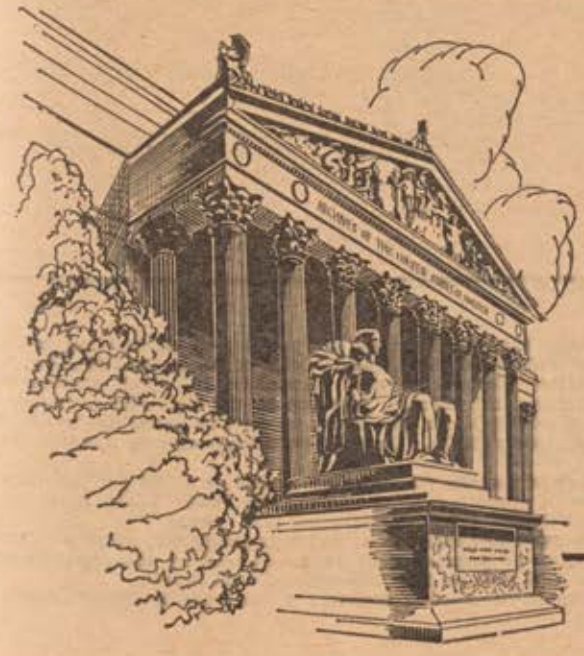
FEDERAL REGISTER

VOLUME 30 • NUMBER 150

Thursday, August 5, 1965 • Washington, D.C.
Pages 9735–9789

Agencies in this issue—

Detailed list of Contents appears inside.



FEDERAL REGISTER

Area Code 202 Phone 963-3261

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 (mail address National Archives Building, 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. 8B), 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, Government Printing Office, Washington, D.C. 20402.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, 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. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements 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

(Continued on next page)

List of CFR Parts Affected

(Codification Guide)

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, 1965, and specifies how they are affected.

5 CFR

213 9758

7 CFR

755 9758
927 9758
1427 9759
PROPOSED RULES:
52 9776

14 CFR

71 (2 documents) 9761
73 (2 documents) 9762
208 9762
PROPOSED RULES:
25 9776

21 CFR

8 9764
148i 9765

26 CFR

1 9739
19 9739
PROPOSED RULES:
1 9768

32 CFR

564 9765

33 CFR

203 9765
207 9765

41 CFR

1–1 9766
5–10 9767

47 CFR

1 9767

50 CFR

13 9767
32 9767

Rules and Regulations

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6845]

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

PART 19—TEMPORARY REGULATIONS UNDER THE REVENUE ACT OF 1964

Surtax Exemptions of Certain Controlled Corporations

On February 25, 1965, notice of proposed rulemaking with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) to conform such regulations to section 235(a) and certain provisions of section 235(c) of the Revenue Act of 1964 (78 Stat. 116, 126) was published in the FEDERAL REGISTER (30 F.R. 2450). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted, subject to the changes set forth below. Sections 1.1561–1 through 1.1563–4 of the regulations supersede § 19.5–1 of Treasury Decision 6733, approved May 11, 1964 (29 F.R. 6320).

PARAGRAPH 1. Paragraph (a)(3) of § 1.1561–2, as set forth in paragraph 8 of the notice of proposed rule making, is changed by revising example (3).

PAR. 2. Section 1.1561–3, as set forth in paragraph 8 of the notice of proposed rule making, is changed by revising paragraphs (a) (1), (2), (3)(iii), and (b).

PAR. 3. Section 1.1562–2, as set forth in paragraph 8 of the notice of proposed rule making, is changed by revising paragraph (b)(2)(i).

PAR. 4. Section 1.1562–3, as set forth in paragraph 8 of the notice of proposed rule making, is changed by revising paragraph (c).

PAR. 5. Paragraph (b)(2) of § 1.1562–5, as set forth in paragraph 8 of the notice of proposed rule making, is changed by revising example (5).

PAR. 6. Paragraph (a) of § 1.1562–6, as set forth in paragraph 8 of the notice of proposed rule making, is changed by revising subparagraph (1) and by adding a new subparagraph (4).

PAR. 7. Section 1.1563–1, as set forth in paragraph 8 of the notice of proposed rule making, is changed by revising paragraph (c).

PAR. 8. Section 1.1563–3, as set forth in paragraph 8 of the notice of proposed rule making, is changed by revising paragraphs (b)(3)(i) and (d)(2)(iv).

PAR. 9. Section 1.1563–4, as set forth in paragraph 8 of the notice of proposed rule making, is revised.

[SEAL] SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved: August 2, 1965.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) to section 235(a) and certain provisions of section 235(c) of the Revenue Act of 1964 (78 Stat. 116, 126), such regulations are amended as follows:

PARAGRAPH 1. Section 1.441 is amended by revising section 441(f)(2)(A) and by adding a historical note. These amended and added provisions read as follows:

§ 1.441 Statutory provisions; period for computation of taxable income.

SEC. 441. *Period for computation of taxable income.* * * *

(f) *Election of year consisting of 52–53 weeks.* * * *

(2) *Special rules for 52–53-week year*—(A) *Effective dates.* In any case in which the effective date or the applicability of any provision of this title is expressed in terms of taxable years beginning, including, or ending with reference to a specified date which is the first or last day of a month, a taxable year described in paragraph (1) shall (except for purposes of the computation under section 21) be treated—

(i) As beginning with the first day of the calendar month beginning nearest to the first day of such taxable year, or

(ii) As ending with the last day of the calendar month ending nearest to the last day of such taxable year,

as the case may be.

* * * * *

[Sec. 441 as amended by sec. 235(c)(3), Rev. Act 1964 (78 Stat. 127)]

PAR. 2. Paragraph (b)(1) of § 1.441–2 is amended to read as follows:

§ 1.441–2 Election of year consisting of 52–53 weeks.

* * * * *

(b) *Application of effective dates.* (1) For purposes of determining the effective date or the applicability of any provision of this title which is expressed in terms of taxable years beginning, including, or ending with reference to the first or last day of a specified calendar month, a 52–53-week taxable year is deemed to begin on the first day of the calendar month beginning nearest to the first day of the 52–53-week taxable year, and is deemed to end or close on the last day of the calendar month ending nearest to the last day of the 52–53-week taxable year, as the case may be. Examples of provisions of this title the applicability of which is expressed in terms referred to in the preceding sentence include the provisions relating to the time for filing returns and other documents, paying tax, or performing other acts, and the provisions of part II (section 1561 and following), subchapter B, chapter 6, relating to surtax exemptions of certain controlled corporations. The provisions of this subparagraph do not apply to the computation of the tax if subparagraph (2) of this paragraph, relating to the computation under section 21 of the effect of changes in rates of tax during a taxable year, applies. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). Assume that an income tax provision is applicable to taxable years beginning on or after January 1, 1957. For that purpose, a 52–53-week taxable year beginning on any day within the period December 26, 1956, to January 4, 1957, inclusive, shall be treated as beginning on January 1, 1957.

Example (2). Assume that an income tax provision requires that a return must be filed on or before the 15th day of the third month following the close of the taxable year. For that purpose, a 52–53-week taxable year ending on any day during the period May 25 to June 3, inclusive, shall be treated as ending on May 31, the last day of the month ending nearest to the last day of the taxable year, and the return, therefore, must be made on or before August 15.

Example (3). X, a corporation created on January 1, 1966, elects a 52–53-week taxable year ending on the Friday nearest the end of December. Thus, X's first taxable year begins on Saturday, January 1, 1966, and ends on Friday, December 30, 1966; its next taxable year begins on Saturday, December 31, 1966, and ends on Friday, December 29, 1967; and its next taxable year begins on Saturday, December 30, 1967, and ends on Friday, January 3, 1969. For purposes of applying the provisions of Part II, subchapter B, chapter 6 of the Code, X's first taxable year is deemed to begin on January 1, 1966, and end on December 31, 1966; its next taxable year is deemed to begin on January 1, 1967, and end on December 31, 1967; and its next taxable year is deemed to begin on January 1, 1968, and end on December 31, 1968. Accordingly, each such taxable year is treated as including one and only one December 31st.

