X as computed under section 1250(d)(4)(E) in (c) of example (1) (\$7,000), plus the additional depreciation attributable to periods after Y was acquired (\$2,500). Since the additional depreciation (\$9,500) is less than the gain realized (\$30,000, that is, \$35,000 minus \$5,000), the gain recognized under section 1250(a)(2) as ordinary income is \$2,850, that is, 30 percent of \$9,500.

(6) *Single disposition of section 1250 property and property of different class.*

(i) For purposes of this subparagraph—

(a) Section 1250 property, section 1245 property (as defined in section 1245(a)(3)), and other property shall each be treated as a separate class of property, and

(b) The term "qualifying property" means property which may be acquired without recognition of gain under the applicable provision of section 1031 or 1033 (applied without regard to section 1250 or 1245) upon the disposition of property.

(ii) If upon a sale of section 1250 property gain would be recognized under section 1250(a) and if such section 1250 property together with property of a different class or classes are disposed of in one transaction in which gain is not recognized in whole or in part under section 1031 or 1033 (without regard to sections 1245 and 1250), then—

(a) The total amount realized shall be allocated between the different classes

of property disposed of in proportion to their respective fair market values,

(b) The amount realized upon the disposition of property of a class shall be deemed to consist of so much of the fair market value of qualifying property of the same class acquired as is not in excess of the amount realized from the property of such class disposed of.

(c) The remaining portion (if any) of the amount realized upon the disposition of property of such class shall be deemed to consist of so much of the fair market value of any other property acquired as is not in excess of such remaining portion, and

(d) For purposes of applying (c) of this subdivision, the fair market value of acquired property shall be taken into account only once and in such manner as the taxpayer determines.

(iii) The amounts determined under this subparagraph in respect of property shall apply for all purposes of the Code.

(iv) The application of this subparagraph may be illustrated by the following example:

Example. (a) Green owns property consisting of land and a fully equipped factory building thereon. The property is condemned and proceeds of \$100,000 are received. If the property were sold for \$100,000, gain of \$40,000 would be recognized of which \$10,000 would be recognized as ordinary income under section 1250(a). Proceeds of \$95,000 are used to purchase property similar or related in service or use to the condemned property and under section 1033(a)(3)(A) (without regard to sections 1245 and 1250) recognition of gain is limited to \$5,000. The fair market values by classes of the property disposed of, and of the property acquired, are summarized in the table below:

	Fair market value of property	
	Disposed of	Acquired
Sec. 1245 property.....	\$35,000	\$55,000
Sec. 1250 property.....	45,000	28,000
Land.....	20,000	12,000
Cash.....		5,000
	100,000	100,000

(b) The allocations under subdivision (i) of this subparagraph are summarized in the table below:

Property disposed of	Property acquired			Cash remaining
	Sec. 1245 property	Sec. 1250 property	Land	
\$35,000 of sec. 1245 property.....	\$35,000			
\$45,000 of sec. 1250 property.....	17,000	\$28,000		
\$20,000 of land.....	3,000		\$12,000	\$5,000
Total.....	55,000	28,000	12,000	5,000

¹ Determined by taxpayer pursuant to subdivision (ii)(d) of this subparagraph.

(c) Upon the disposition of the section 1245 property, only section 1245 property is acquired, and thus gain (if any) would not be recognized under section 1245(a)(1). See section 1245(b)(4). Upon the disposition of the section 1250 property gain under section 1250(a) would not be recognized by reason of the application of section 1250(d)(4)(A). See subparagraph (1) of this paragraph. If

the gain realized on the disposition of the land is not less than \$5,000, then under section 1033(a)(3)(A) the gain recognized would be \$5,000, that is, an amount equal to the portion of the proceeds from the disposition of the land (\$5,000) not invested in qualifying property.

(7) *Disposition of portion of property.* A disposition described in section 1250(d)(4)(A) of a portion of an item of property gives rise to an addition to capital account described in the last sentence of paragraph (d)(2)(i) of § 1.1250-5 (relating to property with 2 or more elements). If the addition to capital account is a separate improvement within the meaning of paragraph (d) of § 1.1250-5, and thus an element, then immediately after the addition is made the amount of additional depreciation for such separate improvement shall be computed under subparagraph (5) of this paragraph by treating such portion and such addition as separate properties. If the addition is not a separate improvement, then immediately after the addition is made such property is considered under paragraph (c)(5)(ii) of § 1.1250-5 as having a special element with the same amount of additional depreciation so computed. For purposes of computing applicable percentage, the holding period of the separate improvement or special element (as the case may be), which is determined under section 1250(e)(1), does not include the holding period of the property disposed of.

(e) *Section 1071 and 1081 transactions.*—(1) *General.* This paragraph prescribes regulations under section 1250(d)(5) which apply in the case of a disposition of section 1250 property in a transaction in which gain (determined without regard to section 1250) is not recognized in whole or in part by reason of the application of section 1071 (relating to gain from sale or exchange to effectuate policies of FCC) or section 1081 (relating to gain from sale or exchange in obedience to order of SEC).

(2) *Involuntary conversion treatment under section 1071.* If section 1250 property is disposed of and gain (determined without regard to section 1250) is not recognized in whole or in part solely by reason of an election under the first sentence of section 1071(a) to treat the transaction as an involuntary conversion, the consequences of the transaction shall be determined under the principles of paragraph (d) of this section.

(3) *Basis reduction under section 1071 or 1082(a)(2).* (i) If section 1250 property is disposed of and gain (determined without regard to section 1250) is not recognized in whole or in part by reason of a reduction in basis of property pursuant to an election under section 1071(a) or the application of section 1082(a)(2), then the amount of gain taken into account by the transferor under section 1250(a) shall not exceed the sum of—

(a) The amount of gain recognized on such disposition (determined without regard to section 1250), plus

(b) In case involuntary conversion treatment was also elected under section 1071(a), an amount equal to the cost of any stock purchased in a cor-

poration which (without regard to section 1250) would result in nonrecognition of gain under section 1033(a)(3), as modified by section 1071(a), plus

(c) The portion of the gain computed under section 1250(a) (without regard to this paragraph) which is neither taken into account under (a) or (b) of this subdivision nor applied under subdivision (ii) of this subparagraph to reduce the basis of section 1250 property.

(ii) (a) The amount of gain computed under section 1250(a) (without regard to this paragraph) which is not taken into account under subdivision (i) (a) or (b) of this subparagraph shall be applied to the amount by which the basis of the section 1250 property was reduced under section 1071(a) or 1082(a)(2), as the case may be, before other gain (which is not gain computed under section 1250(a)) is so applied.

(b) If the basis of more than one item of section 1250 property was so reduced, the gain applied under (a) of this subdivision to all such section 1250 properties shall be applied to such items in proportion to the amounts of their respective basis reductions.

(c) Any gain not applied under (a) of this subdivision shall be applied to the amount by which the basis of the non-section 1250 property was reduced.

(iii) If gain computed under section 1250 is applied under subdivision (ii) of this subparagraph to reduce the basis of section 1250 property, the amount so applied shall be treated as additional depreciation in respect of such section 1250 property. For treatment of such section 1250 property as having a special element with additional depreciation consisting of such amount, see paragraph (c)(5)(i) of § 1.1250-5. For purposes of computing applicable percentage, such special element shall have a holding period beginning on the day after the date as of which the property's basis was so reduced.

(4) *Section 1081(d)(1)(A) transaction.* No gain shall be recognized under section 1250(a) upon an exchange of property as to which gain is not recognized (without regard to section 1250) because of the application of section 1081(d)(1)(A) (relating to transfers within system group). For treatment of property in the hands of a transferee, the principles of paragraph (c)(3) of this section shall apply.

(f) *Property distributed by a partnership to a partner.*—(1) *General.* For purposes of section 1250(d)(3) and (e)(2), the basis of section 1250 property distributed by a partnership to a partner shall be determined by reference to the adjusted basis of such property to the partnership. Thus, if section 731 applies to a distribution of section 1250 property by a partnership to a partner, then even though the partner's basis is not determined for other purposes by reference to the partnership's basis, (i) the amount of gain taken into account by the partnership under section 1250(a) is limited by section 1250(d)(3) to the amount of gain recognized to the partnership upon the distribution (determined without regard to section 1250), and (ii) the

holding period of the property in the hands of the partner shall, under section 1250(e)(2), include the holding period of the property in the hands of the partnership. For nonapplication of section 1250(d)(3) to a disposition to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by chapter 1 of the Code, see paragraph (c)(1) of this section.

(2) *Treatment of property distributed by partnership.* (i) If section 1250 property is distributed by a partnership to a partner in a distribution in which no part of the partnership's "potential section 1250 income" in respect of the property was recognized as ordinary income to the partnership under paragraph (b)(2)(ii) of § 1.751-1, the additional depreciation for the property in the hands of the distributee attributable to periods before the distribution shall be an amount equal to the total potential section 1250 income of the partnership in respect of the property immediately before the distribution, recomputed as if the applicable percentage for the property had been 100 percent. Under paragraph (c)(4) of § 1.751-1, the potential section 1250 income is, in effect, the gain to which section 1250(a) would have applied if the property had been sold by the partnership immediately before the distribution at its fair market value at such time.

(ii) If upon the distribution any potential section 1250 income in respect of the property was recognized to the partnership under paragraph (b)(2)(ii) of § 1.751-1, then after the distribution the additional depreciation shall be an amount equal to (a) the total potential section 1250 income in respect of the property, as recomputed in subdivision (i) of this subparagraph, minus (b) the amount of potential section 1250 income which would have been recognized to the partnership under paragraph (b)(2)(ii) of § 1.751-1 if the applicable percentage for the property had been 100 percent.

(iii) If the partner's basis for the property immediately after the transaction exceeds the partnership's adjusted basis for the property immediately before the transaction, the excess may be an addition to capital account under paragraph (d)(2)(ii) of § 1.1250-5 (relating to property with two or more elements).

(3) *Examples.* The provisions of subparagraphs (1) and (2) of this paragraph may be illustrated by the following examples:

Example (1). (1) A partnership distributes a building to Smith on January 1, 1969, in a complete liquidation of his partnership interest to which section 736(a) does not apply. On the date of the distribution, the partnership's holding period for the property is 40 full months and, accordingly, the applicable percentage under section 1250(a)(2) is 80 percent. On such date, the partnership's additional depreciation for the building (\$6,250) is lower than the excess (\$40,000) of its fair market value (\$140,000) over adjusted basis (\$100,000). Thus, under paragraph (c)(4) of § 1.751-1, the partnership's potential section 1250 income in respect of the building is \$5,000 (80 percent of \$6,250).

Assume that section 751(b) does not apply to the distribution. Accordingly, no gain would be recognized to the partnership under section 731(b) (without regard to the application of section 1250). Smith's basis for his partnership interest was \$150,000, and under section 732(b) Smith's basis for the building is equal to his basis for his partnership interest. Thus, Smith's basis for the building is not determined by reference to the partnership's basis for the building. Nevertheless, under subparagraph (1) of this paragraph, no gain is recognized to the partnership under section 1250(a)(2) and Smith's holding period for the property includes the partnership's holding period.

(ii) Six full months after Smith received the building in the distribution, or July 1, 1969, he sells it for \$153,000. Assume that no depreciation was allowed or allowable to Smith for the building, and that the special rules under § 1.1250-5 for property with two or more elements do not apply. Since Smith's holding period for the building includes its holding period in the hands of the partnership, his holding period is 46 full months (40 full months for the partnership plus 6 full months for Smith) and the applicable percentage under section 1250(a)(2) is 74 percent.

(iii) Since no potential section 1250 income was recognized to the partnership under paragraph (b)(2)(ii) of § 1.751-1, the additional depreciation for the building attributable to periods before the distribution is determined under the provisions of subparagraph (2)(i) of this paragraph. Under such provisions, the potential section 1250 income to the partnership, which was actually \$5,000 (that is, 80 percent of \$6,250), is recomputed as if the applicable percentage were 100 percent, and thus such additional depreciation is \$6,250 (that is, 100 percent of \$6,250). Since no depreciation was allowed or allowable for the building in Smith's hands, the additional depreciation for the building attributable to Smith's total holding period (46 full months) is \$6,250. Since the gain realized (\$3,000, that is, amount realized, \$153,000, minus adjusted basis, \$150,000), is lower than the additional depreciation (\$6,250), the gain recognized to Smith under section 1250(a)(2) is \$2,220 (that is, 74 percent of \$3,000).

Example (2). Assume the facts as in example (1) except that as a result of the distribution the partnership recognizes under paragraph (b)(2)(ii) of § 1.751-1 potential section 1250 income of \$1,000 (that is, 80 percent of \$1,250). The additional depreciation attributable to periods before the distribution, as determined under the provisions of subparagraph (2)(i) of this paragraph, is \$5,000, that is, (a) the total potential section 1250 income in respect of the property, recomputed in example (1) as if the applicable percentage were 100 percent (\$6,250), minus (b) the amount of potential section 1250 income which would have been recognized to the partnership under paragraph (b)(2)(ii) of § 1.751-1 if the applicable percentage for the property had been 100 percent (\$1,250, that is, 100 percent of \$1,250).

(4) *Treatment of partnership property after certain transactions.* If under paragraph (b)(3) of § 1.751-1 (relating to certain distributions of partnership property other than section 751 property treated as sales or exchanges) a partnership is treated as purchasing section 1250 property (or a portion thereof) from a distributee who relinquishes his interest in such property (or portion), then after the date of such purchase the following rules shall apply:

(i) If only a portion of the property is treated as purchased, there shall be

excluded from the additional depreciation for the remaining portion any additional depreciation in respect of the purchased portion for periods before such purchase.

(ii) In respect of the purchased property (or portion), (a) as of the date of purchase the amount of additional depreciation shall be zero, and (b) for purposes of computing applicable percentage the holding period shall begin on the day after the date of such purchase.

(5) *Cross reference.* See paragraph (f) of § 1.1250-1 for the amount of additional depreciation for partnership property in respect of a partner who acquired his partnership interest in certain transactions when an election under section 754 (relating to optional adjustments to basis of partnership property) was in effect.

(g) *Disposition of principal residence—(1) In general.* (i) Section 1250(d)(7)(A) provides that section 1250(a) shall not apply to a disposition of property by a taxpayer to the extent the property is used by the taxpayer as his principal residence (within the meaning of section 1034(a) and the regulations thereunder, relating to a sale or exchange of residence). Thus, for example, if a doctor sells a house, of which one portion was used as his principal residence within the meaning of section 1034(a) and the other portion was properly subject to the allowance for depreciation as property used in his trade or business, then, by reason of the application of section 1250(d)(7)(A), section 1250(a) does not apply in respect of the disposition of the portion used as his principal residence. The provisions of this subparagraph shall apply regardless of whether section 1034 applies. Thus, for example, if section 1034 did not apply to the sale because the doctor did not invest in a new principal residence within the period specified in section 1034, nevertheless section 1250(a) would not apply to the disposition of the portion used as a principal residence.

(ii) Section 1250(d)(7)(B) provides that section 1250(a) shall not apply to a disposition of section 1250 property by a taxpayer who, in respect of the property, satisfies the age and ownership requirements of section 121 (relating to exclusion from gross income of gain on sale or exchange of residence of individual who has attained age 65), but only to the extent the taxpayer satisfies the use requirements of section 121 in respect of such property. Thus, if a taxpayer has attained the age of 65 before the date on which he disposes of section 1250 property, and if during the 8-year period ending on the date of the disposition the property has been owned and used by the taxpayer solely as his principal residence for periods aggregating 5 years or more, then section 1250(a) does not apply in respect of the disposition. This result would not be changed even if the taxpayer does not or cannot make the election provided for in section 121 and even if section 121 applies to only a portion of the gain because the adjusted sales price exceeds the \$20,000 limitation in section 121(b)(1). If, however, only a

portion of the property has been used as his principal residence for such periods aggregating 5 years or more, then, by reason of the application of section 1250(d)(7)(B), section 1250(a) is inapplicable only to the portion so used. For special rules for determining whether the age, ownership, and use requirements of section 121 are treated as satisfied, and for the manner of applying such requirements, see section 121(d) and the regulations thereunder.

(2) *Concurrent operation of section 1250(d)(7) with other provisions.* Upon the disposition of a principal residence, gain computed under section 1250(a) may not be recognized in whole or in part by reason of the application of both the provisions of section 1250(d)(7) and the provisions of one of the other exceptions or limitations enumerated in section 1250(d). Thus, for example, if an entire house is transferred as a gift, and if section 1250(d)(7) applies to only a portion of the house, then section 1250(d)(1) excepts the disposition of the entire house from the application of section 1250(a).

(3) *Special rule.* If by reason of section 1250(d)(7) a disposition is partially excepted from the application of section 1250(a), and if no other paragraph of section 1250(d) excepts the disposition entirely from such application, then the gain to which section 1250(a) applies shall be an amount which bears the same ratio to (i) the gain computed under section 1250(a) (without regard to section 1250(d)(7)), as (ii) the fair market value of the portion of the property to which the exception in section 1250(d)(7) does not apply, bears to (iii) the total fair market value of the property. Thus, for example, if under paragraph (a)(2) of this section gain of \$300 would be recognized as ordinary income under section 1250(a) (without regard to section 1250(d)(7)) upon a combined sale and gift of section 1250 property, and if the property has a fair market value of \$25,000 of which \$10,000 is properly allocable to a portion not used as a principal residence, then the amount of gain recognized as ordinary income under section 1250(a) would be \$120 ($\frac{10}{25}$ of \$300).

(4) *Treatment of property in hands of transferee.* If property is disposed of in a transaction to which section 1250(d)(7) applies, and if its basis in the hands of the transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 1250(d)(1) (relating to gifts) or section 1250(d)(3) (relating to certain tax-free transactions), then the treatment of the property in the hands of the transferee shall be determined under paragraph (a)(3) or (c)(3) (whichever is applicable) of this section.

(5) *Treatment of property acquired in like kind exchange or involuntary conversion.* If property is disposed of in a transaction to which section 1250(d)(7) (relating to principal residence) and section 1250(d)(4) (relating to like kind exchanges and involuntary conversions) apply, then—

(i) The basis of the property acquired shall be determined under the applicable provisions of paragraph (d)(2), (3), or (4) of this section, applied as if all gain computed under section 1250(a) (except any gain not recognized solely by reason of the application of section 1250(d)(7)) were not taken into account by reason of section 1250(d)(4)(A).

(ii) The additional depreciation for the property acquired shall be determined in the manner prescribed in paragraph (d)(5) of this section, so applied, and

(iii) For purposes of computing the applicable percentage, the holding period of the acquired property shall be determined under section 1250(e)(1).

(6) *Treatment of property acquired in section 1034 transaction.* If a principal residence is disposed of in a transaction to which section 1250(d)(7) applies, and if by reason of the application of section 1034 (relating to sale or exchange of residence) the basis of property acquired in the transaction is determined by reference to the basis in the hands of the taxpayer of the property disposed of, then—

(i) The additional depreciation for the acquired property immediately after the transaction shall be an amount equal to (a) the amount of the additional depreciation for the property disposed of, minus (b) the amount of any gain which would have been taken into account under section 1250(a) by the transferor upon the disposition if the applicable percentage for the property had been 100 percent,

(ii) For purposes of computing the applicable percentage, the holding period of the acquired property includes the holding period of the disposed of property (see section 1250(e)(3)),

(iii) If the adjusted basis of the acquired property exceeds the adjusted basis immediately before the transfer of the property disposed of, the excess is an addition to capital account under paragraph (d)(2)(ii) of § 1.1250-5 (relating to property with more than one element), and

(iv) If the property disposed of consisted of two or more elements within the meaning of paragraph (c) of § 1.1250-5, see paragraph (e)(3) of § 1.1250-5 for the amount of additional depreciation and the holding period for each element in the hands of the transferee.

(h) [Reserved]

§ 1.1250-4 Holding period.

(a) *General.* In general, for purposes only of determining the applicable percentage (as defined in sec. 1250(1)(C) and (2)(B)) of section 1250 property, the holding period of the property shall be determined under the rules of section 1250(e) and this section and not under the rules of section 1223. If the property is treated as consisting of two or more elements (within the meaning of paragraph (c)(1) of § 1.1250-5), see paragraph (a)(2)(ii) of § 1.1250-5 for application of this section to determination of holding period of each element. Section 1250(e)

does not affect the determination of the amount of additional depreciation in respect of section 1250 property.

(b) *Beginning of holding period.* (1) For the purpose of determining the applicable percentage, in the case of property acquired by the taxpayer (other than by means of a transaction referred to in paragraph (c) or (d) of this section), the holding period of the property shall begin on the day after the date of its acquisition. See section 1250(e)(1)(A). Thus, for example, if a taxpayer purchases section 1250 property on January 1, 1965, the holding period of the property begins on January 2, 1965. If he sells the property on October 1, 1966, the holding period on the day of the sale is 21 full months, and, accordingly, the applicable percentage is 99 percent. This result would not be changed even if the property initially had been used solely as the taxpayer's residence for a portion of the 21-month period. If, however, the property were sold on September 30, 1966, the holding period would be only 20 full months.

(2) For the purpose of determining the applicable percentage in the case of property constructed, reconstructed, or erected by the taxpayer, the holding period of the property shall begin on the first day of the month during which the property is placed in service. See section 1250(e)(1)(B). Thus, for example, if a taxpayer constructs section 1250 property and places it in service on January 15, 1965, its holding period begins on January 1, 1965. If the taxpayer sells the property on December 31, 1966, its holding period on the day of sale is 24 full months, and, accordingly, the applicable percentage is 96 percent. For purposes of this subparagraph, property is placed in service on the date on which it is first used, whether in a trade or business, in the production of income, or in a personal activity. Thus, for example, a residence constructed by a taxpayer for his personal use is placed in service on the date it is occupied as a residence. For purposes of determining the date property is placed in service, it is immaterial when the period begins for depreciation with respect to the property under any depreciation practice under which depreciation begins in any month other than the month in which the property is placed in service. If one or more units of a single property are placed in service on different dates before the completion of the property, see paragraph (c)(3) of § 1.1250-5 (relating to treatment of each such unit as an element).

(c) *Property with transferred basis.* Under section 1250(e)(2), if the basis of property acquired in a transaction described in this subparagraph is determined by reference to its basis in the hands of the transferor, then the holding period of the property in the hands of the transferee shall include the holding period of the property in the hands of the transferor. The transactions described in this subparagraph are:

(1) A gift described in section 1250(d)(1).

(2) Certain transfers at death to the extent provided in paragraph (b) (2) (ii) of § 1.1250-3.

(3) Certain tax-free transactions to which section 1250(d)(3) applies. For application of section 1250(d)(3) and (e)(2) to a distribution by a partnership to a partner, see paragraph (f) (1) of § 1.1250-3.

(4) A transfer described in paragraph (e) (4) of § 1.1250-3 (relating to transaction under section 1081(d)(1)(A)).

(d) *Principal residence acquired in certain transactions.* The holding period of a principal residence acquired in a transaction to which section 1034 and paragraph (g) (6) of § 1.1250-3 apply includes the holding period of the principal residence disposed of in such transaction. See section 1250(e)(3). The holding period of a principal residence acquired does not include the period beginning on the day after the date of the disposition and ending on the date of the acquisition.

(e) *Application of transferred basis and principal residence rules.* The determination of holding period under this section shall be made without regard to whether a transaction occurred prior to the effective date of section 1250 and without regard to whether there was any gain upon the transaction. Thus, for example, under paragraph (c) of this section a donee's holding period for property includes his donor's holding period notwithstanding that the gift occurred on or before December 31, 1963, or that there was no additional depreciation in respect of the property at the time of the gift.

(f) [Reserved]

(g) *Cross reference.* If the adjusted basis of the property in the hands of the transferee immediately after a transaction to which paragraph (c) or (d) of this section applies exceeds its adjusted basis in the hands of the transferor immediately before the transaction, the excess is an addition to capital account under paragraph (d) (2) (ii) of § 1.1250-5 (relating to property with two or more elements).