* * * * *

PAR. 3. Section 1.802 is amended by revising section 802(a)(1) and the historical note to read as follows:

§ 1.802 Statutory provisions: life insurance companies; tax imposed; life insurance company taxable income defined.

SEC. 802. *Tax imposed*—(a) *Tax imposed*—(1) *In general.* A tax is hereby imposed for each taxable year beginning after December 31, 1957, on the life insurance company taxable income of every life insurance company. Such tax shall consist of a normal tax and surtax computed as provided in section 11 as though the life insurance company taxable income were the taxable income referred to in section 11.

* * * * *

[Sec. 802 as amended by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 38); sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 115); sec. 235(c)(1), Rev. Act 1964 (78 Stat. 126)]

PAR. 4. Section 1.802–2 is amended to read as follows:

§ 1.802–2 Taxable years affected.

Section 1.802(b)–1 is applicable only to taxable years beginning after December 31, 1953, and before January 1, 1955, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, before amendments. Sections 1.802–3 through 1.802–5, except as otherwise provided therein, are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112), and section 235(c)(1) of the Revenue Act of 1964 (78 Stat. 126).

PAR. 5. Section 1.802–3 is amended by revising paragraphs (b) and (d), and by adding a new paragraph (j). These revised and added provisions read as follows:

§ 1.802–3 Tax imposed on life insurance companies.

* * * * *

(b) *Tax imposed.* The tax imposed by section 802(a)(1) consists of a normal tax and a surtax computed as provided in section 11 as though the life insurance company taxable income (as defined in section 802(b)) were the taxable income referred to in section 11.

* * * * *

(d) *Surtax.* The surtax is computed by applying the regular corporate surtax rate (as in effect for the taxable year) provided by section 11(c) to the amount by which the life insurance company taxable income exceeds the surtax exemption for the taxable year as determined under section 11(d). See sections 269 and 1551 and the regulations thereunder, for certain circumstances in which the surtax exemption may be disallowed in whole or in part.

* * * * *

(j) *Cross reference.* In the case of a taxable year of a life insurance company ending after December 31, 1963, for which an election under section 1562(a)(1) by a controlled group of corporations is effective, the additional tax imposed by section 1562 may apply. See section 1562 and the regulations thereunder.

PAR. 6. Paragraph (a)(1) of § 1.1361–1 is amended to read as follows:

§ 1.1361–1 Unincorporated business enterprises electing to be taxed as domestic corporations.

(a) *General rule.* (1) Section 1361 provides that, if certain qualifications are met, the proprietor or the partners of an unincorporated enterprise engaged in the operation of a trade or business may elect to have the enterprise treated as a domestic corporation subject to (i) the normal tax and surtax imposed by section 11 (including any additional tax imposed by section 1562(b)), (ii) the accumulated earnings tax imposed by section 531, and (iii) the alternative tax for capital gains imposed by section 1201(a). An election made under section 1361 shall apply to the taxable year for which made and to all subsequent taxable years. Such election shall be irrevocable except as provided in § 1.1361–15. See, however, paragraph (b) of § 1.1361–5 for effect of ceasing to conduct the business of the enterprise in an unincorporated form, and § 1.1361–6 for effect of a change of ownership. An election may be made only with respect to taxable years of a proprietor or partnership beginning after December 31, 1953, and ending after August 16, 1954.

* * * * *

PAR. 7. Paragraph (a) of § 1.1361–3 is amended by adding a new subparagraph (6). The added provision reads as follows:

§ 1.1361–3 Code provisions applicable.

(a) *Subtitle A.* * * *

(6) A section 1361 corporation may be a component member of a controlled group of corporations. See section 1563. In such case, the surtax exemption of the section 1361 corporation shall be determined under section 1561 unless the controlled group makes a valid election under section 1562.

* * * * *

PAR. 8. There is inserted immediately after § 1.1552–1 the following:

CERTAIN CONTROLLED CORPORATIONS

Sec.

CERTAIN CONTROLLED CORPORATIONS

§ 1.1561 Statutory provisions; surtax exemptions in case of certain controlled corporations.

SEC. 1561. *Surtax exemptions in case of certain controlled corporations*—(a) *General rule.* If a corporation is a component member of a controlled group of corporations on a December 31, then for purposes of this subtitle the surtax exemption of such corporation for the taxable year which includes such December 31 shall be an amount equal to—

(1) $25,000 divided by the number of corporations which are component members of such group on such December 31, or

(2) If all such component members consent (at such time and in such manner as the Secretary or his delegate shall by regulations prescribe) to an apportionment plan, such portion of $25,000 as is apportioned to such member in accordance with such plan.

The sum of the amounts apportioned under paragraph (2) among the component members of any controlled group shall not exceed $25,000.

(b) *Certain short taxable years.* If a corporation—

(1) Has a short taxable year which does not include a December 31, and

(2) Is a component member of a controlled group of corporations with respect to such taxable year,

then for purposes of this subtitle the surtax exemption of such corporation for such taxable year shall be an amount equal to $25,000 divided by the number of corporations which are component members of such group on the last day of such taxable year. For purposes of the preceding sentence, section 1563(b) shall be applied as if such last day were substituted for December 31.

[Sec. 1561 as added by sec. 235(a), Rev. Act 1964 (78 Stat. 116)]

§ 1.1561–1 Surtax exemptions in case of certain controlled corporations.

(a) *In general.* Part II (section 1561 and following), subchapter B, chapter 6 of the Code, deals with the surtax exemptions of certain controlled corporations. In general, section 1561 provides that for taxable years ending after December 31, 1963, the component members of a controlled group of corporations are entitled, in the aggregate, to only a single $25,000 surtax exemption (in lieu of the multiple surtax exemptions which may have been available to such corporations in prior taxable years). However, under section 1562 a controlled group of corporations has the privilege of electing to have each of its component members make its returns without regard to section 1561. In such case, each component member of the electing controlled group is generally liable for the additional tax imposed by section 1562(b). Section 1563 contains certain definitions (including the definition of a "controlled group of corporations", and "component member") and special rules for purposes of part II of subchapter B.

(b) *Tax avoidance.* The provisions of part II, subchapter B, chapter 6 do not delimit or abrogate any principle of law established by judicial decision, or any existing provisions of the Code, such as sections 269, 482, and 1551, which have the effect of preventing the avoidance or evasion of income taxes. Thus, for example, notwithstanding the fact that a corporation is a component member of a controlled group of corporations which has elected multiple surtax exemptions under section 1562, if property is transferred to such corporation under the circumstances described in section 1551(a), the Commissioner may disallow in whole or in part the surtax exemption of the transferee corporation unless such transferee corporation establishes by the clear preponderance of the evidence that the securing of such exemption was not a major purpose of the transfer.

(c) *Special rules.* (1) For purposes of sections 1561 through 1563 and the

regulations thereunder, the term "corporation" includes an unincorporated business enterprise subject to tax as a corporation under section 1361 and an electing small business corporation (as defined in section 1371(b)). However, for the treatment of an electing small business corporation as an excluded member of a controlled group of corporations, see paragraph (b)(2)(ii) of § 1.1563–1.

(2) In the case of corporations electing a 52–53-week taxable year under section 441(f)(1), the provisions of sections 1561 through 1563 and the regulations thereunder shall be applied in accordance with the special rule of section 441(f)(2)(A). See paragraph (b)(1) of § 1.441–2.

(3) If—

(i) The surtax exemption of a corporation for a taxable year beginning in 1963 and ending in 1964 is less than $25,000 by reason of the application of section 1561, or

(ii) An additional tax is imposed by section 1562(b) on the taxable income of a corporation for any such taxable year,

the change in the surtax exemption, or the imposition of the additional tax, is treated as a change in a rate of tax taking effect on January 1, 1964, for purposes of section 21(a). See section 21(d)(2) and the regulations thereunder.

§ 1.1561–2 Reduction of surtax exemption.

(a) *Amount of surtax exemption*—(1) *General rule.* Under section 1561(a), if a corporation is a component member of a controlled group of corporations on a December 31, then for purposes of subtitle A of the Code the surtax exemption of such corporation for the taxable year which includes such December 31 shall be an amount equal to—

(i) $25,000 divided by the number of corporations which are component members of such group on such December 31, or

(ii) If an apportionment plan is adopted under § 1.1561–3 which is effective with respect to such taxable year, such portion of $25,000 as is apportioned to such member in accordance with such plan.

(2) *Consolidated returns.* The surtax exemption of a controlled group of corporations all of whose component members join in the filing of a consolidated return shall be $25,000. If there are component members of the controlled group which do not join in the filing of a consolidated return, and there is no apportionment plan effective under § 1.1561–3 apportioning the $25,000 amount among the component members filing the consolidated return and the other component members of the controlled group, each component member of the controlled group (including each component member which joins in filing the consolidated return) shall be treated as a separate corporation for purposes of equally apportioning the $25,000 amount under subparagraph (1)(i) of this paragraph. In such case, the surtax exemption of the corporations filing the consolidated return shall be the sum of the amounts apportioned to each component member which joins in filing the consolidated return.

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

Example (1). Corporations W, X, Y, and Z are component members of a controlled group of corporations on December 31, 1964, and each corporation files its income tax return on the basis of a calendar year. For their taxable years ending on December 31, 1964, W and X each incur a net operating loss; Y has $5,250 of taxable income; and Z has $30,000 of taxable income. If an apportionment plan is not effective for such taxable years, the surtax exemption of each corporation, determined under subparagraph (1)(i) of this paragraph, is $6,250 ($25,000 ÷ 4). However, the four corporations may avoid a pro rata division of the $25,000 amount by filing an apportionment plan in accordance with the provisions of § 1.1561–3 allocating the $25,000 amount in any manner they deem proper.

Example (2). Corporation A files its income tax return on the basis of a calendar year; corporation B files its income tax return on the basis of a fiscal year ending on March 31. On December 31, 1964, A and B are the only component members of a controlled group of corporations. Under subparagraph (1)(i) of this paragraph, the surtax exemption of A for 1964, and the surtax exemption of B for its fiscal year ending March 31, 1965, is an amount equal to $12,500 ($25,000 ÷ 2). However, if an apportionment plan is filed in accordance with the provisions of § 1.1561–3, the surtax exemption of each such corporation will be the amount apportioned to the corporation pursuant to the plan.

Example (3). Corporations B, P, and S are component members of a controlled group of corporations on December 31, 1964. P and S file a consolidated return for their fiscal years ending June 30, 1965. B files a separate return for its taxable year ending on December 31, 1964. No apportionment plan is effective with respect to B's, P's, and S's taxable years which include December 31, 1964. Therefore, B, P, and S are each apportioned $8,333.33 of the $25,000 amount ($25,000 ÷ 3) for their taxable years including such date. The surtax exemption of the affiliated group filing a consolidated return (P and S) for the year ending June 30, 1965, is $16,666.66 (*i.e.*, the sum of the $8,333.33 amounts apportioned to P and S). However, if an apportionment plan is filed in accordance with the provisions of § 1.1561–3, the surtax exemption of the corporations which are members of the affiliated group filing a consolidated return and of each other corporation which is a component member of the controlled group of corporations will be the amount apportioned to such affiliated group and to each such other corporation pursuant to the plan.

(b) *Certain short taxable years*—(1) *General rule.* If (i) the return of a corporation is for a short period (ending after December 31, 1963) which does not include a December 31, and (ii) such corporation is a component member of a controlled group of corporations with respect to such short period, then for purposes of subtitle A of the Code the surtax exemption of such corporation for such short period shall be an amount equal to $25,000 divided by the number of corporations which are component members of such group on the last day of such short period. For purposes of the preceding sentence, the term "short period" does not include any period if the income for such period is required to be included in a consolidated return under § 1.1502–13. The determination of whether a corporation is a component member of a controlled group of corporations on the last day of a short period is made by applying the definition of "component member" contained in section 1563(b) and § 1.1563–1 as if the last day of such short period were a December 31 occurring after December 31, 1963.

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

Example (1). On January 2, 1964, corporation X transfers cash to newly formed corporation Y (which begins business on that date) and receives all the stock of Y in return. X also owns all the stock of corporation Z on each day of 1963 and 1964. X uses the calendar year as its taxable year and Z uses a fiscal year ending on August 31. Y adopts a fiscal year ending on June 30 as its annual accounting period and, therefore, files a return for the short taxable year beginning on January 2, 1964, and ending on June 30, 1964. On June 30, 1964, Y is a component member of a parent-subsidiary controlled group of corporations of which X, Y, and Z are component members. Accordingly, the surtax exemption of Y for the short taxable year ending on June 30, 1964, is $8,333.33 ($25,000 ÷ 3). On December 31, 1964, X, Y, and Z are component members of a parent-subsidiary controlled group of corporations. Accordingly, the surtax exemption of each such corporation for its taxable year including December 31, 1964 (i.e., X's calendar year ending December 31, 1964, Z's fiscal year ending August 31, 1965, and Y's fiscal year ending June 30, 1965) is $8,333.33 ($25,000 ÷ 3), or, if an apportionment plan is filed under § 1.1561–3, the amount apportioned pursuant to such plan.

Example (2). On January 1, 1964, corporation P owns all the stock of corporations S–1, S–2, and S–3. P, S–1, S–2, and S–3 file separate returns on a calendar year basis. On July 31, 1964, S–1 is liquidated and therefore files a return for the short taxable year beginning on January 1, 1964, and ending on July 31, 1964. On August 31, 1964, S–2 is liquidated and therefore files a return for the short taxable year beginning on January 1, 1964, and ending on August 31, 1964. On July 31, 1964, S–1 is a component member of a parent-subsidiary controlled group of corporations of which P, S–1, S–2, and S–3 are component members. Accordingly, the surtax exemption of S–1 for the short taxable year ending on July 31, 1964, is $6,250 ($25,000 ÷ 4). On August 31, 1964, S–2 is a component member of a parent-subsidiary controlled group of corporations of which P, S–2, and S–3 are component members. Accordingly, the surtax exemption of S–2 for the short taxable year ending on August 31, 1964, is $8,333.33 ($25,000 ÷ 3). On December 31, 1964, P and S–3 are component members of a parent-subsidiary controlled group of corporations. Accordingly, the surtax exemption of each such corporation for the calendar year 1964 is $12,500 ($25,000 ÷ 2), or, if an apportionment plan is filed under § 1.1561–3, the amount apportioned pursuant to such plan.

(c) *Corporations affected.* The provisions of section 1561 may result in the reduction of the surtax exemption of any corporation which is a component member of a controlled group of corporations and which is subject to the tax imposed by section 11, or by any other provision of subtitle A of the Code if the tax under such other provisions is computed by reference to the amount of the surtax exemption provided by section 11. Such

other provisions include, for example, sections 511(a)(1), 594, 802, 831, 852, 857, 882, and 1201.

§ 1.1561–3 Apportionment of $25,000 surtax exemption.

(a) *Apportionment plan*—(1) *In general.* In the case of corporations which are component members of a controlled group of corporations on a December 31, a single $25,000 surtax exemption may be apportioned among such members (for the taxable year of each such member which includes such December 31) if all such members consent, in the manner provided in paragraph (b) of this section, to an apportionment plan with respect to such December 31. Such plan shall provide for the apportionment of a fixed dollar amount to one or more of such members, but in no event shall the sum of the amounts so apportioned exceed $25,000. An apportionment plan shall not be considered as adopted with respect to a particular December 31 until each component member which is required to consent to the plan under paragraph (b)(1) of this section files the original of a statement described in such paragraph (or, the original of a statement incorporating its consent is filed on its behalf). In the case of a return filed before a plan is adopted, the surtax exemption for purposes of such return shall be equally apportioned in accordance with paragraph (a)(1)(i) of § 1.1561–2. (If a valid apportionment plan is adopted after the return is filed and within the time prescribed in subparagraph (2) of this paragraph, such return should be amended (or a claim for refund should be made) to reflect the change from equal apportionment.)