§ 1.1250-5 Property with two or more elements.

(a) *Dispositions before January 1, 1970—(1) Amount treated as ordinary income.* If section 1250 property consisting of two or more elements (described in paragraph (c) of this section) is disposed of before January 1, 1970, the amount of gain taken into account under section 1250(a)(2) shall be the sum, determined in three steps under subparagraphs (2), (3), and (4) of this paragraph, of the amounts of gain for each element.

(2) *Step 1.* The first step is to make the following computations:

(i) In respect of the property as a whole, compute the additional depreciation (as defined in section 1250(b)), and the gain realized. For purposes of this paragraph, in the case of a transaction other than a sale, exchange or involuntary conversion, the gain realized shall be considered to be the excess of the fair market value of the property over its adjusted basis.

(ii) In respect of each element as if it were a separate property, compute the additional depreciation for the element, and the applicable percentage (as defined in section 1250(a)(2)) for the element. For additional depreciation in respect of an element of property acquired in certain transactions, see paragraph (e) of this section. For purposes of determining additional depreciation, the holding period of an element shall be determined under section 1223, applied by treating the element as a separate property. However, for the purpose of determining applicable percentage, the holding period for an element shall, except to the extent provided in paragraphs (c) (5), (e), and (f) of this section, be determined in accordance with the rules prescribed in § 1.1250-4.

(3) *Step 2.* The second step is to determine the amount of gain for each element in the following manner:

(i) If the amount of additional depreciation in respect of the property as a whole is equal to the sum of the additional depreciation in respect of each element having additional depreciation, and if such amount is not more than the gain realized, then the amount of gain to be taken into account for an element is the product of the additional depreciation for the element, multiplied by the applicable percentage for the element.

(ii) If subdivision (i) of this subparagraph does not apply, the amount of gain to be taken into account for an element is the product of—

(a) The additional depreciation for the element, multiplied by

(b) The applicable percentage for the element, and multiplied by

(c) A ratio, computed by dividing (1) the lower of the additional depreciation in respect of the property as a whole or the gain realized, by (2) the sum of the additional depreciation in respect of each element having additional depreciation.

(4) *Step 3.* The third step is to compute the sum of the amounts of gain for each element, as determined in step 2.

(5) *Examples.* The provisions of this subparagraph may be illustrated by the following examples:

Example (1). Gain of \$35,000 is realized upon a sale, before January 1, 1970, of section 1250 property which consists of four elements (W, X, Y, and Z). Since on the date of the sale the amount of additional depreciation in respect of the property as a whole (\$24,000) is equal to the sum of the additional depreciation in respect of each element having additional depreciation and is less than the gain realized, the additional depreciation for each element is determined under subparagraph (3) (1) of this paragraph. The amount of gain taken into account under section 1250(a)(2) is \$7,500, as determined in the following table in accordance with the additional facts assumed.

Element	Additional depreciation	×	Applicable percentage	=	Gain for element
W.....	\$12,000	×	0	=	0
X.....	6,000	×	50	=	\$3,000
Y.....	0	×	63	=	0
Z.....	6,000	×	75	=	4,500
Totals..	24,000				7,500

Example (2). Assume the same facts as in example (1), except that in respect of the property as a whole the additional depreciation is \$20,000 because with respect to element Y additional depreciation allowed was \$4,000 less than straight line. Accordingly, the sum of the additional depreciation for each element having additional depreciation is \$24,000, that is, \$4,000 greater than the additional depreciation in respect of the property as a whole. Thus, the additional depreciation for each element is determined under subparagraph (3) (ii) of this paragraph. The ratio referred to in subparagraph (3) (ii) (c) of this paragraph is twenty twenty-fourths, that is, the lower of additional depreciation in respect of the property as a whole (\$20,000) or the gain realized (\$35,000), divided by the sum of the additional depreciation in respect of each element having additional depreciation (\$24,000). The amount of gain taken into account under section 1250(a)(2) is \$6,250, as determined in the following table:

Element	Additional depreciation	×	Applicable percentage	×	Ratio	=	Gain for element
W.....	\$12,000	×	0	×	20:24	=	0
X.....	6,000	×	50	×	20:24	=	\$2,500
Y.....	0	×	63	×	20:24	=	0
Z.....	6,000	×	75	×	20:24	=	3,750
Totals..	24,000						6,250

(b) [Reserved]

(c) *Element—(1) General.* For purposes of this section, in the case of section 1250 property, there shall be treated as separate elements the separate improvements, units, remaining property, and special elements which are respectively referred to in subparagraphs (2), (3), (4), and (5) of this paragraph.

(2) *Separate improvements.* There shall be treated as an element each "separate improvement" (as defined in paragraph (d) (1) of this section) to the property.

(3) *Units.* If before completion of section 1250 property one or more units thereof are placed in service, each such unit of the section 1250 property shall be treated as an element.

(4) *Remaining property.* The remaining property which is not taken into account under subparagraph (2) or (3) of this paragraph shall be treated as an element.

(5) *Special elements.* (i) If the basis of section 1250 property is reduced in the manner described in paragraph (b) (2) (ii) of § 1.1250-3 (relating to property acquired from a decedent prior to his death) or in paragraph (e) (3) (iii) of § 1.1250-3 (relating to basis reduction under section 1071 or 1082(a)(2)), then such property shall be considered as having a special element with additional depreciation equal to the amount of additional depreciation included in the depreciation adjustments (referred to in paragraph (d) (1) of § 1.1250-2) to which the basis reduction is attributable. For purposes of computing applicable percentage, the holding period of a special element under this subdivision shall be determined under paragraph (b) (2) (ii) or (e) (3) (iii) (whichever is applicable) of § 1.1250-3.

(ii) If a disposition described in section 1250(d)(4)(A) (relating to like kind exchanges and involuntary conversions) of a portion of an item of property gives rise to an addition to capital account (described in the last sentence of paragraph (d)(2)(i) of this section) which is not a separate improvement, then such property shall be considered as having a special element with additional depreciation and, for purposes of computing applicable percentage, a holding period determined under paragraph (d)(7) of § 1.1250-3.

(6) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). A taxpayer constructs an apartment house which he places in service in three stages. The total cost is \$1 million, of which \$350,000 is allocable to the first stage, \$500,000 to the second stage, and \$150,000 to the third stage. The first stage, which is placed in service on January 1, 1965, consists of 300 apartments and certain facilities including a central heating system and a common lobby. The second stage, which is placed in service on July 15, 1965, consists of 550 apartments and certain facilities including the motor for a central air-conditioning system. The third stage, which is placed in service on January 19, 1966, consists of the residue of the apartment house. On December 31, 1968, the taxpayer disposes of the apartment house. On such date, the apartment house has three elements which are described in the table below:

Stage	Kind of element	Cost	Full months in holding period	Applicable percentage
1	Unit.....	\$350,000	48	72
2	Unit.....	500,000	42	78
3	Remaining property.....	150,000	36	84

Example (2). Assume the same facts as in example (1) except that on January 1, 1969, two new floors, which were added after the apartment house was completed, are placed in service and that on July 1, 1972, the taxpayer disposes of the building. Assume further that the two new floors are one separate improvement (within the meaning of paragraph (d) of this section). On the date disposed of, the property consists of four elements, that is, the three elements described in example (1) and the separate improvement.

(d) *Separate improvement*—(1) *Definition.* For purposes of this section, with respect to any section 1250 property, the term "separate improvement" means an "addition to capital account" described in subparagraph (2) of this paragraph which qualifies as an "improvement" under the 1-year test prescribed in subparagraph (3) of this paragraph and which satisfies the 36-month test prescribed in subparagraph (4) of this paragraph.

(2) *Addition to capital account.* (i) In the case of any section 1250 property, an addition to capital account described in this subparagraph is any addition to capital account in respect of such property after its initial acquisition or completion by the taxpayer or by any person who held the property during a period included in the taxpayer's holding period (see § 1.1250-4) for the property. An ad-

dition to the capital account of section 1250 property may arise, for example, if there is an expenditure for section 1250 property which is an improvement, replacement, addition, or alteration to such property (regardless of whether the cost thereof is capitalized or charged against the depreciation reserve). In such a case, the "addition to capital account" is the gross addition, unreduced by amounts attributable to replaced property, to the net capital account and not the net addition to such account. Thus, if a roof has an adjusted basis of \$20,000, and is replaced by constructing a new roof at a cost of \$50,000, the gross addition of \$50,000 is an addition to capital account. (The adjusted basis of the old roof is no longer included in the capital account for the property.) For purposes of this section, the status of an addition to capital account is not affected by whether or not it is treated as a separate property for purposes of determining depreciation adjustments. In case of an addition to the capital account of property arising after December 31, 1963, upon a disposition referred to in section 1250(d)(4) (relating to like kind exchanges and involuntary conversions) of a portion of an item of such property, the amount of such addition (and its basis for all purposes of the Code) shall be the basis thereof determined under paragraph (d)(2), (3), or (4) (whichever is applicable) of § 1.1250-3, applied by treating such portion and such addition as separate properties.

(ii) An addition to capital account may be attributable to an excess of the adjusted basis of section 1250 property in the hands of a transferee immediately after a transaction referred to in section 1250(e)(2) (relating to holding period of property with transferred basis) over its adjusted basis in the hands of the transferor immediately before the transaction. Thus, for example, such excess may arise from a gift which is in part a sale or exchange (see paragraph (a)(2) of § 1.1250-3), from an increase in basis due to gift tax paid (see section 1015(d)), from a transfer referred to in paragraph (c)(2) of § 1.1250-3 (relating to certain tax-free transactions) in which gain is partially recognized, or from a distribution by a partnership to a partner in which no gain is recognized by reason of the application of section 731. Similarly, an addition to capital account may be attributable to an excess of the adjusted basis of a principal residence acquired in a transaction referred to in section 1250(e)(3) over the adjusted basis of the principal residence disposed of, as well as to any increase in the adjusted basis of section 1250 property of a partnership by reason of an optional basis adjustment under section 734(b) or 743(b).

(iii) Whether or not an expenditure shall be treated as an addition to capital account described in this subparagraph, as distinguished from a separate item of property, may depend on how the property or properties are disposed of. Thus, for example, if a taxpayer, who owns a motel consisting of 10 buildings with

common heating and plumbing systems, adds to the motel three new buildings which are connected to the common systems, and if the taxpayer sells the motel to one person in one transaction, then for purposes of this subparagraph the cost of the three new buildings shall be treated as an addition to the capital account of the motel and, if the 1-year and 36-month tests of subparagraphs (3) and (4) of this paragraph are satisfied, the motel consists of at least two elements. If, however, the 10-building group and the three-building group were individually sold in separate transactions to two different people each of whom would operate his group as a separate business, the motel would consist of two items of property.

(3) *One-year test for improvement.*

(i) An addition to capital account of section 1250 property for any taxable year (including a short taxable year and the entire taxable year in which the disposition occurs) shall be treated as an improvement only if the sum of all additions to the capital account of such property for such taxable year exceeds the greater of—

- (a) \$2,000, or
- (b) One percent of the unadjusted basis of the property, determined as of the beginning (1) of such taxable year, or (2) of the holding period (within the meaning of § 1.1250-4) of the property, whichever is the later.

(ii) For purposes of this section, the term "unadjusted basis" means the adjusted basis of the property, determined without regard to the adjustments provided in section 1016(a)(2) and (3) (relating to adjustments for depreciation, amortization, and depletion). For purposes of this paragraph, as of any particular date the unadjusted basis of section 1250 property (a) includes the cost of any addition to capital account for the property which arises prior to such date (regardless of whether such addition qualified under this subparagraph as an improvement), and (b) does not include the cost of a component retired before such date.

(iii) In respect of a particular disposition of section 1250 property by a person—

(a) There shall not be taken into account under the 1-year test for improvements in this subparagraph any addition to capital account which arises by reason of (or after) such disposition or which arises before the beginning of the holding period under § 1.1250-4 of such person for the property, and

(b) Such test shall be made in respect of each taxable year of such person (and of any prior transferor) any day of which is included under § 1.1250-4 in such person's holding period for the property, except that (1) such test shall be made for a taxable year of such person only if such person actually owned the property on at least 1 day of such taxable year, and (2) such test shall be made for a taxable year of such prior transferor only if such prior transferor actually owned the property on at least 1 day of such taxable year.

(iv) The provisions of this subparagraph may be illustrated by the following examples:

Example (1). The unadjusted basis of section 1250 property as of the beginning of January 1, 1960, is \$300,000. During the taxable year ending on December 31, 1960, the only additions to the capital account for the property are addition A on January 1, 1960, costing \$1,000, and addition B on July 1, 1960, costing \$600. Since the sum of the amounts added to capital account for such taxable year is less than \$2,000, A and B are not treated as improvements. This result would not be changed if addition C, costing \$600, were added on December 15, 1960, since although the sum of the additions (\$1,000 plus \$600 plus \$600, or \$2,200) exceeds \$2,000, such sum is less than 1 percent of the unadjusted basis of the property as of the beginning of 1960 (\$3,000, that is, 1 percent of \$300,000). If however, C cost \$1,500, then A, B, and C would each be considered an improvement since the sum of the amounts added to capital account \$3,100 would exceed \$3,000.

Example (2). Green and his son both use the calendar year as the taxable year. On February 1, 1965, Green makes addition A to a piece of section 1250 property. On June 15, 1965, Green transfers such property to his son as a gift which is in part a sale (see paragraph (a) of § 1.1250-3). Addition B arises by reason of the transfer. On August 1, 1965, the son makes addition C to the property. For purposes of determining the amount of gain recognized under section 1250(a) to Green upon the transfer, the determination of whether addition A is an improvement is made without taking into account additions B and C. For purposes of determining the amount of gain recognized under section 1250(a) upon a subsequent disposition of the property by the son, additions B and C would be taken into account in the determination of whether A is an improvement, and A would be taken into account in the determination of whether B and C are improvements.

Example (3). Assume the same facts as in example (2). Assume further that on September 15, 1965, the son transfers the property to a corporation in exchange for cash and stock in the corporation in a transaction qualifying under section 351 (see paragraph (c) of § 1.1250-3), and that the corporation uses a fiscal year ending November 30. For purposes of determining the amount of gain recognized under section 1250(a) upon a subsequent disposition by the corporation, the one-year test under subdivision (1) of this subparagraph is made for the entire taxable year of Green and of the son ending on December 31, 1965, and in respect of the corporation's taxable year ending November 30, 1965. Accordingly, if on December 7, 1965, addition D is made by the corporation, then, upon a subsequent disposition by the corporation, D is taken into account for purposes of the determination in respect of the entire taxable year of Green and of the son ending on December 31, 1965, and for the corporation's taxable year ending November 30, 1965, but not for purposes of the corporation's taxable year ending November 30, 1965. If D were made on January 3, 1966, D would still be taken into account for purposes of the determination in respect of the corporation's taxable year ending November 30, 1966. However, since neither Green nor his son actually owned the property on any day of the taxable year ending December 31, 1966, no determination is made in respect of such taxable year of Green or of the son.

(4) 36-month test for separate improvement. (i) If, during the 36-month

period ending on the last day of any taxable year (including a short taxable year and the entire taxable year in which the disposition occurs), the sum of the amounts treated under subparagraph (3) of this paragraph as improvements for such period exceeds the greatest of—

- (a) 25 percent of the adjusted basis of the property,
- (b) 10 percent of the unadjusted basis (determined under subparagraph (3) (ii) of this paragraph) of the property, or
- (c) \$5,000,

then each such improvement during such period shall be treated as a separate improvement, and thus as an element. For purposes of (a) and (b) of this subdivision, the adjusted basis (or unadjusted basis) of section 1250 property shall be determined as of the beginning of the 36-month period, or as of the beginning of the holding period of the property (within the meaning of § 1.1250-4), whichever is the later.

(ii) In respect of a particular disposition of section 1250 property by a person—

(a) There shall not be taken into account under the 36-month test for separate improvements in this subparagraph any amount treated under subparagraph (3) of this paragraph as an improvement which arises by reason of (or after) the disposition or which arises before the beginning of the holding period under § 1.1250-4 of such person for the property, and

(b) Such test shall be made in respect of each 36-month period ending on the last day of each taxable year of such person (and of any prior transferor) if at least 1 day of such period is included under § 1.1250-4 in such person's holding period for the property, except that (1) such test shall be made for a 36-month period ending on the last day of a taxable year of such person only if such person actually owned the property on at least 1 day of such period, and (2) such test shall be made for a 36-month period ending on the last day of a taxable year of such prior transferor only if such prior transferor actually owned the property on at least 1 day of such period.

(iii) For illustration of the principles of subdivision (ii) of this subparagraph, see examples (2) and (3) in subparagraph (3) (iv) of this paragraph.

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

Example. (1) On December 31, 1967, X, a calendar year taxpayer, purchases an item of section 1250 property at a cost of \$100,000. In the table below, the adjusted basis and unadjusted basis of the property are shown for the beginning of January 1 of each taxable year and it is assumed that each addition to capital was added on January 1 of the year shown.

Year	Adjusted basis	Unadjusted basis	1 percent of unadjusted basis	Addition
1969	\$94,000	\$100,000	\$1,000	A \$10,000
1970	97,030	110,000	1,100	B 4,000
1971	94,041	114,000	1,140	C 8,000
1972	92,799	120,000	1,200	-----
1973	86,158	120,000	1,200	D 18,000

(ii) Since each addition to capital account for the property exceeds the greater of \$2,000 or one percent of unadjusted basis, determined as of the beginning of the taxable year in which made, each addition to capital account qualifies as an improvement under subparagraph (2) of this paragraph.

(iii) Since the beginning of the holding period of the property under § 1.1250-4 (Jan. 1, 1968) is later than the beginning of the 36-month period ending on December 31, 1969, the determination as to whether there are any separate improvements on the property as of December 31, 1969, is made by examining the adjusted basis (or unadjusted basis) of the property as of the beginning of January 1, 1968. As of December 31, 1969, there were no separate improvements on the property since the only amount treated as an improvement for the period beginning on January 1, 1968, and ending on December 31, 1969, is addition A (costing \$10,000), which is less than \$25,000, that is, 25 percent of the adjusted basis (\$100,000) of the property as of the beginning of January 1, 1968.

(iv) As of December 31, 1970, there were no separate improvements on the property since the sum of the amounts treated as improvements for the 36-month period ending on December 31, 1970, is \$14,000 (that is, \$10,000 for A, plus \$4,000 for B), and this sum is less than \$25,000, that is, 25 percent of the adjusted basis (\$100,000) of the property as of the beginning of January 1, 1968.

(v) As of December 31, 1971, there were no separate improvements on the property since the sum of the amounts treated as improvements for the 36-month period ending on December 31, 1971, is \$20,000 (that is, \$10,000 for A, plus \$4,000 for B, plus \$6,000 for C), and this sum is less than \$23,500, that is, 25 percent of the adjusted basis (\$94,000) of the property as of the beginning of January 1, 1969.

(vi) As of December 31, 1972, there were no separate improvements on the property since the sum of the amounts treated as improvements for the 36-month period ending on December 31, 1972, is \$10,000 (that is, \$4,000 for B plus \$6,000 for C), and this sum is less than \$24,258 that is, 25 percent of the adjusted basis (\$97,030) of the property as of the beginning of January 1, 1970.

(vii) As of December 31, 1973, C and D are separate improvements (notwithstanding that as of December 31, 1971 and 1972, C was not a separate improvement) since the sum of the amounts added for the 36-month period ending December 31, 1973, is \$24,000 (that is, \$6,000 for C plus \$18,000 for D), and this sum exceeds the greatest of—

(a) \$23,510, that is, 25 percent of the adjusted basis (\$94,041) of the section 1250 property as of the beginning of January 1, 1971,

(b) \$11,400, that is, 10 percent of the unadjusted basis (\$114,000) of the property as of the beginning of such first day, or

(c) \$5,000.

(e) **Additional depreciation and holding period of property acquired in certain transactions—**(1) *Transferred basis.* If property consisting of two or more elements is disposed of, and if the holding period of the property in the hands of the transferee for purposes of computing applicable percentage includes the holding period of the transferor by reason of the application of paragraph (c) (other than subparagraph (2) thereof) of § 1.1250-4, then the additional depreciation for each element of the property in the hands of the transferee immediately after the transfer shall be computed in the manner set forth in this subparagraph. First, any element

having a deficit in additional depreciation in the hands of the transferor immediately before such transfer shall be considered to have the same deficit in the hands of the transferee. Second, elements having additional depreciation in the hands of the transferor immediately before the transfer shall be considered to have additional depreciation in the hands of the transferee. The sum of the transferee's additional depreciation for all elements of the property having additional depreciation in the hands of the transferor shall be an amount equal to the additional depreciation in respect of the property as a whole immediately after the transfer increased by the sum of the deficits in additional depreciation for all elements having such deficits. In case there is more than one element having additional depreciation, the additional depreciation for any such element in the hands of the transferee shall be computed by multiplying (i) the amount computed under the preceding sentence by (ii) the additional depreciation for such element in the hands of the transferor divided by the sum of the additional depreciation for all such elements having additional depreciation in the hands of the transferor. For purposes of computing applicable percentage, the holding period for an element of such property in the hands of the transferee shall include the holding period of such element in the hands of the transferor.

(2) *Example.* The provisions of subparagraph (1) of this paragraph may be illustrated by the following example:

Example. Section 1250 property has additional depreciation of \$16,000 of which \$12,000 is additional depreciation for element X and \$4,000 for element Y. The property is transferred to a corporation in exchange for cash of \$8,000 and for stock in the corporation. Assume that recognition of gain under section 1250(a) is limited to \$6,000 (the amount of cash received) by reason of the application of section 351(b) (relating to transfer to corporation controlled by transferor) and section 1250(d)(3) (relating to limitation on application of section 1250 in certain tax-free transactions). Under paragraph (c)(3)(i) of § 1.1250-3, the additional depreciation for the property in the hands of the corporation immediately after the transfer is \$10,000, that is, the additional depreciation for the property in the hands of the transferor immediately before the transfer (\$16,000) minus the gain under section 1250(a) recognized upon the transfer (\$6,000). Under subparagraph (1) of this paragraph, in the hands of the corporation immediately after the transfer element X has additional depreciation of \$7,500 (2/3 of \$10,000) and element Y as additional depreciation of \$2,500 (1/3 of \$10,000). Under paragraph (d)(2)(ii) of this section there is an addition of \$6,000 to the capital account for the property.

(3) *Principal residence.* If a principal residence consisting of two or more elements is disposed of, and if for purposes of computing applicable percentage the holding period of the principal residence acquired includes the holding period of the principal residence disposed of by reason of the application of paragraph (d) of § 1.1250-4, then the additional depreciation (or a deficit in additional

depreciation) for an element of the principal residence acquired immediately after the transaction shall be determined in a manner consistent with the principles of subparagraph (1) of this paragraph. For purposes of computing applicable percentage, the holding period for an element of the principal residence acquired includes the holding period of such element of the principal residence disposed of, but not the period beginning on the day after the date of the disposition and ending on the date of the acquisition.

(4) [Reserved]

(f) *Holding period for small separate improvements—(1) General.* This paragraph prescribes a special holding period solely for the purpose of computing the applicable percentage of a separate improvement (as defined in paragraph (d) of this section) which is treated as an element. See paragraph (a)(2)(ii) of this section for determination of holding period under section 1223 for purposes of computing additional depreciation. In respect of section 1250 property, if the amount of a separate improvement does not exceed the greater of—

(i) \$2,000, or

(ii) One percent of the unadjusted basis (within the meaning of paragraph (d)(3)(ii) of this section) of such property, determined as of the beginning of the taxable year in which such separate improvement was made,

then such separate improvement shall be treated for purposes of computing applicable percentage as placed in service on the first day, of a calendar month, which is the closest such first day to the middle of the taxable year. See the last sentence of section 1250(f)(4)(B). If two such first days are equally close to the middle of the taxable year, the earliest of such days is the applicable day.