(2) *Time for adopting plan.* A controlled group may adopt an apportionment plan with respect to a particular December 31 only if, at the time such plan is sought to be adopted, there is at least one year remaining in the statutory period (including any extensions thereof) for the assessment of a deficiency against any corporation the tax liability of which would be increased by the adoption of such plan. If there is less than one year remaining with respect to any such corporation, the district director with whom such corporation files its income tax return will ordinarily, upon request, enter into an agreement to extend such statutory period for the limited purpose of assessing any deficiency against such corporation attributable to the adoption of such apportionment plan.

(3) *Years for which effective.* (i) The amount apportioned to a component member of a controlled group of corporations in an apportionment plan adopted with respect to a particular December 31 shall constitute such member's surtax exemption for its taxable year including the particular December 31, and for all taxable years including succeeding December 31's, unless the apportionment plan is amended in accordance with paragraph (c) of this section or is terminated under subdivision (ii) of this subparagraph. Thus, the apportionment plan (including any amendments thereof) has a continuing effect and need not be renewed annually. For an exception to this rule in case of apportionment plans adopted with respect to December 31, 1963, see paragraph (e) of this section.

(ii) If an election is made under section 1562(a)(1) which is effective with respect to a December 31 for which an apportionment plan would otherwise be effective under subdivision (i) of this subparagaph, then such plan shall terminate with respect to such December 31. Furthermore, if an apportionment plan is adopted with respect to a particular December 31, such plan shall terminate with respect to a succeeding December 31, if—

(*a*) The controlled group goes out of existence with respect to such succeeding December 31 within the meaning of paragraph (b) of § 1.1562–5,

(*b*) Any corporation which was a component member of such group on the particular December 31 is not a component member of such group on such succeeding December 31, or

(*c*) Any corporation which was not a component member of such group on the particular December 31 is a component member of such group on such succeeding December 31.

An apportionment plan, once terminated with respect to a December 31, is no longer effective. Accordingly, unless a new apportionment plan is adopted or an election under section 1562(a)(1) is effective, the surtax exemption of the component members of the controlled group for their taxable years which include such December 31 and all December 31's thereafter will be determined under paragraph (a)(1)(i) of § 1.1561–2.

(iii) If an apportionment plan is terminated with respect to a particular December 31 by reason of an occurrence described in subdivision (ii) (*b*) or (*c*) of this subparagraph, each corporation which is a component member of the controlled group on such particular December 31 should, on or before the date it files its income tax return for the taxable year which includes such particular December 31, notify the district director with whom it files such return of such termination. If an apportionment plan is terminated with respect to a particular December 31 by reason of an occurrence described in subdivision (ii)(*a*) of this subparagraph, each corporation which was a component member of the controlled group on the preceding December 31 should, on or before the date it files its income tax return for the taxable year which includes such particular December 31, notify the district director with whom it files such return of such termination.

(b) *Consents to plan*—(1) *General.* (i) The consent of a component member (other than a wholly-owned subsidiary) to an apportionment plan with respect to a particular December 31 shall be made by means of a statement, signed by any person who is duly authorized to act on behalf of the consenting member, stating that such member consents to the apportionment plan with respect to such December 31. The statement shall set forth the name, address, taxpayer account number, and taxable year of the consenting component member, the amount apportioned to such member under the plan, and the internal revenue district where the original of the statement is to be filed. The consent of more than one component member may be incorporated in a single statement. The original of a statement of consent shall be filed with the district director with whom the component member of the group on such December 31 which has the taxable year ending first on or after such date filed its return for such taxable year. (If two or more component members have the same such taxable year, a statement of consent may be filed with the district director with whom the return for any such taxable year is filed.) The original of a statement of consent shall have attached thereto information (referred to in this paragraph as "group identification") setting forth the name, address, taxpayer account number, and taxable year of each component member of the controlled group on such December 31 (including wholly-owned subsidiaries) and the amount apportioned to each such member under the plan. If more than one original statement is filed, a statement may incorporate the group identification by reference to the name, address, taxpayer account number, and taxable year of a component member of the group which has attached such group identification to the original of its statement.

(ii) Each component member of the group on such December 31 (other than wholly-owned subsidiaries) should attach a copy of its consent (or a copy of the statement incorporating its consent) to the income tax return, amended return, or claim for refund filed with its district director for the taxable year including such date. Such copy shall either have attached thereto information on group identification or shall incorporate such information by reference to the name, address, taxpayer account number, and taxable year of a component member of the group which has attached such information to its income tax return, amended return, or claim for refund filed with the same district director for the taxable year including such date.

(2) *Wholly-owned subsidiaries.* (i) Each component member of a controlled group which is a wholly-owned subsidiary of such group with respect to a December 31 shall be deemed to consent to an apportionment plan with respect to such December 31, provided each component member of the group which is not a wholly-owned subsidiary consents to the plan. For purposes of this section, a component member of a controlled group shall be considered to be a wholly-owned subsidiary of the group with respect to a December 31 if, on each day preceding such date during its taxable year which includes such date, all of its stock is owned directly by one or more corporations which are component members of the group on such December 31.

(ii) Each wholly-owned subsidiary of a controlled group with respect to a December 31 should attach a statement containing the information which is required to be set forth in a statement of consent to an apportionment plan with

respect to such December 31 to the income tax return, amended return, or claim for refund filed with its district director for the taxable year which includes such date. Such statement should either have attached thereto information on group identification or incorporate such information by reference to the name, address, taxpayer account number, and taxable year of a component member of the group which has attached such information to its income tax return, amended return, or claim for refund filed with the same district director for the taxable year including such date.

(c) *Amendment of plan.* An apportionment plan adopted with respect to a December 31 by a controlled group of corporations may be amended with respect to such December 31, or with respect to any succeeding December 31 for which the plan is effective under paragraph (a)(3) of this section. An apportionment plan must be amended with respect to a particular December 31 and the amendments to the plan shall be effective only if adopted in accordance with the rules prescribed in this section for the adoption of an original plan with respect to such December 31.

(d) *Component members filing consolidated return.* If the component members of a controlled group of corporations on a December 31 include corporations which join in the filing of a consolidated return, the corporations filing the consolidated return shall be treated as a single component member for purposes of this section. Thus, for example, only one consent, executed by the common parent, to an apportionment plan filed pursuant to this section is required on behalf of the component members filing the consolidated return.

(e) *Apportionment plans with respect to December 31, 1963.* Any apportionment plan with respect to December 31, 1963, filed in accordance with Treasury Decision 6733, approved May 11, 1964 (29 F.R. 6320, C.B. 1964–1 (Part 1), 635) shall be deemed to satisfy the requirements of this section. However, any such plan shall not be effective under paragraph (a)(3) of this section with respect to taxable years including December 31, 1964 (or any succeeding December 31) unless the requirements of this section are actually satisfied. For example, if a component member of a controlled group of corporations on December 31, 1963, is deemed to consent to an apportionment plan with respect to such date filed in accordance with the provisions of Treasury Decision 6733, but would not be deemed to consent to such plan under the provisions of paragraph (b)(2) of this section, then although such plan is valid with respect to the taxable years of the component members of such group which include December 31, 1963, such plan is not effective under paragraph (a)(3) of this section with respect to taxable years including December 31, 1964 (or any succeeding December 31). Accordingly, if an apportionment plan is desired with respect to December 31, 1964 (or any succeeding December 31), new consents will be required.

§ 1.1562 Statutory provisions; privilege of groups to elect multiple surtax exemptions.