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

Example. (1) The unadjusted basis of section 1250 property as of the beginning of January 1, 1960, is \$100,000. During the taxable year ending on December 31, 1960, the only additions to the capital account for the property are addition A on March 10, 1960, costing \$1,200 and addition B on September 16, 1960, costing \$1,400. Since the sum of the additions (\$2,600) exceeds the greater of \$2,000 and 1 percent of unadjusted basis (\$1,000, that is, 1 percent of \$100,000), each addition is an improvement under the 1-year test of paragraph (d)(3) of this section. Assume that the 36-month test of paragraph (d)(4) of this section is satisfied and, therefore, each addition is a separate improvement treated as an element.

(ii) Since each element is less than \$2,000, the provisions of this paragraph apply. Since there are 366 days in 1960, the middle of the year is at the end of 183 days, or July 1. Thus, that first day of a calendar month in 1960, which is the closest first day (of a calendar month) to the middle of the taxable year, is July 1, 1960. Accordingly, for purposes of computing applicable percentage, elements A and B are each treated as placed in service on July 1, 1960.

[F.R. Doc. 71-220; Filed, Jan. 7, 1971; 8:45 a.m.]

Title 29—LABOR

Subtitle A—Office of the Secretary of Labor

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

Delegations of Authority Within Workplace Standards Administration

Pursuant to the authority delegated to me under Secretary of Labor's Orders numbered 19-70 and 20-70, which are published in the FEDERAL REGISTER on this date and the statutory authority cited below, Part 4 of Title 29, Code of Federal Regulations, is hereby amended to reflect the establishment of the Workplace Standards Administration (WSA) within the Department and delegations of authority within the WSA as they pertain to that part.

The amendments shall be effective immediately.

The amendments of Part 4 of Title 29, Code of Federal Regulations, read as follows:

1. Section 4.3 is amended to read as follows:

§ 4.3 Register of wage determinations and fringe benefits.

The Director of the Office of Government Contracts Wage Standards, Workplace Standards Administration (WSA), of the Department of Labor will determine the minimum monetary wages and specify the fringe benefits to be furnished the various classes of service employees for the several localities in which they are to be employed under contracts subject to such determinations under the Act. These determinations and specifications will be issued as an orderly series constituting a register of such minimum wages and fringe benefits. Such a register will be available for public inspection during business hours at the national and regional offices of the Workplace Standards Administration of the U.S. Department of Labor. Provisions may also be made, when practicable, for maintaining such a register at other locations where the needs of procurement agencies for the information contained therein may be better served by such action.

2. Section 4.4 is amended to read as follows:

§ 4.4 Notice of intention to make a service contract.

(a) Not less than 30 days prior to any invitation for bids or the commencement of negotiations for any contract exceeding \$2,500 which may be subject to the Act, the contracting agency shall file with the Office of Government Contracts Wage Standards, Workplace Standards Administration, of the Department of Labor its notice of intention to make a service contract on Standard Form 98, Notice of Intention to Make a Service Contract, completed in accordance with the instructions on the reverse thereof.

Copies of Standard Form 98 are available from the General Services Administration.

(b) If exceptional circumstances prevent the filing of the notice of intention required by this section on or before a date 30 days prior to any invitation for bids or the commencement of negotiations, the notice shall be submitted to the Office of Government Contracts Wage Standards, Workplace Standards Administration, as soon as practicable with a detailed explanation of the special circumstances which prevented timely submission.

3. In § 4.5 paragraphs (a) and (c) are amended to read as follows:

§ 4.5 Contract minimum wage determinations and fringe benefit specifications.

Any contract agreed upon in excess of \$2,500 shall contain the minimum wages and fringe benefits specified in any applicable currently effective determination including any expressed in any document referred to in paragraph (a) or (b) of this section.

(a) Any communication from the Office of Government Contracts Wage Standards, Workplace Standards Administration, of the Department of Labor responsive to the notice required by § 4.4; or

(c) If the notice of intention required by § 4.4(a) is not filed within the time provided in § 4.4(a), the contracting agency shall exercise any and all of its power that may be needed (including where necessary, its power to negotiate, its power to pay any necessary additional costs, and its power under any provision of the contract authorizing changes) to include in the contract any determinations communicated to it within 30 days of the filing of such notice or of the discovery by the Workplace Standards Administration, U.S. Department of Labor, of such omission.

4. In § 4.6 paragraphs (b), (c), and the introductory text of paragraph (g) are amended to read as follows:

§ 4.6 Labor standards clauses for Federal service contracts exceeding \$2,500.

The clauses set forth in the following paragraphs shall be included in every contract (and any bid specification therefor) entered into by the United States or the District of Columbia, in excess of \$2,500, the principal purpose of which is to furnish services through the use of service employees:

(b) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wage and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or his authorized representative, as specified in any attachment to this contract. If there is such

an attachment, any class of service employees which is not listed therein, but which is to be employed under this contract, shall be classified by the contractor so as to provide a reasonable relationship between such classifications and those listed in the attachment, and shall be paid such monetary wages and furnished such fringe benefits as are determined by agreement of the interested parties, who shall be deemed to be the contracting agency, the contractor, and the employees who will perform on the contract or their representatives. If the interested parties do not agree on a classification or reclassification which is, in fact, conformable, the contracting officer shall submit the question, together with his recommendation, to the Director, Office of Government Contracts Wage Standards, WSA, of the Department of Labor for final determination. Failure to pay such employees the compensation agreed upon by the interested parties or finally determined by the Director or his authorized representative shall be a violation of this contract. No employee engaged in performing work on this contract shall in any event be paid less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(c) The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of fringe benefits, or by making equivalent or differential payments in cash, pursuant to applicable rules of the Administrator of Workplace Standards, Department of Labor. (Subpart B of this part.)

(g) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in subparagraphs (1) through (5) of this paragraph for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Administrator of Workplace Standards of the U.S. Department of Labor.

5. Section 4.101 is amended to read as follows:

§ 4.101 Official rulings and interpretations in this subpart.

The purpose of this subpart is to provide, pursuant to the authority cited in § 4.104, official rulings and interpretations with respect to the application of the McNamara-O'Hara Service Contract Act for the guidance of the agencies of the United States and the District of Columbia which may enter into and administer contracts subject to its provisions, the persons desiring to enter into such contracts with these agencies, and the contractors, subcontractors, and employees who perform work under such contracts. This subpart supersedes all prior rulings and interpretations issued

under the Act to the extent, if any, that they may be inconsistent with rules herein stated. Principles governing the application of the Act as set forth in this subpart are clarified or amplified in particular instances by illustrations and examples based on specific fact situations. Since such illustrations and examples cannot and are not intended to be exhaustive, no inference should be drawn from the fact that a subject or illustration is omitted. If doubt arises, inquiries may be directed to the Administrator of Workplace Standards, U.S. Department of Labor, Washington, D.C. 20210, or to any Regional Office of the WSA. Safety and health inquiries may be addressed directly to the Director, Bureau of Labor Standards, WSA, U.S. Department of Labor, Washington, D.C. 20210, or to any WSA Regional Office. A full description of the facts and any relevant documents should be submitted if an official ruling is desired.

6. In § 4.123 paragraph (b) is amended to read as follows:

§ 4.123 Administrative limitations, variations, tolerances, and exemptions.

(b) *Administrative action under section 4(b) of the Act.* The authority conferred on the Secretary by section 4(b) of the Act will be exercised with due regard to the remedial purpose of the statute to protect prevailing labor standards and to avoid the undercutting of such standards which could result from the award of Government work to contractors who will not observe such standards, and whose saving in labor cost therefrom enables them to offer a lower price to the Government than can be offered by the fair employers who maintain the prevailing standards. Administrative action consistent with this statutory purpose may be taken under section 4(b) with or without a request therefor, when found necessary and proper in accordance with the statutory standards. No formal procedures have been prescribed for requesting such action. However, a request for exemption from the Act's provisions will be granted only upon a strong and affirmative showing that it is necessary and proper in the public interest or to avoid serious impairment of Government business. If the request for administrative action under section 4(b) is not made by the headquarters office of the contracting agency to which the contract services are to be provided, the views of such office on the matter should be obtained and submitted with the request or the contracting officer may forward such a request through channels to the agency headquarters for submission to the latter's views to the Administrator of Workplace Standards, Department of Labor.

7. In § 4.133 paragraph (b) is amended to read as follows:

§ 4.133 Government as beneficiary of contract services.

(b) *Special situations.* It is not considered that the Act was intended to cover every contract, however, which is entered into with the Government by a contractor to furnish services, no matter how indirect or remote a benefit the Government may derive therefrom. If, for example, a contract with the Government grants the contractor the privilege of operating as a concessionaire in a Government park for the purpose of furnishing services to the public generally rather than to the Government or to personnel engaged in its business, the contract is not considered subject to the Act. Since the statute itself provides no clear line of demarcation, questions of contract coverage where doubt arises because of remoteness of benefit to the Government from the services to be furnished should be referred to the Office of Government Contracts Wage Standards, WSA, for resolution.

8. In § 4.164 paragraph (b) (2) is amended to read as follows:

§ 4.164 Making the determinations and informing contractors.

(b) *Provision for consideration of currently prevailing wage rates and fringe benefits.* * * *

(2) The regulations, in § 4.4, provide for the filing with the Office of Government Contracts Wage Standards, Workplace Standards Administration, by the awarding agency, prior to any invitation for bids or the commencement of negotiations for contracts exceeding \$2,500, of a notice of intention to make a service contract which is subject to the Act. Upon receipt of the notice that Office may make a determination of minimum monetary wages and fringe benefits for the classes of service employee who will perform on the contract or may revise a determination which is currently in effect.

(Secs. 2(a) and 4, 79 Stat. 1034, 1035, 41 U.S.C. 351, 353; 5 U.S.C. 301)

Signed at Washington, D.C., this 16th day of December 1970.

ROBERT D. MORAN,
Administrator
of Workplace Standards.

[F.R. Doc. 71-265; Filed, Jan. 7, 1971; 8:49 a.m.]

PART 6—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS ENFORCING LABOR STANDARDS IN FEDERAL SERVICE CONTRACTS

Delegations of Authority Within Workplace Standards Administration

Pursuant to Secretary of Labor's Orders numbered 19-70 and 20-70, published in the FEDERAL REGISTER on this date, and the statutory authority cited below, Part 6 of Title 29, Code of Federal Regulations, is hereby amended in the manner indicated below. The changes reflect the establishment of the Work-

place Standards Administration within the Department of Labor and delegations of authority within the Workplace Standards Administration.

The amendments of Part 6 are the following:

1. Section 6.2 is amended to revise paragraph (d) and to revoke paragraph (e), and reads as follows:

§ 6.2 Definitions.

(d) "Administrator" means the Administrator of Workplace Standards, U.S. Department of Labor.

(e) [Revoked]

2. Paragraph (b) (3) of § 6.6 is amended to read as follows:

§ 6.6 Consent findings and order.

(b) * * *

(3) A waiver of any further procedural steps before the hearing examiner and the Administrator; and

3. Section 6.12 is amended to read as follows:

§ 6.12 Relief from ineligible list.

Application for relief from the ineligible list provision under section 5(a) of the Act may be filed by the respondent with the Secretary of Labor within 20 days from the date of service of the hearing examiner's decision or Administrator's decision, as the case may be. Notice of the determination of the Secretary on the application of the ineligible list provision of the Act shall be served upon the parties.

4. Section 6.13 is amended to read as follows:

§ 6.13 Transmission of record.

If exceptions are filed, the hearing examiner shall transmit the record of the proceeding to the Administrator. The record shall include: The pleadings, motions, and requests filed in written form, rulings thereon, the transcript of the testimony and proceeding taken at the hearing, together with the exhibits admitted in evidence, any documents or papers filed in connection with prehearing conferences, such proposed findings of fact, conclusions of law, orders, and supporting reasons, as may have been filed, the hearing examiner's decision, and such exceptions, statements of objections, and briefs in support thereof, as may have been filed in the proceeding.

5. Section 6.14 is amended to read as follows:

§ 6.14 Decisions and order of the Administrator.

If exceptions to the decision of the hearing examiner are taken as provided in this part, the Administrator shall upon consideration thereof, together with the record references and authorities cited in support thereof, make his decision, which shall affirm, modify, or set aside, in whole or part, the findings, conclusions, and order contained in the

decision of the hearing examiner, and shall include a statement of reasons or bases for the actions taken. With respect to the findings of fact, the Administrator shall modify or set aside only those findings that are clearly erroneous. Copies of the decision and order shall be served upon the parties. Any such decision shall treat any question of recommendation for relief from the ineligible list under section 5(a) of the Act to the same extent and subject to the same limitations as provided in § 6.10(b) concerning decisions of the hearing examiner.

6. In § 6.15, paragraph (c) is amended to read as follows:

§ 6.15 Service; copies of documents and pleadings.

(c) *Service upon Department, number of copies of pleading or other documents.* An original and three copies of all pleadings and other documents shall be filed with the Department of Labor, the original with the officer before whom the case is pending (hearing examiner, chief hearing examiner, Administrator, or the Secretary of Labor) and the copies with the attorney representing the Department during the hearing or the Associate Solicitor in charge of litigation.

7. In § 6.19, paragraph (b) is amended to read as follows:

§ 6.19 Hearing examiners.

(b) *How assigned.* The presiding hearing examiner shall be designated by the Chief Hearing Examiner.

(Sec. 4, 79 Stat. 1035; 41 U.S.C. 353)

Effective date. These amendments shall be effective upon publication in the FEDERAL REGISTER, but shall not affect delegations of decisional authority in any formal adjudicatory proceedings pending as of that date.

Signed at Washington, D.C., this 16th day of December 1970.

ROBERT D. MORAN,
Administrator of
Workplace Standards.

[F.R. Doc. 71-266; Filed, Jan. 7, 1971; 8:49 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 1—Federal Procurement Regulations

MISCELLANEOUS AMENDMENTS TO CHAPTER

These amendments prescribe a minimum 30-calendar-day-bidding period in certain instances where brand name descriptions are used and prescribe additional criteria for determining reasonableness of price in formally advertised procurement.

PART 1-1—GENERAL

Subpart 1-1.3—General Policies

Section 1-1.307-4 is amended as follows:

§ 1-1.307-4 Brand name products or equal.

(a) Purchase descriptions which contain references to one or more brand name products followed by the words "or equal" may be used only in accordance with this § 1-1.307-4 and §§ 1-1.307-5 through 1-1.307-9. The term "brand name product" means a commercial product described by brand name and make or model number or other appropriate nomenclature by which such product is offered for sale to the public by the particular manufacturer, producer, or distributor. Where feasible, all known acceptable brand name products should be referenced. Where a "brand name or equal" purchase description is used in connection with a primary item, or a major component, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of the Government in essentially the same manner as those referenced. If modifications to standard products of prospective contractors to meet the purchase description requirements are anticipated, a minimum of 30 calendar days shall be allowed between issuance of the solicitation and opening of bids or receipt of proposals, provided that periods of less than 30 calendar days may be set in cases of urgency or when the contracting officer has reason to believe that bidders can bid effectively on the basis of a shorter period.

PART 1-2—PROCUREMENT BY FORMAL ADVERTISING

The table of contents of Part 1-2 is amended to provide a revised entry as follows:

Sec.
1-2.407-2 Responsible bidder—Reasonableness of price.

Subpart 1-2.2—Solicitation of Bids

Section 1-2.202-1 is amended as follows:

§ 1-2.202-1 Bidding time.

(c) *Minimum bidding time.* As a general rule, bidding time shall be not less than 15 calendar days when procuring standard commercial articles and services and not less than 30 calendar days when procuring other than standard commercial articles or services. (Where brand name or equal purchase descriptions are used involving a modification of the brand name product, see § 1-1.307-4 of this chapter.) This rule need not be observed in special circumstances or where the urgency for the supplies or services does not permit such delay. Procurement activities shall develop proce-

dures for ensuring that these bidding time requirements are observed.

Subpart 1-2.4—Opening of Bids and Award of Contract

Section 1-2.407-2 is revised as follows:

§ 1-2.407-2 Responsible bidder—reasonableness of price.

Before awarding the contract, the contracting officer shall determine that a prospective contractor is responsible (see § 1-1.310 of this chapter) and that the prices offered are reasonable. The price analysis techniques set forth in § 1-3.807-2(b)(1) of this chapter may be used as guidelines, where appropriate, but determination in each case shall be made in the light of all prevailing circumstances. Particular care must be taken in cases where only a single bid is received.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. This amendment is effective January 1, 1971, but may be observed earlier.

Dated: December 31, 1970.

— ROD KREGER,
Acting Administrator of
General Services.

[F.R. Doc. 71-223; Filed, Jan. 7, 1971;
8:45 a.m.]

Chapter 50—Public Contracts,
Department of LaborPART 50-201—GENERAL
REGULATIONSDelegations of Authority Within
Workplace Standards Administration

Pursuant to the authority delegated to me under Secretary of Labor's Orders numbered 19-70 and 20-70, which are published in the FEDERAL REGISTER on this date, and the statutory authority cited below, Part 50-201 of Title 41, Code of Federal Regulations, is hereby amended in the manner indicated below in order to reflect the establishment of the Workplace Standards Administration (WSA) within the Department and to reflect delegations of authority within the WSA as they pertain to that part.

The amendments of Part 50-201 of Title 41, Code of Federal Regulations, read as follows:

1. In § 50-201.601 paragraph (b) is amended as follows:

§ 50-201.601 Requests for exceptions and exemptions.

(b) All requests for exceptions or exemptions which relate solely to safety and health standards shall be transmitted directly to the Bureau of Labor Standards, WSA, Department of Labor. All other requests for exceptions or exemptions shall be transmitted to the Office of Government Contracts Wage Standards, WSA, of the Department of Labor.

2. Section 50-201.602 is amended to read as follows:

§ 50-201.602 Decisions concerning exceptions and exemptions.

Decisions concerning exceptions and exemptions shall be in writing and approved by the Secretary of Labor or officer prescribed by him, originals being filed in the Department of Labor, and certified copies shall be transmitted to the department or agency originating the request, to the Comptroller General, and to the Procurement Division of the Treasury. All such decisions shall be promulgated to all contracting agencies by the Office of Government Contracts Wage Standards, WSA, of the Department of Labor.

3. Section 50-201.1101 is amended to read as follows:

§ 50-201.1101 Minimum wages.

Determinations of prevailing minimum wages or changes therein will be published in the FEDERAL REGISTER, and sent to contracting officers by the Office of Government Contracts Wage Standards, WSA, of the Department of Labor. (Secs. 1, 4, 49 Stat. 1036, 1038, as amended, 41 U.S.C. 35, 38, 5 U.S.C. 301)

Signed at Washington, D.C., this 16th day of December 1970.

ROBERT D. MORAN,
Administrator of
Workplace Standards.

[F.R. Doc. 71-263; Filed, Jan. 7, 1971;
8:48 a.m.]

PART 50-203—RULES OF PRACTICE

Delegations of Authority Within
Workplace Standards Administration

Pursuant to the authority delegated to me under Secretary of Labor's Orders numbered 19-70 and 20-70, which are published in the FEDERAL REGISTER on this date, and the statutory authority cited below, Part 50-203 of Title 41, Code of Federal Regulations, is hereby amended in the manner indicated below in order to reflect the establishment of the Workplace Standards Administration (WSA) within the Department of Labor and to reflect delegations of authority within the WSA as they pertain to that part.

As amended, Part 50-203 of Title 41, Code of Federal Regulations, reads as follows:

1. In § 50-203.1, paragraph (b) is amended and paragraph (c) is deleted. As amended, § 50-203 reads as follows:

§ 50-203.1 Reports of breach or violation.

(b) A report of breach or violation may be reported to the nearest regional or local office of the Workplace Standards Administration, U.S. Department of Labor, or with the Administrator of Workplace Standards, U.S. Department of Labor, Washington, D.C. 20210.

(c) [Deleted]

2. In § 50-203.6, paragraph (b) is amended to read as follows:

§ 50-203.6 Witnesses and subpoenas.

(b) The Trial Examiner (or the Administrator holding the hearing as provided in § 50-203.8(m)) shall upon application by any party, and upon a showing of general relevance and reasonable scope of the evidence sought, issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence under oath, including books, records, correspondence, or documents. Applications for the issuance of subpoenas duces tecum shall specify the books, records, correspondence or other documents sought.

3. In § 50-203.8, paragraph (m) is amended to read as follows:

§ 50-203.8 Hearing.

(m) The Administrator of Workplace Standards may, in his discretion, direct that in lieu of the procedure set forth in paragraph (a) of this section, the hearing on formal complaint shall be held in the first instance before him; in which event the Administrator shall issue an order embodying his decision.

4. In § 50-203.11, paragraphs (a), (d), (e), (f), (g), and (h) are amended to read as follows:

§ 50-203.11 Review.

(a) Within twenty (20) days after service of the decision of the Trial Examiner any interested party to the proceeding may file with the Chief Trial Examiner an original and four copies of a petition for review of the decision. The petition shall set out separately and particularly each error assigned. The request for review and the record will then be certified to the Administrator of Workplace Standards.

(d) No matter properly subject to objection before the Trial Examiner will be considered by the Administrator unless it shall have been raised before the Trial Examiner or unless there were reasonable grounds for failure so to do; nor will any matter be considered by the Administrator unless included in the assignment or errors. In the discretion of the Administrator, review may be denied if the petition and brief in support thereof fail to show adequate cause for such review.

(e) The order denying review, or the decision of the Administrator, whichever is entered, will be made a part of the record, and a copy of such order or decision will be served upon the parties who were served with a copy of the Trial Examiner's decision.

(f) If the respondent is found to have violated the Act, the Administrator in his decision shall make recommendations to the Secretary of Labor as to whether respondent shall be relieved from the application of the ineligible-list provisions of section 3 of the Walsh-Healey Public Contracts Act (sec. 4, 49 Stat. 2039; 41 U.S.C. 37).

(g) Application for relief from the ineligible-list provisions of section 3 shall be filed by the respondent with the Secretary of Labor within 20 days from the date of service of the Trial Examiner's decision or the Administrator's decision.

(h) Notice of the determination of the Secretary on the application of the ineligible-list provisions of section 3 of the Walsh-Healey Public Contracts Act (sec. 3, 49 Stat. 2037; 41 U.S.C. 37) shall be served upon the parties who were served with a copy of the Trial Examiner's decision or the Administrator's decision, as the case may be.

5. In § 50-203.13, paragraph (c) is amended to read as follows:

§ 50-203.13 Requests for exceptions and exemptions.

(c) All requests for exceptions or exemptions which relate solely to safety and health standards shall be transmitted directly to the Bureau of Labor Standards, WSA, Department of Labor. All other requests for exceptions or exemptions shall be transmitted to the Office of Government Contracts Wage Standards, WSA, of the Department of Labor.

6. Section 50-203.14 is amended to read as follows:

§ 50-203.14 Decisions concerning exceptions and exemptions.

Decisions concerning exceptions and exemptions shall be in writing and approved by the Secretary of Labor or officer prescribed by him, originals being filed in the Department of Labor, and certified copies shall be transferred to the department or agency originating the request and to the Comptroller General. All such decisions shall be promulgated to all contracting agencies by the Office of Government Contracts Wage Standards, WSA of the Department of Labor.

7. A new section, designated § 50-203.23, is added to Subpart C and reads as follows:

§ 50-203.23 Delegation of authority.

The duties of the Secretary of Labor under this subpart may be exercised in any particular proceeding by the Secretary of Labor, the Assistant Secretary for Workplace Standards, or the Administrator of Workplace Standards, Department of Labor.

(Sec. 4, 49 Stat. 2038; 41 U.S.C. 38)

Effective date. These amendments shall be effective upon publication in the FEDERAL REGISTER, but shall not affect delegations of decisional authority in any formal adjudicatory proceedings pending as of that date.

Signed at Washington, D.C., this 16th day of December 1970.

ROBERT D. MORAN,
Administrator of
Workplace Standards.

[F.R. Doc. 71-264; Filed, Jan. 7, 1971; 8:48 a.m.]

Title 49—TRANSPORTATION

Chapter V—National Highway Safety Bureau, Department of Transportation

[Docket No. 3-3; Notice 4]

PART 571—MOTOR VEHICLE SAFETY STANDARDS

Flammability of Interior Materials in Passenger Cars, Multipurpose Passenger Vehicles, Trucks, and Buses

This notice amends § 571.21 of Title 49 of the Code of Federal Regulations by adding a new motor vehicle safety standard, No. 302, Flammability of Interior Materials. Notices of proposed rule making on the subject were published on December 31, 1969 (34 F.R. 20434), and June 26, 1970 (35 F.R. 10460).

As stated in the notice of December 31, 1969, the occurrence of thousands of fires per year that begin in vehicle interiors provide ample justification for a safety standard on flammability of interior materials. Although the qualities of interior materials cannot by themselves make occupants safe from the hazards of fuel-fed fires, it is important, when fires occur in the interior of the vehicle from such sources as matches, cigarettes, or short circuits in interior wiring, that there be sufficient time for the driver to stop the vehicle, and if necessary for occupants to leave it, before injury occurs.

The question on which the public responds to the above notice, differed most widely was the burn rate limit to be required. The rate proposed was 4 inches per minute, measured by a horizontal test. Some manufacturers suggested maximum burn rates as high as 15 inches per minute. The Center for Auto Safety, the Textile Fibers and By-Products Association, and the National Cotton Bating Institute, on the other hand, suggested essentially a zero burn rate, or self-extinguishment, requirement, with a vertical rather than a horizontal test. A careful study was made of the available information on this subject, including the burn rates of materials currently in use or available for use, recommendations or regulations of other agencies, and the economic and technical consequences of various possible rate levels and types of tests. A considerable amount of Bureau-sponsored research has been conducted and is continuing on the subject. On consideration of this data, the Bureau has decided to retain the 4-inch-per-minute burn limit, with the horizontal test, in this standard. It has been determined that suitable materials are not available in sufficient quantities, at reasonable costs, to meet a significantly more stringent burn rate by the effective date that is hereby established. The 4-inch rate will require a major upgrading of materials used in many areas, and a corresponding improvement in this aspect of motor vehicle safety. It is important that this standard not hinder manufacturers' efforts to comply with the crash protection requirements that are currently being imposed, and that in the Bureau's

judgment are of the greatest importance. Further study will be made, however, of the feasibility of, and justification for, imposing more stringent requirements with a later effective date.

As pointed out in several comments, the problem of toxic combustion by-products is closely related to that of burn rate. Release of toxic gases is one of the injury-producing aspects of motor vehicle fires, and many of the common ways of treating materials to reduce their burn rates involve chemicals that produce highly poisonous gases such as hydrogen chloride and hydrogen cyanide. The problem of setting standards with regard to combustion byproducts is difficult and complex, and the subject of continuing research under Bureau auspices. Until enough is known in this area to form the basis for a standard, and to establish the proper interaction between burn rate and toxicity, this uncertainty constitutes an additional reason for not requiring self-extinguishing materials.

The proposal specified a particular commercial gas for the test burner, and several comments suggested problems in obtaining the gas for manufacturer testing. As is the case with all the motor vehicle safety standards, the test procedures describe the tests that the regulated vehicles or equipment must be capable of passing, when tested by the Bureau, and not the method by which a manufacturer must ascertain that capability. Any gas with at least as high a flame temperature as the gas described in the standard would therefore be suitable for manufacturer testing. To make this point clearer, and to use a more readily available reference point, the standard has been reworded to specify a gas that "has a flame temperature equivalent to that of natural gas."

The dimensions of the enclosure within which the test is conducted have been changed from those proposed, in order to provide more draft-free conditions, and consequently more repeatable results. Smaller cabinets, furthermore, evidently are more generally available than larger ones. Again it should be noted that there is no necessity that manufacturers duplicate the dimensions of the test cabinet, as long as they can establish a reasonable basis for concluding that their materials will meet the requirements when tested in such a cabinet.

Several comments questioned the need for specifying the temperature and relative humidity under which the material is conditioned and the test is conducted. The foregoing discussions of the relation of the standard to manufacturer testing apply here also. The specification of temperature and relative humidity for conditioning and testing is made to preclude any arguments, in the face of a compliance test failure, that variations in test results are due to permitted variations in test conditions. The relative humidity specification has been changed from 65 percent, as proposed, to 50 percent. This humidity level represents more closely the conditions encountered

in use during fairly dry weather. While it is a slightly more stringent condition, it is one in wide use for materials testing, according to the comments, and is not, in the judgment of the Bureau, a large enough change in the substance of the proposal to warrant further notice and opportunity for comment.

Several comments suggested that the standard should specify the number of specimens to be tested, with averaging of results, as is commonly found in specification-type standards. The legal nature of the motor vehicle safety standards is such, however, that sampling and averaging provisions would be inappropriate. As defined by the National Traffic and Motor Vehicle Safety Act, the standards are minimum performance levels that must be met by every motor vehicle or item of motor vehicle equipment to which they apply. Enforcement is based on independent Bureau testing, not review of manufacturer testing, and manufacturers are required to take legal responsibility for every item they produce. The result, and the intent of the Bureau in setting the standards, is that manufacturers must establish a sufficient margin of performance between their test results and the standard's requirements to allow for whatever variances may occur between items tested and items produced.

The description of portions to be tested has been changed slightly, such that the surface and the underlying materials are tested either separately or as a composite, depending on whether they are attached to each other as used in the vehicle. In the proposal, surface and underlying materials were to be tested separately regardless of how used, an element of complexity found unnecessary for safety purposes.

In response to comments with respect to materials that burn at a decreasing rate, to which the application of the test is not clear, an additional criterion has been added. If material stops burning before it has burned for 60 seconds, and does not burn more than 2 inches, it is considered to meet the requirement.

In consideration of the foregoing, § 571.21 of Title 49, Code of Federal Regulations, is amended by the addition of Standard No. 302, Flammability of Interior Materials, as set forth below.

Effective date. September 1, 1972. Because of the extensive design changes that will be necessitated by this new standard, and the leadtime consequently required by manufacturers to prepare for production, it is found, for good cause shown, that an effective date later than 1 year from the issuance of this notice is in the public interest.

(Secs. 103, 119, National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.51 (35 F.R. 4955))

Issued on December 29, 1970.

DOUGLAS W. TOMS,
Director.

§ 571.21 Federal Motor Vehicle Safety Standards.

* * * * *

MOTOR VEHICLE SAFETY STANDARD No. 302

FLAMMABILITY OF INTERIOR MATERIALS—
PASSENGER CARS, MULTIPURPOSE PAS-
SENGER VEHICLES, TRUCKS, AND BUSES

S1. Scope. This standard specifies burn resistance requirements for materials used in the occupant compartments of motor vehicles.

S2. Purpose. The purpose of this standard is to reduce the deaths and injuries to motor vehicle occupants caused by vehicle fires, especially those originating in the interior of the vehicle from sources such as matches or cigarettes.

S3. Application. This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses.

S4. Requirements.

S4.1 The portions described in S4.2 of the following components of vehicle occupant compartments shall meet the requirements of S4.3: Seat cushions, seat backs, seat belts, headlining, convertible tops, arm rests, all trim panels including door, front, rear, and side panels, compartment shelves, head restraints, floor coverings, sun visors, curtains, shades, wheel housing covers, engine compartment covers, mattress covers, and any other interior materials, including padding and crash-deployed elements, that are designed to absorb energy on contact by occupants in the event of a crash.

S4.2 The portions of the components that shall meet the requirements of S4.3 are all of the following:

(a) The surface material taken separately if it is not bonded, sewed or mechanically attached to underlying material.

(b) A composite consisting of the surface material bonded, sewed or mechanically attached to underlying material, if such a composite is used in the component.

(c) Padding and cushioning materials taken separately, if those materials are not bonded, sewed or mechanically attached to surface materials.

S4.3 Material described in S4.1 and S4.2 shall not burn, or transmit a flame from across its surface, at a rate of more than 4 inches per minute. However, if a material stops burning before it has burned for 60 seconds from the start of timing, and has not burned more than 2 inches from the point where timing was started, it shall be considered to meet this requirement.

S5. Test procedure.

S5.1 Conditions.

S5.1.1 The test is conducted in a metal cabinet for protecting the test specimens from drafts. The interior of the cabinet is 15 inches long, 8 inches deep, and 14 inches high. It has a glass observation window in the front, a closable opening to permit insertion of the specimen holder, and a hole to accommodate tubing for a gas burner. For ventilation, it has a 1/2-inch clearance space around the top of the cabinet, ten 3/4-inch-diameter holes in the base of the cabinet, and legs to elevate the bottom of the cabinet by three-eighths of an inch, all located as shown in Figure 1.

S5.1.2 Prior to testing, each specimen is conditioned for 24 hours at a temperature of 70° F. and a relative humidity of 50 percent, and the test is conducted under those ambient conditions.

S5.1.3 The test specimen is inserted between two matching U-shaped frames of metal stock 1-inch wide and 3/8 of an inch high. The interior dimensions of the U-shaped frames are 2 inches wide by 13 inches long. A specimen that softens and bends at the flaming end so as to cause erratic burning is kept horizontal by supports consisting of thin, heat-resistant wires, spanning the width of the U-shaped frame under the specimen at 1-inch intervals. A device that may be used for supporting this type of material is an additional U-shaped frame, wider than the U-shaped frame containing the specimen, spanned by 10-mil wires of heat-resistant composition at 1-inch intervals, inserted over the bottom U-shaped frame.

S5.1.4 A bunsen burner with a tube of 3/8-inch inside diameter is used. The gas adjusting valve is set to provide a flame, with the tube vertical, of 1 1/2 inches in height. The air inlet to the burner is closed.

S5.1.5 The gas supplied to the burner has a flame temperature equivalent to that of natural gas.

S5.2 Preparation of specimens.

S5.2.1 Each specimen of material to be tested is a rectangle 4 inches wide by 14 inches long, wherever possible. The thickness of the specimen is that of the material as used in the vehicle, except that where the material's thickness exceeds 1/2 inch the specimen is cut down to that thickness. Where it is not possible to obtain a flat specimen, because of component configuration, the specimen is cut to not more than 1/2 inch in thickness at any point, from the area with the least curvature, and in such a manner as to include the face side. The maximum available length or width of a specimen is used where either dimension is less than 14 inches or 4 inches respectively.

S5.2.2 Material with directional effects is oriented so as to provide the most adverse results.

S5.2.3 Material with a napped or tufted surface is placed on a flat surface

and combed twice against the nap with a comb having seven to eight smooth, rounded teeth per inch.

S5.3 Procedure.

(a) Mount the specimen so that both sides and one end are held by the U-shaped frame, and one end is even with the open end of the frame. Where the maximum available width of a specimen is not more than 2 inches, so that the sides of the specimen cannot be held in the U-shaped frame, place the specimen in position on wire supports as described in S5.1.3, with one end held by the closed end of the U-shaped frame.

(b) Place the mounted specimen in a horizontal position, in the center of the cabinet.

(c) With the flame adjusted according to S5.1.4, position the bunsen burner and specimen so that the center of the burner tip is three-fourths of an inch be-

low the center of the bottom edge of the open end of the specimen.

(d) Expose the specimen to the flame for 15 seconds.

(e) Begin timing (without reference to the period of application of the burner flame) when the flame from the burning specimen reaches a point 1 1/2 inches from the open end of the specimen.

(f) Measure the time that it takes the flame to progress to a point 1 1/2 inches from the clamped end of the specimen. If the flame does not reach the specified end point, time its progress to the point where flaming stops.

(g) Calculate the burn rate from the formula

$$B = 60 \times \frac{D}{T}$$

Where:

B = Burn rate in inches per minute,
 D = Length the flame travels in inches, and
 T = Time in seconds for the flame to travel D inches.

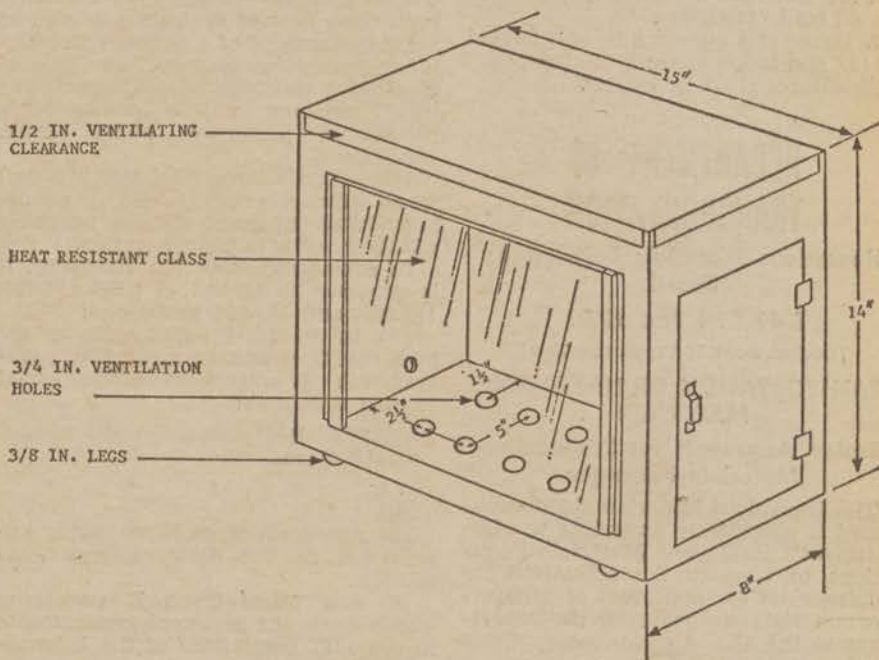


FIGURE 1

[F.R. Doc. 71-190; Filed, Jan. 7, 1971; 8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Amortization of Pollution Control Facilities

Correction

In F.R. Doc. 70-17472 appearing at page 19672 in the issue of Tuesday, December 29, 1970, the following changes should be made:

1. The monetary figure in the 18th line of Example 1 under § 1.169-1(b) should read "\$120,000".

2. Delete the eighth line of § 1.169-3 (f) (2) and insert instead "is made, such expenditures shall be taken".

DEPARTMENT OF TRANSPORTATION

Hazardous Materials Regulations Board

[49 CFR Part 173]

[Docket No. HM-73; Notice 71-1]

TRANSPORTATION OF HAZARDOUS MATERIALS

Design Approvals for Radioactive Materials Packages

The Hazardous Materials Regulations Board is considering amending the Department's Hazardous Materials Regulations to transfer the administrative requirements for approvals of radioactive materials packages from the Department to the U.S. Atomic Energy Commission (USAEC).

At the present time, the Department issues special permits for radioactive materials packages which meet the Department's performance standards but which are not among the limited number of specification packagings prescribed for radioactive materials in the regulations. In most instances, the USAEC performs detailed safety evaluations to determine whether a petitioner's package design does in fact meet the Department's performance standards. As a result, the Department's special permits are often only duplicative paperwork incorporating the USAEC approval by reference. The Board has concluded that it would be in the public interest to eliminate this duplicative ministerial requirement. This would reduce the administrative burden on both the nuclear industry and the Department, without adversely affecting the safe transport of radioactive materials. The USAEC has agreed to this procedure.

Under this change in procedure, special permits would only be issued by the Department in those cases where it is necessary and appropriate to provide an exemption or waiver of the regulations. Petitioners for routine package approvals would apply directly to the USAEC for package review, evaluation, and approval. The procedures for obtaining USAEC approval are contained in the regulations of the USAEC (10 CFR Part 71) for USAEC licensees, and in USAEC Manual Chapter 0529 for USAEC prime operating contractors. Specific procedures for USAEC approval of Type B packages are being developed at this time. Provisions would be made for continuation of the existing special permits until their date of expiration as well as for establishment of a package numbering/identification system. The Office of Hazardous Materials of the Department would continue to issue certificates of competent authority under IAEA regulations.

The Board believes that this proposal would effectively reduce delays in granting package approval without adversely affecting safety in transportation.

In consideration of the foregoing, it is proposed to amend 49 CFR 173.394, 173.395, and 173.396 as follows:

(A) In § 173.394 paragraphs (b) (3) and (c) (2) would be amended; paragraphs (b) (4) and (c) (3) would be added to read as follows:

§ 173.394 Radioactive material in special form.

(b) * * *

(3) Any other Type B packaging approved by the U.S. Atomic Energy Commission.

(4) Any other Type B packaging which meets the pertinent requirements in the 1967 regulations of the International Atomic Energy Agency, and for which an appropriate Certificate has been issued by a foreign competent authority.

(c) * * *

(2) Any other Type B packaging which meets the pertinent requirements for large quantities of radioactive materials in the regulations of the U.S. Atomic Energy Commission (10 CFR Part 71) and is approved by the U.S. Atomic Energy Commission.

(3) Any other Type B packaging which meets the pertinent requirements for large quantities of radioactive materials in the 1967 regulations of the International Atomic Energy Agency, and for which the foreign competent authority Certificate has been revalidated by the Department.

(B) In § 173.395 paragraphs (b) (2) and (c) (2) would be amended; paragraphs (b) (3) and (c) (3) would be added to read as follows:

§ 173.395 Radioactive material in normal form.

(b) * * *

(2) Any other Type B packaging approved by the U.S. Atomic Energy Commission.

(3) Any other Type B packaging which meets the pertinent requirements in the 1967 regulations of the International Atomic Energy Agency, and for which an appropriate Certificate has been issued by a foreign competent authority.

(c) * * *

(2) Any other Type B packaging which meets the pertinent requirements for large quantities of radioactive materials in the regulations of the U.S. Atomic Energy Commission (10 CFR Part 71) and is approved by the U.S. Atomic Energy Commission.

(3) Any other Type B packaging which meets the pertinent requirements for large quantities of radioactive materials in the 1967 regulations of the International Atomic Energy Agency, and for which the foreign competent authority Certificate has been revalidated by the Department.

(C) In § 173.396 paragraphs (b) (4) and (c) (3) would be amended; paragraphs (b) (5) and (c) (4) would be added; paragraph (d) and note following would be canceled as follows:

§ 173.396 Fissile radioactive material.

(b) * * *

(4) Any other Type A or B packaging which also meets the standards for packaging for fissile radioactive materials in the regulations of the U.S. Atomic Energy Commission (10 CFR Part 71), and is approved by the U.S. Atomic Energy Commission.

(5) Any other Type A or B packaging which also meets the pertinent requirements for fissile radioactive materials in the 1967 regulations of the International Atomic Energy Agency, and for which the foreign competent authority Certificate has been revalidated by the Department.

(c) * * *

(3) Any other Type B packaging which also meets the standards for packaging for fissile radioactive materials in the regulations of the U.S. Atomic Energy Commission (10 CFR Part 71), and is approved by the U.S. Atomic Energy Commission.

(4) Any other Type B packaging which also meets the pertinent requirements for fissile radioactive materials in the 1967 regulations of the International Atomic Energy Agency, and for which the foreign competent authority Certificate has been revalidated by the Department.

(d) [Canceled]

NOTE: [Canceled]

Interested persons are invited to give their views on this proposal. Communications should identify the docket number and be submitted in duplicate to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, D.C. 20590. Communications received on or before March 10, 1971, will be considered before final action is taken on the proposal. All comments received will be available for examination by interested persons at the Office of the Secretary, Hazardous Materials Regulations Board, both before and after the closing date for comments.

This proposal is made under the authority of sections 831-835 of title 18, United States Code, section 9 of the Department of Transportation Act (49 U.S.C. 1657), and title VI and section 902(h) of the Federal Aviation Act of 1958 (49 U.S.C. 1421-143 and 1472(h)).

Issued in Washington, D.C., on January 4, 1971.

W. M. BENKERT,
Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

CARL V. LYON,
Acting Administrator,
Federal Railroad Administration.

KENNETH L. PIERSON,
Acting Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

SAM SCHNEIDER,
Board Member, for the Federal Aviation Administration.

[F.R. Doc. 71-254; Filed, Jan. 7, 1971; 8:47 a.m.]

ENVIRONMENTAL PROTECTION AGENCY

[42 CFR Part 481]

PHOENIX-TUCSON INTRASTATE AIR QUALITY CONTROL REGION

Proposed Revision of Regions; Consultation With Appropriate State and Local Authorities

Notice is hereby given of a proposal to revise the boundaries of the presently designated Phoenix-Tucson Intrastate Air Quality Control Region (Arizona) (§ 481.36). It is proposed to make such redesignation effective upon republication.

Interested persons may submit written data, views, or arguments in triplicate to the Office of the Acting Commissioner, Air Pollution Control Office, Environmental Protection Agency, Room 17-82, 5600 Fishers Lane, Rockville, MD 20852. All relevant material received not later than 30 days after the publication of this notice will be considered.

Interested authorities of the States of Arizona and California and appropriate local authorities, both within and without the proposed region, who are affected by or interested in the proposed revision are hereby given notice of an opportunity to consult with representatives of the Administrator concerning such designations and revisions. Such consultation will take place at 2 p.m., January 19, 1971, in the Environmental Health Services Conference Room, 4019 North 33rd Avenue, Phoenix, AZ 85017.

Mr. Doyle J. Borchers is hereby designated Chairman for the consultation. The Chairman shall fix the time, date, and place of later sessions and may convene, reconvene, recess, and adjourn the sessions as he deems appropriate to expedite the proceedings.

State and local authorities wishing to participate in the consultation should notify the Chairman, Mr. Doyle J. Borchers, Air Pollution Control Office, Environmental Protection Agency, 5600 Fishers Lane, Rockville, MD 20852.

The Phoenix-Tucson Intrastate Air Quality Control Region (Arizona) (§ 481.36) presently is designated as the territorial area encompassed by the boundaries of the following jurisdictions (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Arizona:

Gila County.	Pinal County.
Maricopa County.	Santa Cruz County.
Pima County.	

It is now proposed to add Yuma County, Ariz., to the Phoenix-Tucson Intrastate Air Quality Control Region.

This action is proposed under the authority of sections 107(a) and 301(a) of the Clean Air Act, section 2, Public Law 90-148, 81 Stat. 490, 504; 42 U.S.C. 1857c-2(a), 1857g(a).

Dated: January 4, 1971.

WILLIAM D. RUCKELSHAUS,
Administrator.

[F.R. Doc. 71-253; Filed, Jan. 7, 1971; 8:47 a.m.]

[42 CFR Part 481]

CERTAIN AIR QUALITY CONTROL REGIONS

Proposed Designation and Revision of Regions; Consultation With Appropriate State and Local Authorities

Notice is hereby given of a proposal to designate two Intrastate Air Quality Control Regions in the State of Wisconsin as set forth in the following new §§ 481.157-481.158 inclusive which would be added to Part 481 of Title 42, Code of Federal Regulations. It is proposed to make such designations effective upon republication.

In addition to the proposal to designate the new Intrastate Air Quality Control Regions, it is proposed to revise the

boundaries of the presently designated Duluth (Minnesota)—Superior (Wisconsin) Interstate Air Quality Control Region (§ 481.60), the designated Menominee-Escanaba (Michigan)—Marquette (Wisconsin) Interstate Air Quality Control Regions (§ 481.67), and the designated Southeast Minnesota—La Crosse (Wisconsin) Interstate Air Quality Control Region (§ 481.66).