SEC. 1562. *Privilege of groups to elect multiple surtax exemptions*—(a) *Election of multiple surtax exemptions*—(1) *In general.* A controlled group of corporations shall (subject to the provisions of this section) have the privilege of electing to have each of its component members make its returns without regard to section 1561. Such election shall be made with respect to a specified December 31 and shall be valid only if—

(A) Each corporation which is a component member of such group on such December 31, and

(B) Each other corporation which is a component member of such group on any succeeding December 31 before the day on which the election is filed,

consents to such election.

(2) *Years for which effective.* An election by a controlled group of corporations under paragraph (1) shall be effective with respect to the taxable year of each component member of such group which includes the specified December 31, and each taxable year of each corporation which is a component member of such group (or a successor group) on a succeeding December 31 included within such taxable year, unless the election is terminated under subsection (c).

(3) *Effect of election.* If an election by a controlled group of corporations under paragraph (1) is effective with respect to any taxable year of a corporation—

(A) Section 1561 shall not apply to such corporation for such taxable year, but

(B) The additional tax imposed by subsection (b) shall apply to such corporation for such taxable year.

(b) *Additional tax imposed*—(1) *General rule.* If an election under subsection (a)(1) by a controlled group of corporations is effective with respect to the taxable year of a corporation, there is hereby imposed for such taxable year on the taxable income of such corporation a tax equal to 6 percent of so much of such corporation's taxable income for such taxable year as does not exceed $25,000. This paragraph shall not apply to the taxable year of a corporation if—

(A) Such corporation is the only component member of such controlled group on the December 31 included in such corporation's taxable year which has taxable income for a taxable year including such December 31, or

(B) Such corporation's surtax exemption is disallowed for such taxable year under any provisions of this subtitle.

(2) *Tax treated as imposed by section 11, etc.* If for the taxable year of a corporation a tax is imposed by section 11 on the taxable income of such corporation, the additional tax imposed by this subsection shall be treated for purposes of this title as a tax imposed by section 11. If for the taxable year of a corporation a tax is imposed on the taxable income of such corporation which is computed under any other section by reference to section 11, the additional tax imposed by this subsection shall be treated for purposes of this title as imposed by such other section.

(3) *Taxable income defined.* For purposes of this subsection, the term "taxable income" means—

(A) In the case of a corporation subject to tax under section 511, its unrelated business taxable income (within the meaning of section 512);

(B) In the case of a life insurance company, its life insurance company taxable income (within the meaning of section 802(b));

(C) In the case of a regulated investment company, its investment company taxable income (within the meaning of section 852(b)(2)); and

(D) In the case of a real estate investment trust, its real estate investment trust taxable income (within the meaning of section 857(b)(2)).

(4) *Special rules.* If for the the taxable year an additional tax is imposed on the taxable income of a corporation by this subsection, then sections 244 (relating to dividends received on certain preferred stock), 247 (relating to dividends paid on certain preferred stock of public utilities), 804(a)(3) (relating to deduction for partially tax-exempt interest in the case of a life insurance company), and 922 (relating to special deduction for Western Hemisphere trade corporations) shall be applied without regard to the additional tax imposed by this subsection.

(c) *Termination of election.* An election by a controlled group of corporations under subsection (a) shall terminate with respect to such group—

(1) *Consent of the members.* If such group files a termination of such election with respect to a specified December 31, and—

(A) Each corporation which is a component member of such group on such December 31, and

(B) Each other corporation which is a component member of such group on any succeeding December 31 before the day on which the termination is filed,

consents to such termination.

(2) *Refusal by new member to consent.* If on December 31 of any year such group includes a component member which—

(A) On the immediately preceding January 1 was not a member of such group, and

(B) Within the time and in the manner provided by regulations prescribed by the Secretary or his delegate, files a statement that it does not consent to the election.

(3) *Consolidated returns.* If—

(A) A corporation is a component member (determined without regard to section 1563(b)(3)) of such group on a December 31 included within a taxable year ending on or after January 1, 1964, and

(B) Such corporation is a member of an affiliated group of corporations which makes a consolidated return under this chapter (sec. 1501 and following) for such taxable year.

(4) *Controlled group no longer in existence.* If such group is considered as no longer in existence with respect to any December 31,

Such termination shall be effective with respect to the December 31 referred to in paragraph (1)(A), (2), (3), or (4), as the case may be.

(d) *Election after termination.* If an election by a controlled group of corporations is terminated under subsection (c), such group (and any successor group) shall not be eligible to make an election under subsection (a) with respect to any December 31 before the sixth December 31 after the December 31 with respect to which such termination was effective.

(e) *Manner and time of giving consent and making election, etc.* An election under subsection (a)(1) or a termination under subsection (c)(1) (and the consent of each member of a controlled group of corporations which is required with respect to such election or termination) shall be made in such manner as the Secretary or his delegate shall by regulations prescribe, and shall be made at any time before the expiration of 3 years after—

(1) In the case of such an election, the date when the income tax return for the taxable year of the component member of the controlled group which has the taxable year ending first on or after the specified December 31 is required to be filed (without regard to any extensions of time), and

(2) In the case of such a termination, the specified December 31 with respect to which such termination was made.

Any consent to such an election or termination, and a failure by a component member to file a statement that it does not consent to an election under this section, shall be deemed to be a consent to the application of subsection (g)(1) (relating to tolling of statute of limitations on assessment of deficiencies).

(f) *Special rules.* For purposes of this section—

(1) *Continuing and successor controlled groups.* The determination of whether a controlled group of corporations—

(A) Is considered as no longer in existence with respect to any December 31, or

(B) Is a successor to another controlled group of corporations (and the effect of such determination with respect to any election or termination),

shall be made under regulations prescribed by the Secretary or his delegate. For purposes of subparagraph (B), such regulations shall be based on the continuation (or termination) of predominant equitable ownership.

(2) *Certain short taxable years.* If one or more corporations have short taxable years which do not include a December 31 and are component members of a controlled group of corporations with respect to such taxable years (determined by applying section 1563(b) as if the last day of each such taxable year were substituted for December 31), then an election by such group under this section shall apply with respect to such corporations with respect to such taxable years if—

(A) Such election is in effect with respect to both the December 31 immediately preceding such taxable years and the December 31 immediately succeeding such taxable years, or

(B) Such election is in effect with respect to the December 31 immediately preceding or succeeding such taxable years and each such corporation files a consent to the application of such election to its short taxable year at such time and in such manner as the Secretary or his delegate shall prescribe by regulations.

(g) *Tolling of statute of limitations.* In any case in which a controlled group of corporations makes an election or termination under this section, the statutory period—

(1) For assessment of any deficiency against a corporation which is a component member of such group for any taxable year, to the extent such deficiency is attributable to the application of this part, shall not expire before the expiration of one year after the date such election or termination is made; and

(2) For allowing or making credit or refund of any overpayment of tax by a corporation which is a component member of such group for any taxable year, to the extent such credit or refund is attributable to the application of this part, shall not expire before the expiration of one year after the date such election or termination is made.

[Sec. 1562 as added by sec. 235(a), Rev. Act 1964 (78 Stat. 116)]

§ 1.1562–1 Privilege of controlled group to elect multiple surtax exemptions.

(a) *Election*—(1) *In general.* (i) Under section 1562(a)(1) a controlled group of corporations has the privilege of electing to have each of its component members make its returns without regard to section 1561 (relating to single surtax exemption in the case of a controlled group of corporations). The election shall be made with respect to a particular December 31 and shall be valid only if each corporation which is required to consent to the election under the provisions of paragraph (a)(1) of § 1.1562–3 gives its consent in the manner and within the time prescribed in such section. An election shall not be considered as made with respect to a particular December 31 until each corporation which is required to consent to the election under paragraph (c)(1) of § 1.1562–3 files the original of a statement described in such paragraph (or, the original of a statement incorporating its consent is filed on its behalf). Accordingly, for purposes of returns filed before an election is made, the surtax exemption of component members of a controlled group of corporations shall be determined in accordance with section 1561 and the regulations thereunder. (If a valid election is made after the return is filed and within the time prescribed in § 1.1562–3, such return should be amended (or a claim for refund should be made) to reflect the change in the amount of the surtax exemption (and the imposition of the additional tax) resulting from the election.)

(ii) An election once made with respect to a particular December 31 may not thereafter be withdrawn unless such election is terminated with respect to such December 31 in accordance with the provisions of section 1562(c) and § 1.1562–2.

(iii) An election under section 1562(a)(1) may be made by a controlled group of corporations with respect to any December 31 (after December 31, 1962), unless—

(*a*) A component member of such group on such December 31 joins, or is required to join, in the filing of a consolidated return for its taxable year which includes such date, or

(*b*) Such controlled group is not eligible to make an election with respect to such December 31 by reason of section 1562(d).

See also section 243(b)(3)(A), relating to effect of election of 100-percent dividends received deduction, which may prevent a controlled group from making an election under section 1562(a)(1) with respect to a particular December 31.

(2) *Years for which effective.* (i) A valid election under section 1562(a)(1) by a controlled group of corporations with respect to a particular December 31 is effective with respect to—

(*a*) The taxable year of each component member of such group on such December 31 which includes such December 31, and

(*b*) Any succeeding taxable year of any corporation which is a component member of such group (or a successor group) on a succeeding December 31 included within any such succeeding taxable year.

Under section 1562(c) and § 1.1562–2, an election under section 1562(a)(1) may be terminated with respect to a December 31 referred to in either (*a*) or (*b*) of this subdivision. For years affected by termination, see paragraph (c) of § 1.1562–2.

(ii) For the application of an election under section 1562(a)(1) to certain short taxable years not including a December 31, see section 1562(f)(2) and § 1.1562–6.

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

Example. Corporation P is the common parent of a a parent-subsidiary controlled group of corporations of which corporations P, S–1, and S–2 are component members on December 31, 1964. On December 31, 1965, the controlled group of corporations consists of the same component members as on December 31, 1964, except that corporation S–3 is also a component member on December 31, 1965. On December 31, 1966, the controlled group of corporations consists of the same component members as on December 31, 1965, except that S–1 is no longer a component member on December 31, 1966. In January 1965, the controlled group makes a valid election under section 1562(a)(1) with respect to December 31, 1964. Under subdivision (i)(*a*) of this subparagraph, the election (unless terminated) is effective with respect to the taxable years of P, S–1, and S–2 which include December 31, 1964. Under subdivision (i)(*b*) of this subparagraph, the election (unless terminated) is also effective with respect to the taxable years of P, S–1, S–2, and S–3 which include December 31, 1965, and with respect to the taxable years of P, S–2, and S–3 which include December 31, 1966.

(b) *Effect of election*—(1) *General.* If an election under section 1562(a)(1) is effective with respect to a taxable year of a corporation, then—

(i) Section 1561 shall not apply to such corporation for such taxable year, but

(ii) The additional tax imposed by section 1562(b) shall apply to such corporation for such taxable year (except as otherwise provided in subparagraph (3) of this paragraph).

(2) *Additional tax.* The additional tax imposed by section 1562(b) is an amount equal to 6 percent of so much of a corporation's taxable income for the taxable year as does not exceed $25,000. However, if a corporation computes its tax under section 1201 (relating to alternative tax) and is subject to the additional tax imposed by section 1562(b) for such taxable year, the additional tax applies only to an amount equal to the taxable income reduced by the excess of the net long-term capital gain over the net short-term capital loss for such taxable year (to the extent such amount does not exceed $25,000).

(3) *Exceptions.* The additional tax imposed by section 1562(b) shall not apply to a corporation for any taxable year if—

(i) Such corporation is the only component member of a controlled group on the December 31 included within such taxable year which has taxable income for the taxable years including such date, or

(ii) Such corporation's surtax exemption is disallowed for such year under any provision of the Code. For purposes of this subdivision, if the component members of a controlled group of corporations on a December 31 are limited in the aggregate to a single $25,000 surtax exemption for their taxable years which include such date, then the surtax exemption of each such component member shall be considered to be disallowed for such taxable year regardless of how the $25,000 is allocated among such members. For example, if pursuant to

the authority provided in section 269(b), the Commissioner allocates a single $25,000 surtax exemption equally between two corporations which are the only component members of an electing controlled group of corporations, the surtax exemption of each such corporation shall be considered to be disallowed.

The application of this subparagraph in respect of a taxable year of a component member of a controlled group of corporations does not constitute the termination of an election made under section 1562(a)(1). Accordingly, such election continues in effect for the subsequent taxable years of such corporation and the other corporations which are component members of the controlled group, unless the election is terminated under section 1562(c).

(4) *Taxable income defined.* For purposes of this paragraph, the term "taxable income" means—

(i) In the case of a corporation subject to tax under section 511(a) (relating to tax on unrelated business income of charitable, etc., organizations at corporation rates), its "unrelated business taxable income" (as defined in section 512),

(ii) In the case of a life insurance company, its "life insurance company taxable income" (as defined in section 802(b)),

(iii) In the case of a regulated investment company, its "investment company taxable income" (as defined in section 852(b)(2)), and

(iv) In the case of a real estate investment trust, its "real estate investment trust taxable income" (as defined in section 857(b)(2)).

(5) *Tax treated as imposed by section 11, etc.* For purposes of applying other sections of the Code, if for a taxable year a corporation is subject to both the tax imposed by section 11 and to the additional tax imposed by section 1562(b), then the additional tax is treated as if it were imposed by section 11. If a corporation is subject to a tax imposed by any section of chapter 1 of the Code other than section 11 but such tax is computed by reference to section 11, the additional tax is treated for purposes of the Code as imposed by such other section. (For example, the tax imposed by section 831(a) is "computed as provided in section 11"; therefore if a corporation is subject to both the tax imposed by section 831(a) and the additional tax imposed by section 1562(b) for any taxable year, the additional tax is treated as imposed by section 831(a) for such taxable year.) Accordingly, the credits against the tax imposed by chapter 1 of the Code allowable, for example, under sections 38 (relating to credit against tax for investment in certain depreciable property) and 33 (relating to credit for taxes of foreign countries and possessions of the United States) may be applied against the additional tax.

(6) *Special rules.* For purposes of sections 244 (relating to dividends received on certain preferred stock), 247 (relating to dividends paid on certain preferred stock of public utilities), 804(a)(3) (relating to deduction for partially tax-exempt interest in the case of a life insurance company), and 922 (relating to special deduction for Western Hemisphere trade corporations), the normal tax rate referred to in such sections shall be determined without regard to the additional tax imposed by section 1562(b). For example, in the case of a corporation subject to the additional tax imposed by section 1562(b) for its taxable year ending December 31, 1965, the percentage computed under section 244(a)(2)(B) for such taxable year would be 48 percent.

§ 1.1562–2 Termination of election.

(a) *In general.* An election under section 1562(a)(1) is terminated by any one of the occurrences described in paragraph (b) of this section. For years affected by termination, see paragraph (c) of this section.

(b) *Methods of termination*—(1) *Consent of the members.* An election may be terminated with respect to a particular December 31 by consent of the component members of a controlled group of corporations. A termination by consent shall be made with respect to a particular December 31 and shall be valid only if each corporation which is required to consent to the termination under paragraph (a)(1) of § 1.1562–3 gives its consent in the manner and within the time prescribed in such section. A termination by consent shall not be considered as made with respect to a particular December 31 until each corporation which is required to consent to the termination under paragraph (c)(1) of § 1.1562–3 files the original of a statement described in such paragraph (or, the original of a statement incorporating its consent is filed on its behalf).