Interested persons may submit written data, views, or arguments in triplicate to the Office of the Acting Commissioner, Air Pollution Control Office, Environmental Protection Agency, Room 17-82, 5600 Fishers Lane, Rockville, MD 20852. All relevant material received not later than 30 days after the publication of this notice will be considered.

Interested authorities of the States of Wisconsin, Michigan, Minnesota, Illinois, and Iowa and appropriate local authorities, both within and without the proposed regions, who are affected by or interested in the proposed designations and revisions are hereby given notice of an opportunity to consult with representatives of the Administrator concerning such designations and revisions. Such consultation will take place at 1 p.m., January 15, 1971, in Room 1305, Wisconsin Department of Natural Resources, 4610 University Avenue, Madison, WI.

Mr. Doyle J. Borchers is hereby designated Chairman for the consultation. The Chairman shall fix the time, date, and place of later sessions and may convene, reconvene, recess, and adjourn the sessions as he deems appropriate to expedite the proceedings.

State and local authorities wishing to participate in the consultation should notify the Chairman, Mr. Doyle J. Borchers, Air Pollution Control Office, Environmental Protection Agency, 5600 Fishers Lane, Rockville, MD 20852.

In Part 481 the following new sections are proposed to be added to read as follows:

§ 481.157 North Central Wisconsin Intrastate Air Quality Control Region.

The North Central Wisconsin Intrastate Air Quality Control Region (Wisconsin) consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited:

In the State of Wisconsin:

Adams County.	Marathon County.
Forest County.	Oneida County.
Juneau County.	Portage County.
Langlade County.	Vilas County.
Lincoln County.	Wood County.

Additionally, it is proposed that Florence County, Wis., presently in the designated Menominee-Escanaba (Michigan)—Marquette (Wisconsin) Interstate Air Quality Control Region (§ 481.67), be added to the proposed North Central Wisconsin Intrastate Air Quality Control Region.

§ 481.153 Southern Wisconsin Intrastate Air Quality Control Region.

The Southern Wisconsin Intrastate Air Quality Control Region (Wisconsin) consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Wisconsin:

Columbia County.	Jefferson County.
Dane County.	Lafayette County.
Dodge County.	Richland County.
Green County.	Sauk County.
Iowa County.	

§ 481.60 [Amended]

The Duluth (Minnesota)—Superior (Wisconsin) Interstate Air Quality Control Region (§ 481.60) presently is designated as the territorial area encompassed by the boundaries of the following jurisdictions (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Minnesota:

Carlton County.	Lake County.
Cook County.	Pine County.
Koochiching County.	St. Louis County.

In the State of Wisconsin:

Bayfield County.	Douglas County.
Burnett County.	

It is now proposed to add the following counties in the State of Wisconsin: Ashland, Iron, Price, Rusk, Sawyer, Taylor, and Washburn. Additionally, it is proposed to change the name of the Duluth (Minnesota)—Superior (Wisconsin) Interstate Air Quality Control Region to the Duluth (Minnesota)—Northwestern Wisconsin Interstate Air Quality Control Region.

§ 481.66 [Amended]

The Southeast Minnesota—La Crosse (Wisconsin) Interstate Air Quality Control Region (§ 481.66) presently is designated as the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Minnesota:

Dodge County.	Mower County.
Fillmore County.	Olmstead County.
Freeborn County.	Steele County.
Goodhue County.	Wabasha County.
Houston County.	Winona County.

In the State of Wisconsin:

Buffalo County.	Trempealeau County.
La Crosse County.	Vernon County.

It is now proposed to add the following counties in the State of Wisconsin: Barron, Chippewa, Clark, Crawford, Dunn, Eau Claire, Jackson, Monroe, Pepin, Pierce, Polk, and St. Croix. Additionally, it is proposed to change the name of the region to the Southeast Minnesota—West Central Wisconsin Interstate Air Quality Control Region.

§ 481.67 [Amended]

The Menominee-Escanaba (Michigan)—Marinette (Wisconsin) Interstate Air Quality Control Region (§ 481.67) presently is designated as the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Michigan:

Delta County.	Menominee County.
Dickinson County.	

In the State of Wisconsin:

Florence County.	Oconto County.
Marinette County.	

It is now proposed to (1) add the following counties in the State of Wisconsin: Brown, Calumet, Door, Fond du Lac, Green Lake, Kewaunee, Manitowoc, Marquette, Menominee, Outagamie, Shawano, Sheboygan, Waupaca, Wausara, and Winnebago; (2) delete Florence County, in the State of Wisconsin, from the region; and (3) change the name of the Region to the Menominee-Escanaba (Michigan)—Lake Michigan (Wisconsin) Interstate Air Quality Control Region.

§ 481.30 [Amended]

It is proposed to change the name of the presently designated Metropolitan Milwaukee Intrastate Air Quality Control Region (Wisconsin) (§ 481.30) to the Southeastern Wisconsin Intrastate Air Quality Control Region. The existing boundaries would remain unchanged.

This action is proposed under the authority of sections 107(a) and 301(a) of the Clean Air Act, section 2, Public Law 90-148, 81 Stat. 490, 504; 42 U.S.C. 1857c-2(a), 1857g(a).

Dated: January 4, 1971.

WILLIAM D. RUCKELSHAUS,
Administrator.

[F.R. Doc. 71-252; Filed, Jan. 7, 1971;
8:47 a.m.]

**SMALL BUSINESS
ADMINISTRATION**

[13 CFR Part 121]

[Rev. 9]

SMALL BUSINESS SIZE STANDARDS

Definition of Small Business for Purpose of Government Procurement for Air Transportation

Notice is hereby given that the Administrator of the SBA proposes to amend Part 121 of Chapter I of Title 13 of the Code of Federal Regulations by establishing a new definition of small business for the purpose of Government procurement for air transportation.

The currently effective size standard for the purpose of Government procurement for air transportation is 1,000 employees. Department of Defense (DOD) procurement statistics indicate that there has been a generally upward trend in the employment size of air carriers bidding on Government contracts, and that the small business "share" of Government air transportation procurements has declined from twenty-one percent (21%) in fiscal year 1968 to seven percent (7%) in fiscal year 1970.

Based on the above and all other available information concerning the size of concerns in this field of operation, it has been concluded that the size standard should be increased to 1,500 employees.

Interested parties may file with the Small Business Administration within 30 days of publication of this proposal in the FEDERAL REGISTER, written statements of facts, opinions or arguments concerning the proposal.

All correspondence shall be addressed to:

Associate Administrator for Procurement and Management Assistance, Small Business Administration, 1441 L Street NW., Washington, DC 20416. Attention: Size Standards Staff.

It is proposed to amend the regulation by revising § 121.3-8(f) (2) of Part 121 to read as follows:

§ 121.3-8 Definition of small business for government procurement.

• • • • •
(f) • • • • •

(2) As small if it is bidding on a contract for air transportation and its number of employees does not exceed 1,500 persons.

• • • • •
Dated: December 30, 1970.

ANTHONY G. CHASE,
Acting Administrator.

[F.R. Doc. 71-242; Filed, Jan. 7, 1971;
8:46 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Internal Revenue Service

WILLIAM RONALD BRADFORD

Notice of Granting of Relief

Notice is hereby given that William Ronald Bradford, 17 Hart Street, San Rafael, CA 94901, has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for William Ronald Bradford because of such conviction, to ship, transport or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer or collector. In addition, under Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such conviction, it would be unlawful for William Ronald Bradford to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered William Ronald Bradford's application and:

(1) I have found that the conviction was made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144: *It is ordered*, That William Ronald Bradford be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the conviction hereinabove described.

Signed at Washington, D.C., this 23d day of December 1970.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[F.R. Doc. 71-236; Filed, Jan. 7, 1971;
8:46 a.m.]

WAYNE EDWARD FILLMORE

Notice of Granting of Relief

Notice is hereby given that Wayne Edward Fillmore, Box 88, Rocky Ridge, OH 43458, has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his convictions on May 26, 1964, in the Ottawa County Ohio Juvenile Court and July 21, 1964, in the Ottawa County Ohio Common Pleas Court, of crimes punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Wayne Edward Fillmore because of such convictions, to ship, transport or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such convictions, it would be unlawful for Wayne Edward Fillmore to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Wayne Edward Fillmore's application and:

(1) I have found that the convictions were made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the convictions and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144: *It is ordered*, That Wayne Edward Fillmore be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the convictions hereinabove described.

Signed at Washington, D.C., this 29th day of December 1970.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[F.R. Doc. 71-237; Filed, Jan. 7, 1971;
8:46 a.m.]

JAMES AUGUST NOLTE

Notice of Granting of Relief

Notice is hereby given that James August Nolte, 224 East Williamsburg Road, Sandston, VA 23150 has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his convictions on September 1, 1954, in the Caroline County, Va., Circuit Court, on June 17, 1955 and April 1, 1957, in the King William County, Va., Circuit Court, on February 27, 1957 in the Richmond City Hustings Court, Va., and on October 15, 1968 in the King and Queen County, Va., Circuit Court, of crimes punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for James August Nolte, because of such convictions, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such convictions it would be unlawful for James August Nolte to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered James August Nolte's application and:

(1) I have found that the convictions were made upon charges which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the convictions and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144: *It is ordered*, That James August Nolte be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the convictions hereinabove described.

Signed at Washington, D.C., this 29th day of December 1970.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[F.R. Doc. 71-239; Filed, Jan. 7, 1971;
8:46 a.m.]

GORDON JOHN PARKS

Notice of Granting of Relief

Notice is hereby given that Gordon John Parks, Star Route, Box 55, Luzerne, MI 48636, has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his convictions on April 17, 1950, and November 5, 1951, in the Genesee Circuit Court, Flint, Mich., of crimes punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Gordon John Parks because of such convictions, to ship, transport or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer, or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C. Appendix), because of such convictions, it would be unlawful for Gordon John Parks to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Gordon John Parks' application and:

(1) I have found that the convictions were made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the convictions and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144: *It is ordered*, That Gordon John Parks be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment or possession of firearms and incurred by reason of the convictions hereinabove described.

Signed at Washington, D.C., this 29th day of December 1970.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[F.R. Doc. 71-238; Filed, Jan. 7, 1971;
8:46 a.m.]

Office of the Secretary

SHEET GLASS FROM BELGIUM

Notice of Tentative Negative
Determination

DECEMBER 30, 1970.

Information was received on September 23, 1968, that sheet glass from Bel-

gium was being sold at less than fair value within the meaning of the Anti-dumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the FEDERAL REGISTER of December 19, 1968, on page 18943.

I hereby make a tentative determination that sheet glass from Belgium is not being, nor likely to be, sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

Statement of reasons on which this tentative determination is based. Information gathered during the course of the investigation indicated that sales in the home market amounted to less than 25 percent of sales other than for export to the United States.

None of the parties involved in these sales was related within the meaning of section 207 of the Act.

Purchase price was compared to the price to third countries for fair value purposes.

Purchase price was based on the delivered price to purchasers in the United States. Deductions were made for discounts, inland freight, port charges, U.S. duty, commissions, ocean freight, insurance, and packing.

Price to third countries was based on both c.i.f. and f.o.b. prices. Adjustments were made for discounts, customs duties, ocean freight, insurance, port charges, inland freight, and packing.

Comparisons between purchase price and price to third countries revealed that purchase price was not lower than the price to third countries.

In accordance with § 153.33(b), Customs Regulations (19 CFR 153.33(b)), interested parties may present written views or arguments, or request in writing, that the Secretary of the Treasury afford an opportunity to present oral views.

Any requests that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 2100 K Street NW., Washington, DC 20226, in time to be received by his office not later than 14 days from the date of publication of this notice in the FEDERAL REGISTER.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER.

This tentative determination and the statement of reasons therefor are published pursuant to § 153.33 of the Customs Regulations (19 CFR 153.33).

[SEAL] EUGENE T. ROSSIDES,
Assistant Secretary
of the Treasury.

[F.R. Doc. 71-269; Filed, Jan. 7, 1971;
8:49 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-269]

DUKE POWER CO.

Notice of Proposed Issuance of Facility
Operating License

The U.S. Atomic Energy Commission (the Commission) is considering the issuance of a facility operating license which would authorize Duke Power Co. to possess, use, and operate the Oconee Nuclear Station Unit 1 pressurized water nuclear reactor powerplant on the applicant's Oconee Nuclear Station site located in eastern Oconee County, approximately 8 miles northeast of Seneca, S.C. Construction of Unit No. 1 was authorized by Provisional Construction Permit No. CPPR-33 issued by the Commission on November 6, 1967.

The Oconee Nuclear Station Unit 1 would be initially authorized to operate at power levels up to 2,452 megawatts thermal. Operation at power levels up to 2,568 megawatts thermal would be authorized upon notification by the Commission that performance in full conformance with design expectations has been verified to the Commission's satisfaction. Operation would be authorized only in accordance with the provisions of the license and the Technical Specifications appended thereto.

The Commission has found that the application for the facility license, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations published in 10 CFR Chapter I.

During construction of the facility, it has been periodically inspected by the Commission. Prior to issuance of the operating license, the facility will be further inspected by the Commission to determine whether it has been constructed in accordance with the application, as amended, and the provisions of Provisional Construction Permit No. CPPR-33. The license will be issued after the Commission makes the findings which are set forth in the proposed license, and concludes that the issuance of this license will not be inimical to the common defense and security or to the health and safety of the public. As a prerequisite to issuance of the license, Duke Power Co. will be required to execute an indemnity agreement and furnish proof of financial protection as required by section 170 of the Act and 10 CFR Part 140 of the Commission's regulations.

In a separate notice published in the FEDERAL REGISTER, on December 29, 1970, entitled "Notice of Receipt of Applications for Facility Operating Licenses," pertaining to this docket and also to Oconee Nuclear Station, Units 2 and 3, Dockets Nos. 50-270 and 50-287, the Commission is advising of certain rights under subsection 105c(3) of the Act, as

recently amended (84 Stat. 1472), pertaining to an antitrust review of this application and of those in the dockets referred to above. In the event that such an antitrust review is initiated, the Commission could, pursuant to subsection 105c(8), as amended, issue an operating license in advance of consideration of, and findings with respect to, the antitrust aspects of the application, provided that the license contains appropriate conditions. Such conditions would be substantially as follows: (a) This license shall be subject to an antitrust review by the Attorney General pursuant to subsection 105c of the Atomic Energy Act of 1954, as amended; (b) Duke Power Co. shall furnish to the Commission such information as the Attorney General determines to be appropriate for the conduct of the review and the rendering of his advice with respect to the license; (c) the Commission may hold a hearing on antitrust matters on the recommendation of the Attorney General or at the request of any person whose interest may be affected by the proceeding, and, on the basis of its findings made after such hearing, the Commission will continue, rescind, or amend this license to include such conditions as the Commission deems appropriate; and (d) Duke Power Company shall comply with any order issued or license condition imposed by the Commission pursuant to subsection 105c of the Atomic Energy Act of 1954, as amended, with respect to the licensed activities.

Within thirty (30) days from the date of publication of this notice in the FEDERAL REGISTER, the applicant may file a request for a hearing and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions to intervene shall be filed in accordance with the Commission's rules of practice in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed within the time prescribed in this notice, the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to this proposed facility operating license, see (1) the application for construction permit and facility license dated November 28, 1966, as amended (Amendments Nos. 7 through 24); (2) the report of the Advisory Committee on Reactor Safeguards on the application for the Oconee Nuclear Station Unit No. 1 facility license, dated September 23, 1970; (3) the proposed facility operating license, including Technical Specifications; and (4) the safety evaluation prepared by the Division of Reactor Licensing, all of which will be available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of items (2) and (4) above may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 31st day of December 1970.

For the Atomic Energy Commission.

FRANK SCHROEDER,
Acting Director,
Division of Reactor Licensing.

[F.R. Doc. 71-296; Filed, Jan. 7, 1971;
8:49 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 22869; Order 71-1-8]

EASTERN AIR LINES, INC., ET AL.

Order Denying Petition for Reconsideration and Dismissing Complaint

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 4th day of January 1971.

By Order 70-11-93, dated November 19, 1970, the Board among other matters permitted Eastern Air Lines, Inc. (Eastern), National Airlines, Inc. (National), Northeast Airlines, Inc. (Northeast), and United Air Lines, Inc. (United), to black out family fares in Florida markets for a 4-month period from December 1 through April 30. Since issuance of that order, the carriers have refiled tariffs to defer introduction of the blackout until January 11, 1971.¹

On December 10, 1970, the Tampa Bay Area Parties (Tampa) filed a petition for reconsideration of Order 70-11-93 and complaint requesting institution of an investigation encompassing the tariffs of all four carriers and suspension of United's pending investigation.²

The complainants allege that elimination of family fares in Florida markets during the winter season will prejudice that state by leaving it as the only one without these highly beneficial fares; that the record in the Discount Fares phase of the Domestic Passenger Fare Investigation, Docket 21866, shows Florida markets as the top family fare markets in terms of percentage relationship to total traffic; and that the proposed blackout will result in hundreds of thousands of travelers being denied family fares when they most want them. It is further alleged that the record in the fare investigation demonstrates a significant generative effect from these fares; that the Examiner so found; and that the large volume of traffic stimulated to travel to Florida this season by the family fares will be lost, unless they travel by surface means. Finally, the complaint contends that special circumstances which would justify the alleged preference and prejudice have not been shown; that the carriers have not supported their statement that traffic will

¹ Revisions to Airline Tariff Publishers, Inc., Agent, Tariff CAB No. 142.

² Tampa has filed an amendment to its complaint dated Dec. 23, 1970, which purports to seek suspension of all four tariffs as well as similar tariffs filed by Delta Air Lines, Inc., and Trans World Airlines, Inc. Its complaint will be so considered.

move to other discounted services; and that nothing constituting particular circumstances, cost or otherwise, affecting the Florida markets in the winter months has been established.

In answer, Eastern alleges that the makeup of family fare traffic to Florida in the winter months differs from its year-round system experience, and that because of this difference family fares are not generative in these markets during the proposed blackout period. It is contended that family fare travel in the winter peak season months is much more heavily comprised of couples, as opposed to larger groups including children, and that use of first-class family fares in Florida markets is almost twice that on its system as a whole. The carrier points to the Examiner's finding in the investigation that neither category of traveler is significantly susceptible to generation by the reduced family fares. It is alleged that it is the total cost of the trip and not the air fare alone which concerns the potential vacationer, and that the high cost of accommodations in Florida further distinguishes the markets in question from others which it serves.

In addition to the particular characteristics of the winter Florida market and those relating to that State as a resort destination, Eastern alleges unique traffic peaking and more costly operational requirements stemming therefrom as distinguishing circumstances which justify the degree of prejudice involved. It reiterates the allegation contained in its initial justification for the blackout that it seeks to induce the limited number of price conscious travelers to use night coach service on which load factors are low, and to this extent alleviate the need for additional peak capacity.

Upon consideration of the pleadings and all other relevant matters, the Board concludes that the petition and complaint do not set forth sufficient facts to warrant investigation or suspension, and therefore the request for reconsideration of Order 70-11-93 will be denied and the complaint dismissed.

There is no requirement in the statute that fare discounts be established and applied identically in all markets. Different applications, e.g. blackout provisions, do not automatically result in undue preferences or prejudices. On the contrary, different applications in different areas or markets may be required by relevant circumstances if the fare discount is to meet the statutory test of reasonableness. Eastern has made a reasonable showing that the characteristics of the winter travel market to Florida and of the State as a resort destination differ from those generally prevailing elsewhere in the country. During the winter period of high demand for air transportation to Florida points, the diversion to the family discounts of persons who would be willing to pay regular fares would quite likely exceed the generation of new traffic and result in a reduction of net revenue to the carriers. Additionally, the traffic generated by the discount would create an even greater demand

for capacity, thus aggravating the seasonal peaking problem and its attendant costs, but without contributing the revenues necessary to cover those costs. In such circumstances, serious question of the reasonableness of the discount would be raised. These circumstances, peculiar to winter Florida travel, are quite different from those prevailing in other markets at the same time or in Florida markets at other times. Such differences in underlying economic circumstances can be expected to produce quite different economic results as between family fare travel in general and in wintertime Florida markets.

Tampa has not shown that it and other Florida cities will be unduly prejudiced by the blackout vis-a-vis other resort area. Tampa simply argues that without the family discount many persons will use surface transportation or will not go at all. However, we note that the carriers provide a substantial amount of night coach service which will be available to the price conscious traveler. In any event, it is anomalous that the carriers should be required to offer a discount fare to their economic disadvantage, at the very time hotels and other facilities in that resort area are charging peak season prices.

In our opinion, in view of the characteristics peculiar to the peak-season Florida markets, the selective blackouts during the four winter months do not appear unreasonable or unduly prejudice Florida markets in relation to other markets where a similar blackout is not being imposed. The Board has not infrequently permitted selective fare adjustments upon a showing of atypical circumstances and, indeed, did so when it permitted the introduction of northbound excursion fares from three Florida cities (one of which was Tampa) earlier this year.³

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof:

It is ordered, That:

1. The petition of the Tampa Bay Area Parties filed in Docket 22869 requesting reconsideration of Order 70-11-93, dated November 20, 1970, is hereby denied, and the complaint filed in said docket dismissed.

2. Copies of this order shall be served upon the Tampa Bay Area Parties, Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northeast Airlines, Inc., Trans World Airlines, Inc., and United Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[F.R. Doc. 71-267; Filed, Jan. 7, 1971;
8:49 a.m.]

³ Order 70-3-19, Mar. 4, 1970.

CIVIL SERVICE COMMISSION

DEPARTMENT OF COMMERCE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Commerce to fill by non-career executive assignment in the excepted service the position of Director of Policy Analysis, Office of the Secretary, Office of the Special Assistant to the Secretary for Policy Development.

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] JAMES C. SPRY,
Executive Assistant to
the Commissioners.

[F.R. Doc. 71-244; Filed, Jan. 7, 1971;
8:47 a.m.]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Notice of Title Change in Noncareer Executive Assignment

By notice of August 14, 1969, F.R. Doc. 69-9600 the title of the position of General Deputy, Land and Facilities Development Administration was changed to Deputy Director, Community Resources Development Administration. This is notice that the title is now further changed to Deputy Director, Office of Resources Development, Office of the Assistant Secretary for Metropolitan Planning and Development.

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] JAMES C. SPRY,
Executive Assistant to
the Commissioners.

[F.R. Doc. 71-245; Filed, Jan. 7, 1971;
8:47 a.m.]

DEPARTMENT OF JUSTICE

Notice of Title Change in Noncareer Executive Assignment

By notice of November 17, 1967, F.R. Doc. 67-13608, the Civil Service Commission authorized the departments and agencies to fill by noncareer executive assignment, certain positions removed from Schedule C of Civil Service Rule VI by 5 CFR 213.3301a on November 17, 1967. This is notice that the title of one such position so authorized to be filled by noncareer executive assignment has been changed from "Associate Deputy Attorney General for United States Attorneys" to "Director, Executive Office for United States Attorneys", Office of the Deputy Attorney General.

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] JAMES C. SPRY,
Executive Assistant to
the Commissioners.

[F.R. Doc. 71-247; Filed, Jan. 7, 1971;
8:47 a.m.]

INDUSTRIAL RELATIONS SPECIALIST AND ASSISTANT GENERAL COUNSEL FOR LABOR RELATIONS, POST OFFICE DEPARTMENT

Manpower Shortage; Notice of Listing

Under the provisions of 5 U.S.C. 5723, the Civil Service Commission found a manpower shortage on December 30, 1970, for positions of Industrial Relations Specialist, GS-230-14/15 and the single position of Assistant General Counsel for Labor Relations, GS-905-15 in the Post Office Department, Washington, D.C.

Assuming other legal requirements are met, appointees to these positions may be paid for the expense of travel and transportation to first post of duty.

This authorization automatically terminates on December 31, 1971.