(2) *Refusal by new member to consent.* (i) If on a December 31 a controlled group of corporations which has made an election under section 1562(a)(1) includes a new member which files a statement that it does not consent to the election with respect to such December 31, then such election shall terminate with respect to such date. Such statement shall be signed by any person who is duly authorized to act on behalf of the new member, and shall be attached to the income tax return of such new member for its taxable year which includes such December 31, filed on or before the date prescribed by law (including extensions of time) for the filing of such return. The statement shall set forth the name, address, taxpayer account number, and taxable year of each corporation which was a component member of the controlled group on such December 31. In the event of a termination under this subparagraph, each component member of the controlled group on such December 31 (other than such new member) should, within 30 days after such new member files the statement of refusal to consent, file notification of the termination with the district director with whom it filed (or will file) an income tax return for its taxable year which includes such December 31.

(ii) For purposes of subdivision (i) of this subparagraph, a corporation shall be considered to be a new member of a controlled group of corporations on a December 31 if such corporation—

(*a*) Is a component member of such group on such December 31, and

(*b*) Was not a member of such group on the January 1 immediately preceding such December 31.

(3) *Consolidated returns.* (i) If any corporation which is a component member of a controlled group of corporations on a December 31 joins, or is required to join, in the filing of a consolidated return for its taxable year which includes such date, then an election under section 1562(a)(1) which is effective with respect to preceding taxable years of component members of the group shall terminate with respect to such December 31. In the event of a termination under this subparagraph, each component member of the controlled group on such December 31 which does not join in the filing of a consolidated return for the taxable year which includes such date, should, within 30 days after such consolidated return is filed, file notification of the termination with the district director with whom it filed (or will file) an income tax return for its taxable year which includes such December 31.

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

Example. On each day of 1964 and 1965, Brown, an individual, owns all the stock of corporations M and P. Corporation P, in turn, owns all the stock of corporation S. Each corporation files a separate return for its taxable year ending on December 31, 1964. On April 30, 1965, the controlled group of corporations consisting of M, P, and S makes an election under section 1562(a)(1) with respect to December 31, 1964. On March 15, 1966, P and S join in the filing of a consolidated return for their taxable years ending December 31, 1965, and M files a separate return for its taxable year ending on such date. Under this subparagraph, the election by the controlled group with respect to December 31, 1964, is terminated with respect to December 31, 1965. On or before April 14, 1966, M should file notification of the termination with the district director with whom it filed its income tax return for 1965.

(4) *Controlled group no longer in existence.* If a controlled group of corporations is considered as going out of existence with respect to a particular December 31 under paragraph (b) of § 1.1562–5, and if there is no successor group in respect of such controlled group under the rules provided in paragraph (c) of such section, then an election under section 1562(a)(1) with respect to such controlled group shall terminate with respect to such December 31.

(c) *Effect of termination.* A termination under subparagraph (1), (2), (3), or (4) of paragraph (b) of this section is effective with respect to the December 31 referred to in such subparagraph. An election, once terminated, is no longer effective. Thus, a termination is effective with respect to the taxable year of each component member of a controlled group of corporations which includes such December 31 and with respect to all succeeding taxable years of each corporation which is a component member of such group (or a successor group). Moreover, after a termination, the controlled group (and any successor group)

may not make a new election except as provided in section 1562(d) and § 1.1562–4.

§ 1.1562–3 Consents to election and termination.

(a) *Consents required*—(1) *General.* An election under paragraph (a)(1) of § 1.1562–1, or a termination by consent under paragraph (b)(1) of § 1.1562–2, may be made by a controlled group of corporations with respect to a particular December 31 only if each corporation, which was a component member of such group (or a successor group) on any December 31 falling within the period beginning on the particular December 31 and ending on the most recently past December 31, consents to the election or termination within the time prescribed in paragraph (b) of this section and in the manner prescribed in paragraph (c) of this section. Such election or termination may be made with respect to a particular December 31 whether or not the electing or terminating group ceases to remain in existence under the principles of paragraph (a) of § 1.1562–5 before such election or termination is made. In the case of an election with respect to December 31, 1963, if each corporation which is required to consent to the election under the rules provided in Treasury Decision 6733, approved May 11, 1964 (29 F.R. 6320, C.B. 1964–1 (Part 1), 635) gives its consent in the manner provided in such Treasury Decision before December 31, 1964, then a valid election under section 1562(a)(1) shall be considered to have been made with respect to December 31, 1963.

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

Example (1). P Corporation is the common parent of a parent-subsidiary controlled group of which corporations P, S–1, and S–2 are component members on December 31, 1965. On December 31, 1966, the controlled group consists of the same component members as on December 31, 1965, except that S–1 is no longer a component member on December 31, 1966. On December 31, 1967, the controlled group of corporations consists of the same component members as on December 31, 1966, except that corporation S–3 is also a component member on December 31, 1967. In January 1968, the controlled group desires to make an election under section 1562(a)(1) with respect to December 31, 1965. Such election may be made only if P, S–1 (even though S–1 was not a component member of the group on December 31, 1966, or December 31, 1967), S–2, and S–3 (even though S–3 was not a component member of the group on December 31, 1965, or December 31, 1966) consent to the election.

Example (2). Assume the same facts as in example (1) and further assume that in January 1968, the controlled group makes a valid election with respect to December 31, 1965. If, in July 1968, the controlled group desires to terminate the election with respect to December 31, 1966, P, S–2, and S–3 must consent to the termination.

(b) *Time for consents*—(1) *Consents to election.* The consent of each component member of a controlled group of corporations which is required with respect to an election for a particular December 31, shall be made at any time after such December 31 and before the expiration of 3 years after the date on which the income tax return, for the taxable year of the component member of the group on such December 31 which has the taxable year ending first on or after such date, is required to be filed (determined without regard to any extensions of time for the filing of such return). See section 1562(e)(1).

(2) *Consents to termination.* The consent of each component member of a controlled group of corporations which is required with respect to a termination for a particular December 31, shall be made at any time after such December 31 and before the expiration of 3 years after such date. See section 1562(e)(2).

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

Example (1). The component members of a controlled group of corporations on December 31, 1965, consist of 2 calendar-year corporations, X and Y. The group desires to make an election under section 1562(a)(1) with respect to December 31, 1965. Under subparagraph (1) of this paragraph, the required consents to the election must be made after December 31, 1965, and on or before March 15, 1969. The result is the same whether or not X or Y (or both) ceases to be a component member of the group after December 31, 1965, and whether or not X or Y (or both) is granted an extension of time for the filing of its income tax return for 1965.

Example (2). Assume the same facts as in example (1) except that X files its income tax return on the basis of a fiscal year ending January 31, and Y files its income tax return on the basis of a fiscal year ending on June 30. Under subparagraph (1) of this paragraph, the last day on which the required consents may be made with respect to an election for December 31, 1965, is April 15, 1969.

Example (3). Assume the same facts as in example (1) or (2) except that an election under section 1562(a)(1) is effective for X's and Y's taxable years including December 31, 1965. Assume further that the group desires to terminate the election with respect to December 31, 1965. Under subparagraph (2) of this paragraph, the required consents to the termination must be made after December 31, 1965, and on or before December 31, 1968.

(c) *Manner of consenting*—(1) *General rule.* (i) The consent of a corporation to an election or termination with respect to a particular December 31 (other than a corporation which is a wholly-owned subsidiary in respect of such election or termination) shall be made by means of a statement, signed by any person who is duly authorized to act on behalf of the consenting corporation, stating that such corporation consents to an election or termination (as the case may be) with respect to such December 31. Such statement shall set forth the name, address and taxpayer account number of the consenting member and the internal revenue district where the original of the statement is to be filed. The consent of more than one component member may be incorporated in a single statement. The original of a statement of consent shall be filed with the district director with whom the component member of the group on the particular December 31 which has the taxable year ending first on or after such date filed its return for such taxable year. (If two or more component members have the same such taxable year, a statement of consent may be filed with the district director with whom the return for any such taxable year is filed.) The original of a statement shall have attached thereto information (referred to in this paragraph as "group identification") setting forth the name, address, taxpayer account number, and taxable year of each component member of the controlled group on such December 31 (including wholly-owned subsidiaries). If the particular December 31 is a December 31 other than the December 31 immediately preceding the date on which such statement is filed then, as part of the "group identification", the original of the statement shall also set forth the information required in the preceding sentence with respect to each other corporation which was a component member of the group (or a successor group) on any December 31 occurring after the particular December 31 on which the consenting corporation was a component member of such group. If more than one original statement is filed, a statement may incorporate the group identification by reference to the name, address, taxpayer account number, and taxable year of a component member of the group which has attached such group identification to the original of its statement.