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] JAMES C. SPRY,
Executive Assistant to
the Commissioners.

[F.R. Doc. 71-251; Filed, Jan. 7, 1971;
8:47 a.m.]

FEDERAL MARITIME COMMISSION

[Nos. 70-48, 70-49]

HAPAG-LLOYD AKTIENGESELLSCHAFT AND SEA-LAND SERVICES, INC.

Publication of Discriminatory Rates; Rescheduling of Filing Dates

JANUARY 4, 1971.

Respondents Hapag-Lloyd Aktiengesellschaft and Sea-Land Service have requested an enlargement of time within which to respond to the Commission's orders of December 11, 1970.¹

Respondents cite as grounds for the enlargement the difficulties attendant to assembling materials and preparing affidavits for submission to the Commission. A sufficient demonstration of good cause has been shown and the requests will be granted. The Commission wishes to emphasize that these actions do not indicate, in any way, a diminution in its concern regarding the matters under adjudication herein.

Accordingly, it is ordered,

(1) That requests for evidentiary hearing, affidavits of fact, and memoranda of law shall be filed by respondents on or before January 29, 1971.

(2) That replies thereto by Hearing Counsel and interveners, if any, shall be filed on or before February 15, 1971.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 71-255; Filed, Jan. 7, 1971;
8:48 a.m.]

¹ For purposes of this notice only, the requests are here consolidated for consideration.

[Docket No. 71-1]

SEATRAN LINES, INC.**Order To Show Cause Regarding Publication of Discriminatory Rates**

Seatrains Lines, Inc. (Seatrains), is a common carrier by water in the foreign commerce of the United States operating, inter alia, in the trade between U.S. Atlantic ports and continental European ports in the Bordeaux-Hamburg range. During the last several weeks Seatrain has effectuated significant reductions in certain rates published in its Tariff FMC-2 on file with the Commission (Attachment 1¹). Despite the fact that Seatrain offers a transportation service in both directions of the U.S. Atlantic/continental European trade area, the reductions in question are applicable to the commodities concerned only if they are carried in a westbound direction since no rate changes applicable to such commodities have been filed with the Commission applicable to Seatrain's eastbound operations. Moreover, a review of certain major moving commodities in subject trade (Attachment 2¹) reveals that with regard to these commodities as well as the recently reduced rates significant disparities exist between export and import rates of Seatrain.

Therefore Seatrain charges significantly different rates for what appear in all respects to be like services differing only in directional movement. Thus shippers of like traffic will not enjoy the same or even approximately equivalent rates and, specifically, American exporters will be charged rates significantly higher than their European counterparts.

The Commission is aware of no transportation circumstances or conditions which would justify the establishment or maintenance by Seatrain of discriminatory rates in the manner described especially since they may very likely require that American exporters compensate for any losses that may occur because of the decline in revenues accruing to the carrier.

Section 17 of the Shipping Act, 1916, provides in pertinent part that " * * * no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers * * * Whenever the Commission finds that any such rate, fare, or charge, is demanded, charged or collected it may alter the same to the extent necessary to correct such unjust discrimination * * * and make an order that the carrier shall discontinue demanding, charging or collecting any such unjustly discriminatory * * * rate, fare, or charge." Therefore, in the Commission's

opinion, unless Seatrain can offer valid reasons which would justify these rates, Seatrain is charging rates which must be considered to be unjustly discriminatory between shippers in violation of section 17 of the Shipping Act, 1916, 46 U.S.C. 816.

Now therefore, it is ordered, Pursuant to sections 22 and 17 of the Shipping Act, 1916, that Seatrain Lines, Inc. be named respondent in this proceeding and that it be ordered to show cause why the Commission should not order the unjust discrimination existing in its export/import rate structure and in certain instances aggravated by its recent rate reductions as detailed by increasing rates in its westbound services to the level of its eastbound rates, or by reducing the comparable rates which Seatrain charges in its eastbound services, or by changing rates in both directions so as to eliminate rate disparities on the commodities in question.

It is further ordered, That this proceeding shall be limited to the submission of affidavits and memoranda of law, replies, and oral argument. Should any party feel that an evidentiary hearing be required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, and why such proof cannot be submitted through affidavit. Requests for hearing shall be filed on or before January 29, 1971. Affidavits of fact and memoranda of law shall be filed by respondent and served upon all parties no later than the close of business January 29, 1971. Reply affidavits and memoranda shall be filed by the Commission's Bureau of Hearing Counsel and intervenors, if any, no later than close of business February 12, 1971. Oral argument will be scheduled at a later date.

It is further ordered, That a notice of this order be published in the FEDERAL REGISTER and that a copy thereof be served upon respondent.

It is further ordered, That persons other than those already party to this proceeding who desire to become parties to this proceeding and to participate therein shall file a petition to intervene pursuant to Rule 5(1) of the Commission's rules of practice and procedure (46 CFR 502.72) no later than the close of business January 19, 1971.

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573 in an original and 15 copies as well as being mailed directly to all parties of record.

By the Commission.

[SEAL] JOSEPH C. POLKING,
Assistant to the Secretary.

[F.R. Doc. 71-256; Filed, Jan. 7, 1971;
8:48 a.m.]

FEDERAL POWER COMMISSION

[Docket No. E-7582]

PACIFIC POWER & LIGHT CO.**Notice of Application**

DECEMBER 31, 1970.

Take notice that on December 7, 1970, Pacific Power & Light Co. (Applicant), a corporation organized under the laws of the State of Maine and qualified to transact business in the States of Oregon, Wyoming, Washington, California, Montana, and Idaho, with its principal business office at Portland, Oreg., filed an application with the Federal Power Commission, pursuant to section 204 of the Federal Power Act, seeking an order authorizing the issuance of \$40 million in principal amount of its first mortgage bonds.

The new bonds are to be issued under and pursuant to Applicant's presently existing mortgage and deed of trust dated as of July 1, 1947, to Morgan Guaranty Trust Co. of New York and R. E. Sparrow, as trustees, as supplemented and as proposed to be supplemented by a 23d supplemental indenture thereto. The new bonds will bear interest from February 1, 1971, at a rate per annum to be fixed by competitive bidding and will mature on February 1, 2001. Applicant proposes to sell the new bonds at competitive bidding in accordance with applicable requirements of § 34.1a of the Commission's regulations under the Federal Power Act.

The net proceeds from the issuance and sale of the new bonds are proposed to be applied to the prepayment of promissory notes outstanding under a credit agreement dated December 31, 1969, or outstanding commercial paper, or both, and to finance construction expenditures. Applicant's construction expenditures for 1971 are presently estimated at \$120,467,000, most of which it is contemplated will be financed through cash to be internally generated, sale of additional bonds and equity securities later in 1971, and short-term borrowings.

Any person desiring to be heard or to make any protest with reference to said application should, on or before January 11, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance

¹ Attachments 1 and 2 filed as part of the original document.

with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 71-334; Filed, Jan. 7, 1971;
9:51 a.m.]

FEDERAL RESERVE SYSTEM

[Dockets Nos. BHC-102-106, BHC-107]

OTTO BREMER CO. AND OTTO BREMER FOUNDATION

Order Making Determinations Regarding Planned Insurance Activities of Nonbanking Subsidiaries Under Bank Holding Company Act

In the matter of the applications of Otto Bremer Co. and Otto Bremer Foundation, St. Paul, Minn., for determinations under section 4(c) (8) of the Bank Holding Company Act of 1956 relating to the planned insurance activities of their nonbanking subsidiaries: Farmers State Agency of Frederick, Bank of Willmar Agency, Inc., Peoples State Agency of Colfax, Inc., Shelly State Agency, Inc., Washburn State-Bayfield Agency, Inc., and Union State-Webster, Inc.

Otto Bremer Co. and Otto Bremer Foundation, St. Paul, Minn., both holding companies within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. section 1841(a)), have filed requests for determinations by the Board of Governors of the Federal Reserve System that the activities planned to be undertaken by their nonbank subsidiaries: Farmers State Agency of Frederick, Bank of Willmar Agency, Inc., Peoples State Agency of Colfax, Inc., Shelly State Agency, Inc., Washburn State-Bayfield Agency, Inc., and Union State-Webster, Inc., are of the kind described in section 4(c) (8) of the Act (12 U.S.C. section 1843(c) (8)) and § 222.4(a) of Regulation Y (12 CFR 222.4(a)) so as to make it unnecessary for the prohibitions of section 4(a) of the Act, respecting the ownership or control of voting shares in nonbanking companies, to apply in order to carry out the purposes of the Act.

Pursuant to the requirements of section 4(c) (8) of the Act, and in accordance with the provisions of §§ 222.4(a) and 222.5(a) of Regulation Y (12 CFR 222.4(a) and 222.5(a)), a hearing was held on these matters on July 29, 1970. On November 18, 1970, the Hearing Examiner filed his reports and recommended decisions,¹ copies of which are annexed hereto, wherein he recommended that the Board make the requested determinations subject to certain conditions with respect to the application relating to Union State-Webster,

Inc. The time for filing exceptions to the reports and recommended decisions has expired. No exception has been filed to the reports and recommended decisions of the Hearing Examiner. The findings of fact, conclusions of law, and recommendations of the Hearing Examiner are adopted, and on the basis of the entire record.

It is hereby ordered, That the activities to be undertaken by Farmers State Agency of Frederick, Bank of Willmar Agency, Inc., Peoples State Agency of Colfax, Inc., Shelly State Agency, Inc., Washburn State-Bayfield Agency, Inc., and Union State-Webster, Inc., are determined to be so closely related to the business of banking and of managing or controlling banks as to be a proper incident thereto and as to make it unnecessary for the prohibitions of section 4(a) of the Act to apply in order to carry out its purposes, on the condition that Union State-Webster, Inc. shall terminate its real estate business activities, and on the further condition that Union State-Webster, Inc. shall cease the solicitation of insurance business which is not connected with banking activity or solicitation for banking business: *Provided, however,* That this determination is subject to revocation by the Board if the facts upon which it is based change in any material respect: *And provided, further,* That applicants shall not proceed in reliance upon the terms of this order for 10 days from the date hereof.

By order of the General Counsel of the Board of Governors, December 31, 1970, acting on behalf of the Board pursuant to delegated authority (12 CFR 265.2(b) (2)).

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[F.R. Doc. 71-222; Filed, Jan. 7, 1971;
8:45 a.m.]

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

BETHLEHEM MINES CORP. ET AL.

Applications for Renewal Permits; Notice of Opportunity for Public Hearing

Applications for Renewal Permits for Noncompliance with the Interim Mandatory Dust Standard (3.0 mg./m.³) have been received as follows:

(1) ICP Docket No. 10986, Bethlehem Mines Corp., Revloc Mine No. 32, USBM ID No. 36 00842 0, Ebensburg, Cambria County, Pa., Section ID No. 006 (B South).

(2) ICP Docket No. 10324, Winding Gulf Coals, Inc., East Gulf Mine, USBM ID No. 46 01513 0, East Gulf, Raleigh County, W. Va., Section ID No. 002 (11 Panel-North Mains).

(3) ICP Docket No. 10071, Island Creek Coal Co., Virginia Pocahontas No.

1 Mine, USBM ID No. 44 00246 0, Keen Mountain, Buchanan County, Va., Section ID No. 001 (No. 1 Longwall-1st East), Section ID No. 002 (No. 2 Longwall-2d East).

In accordance with the provisions of section 202(b) (4) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), public hearing as to an application for renewal may be filed within 15 days after publication of this notice. Requests for public hearing must be completed in accordance with 30 CFR Part 505 (35 F.R. 11296, July 15, 1970), copies of which may be obtained from the Panel on request.

A copy of the application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Suite 800, 1730 K Street NW., Washington, DC 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

JANUARY 5, 1971.

[F.R. Doc. 71-234; Filed, Jan. 7, 1971;
8:46 a.m.]

HARRISBURG COAL CO. ET AL.

Applications for Renewal Permits; Notice of Opportunity for Public Hearing

Applications for Renewal Permits for Noncompliance with the Interim Mandatory Dust Standard (3.0 mg./m.³) have been received as follows:

(1) ICP Docket No. 10891, Harrisburg Coal Co., Mine No. 1, USBM ID No. 11 00629 0, Marion, Williamson County, Ill., Section ID No. 001 (1st East off Main South) (Carney Sections).

(2) ICP Docket No. 11062, the Youghiogheny & Ohio Coal Co., Allison Mine, USBM ID No. 33 01070 0, Beallsville, Belmont County, Ohio, Section ID No. 002 (Main East North Returns), Section ID No. 004 (Main East).

(3) ICP Docket No. 11181, Freeman Coal Mining Corp., Orient Mine No. 4, USBM ID No. 11 00628 0, Pittsburg, Williamson County, Ill., Section ID No. 009 (7 North off Northwest), Section ID No. 007 (5 North off Northwest Main Entries).

In accordance with the provisions of section 202(b) (4) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for renewal may be filed within 15 days after publication of this notice. Requests for public hearing must be completed in accordance with 30 CFR Part 505 (35 F.R. 11296, July 15, 1970), copies of which may be obtained from the Panel on request.

A copy of the application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim

¹ Filed as part of the original document. Copies available upon request of the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Minneapolis.

Compliance Panel, Suite 800, 1730 K Street NW., Washington, DC 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

JANUARY 5, 1971.

[F.R. Doc. 71-233; Filed, Jan. 7, 1971;
8:46 a.m.]

IMPERIAL COAL CO. AND FREEMAN COAL MINING CORP.

Applications for Renewal Permits; Notice of Opportunity for Public Hearing

Applications for Renewal Permits for Noncompliance with the Interim Mandatory Dust Standard (3.0 mg./m.³) have been received as follows:

(1) ICP Docket No. 10922, Imperial Coal Co., Eagle Mine, USBM ID No. 05 00307 0, Erie, Weld County, Colo., Section ID No. 004 (No. 4 Section 6 North off Main East).

(2) ICP Docket No. 11112, Freeman Coal Mining Corp., Crown Mine, USBM ID No. 11 00604 0, Farmersville, Montgomery County, Ill., Section ID No. 011 (6 North off 2 MW off 1 South).

In accordance with the provisions of section 202(b)(4) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for renewal may be filed within 15 days after publication of this notice. Requests for public hearing must be completed in accordance with 30 CFR Part 505 (35 F.R. 11296, July 15, 1970), copies of which may be obtained from the Panel on request.

A copy of the application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Suite 800, 1730 K Street NW., Washington, DC 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

JANUARY 5, 1971.

[F.R. Doc. 71-232; Filed, Jan. 7, 1971;
8:46 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[70-4959]

CENTRAL POWER AND LIGHT CO.

Notice of Proposed Issue and Sale of First Mortgage Bonds at Competi- tive Bidding

DECEMBER 31, 1970.

Notice is hereby given that Central Power and Light Co. (CP&L), 120 North Chaparral Street, Corpus Christi, TX 78403, an electric utility subsidiary company of Central and South West Corp. (Central), a registered holding company,

has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

CP&L proposes to issue and sell, pursuant to the competitive bidding requirements of Rule 50, \$36 million principal amount of first mortgage bonds, Series L, _____ percent, due February 1, 2001. The interest rate (which shall be a multiple of one-eighth of 1 percent and the price, exclusive of accrued interest, to be paid to CP&L for the bonds (which shall be not less than 99 percent nor more than 102¾ percent of the principal amount of the bonds) will be determined by the competitive bidding. The bonds will be issued under the first mortgage dated November 1, 1943, between CP&L and The First National Bank of Chicago and Robert L. Grinnell, as trustees, as heretofore supplemented and as to be further supplemented by a supplemental indenture to be dated February 1, 1971, and which includes a prohibition until February 1, 1976, against refunding the issue with the proceeds of funds borrowed at a lower annual cost of money.

The net proceeds from the sale of the bonds will be used to finance the construction program of CP&L (including repayment or prepayment of borrowings from banks and from Central incurred therefor, which borrowings aggregated \$4,200,000 as of Nov. 30, 1970). Construction expenditures for 1971 are presently estimated at \$58 million.

It is stated that the fees and expenses to be incurred in connection with the issue and sale of the bonds are estimated at \$62,000, including accountants' fees of \$3,000 and counsel fees of \$15,000. The fees of counsel for the underwriters, to be paid by the successful bidders, are estimated at not to exceed \$9,500. It is further stated that no State commission, and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than January 25, 1971, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided

in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 71-225; Filed, Jan. 7, 1971;
8:45 a.m.]

[File No. 1-3421]

CONTINENTAL VENDING MACHINE CORP.

Order Suspending Trading

DECEMBER 31, 1970.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, 10 cents par value of Continental Vending Machine Corp., and the 6 percent convertible subordinated debentures due September 1, 1976, being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15 (c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period January 1, 1971, through January 10, 1971, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 71-224; Filed, Jan. 7, 1971;
8:45 a.m.]

[812-2526]

PAINÉ WEBBER MUNICIPAL BOND FUND, FIRST SERIES

Notice of Filing of Application for Exemption

DECEMBER 31, 1970.

Notice is hereby given that Paine Webber Municipal Bond Fund, 140 Broadway, New York, NY 10005, First Series (applicant), registered under the Investment Company Act of 1940 (Act) as a unit investment trust, has filed an application pursuant to section 6(c) of the Act for an order exempting the secondary market operations of applicant's sponsor from the provisions of Rule 22e-1 under the Act. The sponsor seeks to continue the practice of valuing applicant's units, for repurchase and resale by the sponsor in the secondary market, at prices computed once a week as of the close of business on the last business day

of the week, effective for all transactions made during the following week. All interested persons are referred to the application on file with the Commission for a statement of applicant's representations contained therein, which are summarized below.

Applicant, which was created in June 1966, has outstanding securities consisting of units (units), each representing an equal undivided interest in applicant's assets. These assets consist of obligations of States, counties, municipalities, and territories of the United States, and authorities and political subdivisions thereof which are exempt from Federal income tax (hereinafter referred to as the "Bonds"), all undistributed interest received or accrued thereon, and any undistributed cash realized from the sale, redemption or other disposition of the Bonds. Under the trust indenture and agreement pursuant to which applicant was created, additional bonds may not be added to applicant's portfolio and additional units may not be issued. Applicant's units are redeemable by the holders thereof at a redemption price determined on the basis of the "bid" prices of the Bonds.

Applicant's sponsor, Paine, Webber, Jackson & Curtis, Inc., is presently maintaining a market for the units and continuously is offering to repurchase units from holders at a price based on the "asked" prices of the Bonds. Such price, according to the application, may exceed the redemption price, based upon the "bid" prices of the Bonds, by \$15 or \$20 per unit. In addition, the sponsor resells units at a public offering price based upon the "asked" prices of the Bonds plus a sales charge of 3.846 percent of the public offering price. Both the repurchase and resale price are computed as of the close of business on the last business day of each week and are effective for all purchases and sales by the sponsor during the following week. The evaluation is made by applicant's evaluator, Investors Management Sciences, Inc., the successor by merger to Standard Statistics Co., Inc. (evaluator).

Rule 22c-1 provides, in part, that redeemable securities of registered investment companies must be sold, redeemed or repurchased at a price based on the current net asset value (computed on each day during which the New York Stock Exchange is open for trading not less frequently than once daily as of the time of the close of trading on such exchange) which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Applicant asserts that the pricing by the sponsor in the secondary market in no way affects applicant's assets, and that the public unit holders benefit from such pricing procedure by receiving a normally higher repurchase price for their units without the cost burden of daily evaluations of the unit redemption

value. In addition, the application states that the sponsor has undertaken to adopt a procedure whereby the evaluator, without a formal evaluation, will provide estimated evaluations on trading days. In the case of a repurchase, if the evaluator cannot state that the previous Friday's price is at least equal to the current bid price, the sponsor will order a full evaluation. In case of resale, if the evaluator cannot state that the previous Friday's price is no more than one-half point (\$5 on a unit representing \$1,000 principal amount of underlying bonds) greater than the current offering price, a full evaluation will be ordered.

Section 6(c) of the Act provides, in part, that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provisions of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than January 18, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation pursuant to delegated authority.

[SEAL]

ORVAL L. DUBOIS,
Secretary.

[P.R. Doc. 71-226; Filed, Jan. 7, 1971;
8:45 a.m.]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 4.1-1, Rev. 3]

DIRECTOR, OFFICE OF FINANCING,
ET AL.

Delegation of Authority Regarding Financial Assistance

Delegation of Authority No. 4.1-1, Revision 2 (33 F.R. 9855), as amended (33 F.R. 10424), is hereby revised to read as follows:

I. Pursuant to the authority delegated by the Associate Administrator for Financial Assistance to the Deputy Associate Administrator for Financial Assistance in Delegation of Authority No. 4.1, Revision 2 (35 F.R. 18493), the following authority, which does not include the authority to declare the nonapplicability of eligibility limitations to a community emergency as set forth in § 120.2(e) of SBA Loan Policy Regulations, is hereby redelegated to the specific positions as indicated herein:

A. *Director, Office of Financing.* 1. To approve or decline business, economic opportunity, trade adjustment, disaster, displaced business, and coal mine health and safety loan applications, including reconsiderations thereof, and to execute authorizations and amendments pertaining to such loans.

2. To cancel, reinstate, modify, and amend authorizations for fully undischarged loans.

3. To determine eligibility of business, economic opportunity, and displaced business loan applicants.

B. *Deputy Director, Office of Financing.* 1. To approve or decline business, economic opportunity, trade adjustment, disaster, displaced business, and coal mine health and safety loan applications, including reconsiderations thereof, and to execute authorizations and amendments pertaining to such loans.

2. To cancel, reinstate, modify, and amend authorizations for fully undischarged loans.

3. To determine eligibility of business, economic opportunity, and displaced business loan applicants.

C. *Chief, Processing Division.* 1. To approve or decline business, economic opportunity, trade adjustment, disaster, displaced business, and coal mine health and safety loan applications, including reconsiderations thereof, and to execute authorizations and amendments pertaining to such loans.

2. To cancel, reinstate, modify, and amend authorizations for fully undischarged loans.

3. To determine eligibility of business and displaced business loan applicants.

D. *Chief, Economic Opportunity Division.* 1. To determine eligibility of economic opportunity loan applicants.

E. *Director, Office of Loan Administration.* 1. To take all necessary action

in connection with the servicing, collection or liquidation of partially or fully disbursed loans and other obligations, and the disposal of acquired property within all loan programs of the Small Business Administration, but is not authorized:

(a) To sell any primary obligation or other evidence of indebtedness, exclusive of property acquired, owed to the Agency for a sum less than the total amount due thereon.

(b) To accept or reject a compromise settlement of an indebtedness owed to the Agency for a sum less than the total amount due thereon.

(c) To deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the initiation of suit for recovery from a participating bank under any alleged violation of a participation or guaranty agreement.

2. To take all necessary actions in connection with the liquidation of SBIC's, rehabilitation loans for the Department of Housing and Urban Development, and EDA loans for the Department of Commerce.

3. To take all necessary actions in connection with the servicing (financial aspects) of certificates of competency and, as appropriate, financial aspects of contracts let by SBA under section 8(a) of the Small Business Act, as amended.

F. Chiefs, Field Operations and Programs and Systems Divisions. 1. To take all necessary action in connection with the servicing, collection or liquidation of partially or fully disbursed loans and other obligations, and the disposal of acquired property within all loan programs of the Small Business Administration, but is not authorized:

(a) To sell any primary obligation or other evidence of indebtedness, exclusive of property acquired, owed to the Agency for a sum less than the total amount due thereon.

(b) To accept or reject a compromise settlement of an indebtedness owed to the Agency for a sum less than the total amount due thereon.

(c) To deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the initiation of suit for recovery from a participating bank under any alleged violation of a participation or guaranty agreement.

2. To take all necessary actions in connection with the liquidation of SBIC's, rehabilitation loans for the Department of Housing and Urban Development, and EDA loans for the Department of Commerce.

3. To take all necessary actions in connection with the servicing (financial aspects) of certificates of competency and, as appropriate, financial aspects of contracts let by SBA under section 8(a) of the Small Business Act, as amended.

G. Director, Office of Community Development. 1. To approve or decline development company (sections 501 and 502) loan applications, including reconsiderations thereof, and to execute authorizations and modifications pertaining to such loans.

2. To cancel, reinstate, modify, and amend authorizations for fully undisbursed loans.

3. To determine eligibility of Development Company loan applicants.

4. To approve or decline applications for the guarantee of the payment of rent under a lease where the aggregate rentals do not exceed \$2,500,000.

5. To enter into reinsurance agreements with participating insurance companies and to modify and revise the same whenever necessary.

6. To reinsure or decline to reinsure any application for the guarantee of the payment of rent under a lease where the aggregate rentals do not exceed \$2,500,000.

7. To approve the investment of moneys in the Lease Guarantee revolving fund not needed for the payment of current operating expenses for the payment of claims arising under the Lease Guarantee program, in bonds or other obligations guaranteed as to principal and interest by the United States.

8. To make size and eligibility determinations for the purpose of the Lease Guarantee program.

H. Chief, Development Company Loan Division. 1. To approve or decline development company (sections 501 and 502) loan applications, including reconsiderations thereof, and to execute authorizations and modifications pertaining to such loans.

2. To cancel, reinstate, modify, and amend authorizations for fully undisbursed loans.

3. To determine eligibility of Development Company loan applicants.

I. Chief, Lease Guarantee Division. 1. To approve or decline applications for the guarantee of the payment of rent under a lease where the aggregate rentals do not exceed \$2,500,000.

2. To enter into reinsurance agreements with participating insurance companies and to modify and revise the same whenever necessary.

3. To reinsure or decline to reinsure any application for the guarantee of the payment of rent under a lease where the aggregate rentals do not exceed \$2,500,000.

4. To make size and eligibility determinations for the purpose of the Lease Guarantee program.

J. Director, Office of Program Management. 1. To determine eligibility of disaster and coal mine health and safety loan applicants, with the exception of applicants for displaced business loans.

2. To authorize acceptance of disaster loan applications after expiration of the original disaster period.

K. Chief, Disaster Planning Division. 1. To determine eligibility of disaster and coal mine health and safety loan applicants, with the exception of applicants for displaced business loans.

2. To authorize acceptance of disaster loan applications after expiration of the original disaster period.

II. The authority delegater herein may be redelegated, with the exception of that contained in item G.7.

III. All authority delegated herein may be exercised by any SBA employee designated as Acting in that position.

IV. Authority delegated by Delegation of Authority No. 4.1-1, Revision 2 (33 F.R. 9855) is hereby revoked by this revision without prejudice to any prior actions taken thereunder.

Effective date: December 4, 1970.

ANTHONY S. STASIO,
Deputy Associate Administrator
for Financial Assistance.

[F.R. Doc. 71-243; Filed, Jan. 7, 1971;
8:46 a.m.]

TARIFF COMMISSION

[337-L-43]

PAPER STITCHERS

Notice of Complaint Received

The U.S. Tariff Commission hereby gives notice of the receipt on December 16, 1970, of a complaint under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), filed by Robert T. Kaufman of Silver Spring, Md., alleging unfair methods of competition and unfair acts in the importation and sale of certain paper stitchers which are embraced within the claims of U.S. Patent No. 2,994,881 owned by the complainant, Ordibel Collators, Inc., 103 Park Avenue, New York, N.Y., has been named as an importer and A. B. Dick & Co., Inc., of Chicago, Ill., has been named as a distributor of the subject products.

In accordance with the provisions of § 203.3 of its rules of practice and procedure (19 CFR 203.3), the Commission has initiated a preliminary inquiry into the allegations of the complaint for the purpose of determining whether there is good and sufficient reason for a full investigation, and if so whether the Commission should recommend to the President the issuance of a temporary order of exclusion from entry under section 337(f) of the Tariff Act.

A copy of the complaint is available for public inspection at the Office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, DC, and at the New York office of the Tariff Commission located in room 437 of the Customhouse.

Information submitted by interested persons which is pertinent to the aforementioned preliminary inquiry will be considered by the Commission if it is received not later than March 1, 1971. Such information should be sent to the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, DC 20436. A signed original and nineteen (19) true copies of each document must be filed.

Issued: January 4, 1971.

By order of the Commission.

[SEAL] KENNETH R. MASON,
Secretary.

[F.R. Doc. 71-229; Filed, Jan. 7, 1971;
8:46 a.m.]

DEPARTMENT OF LABOR

Office of the Secretary

UNEMPLOYMENT COMPENSATION LAWS

Certification of States to Secretary of the Treasury

Pursuant to section 3304(a) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(a)) the unemployment compensation laws of the following States have heretofore been approved:

Alabama.	Montana.
Alaska.	Nebraska.
Arizona.	Nevada.
Arkansas.	New Hampshire.
California.	New Jersey.
Colorado.	New Mexico.
Connecticut.	New York.
Delaware.	North Carolina.
District of Columbia.	North Dakota.
Florida.	Ohio.
Georgia.	Oklahoma.
Hawaii.	Oregon.
Idaho.	Pennsylvania.
Illinois.	Puerto Rico.
Indiana.	Rhode Island.
Iowa.	South Carolina.
Kansas.	South Dakota.
Kentucky.	Tennessee.
Louisiana.	Texas.
Maine.	Utah.
Maryland.	Vermont.
Massachusetts.	Virginia.
Michigan.	Washington.
Minnesota.	West Virginia.
Mississippi.	Wisconsin.
Missouri.	Wyoming.

In accordance with the provisions of section 3304(c) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(c)), I hereby certify that the foregoing States to the Secretary of the Treasury for the taxable year 1970.

J. D. HODGSON,
Secretary of Labor.

DECEMBER 31, 1970.

[F.R. Doc. 71-227; Filed, Jan. 7, 1971;
8:45 a.m.]

UNEMPLOYMENT COMPENSATION LAWS

Certification of State Laws to Secretary of the Treasury

The unemployment compensation laws of the States listed below, having been certified pursuant to paragraph (3) of section 3303(b) of the Internal Revenue Code of 1954 (26 U.S.C. 3303(b)(3)) and each of the States so listed having been certified by me to the Secretary of the Treasury for the taxable year 1970 as provided in section 3304 of the Internal Revenue Code of 1954 (26 U.S.C. 3304), are hereby certified, pursuant to paragraph (1) of section 3303(b) of the Internal Revenue Code of 1954 (26 U.S.C. 3303(b)(1)) to the Secretary of the Treasury for the taxable year 1970.

Alabama.	Connecticut.
Alaska.	Delaware.
Arizona.	District of Columbia.
Arkansas.	Florida.
California.	Georgia.
Colorado.	Hawaii.

Idaho.
Illinois.
Indiana.
Iowa.
Kansas.
Kentucky.
Louisiana.
Maine.
Maryland.
Massachusetts.
Michigan.
Minnesota.
Mississippi.
Missouri.
Montana.
Nebraska.
Nevada.
New Hampshire.
New Jersey.
New Mexico.

New York.
North Carolina.
North Dakota.
Ohio.
Oklahoma.
Oregon.
Pennsylvania.
Rhode Island.
South Carolina.
South Dakota.
Tennessee.
Texas.
Utah.
Vermont.
Virginia.
Washington.
West Virginia.
Wisconsin.
Wyoming.

J. D. HODGSON,
Secretary of Labor.

DECEMBER 31, 1970.

[F.R. Doc. 71-228; Filed, Jan. 7, 1971;
8:45 a.m.]

LABOR STANDARDS APPLICABLE TO FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

Notice of Guidelines to Reflect Organizational Changes

There are published in the FEDERAL REGISTER on this date Secretary of Labor's Orders No. 19-70, 20-70, dealing, among other things, with the establishment of the Workplace Standards Administration (WSA), and 24-70, dealing with the jurisdiction of the Wage Appeals Board, and a description of organizational changes in the administration of the Davis-Bacon Act and related laws within the Department's New WSA. The changes will require the amendment of Parts 1, 3, 5, and 7 of Title 29, Code of Federal Regulations.

Pending the making of these amendments, Parts 1, 3, 5, and 7 of Title 29 should be read in light of the aforementioned documents. The following guidelines may be useful in such reading.

1. The operating responsibility for administering 29 CFR Part 1, the procedure for making wage determinations under the Davis-Bacon Act, is placed in the Office of Government Contracts Wage Standards, Workplace Standards Administration, except that hearing examiners to preside at any hearings under § 1.3(c) or § 1.8 shall be designated by the Chief Hearing Examiner and that the final decisions following such hearings shall be those of the Administrator of Workplace Standards, or a duly authorized representative.

2. The Director, Office of Government Contracts Wage Standards, Workplace Standards Administration, or his designee shall pass upon questions concerning the permissibility of payroll deductions under the rules issued to implement the Copeland Act which are published in 29 CFR Part 3.

3. The Administrator of Workplace Standards and under his direction the Wage and Hour Division and the Regional Administrators, WSA, shall administer 29 CFR Part 5, which contains

rules providing for the coordination of the administration and enforcement of the Davis-Bacon Act and its related laws, except that the granting of any variations, tolerances, and exemptions from 29 CFR Parts 1, 3, and 5 shall be reserved to the Administrator of Workplace Standards.

4. Title 29 CFR Part 7 should be read as permitting review by the Wage Appeals Board of final decisions by the Administrator of Workplace Standards, the Administrator of the Wage and Hour Division, and the Director of the Office of Government Contracts Wage Standards, as if they had been made heretofore by the Solicitor.

Signed at Washington, D.C., this 16th day of December 1970.

ROBERT D. MORAN,
Administrator of
Workplace Standards.

[F.R. Doc. 71-258; Filed, Jan. 7, 1971;
8:48 a.m.]

[Secretary of Labor's Order 19-70]

ASSISTANT SECRETARY FOR WORKPLACE STANDARDS

Delegation of Authority and Assignment of Responsibility

1. *Purpose.* This order redesignates the Assistant Secretary for Wage and Labor Standards as the Assistant Secretary for Workplace Standards and delegates to the Assistant Secretary for Workplace Standards the authority vested in the Secretary of Labor for workplace standards programs, heretofore called wage and labor standards programs.

2. *Background.* Several organizational elements of the Department of Labor involved with workplace standards activities were transferred to the Wage and Labor Standards Administration, pursuant to Secretary's Order No. 24-69. The principle guiding the transfer was to place under one Assistant Secretary the programs which contribute to the achievement of the same major goal. This order consolidates in one directive the authority of the Assistant Secretary for Workplace Standards.

3. *The Workplace Standards Administration (WSA).* There is established in the Department of Labor a Workplace Standards Administration which supersedes the Wage and Labor Standards Administration (WLSA) and is assigned all of the responsibilities, personnel, equipment and facilities of WLSA.

The Workplace Standards Administration shall be headed by an Assistant Secretary who reports to the Secretary of Labor.

4. *Delegation of authority and assignment of responsibility.* a. The Assistant Secretary for Workplace Standards is hereby delegated authority and assigned responsibility, except as hereinafter provided, for:

(1) Carrying out the workplace standards programs and activities of the Department of Labor including the functions to be performed by the Secretary of Labor under:

(a) Fair Labor Standards Act of 1938, as amended;

(b) The Walsh-Healey Public Contracts Act of 1936, as amended;

(c) McNamara-O'Hara Service Contract Act of 1965;

(d) The Davis-Bacon Act and any laws now existing, or which may be subsequently enacted, providing for prevailing wage findings by the Secretary of Labor in accordance with or pursuant to the Davis-Bacon Act; the Copeland Act; Reorganization Plan No. 14 of 1950; and the Tennessee Valley Authority Act.

(e) Contract Work Hours and Safety Standards Act;

(f) Title III of the Consumer Credit Protection Act;

(g) Age Discrimination in Employment Act of 1967;

(h) Vocational Rehabilitation Act Amendments of 1965;

(i) Arts and Humanities Act of 1965;

(j) Federal Employees' Compensation Act as amended and extended (5 U.S.C. 8101 et seq., except 8149 as it pertains to Employees' Compensation Appeals Board);

(k) The Longshoremen's and Harbor Workers' Compensation Act, as amended and extended;

(l) Maritime Safety Act;

(m) The Act of 1920 establishing a Women's Bureau (Public Law 66-259);

(n) Executive Order 10990—Federal Safety Council;

(o) Executive Order 11126—as amended by Executive Order 11221—Status of Women;

(p) Executive Order 11136, as amended—President's Committee on Consumer Interests and Consumer Advisory Committee;

(q) Executive Order 11246, as amended by Executive Order 11375—Federal Contract Compliance;

(r) The responsibilities of the Secretary of Labor with respect to labor safety provisions of any other Federal statutes;

(s) Such additional Federal acts as may from time to time confer upon the Secretary of Labor duties and responsibilities similar to the Fair Labor Standards Act.

b. In carrying out the authority and responsibility delegated under this order, the Assistant Secretary for Workplace Standards shall perform the above functions in accordance with existing Governmental and Departmental regulations, including Chapter 4-1300 of the Manual of Administration, which outlines the functions of Policy Development, Planning, Programming, Budgeting, Executing Programs, Reviewing and Analyzing Planned Versus Actual Performance, and Evaluating Program Effectiveness.

c. The authority and responsibility delegated to the Assistant Secretary may be redelegated by him.

d. The Assistant Secretary is delegated authority for making organizational changes within policies established by the Secretary in accordance with the provisions of Chapter 4-200 of the Manual of Administration.

e. The Solicitor of Labor shall have the responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutes and Executive orders listed in paragraph 4a(1) above.

5. *Reservation of authority.* a. The following functions are reserved to the Secretary:

(1) Submission of reports and recommendations to the President and the Congress concerning the administration of the statutes and Executive orders listed in paragraph 4a(1) above.

(2) The bringing of legal proceedings under the statutes and Executive orders listed in paragraph 4a(1) above, the determination in each case whether such proceedings are appropriate to be made by the Solicitor of Labor.

b. The jurisdiction of the Wage Appeals Board, as presently described in its rules of practice (29 CFR Part 7) is reserved, and the Board shall be empowered to review decisions under this order relating to the Davis-Bacon Act and its related laws within the scope of that jurisdiction.

6. *Directives affected.* a. The following Secretary's orders are canceled by this order: 23-64, 15-67, 19-67, 10-68, 17-68, 25-68, and 24-69.

b. The following Secretary's orders remain in effect until canceled, except that the overall responsibility for the authority delegated in them is now vested in the Assistant Secretary for Workplace Standards: 2-67, 18-67, 21-67, 11-68, 21-68, 26-68, 2-69, 3-69, and 4-69.

7. *Effective date.* This order is effective immediately.

Signed at Washington, D.C., this 24th day of August 1970.

JAMES D. HODGSON,
Secretary of Labor.

[F.R. Doc. 71-259; Filed, Jan. 7, 1971;
8:48 a.m.]

[Secretary of Labor's Order 20-70]

ADMINISTRATOR, WORKPLACE STANDARDS ADMINISTRATION, ET AL.

Redellegation of Authority and Responsibility

1. *Purpose.* This order delegates authority and assigns responsibility to (a) the Administrator, Workplace Standards Administration, (b) the Deputy Assistant Secretary for Program Development and Administration, (c) the Deputy Assistant Secretary for Federal Contract Compliance, and (d) the Director of the Women's Bureau.

2. *Background.* Secretary's Order No. 19-70 established the Workplace Standards Administration and delegated to the Assistant Secretary for Workplace Standards the authority and responsibility for workplace standards programs vested in the Secretary.

Inherent in establishment of the Workplace Standards Administration is the desire of the Secretary to improve the delivery of services in all program

areas involved, with particular attention being given to occupational health and safety and equal employment opportunity.

3. *Delegation of authority and responsibility.* a. The Administrator, Wage and Hour Division, shall also be the Administrator, Workplace Standards Administration (WSA). He shall report to the Assistant Secretary, shall act for the Assistant Secretary in his absence, and shall have responsibility for carrying out workplace standards programs and activities including functions to be performed by the Secretary under:

(1) Fair Labor Standards Act of 1938, as amended;

(2) The Walsh-Healey Public Contracts Act of 1936, as amended;

(3) McNamara-O'Hara Service Contract Act of 1965;

(4) The Davis-Bacon Act and any laws now existing, or which may be subsequently enacted, providing for prevailing wage findings by the Secretary of Labor in accordance with or pursuant to the Davis-Bacon Act; the Copeland Act; Reorganization Plan No. 14 of 1950; and the Tennessee Valley Authority Act;

(5) Age Discrimination in Employment Act of 1967;

(6) Vocational Rehabilitation Act Amendments of 1965;

(7) Contract Work Hours and Safety Standards Act;

(8) Title III of the Consumer Credit Protection Act;

(9) Arts and Humanities Act of 1965;

(10) Federal Employees' Compensation Act as amended and extended (5 U.S.C. 8101 et seq., except 8149 as it pertains to Employees' Compensation Appeals Board);

(11) The Longshoremen's and Harbor Workers' Compensation Act, as amended and extended;

(12) Maritime Safety Act;

(13) Executive Order 10990—Federal Safety Council;

(14) The responsibilities of the Secretary of Labor with respect to labor safety provisions of any other Federal statutes;

(15) Such additional Federal acts as may from time to time confer upon the Secretary of Labor duties and responsibilities similar to the Fair Labor Standards Act.

b. The Director, Bureau of Labor Standards, shall also be the Deputy Administrator, WSA.

c. The Deputy Assistant Secretary for Program Development and Administration shall report to the Assistant Secretary and shall have responsibilities for providing staff assistance to the Assistant Secretary, the Administrator, WSA, and the Deputy Assistant Secretary for Federal Contract Compliance, the Director of the Women's Bureau and the heads of units who report to them. Staff assistance to be provided shall include:

(1) Developing and recommending policies, plans, programs, and standards at the request of the Assistant Secretary, Administrator, WSA, Deputy Assistant Secretary for Federal Contract

Compliance and the Director of the Women's Bureau or on his own initiative;

(2) Planning and conducting research, at the request of the Assistant Secretary, the Administrator, WSA, the Deputy Assistant Secretary for Federal Contract Compliance and the Director of the Women's Bureau or on his own initiative;

(3) Developing and recommending budgets;

(4) Developing and recommending (a) management systems, (b) organization structures, and (c) personnel management policies;

(5) Providing or securing office and other space, facilities and equipment;

(6) Developing and recommending systems for review and analysis (comparing actual with planned performance) and making reviews and analysis of program performance; and

(7) Conducting program evaluation.

d. The Deputy Assistant Secretary for Federal Contract Compliance shall report to the Assistant Secretary and shall have responsibility for carrying out the Secretary's responsibilities under Executive Order 11246 as amended by Executive Order 11375—Federal Contract Compliance.

e. The Director of the Women's Bureau shall report to the Assistant Secretary and shall have responsibility for carrying out the Secretary's responsibilities included under:

(1) The Act of 1920 establishing a Women's Bureau (Public Law 66-259);

(2) Executive Order 11126—as amended by Executive Order 11221—Status of Women;

(3) Executive Order 11136, as amended—President's Committee on Consumer Interests and Consumer Advisory Committee.

f. Regional Administrators, WSA, shall report to the Administrator, WSA, and shall have responsibility for carrying out the directives and policies of the Administrator, WSA.

g. The Administrator, WSA, the Deputy Assistant Secretaries in WSA and the Director of the Women's Bureau may redelegate authority vested in them by this Order.

h. The Administrator, WSA, Deputy Assistant Secretaries, WSA, and the Director of the Women's Bureau shall administer programs in such a manner as to be consistent with the policies of the Secretary of Labor and the Assistant Secretary for Workplace Standards including policies established by staff units in the Office of the Secretary pursuant to delegations to them by the Secretary.

i. The Administrator, WSA, and the Deputy Assistant Secretary for Program Development and Administration shall be members of the Deputies Committee for Management and Operations Reform, and the Departmental Committee on Executive Personnel Assignments.

4. *Effective date.* This order is effective immediately.

Signed at Washington, D.C., this 24th day of August 1970.

ARTHUR A. FLETCHER,
Assistant Secretary for
Workplace Standards.

[F.R. Doc. 71-260; Filed, Jan. 7, 1971;
8:48 a.m.]

[Secretary of Labor's Order 24-70]

WAGE APPEALS BOARD

Authority and Responsibilities

1. *Purpose.* To describe the authority and responsibilities of the Wage Appeals Board in deciding appeals from final decisions by the Assistant Secretary for Workplace Standards and by his delegates under the laws named in this order.

2. *Delegation of authority and assignment of responsibility.* There is in the Department of Labor a Wage Appeals Board which is directly responsible to the Secretary of Labor. The Board shall act as the authorized representative of the Secretary of Labor in deciding appeals, concerning questions of fact and law, taken in the discretion of the Board, from final decisions of the Assistant Secretary for Workplace Standards or his delegates under the following:

a. The Davis-Bacon Act; any laws now existing, or which may be subsequently enacted, providing for prevailing wage findings by the Secretary of Labor in accordance with or pursuant to the Davis-Bacon Act (a list of such laws as of the date of this order is set forth below), Contract Work Hours and Safety Standards Act, the Copeland Act, and Reorganization Plan No. 14 of 1950.

b. The final decisions include those involving wage determinations, debarment, disputes, and the assessment of liquidated damages under the Contract Work Hours and Safety Standards Act (except matters pertaining to safety).

3. *Composition.* The Board shall consist of three public members, one of whom shall be designated Chairman. The members of the Board shall be appointed by the Secretary of Labor, and shall be selected upon the basis of their qualifications and competence in matters within the authority of the Board.

4. *Voting.* The Chairman of the Board may, in his discretion, designate himself or any other member of the Board to decide any appeal provided the interested persons or parties have consented to the disposition of the appeal in this manner. The Chairman may also direct that any appeal may be decided by a panel of any two members of the Board, but if they are unable to agree upon a decision, the case will be decided by the full Board. When an appeal is decided by all three members of the Board, a majority vote shall be necessary for decision. Any decision in any other matter and the issuance of any procedural rules shall also be by a majority vote, except that a decision to hear any appeal may be by one member.

5. *Location of Board proceedings.* The Board shall hold its proceedings in Washington, D.C., unless for good cause the Board orders that proceedings in a particular matter be held in another location.

6. *Rules of practice and procedure.* The Board shall prescribe such rules of procedure as it deems necessary or appropriate for the conduct of its proceedings. The rules which are prescribed in 29 CFR Part 7 as of the date of this order shall govern the proceedings of the Board until changed.

7. *Departmental counsel.* The Solicitor shall provide counsel to represent the Assistant Secretary for Workplace Standards in proceedings before the Board.

8. *Directives affected.* This order supersedes Secretary's Order No. 32-63, dated December 30, 1963.

9. *Effective date.* This order is effective immediately.

Signed at Washington, D.C., this 7th day of October 1970.

JAMES D. HODGSON,
Secretary of Labor.

The Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-7, and as extended to the Federal-Aid Highway Acts codified in 23 U.S.C. 113).

National Housing Act (12 U.S.C. 1713, 1715a, 1715c, 1715e, 1715k, 1715l(d) (3) and (4), 1715v, 1715w, 1715x, 1743, 1747, 1748b, 1748b-2, 1750g, 1715l(h) (1), 1715z(j) (1), 1715z-1, 1715y(d), Subchapter IX-A and X-B, 1715z-7).

Hospital Survey and Construction Act as amended by the Hospital and Medical Facilities Amendments of 1964 (42 U.S.C. 291e).

Federal Airport Act (49 U.S.C. 1114(b)).

Housing Act of 1949, as amended (42 U.S.C. 1459).

School Survey and Construction Act of 1950 (20 U.S.C. 636).

Defense Housing and Community Facilities and Services Act of 1951 (42 U.S.C. 1592i).

United States Housing Act of 1937 (42 U.S.C. 1416).

Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281).

Delaware River Basin Compact (sec. 15.1, 75 Stat. 714).

Cooperative Research Act (20 U.S.C. 332a (c)).

Health Professions Educational Assistance Act of 1963 (42 U.S.C. 292d(c) (4), 293a(c) (5)).

Mental Retardation Facilities Construction Act (42 U.S.C. 295(a) (2) (D), 2662(5), 2675 (a) (5)).

Community Mental Health Centers Act (42 U.S.C. 2685(a) (5)).

Higher Educational Facilities Act of 1963 (20 U.S.C. 753).

Vocational Education Act of 1963 (20 U.S.C. 351).

Library Services and Construction Act (20 U.S.C. 355c(a) (4)).

Urban Mass Transportation Act of 1964 (49 U.S.C. 1609).

Economic Opportunity Act of 1964 (42 U.S.C. 2947).

Housing Act of 1964 (42 U.S.C. 1486(f); 42 U.S.C. 1452b(e)).

The Commercial Fisheries Research and Development Act of 1964 (16 U.S.C. 779e (b)).

The Nurse Training Act of 1964 (42 U.S.C. 296a(b) (5)).

Elementary and Secondary Education Act of 1965 (20 U.S.C. 2411, 848).

Federal Water Pollution Control Act, as amended, by the Water Quality Act of 1965 (33 U.S.C. 466e(g)).

Appalachian Regional Development Act of 1965 (40 U.S.C. App. 402).

National Technical Institute for the Deaf Act (20 U.S.C. 684(b) (5)).

Housing Act of 1959 (12 U.S.C. 1701(q) (c) (3)).

College Housing Act of 1950, as amended (12 U.S.C. 1749a(f)).

Housing and Urban Development Act of 1965 (42 U.S.C. 1500c-3, 3107).

National Foundation on the Arts and the Humanities Act of 1965 (20 U.S.C. 954(k)).

Public Works and Economic Development Act of 1965 (42 U.S.C. 3222).

High Speed Ground Transportation Study (49 U.S.C. 1636(b)).

Heart Disease, Cancer and Stroke Amendments of 1965 (42 U.S.C. 299d(b) (4)).

Mental Retardation Facilities and Community Mental Health Centers Construction Act Amendments of 1965 (20 U.S.C. 618(g)).

Vocational Rehabilitation Act Amendments of 1965 (23 U.S.C. 41a(b) (4)).

Clean Air and Solid Waste Disposal Acts (42 U.S.C. 3256).

Medical Library Assistance Act of 1965 (42 U.S.C. 280b-3(b) (3)).

Veterans Nursing Home Care Act (38 U.S.C. 5035(a) (8)).

National Capital Transportation Act of 1965 (40 U.S.C. 682(b) (4)).

Model Secondary School for the Deaf Act (80 Stat. 1028).

Allied Health Professions Personnel Training Act of 1966 (42 U.S.C. 295h(b) (2) (E)).

Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1416).

Air Quality Act of 1967 (42 U.S.C. 1857j-3).

Elementary and Secondary Education Amendments of 1967 (Title VII—Bilingual Education Act) (20 U.S.C. 880b-6).

Vocational Rehabilitation Amendments of 1967 (29 U.S.C. 42a(c) (3)).

National Visitor Center Facilities Act of 1968 (40 U.S.C. 808).

Juvenile Delinquency Prevention and Control Act of 1968 (42 U.S.C. 3843).

Housing and Urban Development Act of 1968 (including New Communities Act of 1968) (42 U.S.C. 3909).

Public Health Service Act Amendment (Alcoholic and Narcotic Addict Rehabilitation Amendments of 1968) (42 U.S.C. 2681 et seq.).

Vocational Education Amendments of 1968 (20 U.S.C. 1246).

Postal Reorganization Act (39 U.S.C. 410).

[P.R. Doc. 71-261; Filed, Jan. 7, 1971; 8:48 a.m.]

certain statutes and Executive orders. The programs include, among others, a number of statutory programs which are administered at the operational level by the Wage and Hour Division, the Bureau of Labor Standards, the Office of Federal Contract Compliance, the Women's Bureau, and the Bureau of Employees' Compensation. See the "United States Government Organization Manual—1970/71," pp. 320, 323-324. They also include programs and activities of the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a-276a-7) and statutes requiring prevailing wage findings made by the Secretary of Labor in accordance with such Act, and under the Contract Work Hours and Safety Standards Act, Reorganization Plan No. 14 of 1950, the Copeland Act, and the Tennessee Valley Authority Act. Responsibility for carrying out workplace standards programs and activities under these latter statutes and the statutory programs administered at the operational level by the Wage and Hour Division, the Bureau of Labor Standards, and the Bureau of Employees' Compensation has been redelegated by the Assistant Secretary for Workplace Standards to the Administrator, Workplace Standards Administration (hereinafter referred to as Administrator of Workplace Standards or Administrator, WSA), as provided in Secretary of Labor's Order No. 20-70, also published in the FEDERAL REGISTER on this date.

2. *Responsibilities of Administrator of Workplace Standards*—a. *General*. Subject to the reservations and conditions set forth in Secretary's Orders Nos. 19-70 and 20-70 cited above, the workplace standards programs and activities for which he is responsible are carried out by the Administrator of Workplace Standards or under his direction and control by the Wage and Hour Division, the Bureau of Labor Standards, the Bureau of Employees' Compensation, the Office of Government Contracts Wage Standards, and the Regional Administrators, WSA. In the performance of their functions, the Administrator, WSA, and his representatives act upon the advice of the Solicitor of Labor whenever a question of law is involved. The bringing of legal proceedings is reserved to the Secretary, the determination of whether such proceedings are appropriate being made by the Solicitor.

b. *Wage and Hour Division, Bureau of Labor Standards, and Bureau of Employees' Compensation*. The operational responsibilities of the Wage and Hour Division, the Bureau of Labor Standards, and the Bureau of Employee's Compensation remain as described in the "United States Government Organization Manual—1970/71," pp. 320, 324 in the absence of express action by the Administrator of Workplace Standards, making different provisions. To the extent that different provisions have been made to date, they are described in this document.

c. *Office of Government Contracts Wage Standards*. (1) The making of wage determinations and any required fringe benefit determinations under the Davis-Bacon Act and any laws requiring

the determination of prevailing wages in accordance with the Davis-Bacon Act, the Service Contract Act, and the Walsh-Healey Public Contracts Act, and any other laws providing for the making of such determinations by the Secretary of Labor which may from time to time be enacted, is carried out by the Office of Government Contracts Wage Standards, Workplace Standards Administration.

(2) The making of decisions on the permissibility of payroll deductions under rules issued to implement the Copeland Act shall be carried out by the Office of Government Contracts Wage Standards, Workplace Standards Administration.

(3) The Office of Government Contracts Wage Standards, Workplace Standards Administration, shall also handle at the operational level other matters regarding interpretations, regulations, and exemptions relating to the various laws providing wage standards for Government contracts.

d. *Particular responsibilities of the Administrator, WSA*. The issuing of rulings and interpretations of general application upon the advice of the Solicitor and the granting or revoking of variations, tolerances, and exemptions provided for under any laws subject to Reorganization Plan No. 14 of 1950 and in Parts 1, 3, and 5 of Title 29, Code of Federal Regulations, are powers to be exercised by the Administrator of Workplace Standards.

e. *Enforcement of the Davis-Bacon Act and related laws*. The powers and duties relating to enforcement of the Davis-Bacon Act and related laws are carried out by the Administrator of Workplace Standards and under his direction by the Wage and Hour Division and Regional Administrator, WSA; including without limitation, the conduct of investigations regarding compliance with the laws subject to Reorganization Plan No. 14 of 1950; settling, adjusting, and adjudicating by informal means cases involving the payment of wages and liquidated damages under the laws subject to the Plan; coordinating the enforcement activities of the various Federal agencies having labor standards enforcement responsibilities under such laws and regulations; requesting the withholding, or causing to be withheld, by such agencies from accrued contract payments or advances such sums as may be considered necessary to make required wage payments, or payments of liquidated damages, or both; recommending the commencement of legal proceedings for the adjudication of violations of such laws and regulations and imposition of sanctions, including debarment proceedings; adjudicating such violations and imposing sanctions (except that no employee engaged in investigative or prosecuting functions relating to any case shall participate or advise in the adjudication thereof); and approving or disapproving recommendations of Federal agencies concerning relief for contractors or subcontractors from liquidated damages under section 104(c) of the Contract Work Hours and Safety Standards Act.

3. *Wage Appeals Board.* The delegations under Secretary's Order No. 19-70, the redelegation contained in Secretary's Order No. 20-70, and this description do not affect the powers and duties reserved to the Wage Appeals Board, which are set forth in Secretary of Labor's Order No. 24-70, published in the FEDERAL REGISTER on this date.

4. *Certain safety provisions.* This document does not deal with the powers and duties of the Secretary of Labor under section 107 of the Contract Work Hours and Safety Standards Act, as added by Public Law 91-54 (83 Stat. 96), relating to construction safety and health standards, nor with the powers and duties of the Secretary of Labor under the Occupational Safety and Health Act of 1970 (Public Law 91-596).

5. *Pending actions.* The delegations described in this document do not affect any cases of rulemaking or adjudication which may be pending as of this date.

Signed at Washington, D.C., this 16th day of December 1970.

ROBERT D. MORAN,
Administrator of
Workplace Standards.

[F.R. Doc. 71-262; Filed, Jan. 7, 1971;
8:48 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 223]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 4, 1971.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 36509 (Sub-No. 15 TA), filed December 29, 1970. Applicant: LOOMIS ARMORED CAR SERVICE, INC., 55

Battery Street, Seattle, WA 98121. Applicant's representative: George H. Hart, IBM Building, Seattle, WA 98101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coin, currency, and securities*, between Minneapolis, Minn., on the one hand, and, on the other, points in Grant, Roberts, Marshall, Day, Brown, Spink, Clark, Beadle, Hand, Sully, Lyman, Brule, Hyde, Hughes, Stanley, Haakon, Meade, Pennington, Lawrence, Butte, Custer, Fall River, Jackson, and Jones Counties, S. Dak., and traversing Aurora, Hanson, Minnehaha, Davison, and McCook Counties, S. Dak., for 180 days. Supporting shipper: Federal Reserve Bank of Minneapolis, Minneapolis, MN 55440. Send protests to: E. J. Casey, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 6130 Arcade Building, Seattle, WA 98101.

No. MC 105984 (Sub-No. 11 TA), filed December 29, 1970. Applicant: JOHN B. BARBOUR, JR., doing business as JOHN B. BARBOUR TRUCKING COMPANY, 402 East Hiway, Post Office Box 577, Iowa Park, TX 76367. Applicant's representative: John B. Barbour, Jr. (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fiberglass/epoxy line pipe and fittings*, from Burkburnett, Tex., to points in California and to pipeline rights-of-way for stringing, for 180 days. Supporting shipper: CIBA-GEIGY Corp., Ardsley, NY 10502. Send protests to: H. C. Morrison, Sr., Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

No. MC 113267 (Sub-No. 249 TA), filed December 29, 1970. Applicant: CENTRAL & SOUTHERN TRUCK LINES, INC., 312 West Morris Street, Caseyville, IL 62232. Applicant's representative: Lawrence A. Fischer (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clay and cat litter*, from Wrens, Ga., to points in Illinois, Indiana, and Ohio, for 180 days. Supporting shipper: Georgia-Tennessee Mining & Chemical Co., Suite 810, 3379 Peachtree Road NE, at Lenox Square, Atlanta, GA 30326. Send protests to: Harold Jolliff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 476, 325 West Adams Street, Springfield, IL 62704.

No. MC 114632 (Sub-No. 32 TA), filed December 29, 1970. Applicant: APPLE LINES, INC., Box 507, 225 South Van Eps Avenue, Madison, SD 57042. Applicant's representative: Robert A. Applwick (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and packinghouse products*, as set forth in sections A and C, *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Emporia, Kans.; West Point and Dakota City, Nebr.; Luverne, Minn.; Le Mars, Mason City, Fort Dodge, and

Denison, Iowa; to points in Michigan, Indiana, Illinois, Missouri, Kansas, Minnesota, Wisconsin, North Dakota, South Dakota, Iowa, Arkansas, Oklahoma, and Nebraska, for 180 days. Supporting shipper: Iowa Beef Packers, Inc., Dakota City, NE 69731, Starr H. Lloyd, Manager-Analysis. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369, Federal Building, Pierre, SD 57501.

No. MC 114789 (Sub-No. 31 TA) (Correction), filed December 8, 1970, and published FEDERAL REGISTER issue December 18, 1970, and republished in part as corrected this issue. Applicant: NATIONAL CARRIERS, INC., Post Office Box 104, Maple Plain, Minn. 55359. Applicant's representative: M. James Levitus (same address as above). NOTE: The purpose of this partial republication is to show that contract carrier authority is sought in lieu of common carrier, which was inadvertently shown in previous publication, the rest of the application remains as previously published.

No. MC 119917 (Sub-No. 28 TA), filed December 29, 1970. Applicant: DUDLEY TRUCKING COMPANY, INC., 717 Memorial Drive SE., Atlanta, GA 30318. Applicant's representative: Monty Schumacher, Suite 310, 2045 Peachtree Road NE., Atlanta, GA 30309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Potato chips, potato sticks, popped corn, corn chips, twists and puffs*, in straight or mixed shipments with bakery products and related shipping containers and devices empty or loaded, used in the transportation of the shipment of these commodities, from the bakery plants and shipping sites of The Great Atlantic & Pacific Tea Co., Inc., in Atlanta, Ga., to the bakery plants and shipping sites of The Great Atlantic & Pacific Tea Co., Inc., in Charlotte, N.C.; and (2) *bakery products and potato chips, potato sticks, popped corn, corn chips, twists and puffs*, in straight or mixed shipments with bakery products and related shipping containers and devices, empty or loaded, used in the transportation of the shipment of these commodities, from the bakery plants and shipping sites of The Great Atlantic & Pacific Tea Co., Inc., in Charlotte, N.C., to the bakery plants and shipping sites of The Great Atlantic & Pacific Tea Co., Inc., in Atlanta, Ga., for 180 days. Supporting shipper: The Great Atlantic & Pacific Tea Co., Inc., Atlanta, Ga. Send protests to: William L. Scroggs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 309, 1252 West Peachtree Street NW., Atlanta, GA 30309.

No. MC 133646 (Sub-No. 7 TA), filed December 29, 1970. Applicant: YEL-LOWSTONE MOLASSES SERVICE, INC., Post Office Box 404, Billings, MT 59103. Applicant's representative: J. F. Meglen, Post Office Box 1581, Billings, MT 59103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt*, in bulk, bags and blocks, from the salt

plant of Dakota Salt & Chemical Co., located near Williston, N. Dak., to points in Minnesota, Montana, South Dakota, and Wyoming, for 180 days. Supporting shipper: Dakota Salt & Chemical Co., West Haven Road, Lawrenceville, IL 62439. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 251, U.S. Post Office Building, Billings, MT 59101.

No. MC 134599 (Sub-No. 6 TA), filed December 29, 1970. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, Post Office Box 16407, Stockyards Station, Denver, CO 80216. Applicant's representative: Oscar Mandel (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Tires and related rubber products, and equipment, materials, and supplies*, used in the manufacture and production thereof, between Ardmore, Okla., on the one hand, and on the other, Eau Claire, Wis., Detroit, Mich., Los Angeles, Calif., Chicopee Falls, Mass., Indianapolis, Ind., Port Clinton, Ohio, Niles, Mich., Tomson, Ga., Shelbyville

and Chattanooga, Tenn., Port Neches, Tex., Winnsboro, S.C., Galveston, Tex., Louisville, Ky., Houston, Tex., New Orleans, La., and Opelika, Ala., for 180 days. Supporting shipper: Uniroyal, Inc., Rockefeller Center, 1230 Avenue of the Americas, New York, NY 10020. Send protests to: District Supervisor Roger L. Buchanan, 2022 Federal Building, Denver, CO 80202.

No. MC 135014 (Sub-No. 1 TA), filed December 29, 1970. Applicant: SPEAD-MARK, INC., 132 West 31st Street, New York, NY 10001. Applicant's representative: Morton E. Kiel, 140 Cedar Street, New York, NY 10006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Clothing*, from Carrier's Terminal in New York, N.Y., to supporting shipper's Stores in Hempstead, Huntington, Babylon, Manhasset, Garden City, Smithhaven, N.Y., and Woodbridge, N.J., and returned shipments in opposite direction, for 180 days. Supporting shipper: Abraham & Strauss, Brooklyn, N.Y. 11201. Send protests to: Paul W. Assenza, District Supervisor, Interstate Commerce

Commission, Bureau of Operations, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 135118 (Sub-No. 1 TA), filed December 29, 1970. Applicant: MACK-LIN MOVING & STORAGE, INC., 842 Champion, Lemoore, CA 93245. Applicant's representative: Ernest D. Salm, 3846 Evans Street, Los Angeles, CA 90027. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, subject to the "King-pak" Restriction, between points in Fresno, Kings, and Tulare Counties, Calif., for 180 days. Supporting shipper: Karevan, Inc., Post Office Box 9240, Queen Anne Station, Seattle, WA 98109. Send protests to: John E. Nance, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 7708, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

By the Commission.

[SEAL]

ROBERT L. OSWALD,
Secretary.

[F.R. Doc. 71-257; Filed, Jan. 7, 1971;
8:48 a.m.]

CUMULATIVE LIST OF PARTS AFFECTED—JANUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during January.

3 CFR	Page	14 CFR—Continued	Page	36 CFR	Page
PROCLAMATIONS:		PROPOSED RULES:		1-----	154
3548 (see Proc. 4026)-----	5	37-----	23	6-----	158
3558 (see Proc. 4026)-----	5	71-----	165, 224, 225	7-----	55, 156
3562 (see Proc. 4026)-----	5	75-----	165	12-----	154
3597 (see Proc. 4026)-----	5	15 CFR		55-----	154
3709 (see Proc. 4026)-----	5	PROPOSED RULES:		251-----	156
3790 (see Proc. 4026)-----	5	7-----	113	PROPOSED RULES:	
3822 (see Proc. 4026)-----	5	16 CFR		2-----	167
3856 (see Proc. 4026)-----	5	421-----	45	39 CFR	
3870 (see Proc. 4026)-----	5	PROPOSED RULES:		171-----	157
3884 (see Proc. 4026)-----	5	415-----	226	41 CFR	
4026-----	5	18 CFR		1-1-----	288
EXECUTIVE ORDERS:		154-----	69, 167	1-2-----	288
10427 (revoked by EO 11575)-----	37	PROPOSED RULES:		1-16-----	217
10737 (revoked by EO 11575)-----	37	154-----	69, 167	3-1-----	56
11495 (revoked by EO 11575)-----	37	20 CFR		3-7-----	56
11575-----	37	615-----	46	3-16-----	56
5 CFR		21 CFR		5A-2-----	157
213-----	11, 39, 261	148h-----	148	5A-8-----	157
7 CFR		PROPOSED RULES:		5A-16-----	157
20-----	40	121-----	224	5A-72-----	15
270-----	261	24 CFR		50-201-----	288
301-----	139, 261	203-----	216	50-203-----	288
401-----	262	207-----	216	114-26-----	59
722-----	11, 40	220-----	216	114-38-----	59
725-----	11	1914-----	263	114-45-----	59, 221
730-----	139, 140	1915-----	264	114-47-----	221
812-----	140	26 CFR		42 CFR	
814-----	141	1-----	266	481-----	222
815-----	11	13-----	150	PROPOSED RULES:	
905-----	40, 41	154-----	151	481-----	226, 293
906-----	143	PROPOSED RULES:		43 CFR	
907-----	144, 213	1-----	17, 70, 106, 292	PUBLIC LAND ORDERS:	
910-----	41	31-----	20	4976-----	60
966-----	41	42-----	107	4978-----	60
1421-----	41, 42	29 CFR		4979-----	60
PROPOSED RULES:		4-----	285	4980-----	61
907-----	22	6-----	287	4981-----	61
908-----	22	524-----	50	4982-----	61
987-----	112	619-----	221	4983-----	61
9 CFR		661-----	221	4984-----	61
76-----	14, 144, 265	723-----	52	4985-----	62
10 CFR		725-----	222	4986-----	62
30-----	145	PROPOSED RULES:		45 CFR	
40-----	145	525-----	69	177-----	62
70-----	146	30 CFR		47 CFR	
170-----	146	71-----	252	0-----	158
13 CFR		PROPOSED RULES:		97-----	158
121-----	43, 213	525-----	69	49 CFR	
PROPOSED RULES:		30A CFR		7-----	63
121-----	294	OIA (Ch. X):		173-----	64
14 CFR		OI Reg. 1-----	52	391-----	222
1-----	43	PROPOSED RULES:		571-----	289
37-----	15	Ch. X-----	224	1033-----	64
39-----	15, 214	33 CFR		1056-----	158
71-----	44, 147, 214-216	208-----	54	1201-----	64
73-----	44	PROPOSED RULES:		PROPOSED RULES:	
75-----	44	71-----	252	71-----	225
91-----	43	32A CFR		173-----	292
97-----	147	OIA (Ch. X):		571-----	166
121-----	45	OI Reg. 1-----	52	Ch. X-----	226
135-----	45	PROPOSED RULES:		50 CFR	
		Ch. X-----	224	33-----	16
		33 CFR		240-----	158
		208-----	54		

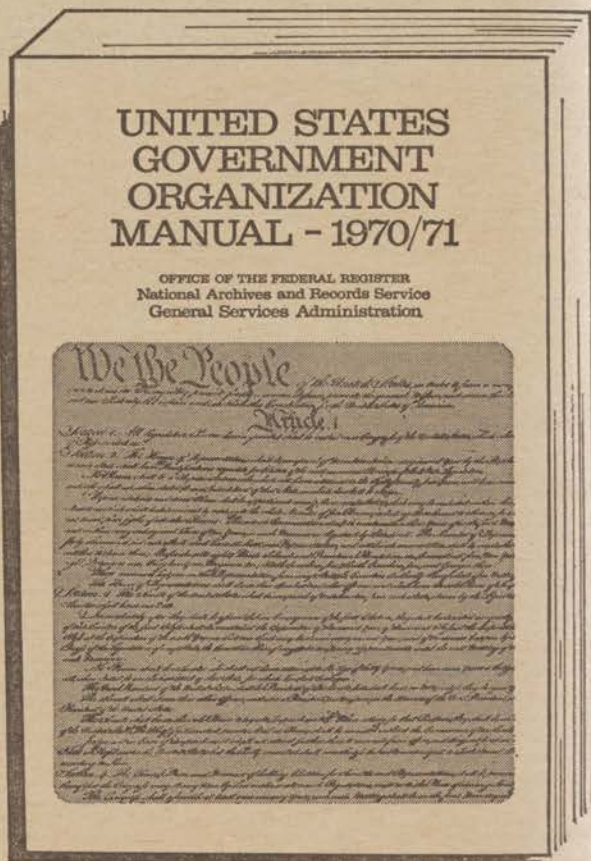
3
3
3
4
2
9
4
8
4
25
22
66
26
16
58

*know
your
government*



UNITED STATES GOVERNMENT ORGANIZATION MANUAL 1970/71

presents essential information about Government agencies (updated and republished annually). Describes the creation and authority, organization, and functions of the agencies in the legislative, judicial, and executive branches. This handbook is an indispensable reference tool for teachers, students, librarians, researchers, businessmen, and lawyers who need current official information about the U.S. Government. The United States Government Organization Manual is the official guide to the functions of the Federal Government, published by the Office of the Federal Register, GSA.



\$3.00 per copy. Paperbound, with charts

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402