(ii) Each corporation which was a component member of the electing (or terminating) controlled group (or a successor group) on a December 31 falling within the period beginning on the particular December 31 and ending on the most recently past December 31 (other than a wholly-owned subsidiary in respect of such election or termination) should attach a copy of its consent (or a copy of the statement incorporating its consent) to each income tax return, amended return, or claim for refund filed with its district director for a taxable year which includes any such December 31. Such copy should either have attached thereto information on group identification or incorporate such information by reference to the name, address, taxpayer account number, and taxable year of a component member of the group which has attached such information to its income tax return, amended return, or claim for refund filed with the same district director for a taxable year which includes any such December 31.

(2) *Wholly-owned subsidiaries.* (i) Each corporation which is a wholly-owned subsidiary of a controlled group of corporations in respect of an election or termination with respect to a particular December 31 shall be deemed to consent to such election or termination (as the case may be). For purposes of this section, a corporation shall be considered to be a wholly-owned subsidiary of a controlled group in respect of an election or termination with respect to a particular December 31 if, on each day falling within the period beginning on the first day of such corporation's taxable year which included such December 31 and ending on the day on which such election or termination is made (or, if such corporation was not in existence on each day of such period, on each day falling within such period during which the corporation was in existence), all the

stock of such corporation is owned directly by one or more corporations which are component members of such group (or a successor group) on any December 31 falling within such period.

(ii) Each wholly-owned subsidiary should attach a statement to an income tax return, amended return, or claim for refund filed with its district director for each taxable year which contains a December 31 falling within the period described in the last sentence of subdivision (i) of this subparagraph, stating that an election or termination (as the case may be) is effective for such taxable year and containing the information which would be required to be set forth in a statement of consent to the election or termination filed pursuant to subparagraph (1)(i) of this paragraph. Information on group identification may either be attached to the statement or incorporated by reference to the name, address, taxpayer account number, and taxable year of a component member of the group which has attached such group identification to an income tax return, amended return, or claim for refund filed with the same district director for the taxable year including such date.

(d) *Effect of consent.* Under section 1562(e), any consent to an election under section 1562(a)(1) or a termination under section 1562(c)(1) is deemed to be a consent to the application of section 1562(g)(1) (relating to tolling of statute of limitations on assessment of deficiencies). See § 1.1562–7.

§ 1.1562–4 Election after termination.

(a) *In general.* Under section 1562(d), if a controlled group of corporations has made a valid election under section 1562(a)(1), and such election is terminated by any one of the occurrences described in paragraph (b) of § 1.1562–2, then such group (or any controlled group which is a successor to such group within the meaning of paragraph (c) of § 1.1562–5) is not eligible to make an election under section 1562(a)(1) with respect to any December 31 before the sixth December 31 after the particular December 31 with respect to which such termination was effective. For the particular December 31 with respect to which a termination is effective, see paragraph (c) of § 1.1562–2.

(b) *Example.* The provisions of this section may be illustrated by the following example:

Example. In 1965, a controlled group of corporations makes a valid election under section 1562(a)(1) with respect to December 31, 1964. In 1967, the election is terminated with respect to December 31, 1964, by consent pursuant to paragraph (b)(1) of § 1.1562–2. The group (or any successor group) is not eligible to make another election with respect to any December 31 before December 31, 1970 (i.e., the sixth December 31 after December 31, 1964, the particular December 31 with respect to which such termination was effective). If in this example the election had been terminated with respect to December 31, 1965, instead of December 31, 1964, the group (or any successor group) would not be eligible to make another election with respect to any December 31 before December 31, 1971.

§ 1.1562–5 Continuing and successor controlled groups.

(a) *Controlled group continuing in existence.* For purposes of § 1.1561–3, and §§ 1.1562–1 through 1.1562–4—

(1) *Parent-subsidiary group.* A parent-subsidiary controlled group of corporations shall be considered as remaining in existence as long as (i) such group is not considered, under paragraph (c)(3) of this section, to be a successor controlled group in respect of another controlled group, and (ii) its common parent corporation remains as a common parent and satisfies the requirements of paragraph (a)(2)(i)(*b*) of § 1.1563–1 with respect to the ownership of stock of at least one corporation.

(2) *Brother-sister group.* A brother-sister controlled group of corporations shall be considered as remaining in existence as long as the common owner of such group (i) remains as a common owner, and (ii) satisfies the requirements of paragraph (a)(3)(i) of § 1.1563–1 with respect to the ownership of stock of at least two corporations.

(3) *Combined group.* A combined group of corporations shall be considered as remaining in existence as long as (i) the brother-sister controlled group of corporations referred to in paragraph (a)(4)(i) of § 1.1563–1 in respect of such combined group remains in existence (within the meaning of subparagraph (2) of this paragraph), and (ii) at least one such corporation is a common parent of a parent-subsidiary controlled group of corporations referred to in such paragraph (a)(4)(i).

(4) *Insurance group.* If, by reason of paragraph (a)(5)(i) of § 1.1563–1, two or more insurance companies subject to taxation under section 802 are treated as an insurance group separate from any corporations which are members of a controlled group described in paragraph (a) (2), (3), or (4) of § 1.1563–1, such insurance group shall be considered as remaining in existence as long as (i) the controlled group described in paragraph (a) (2), (3), or (4) of such section, as the case may be, remains in existence (within the meaning of subparagraph (1), (2), or (3) of this paragraph), and (ii) there are at least two insurance companies which satisfy the requirements of paragraph (a)(5)(i) of such section.

(b) *Controlled group no longer in existence*—(1) *General.* Except as provided in subparagraph (3) of this paragraph, a controlled group of corporations is considered as going out of existence with respect to a December 31 if such group ceases to remain in existence under the principles of paragraph (a) of this section during the calendar year ending on such date.

(2) *Examples.* The provisions of subparagraph (1) of this paragraph may be illustrated by the following examples, in which each corporation referred to uses the calendar year as its taxable year:

Example (1). Corporation P was organized on January 1, 1964, and acquired all the stock of corporation S–1 on February 1, 1964, and all the stock of corporation S–2 on March 1, 1965. On April 1, 1965, P sold all its S–1 stock to the public. Beginning on February 1, 1964, P is the common parent corporation of a parent-subsidiary controlled group of corporations. Under paragraph (a)(1) of this section, the controlled group remains in existence throughout the remainder of 1964 and throughout 1965 even though after April 1, 1965, P satisfies the stock ownership requirements of paragraph (a)(2)(i)(*b*) of § 1.1563–1 only with respect to the stock of S–2, a corporation which was not a member of the group at the time the group was formed, and even though S–1 ceased to be a member of the group after the group was formed. Accordingly, if the controlled group makes a valid election under section 1562(a)(1) with respect to December 31, 1964, such election will remain in effect with respect to December 31, 1965, unless terminated under section 1562(c) (1), (2), or (3). Moreover, if such election were made and subsequently terminated with respect to December 31, 1964, the group would not be eligible (by reason of section 1562(d)) to make an election under section 1562(a)(1) with respect to December 31, 1965.

Example (2). Assume the same facts as in example (1) except that corporation S–2 is a franchised corporation as defined in section 1563(f)(4) for its 1965 taxable year. On December 31, 1965, S–2 is treated as an excluded member of the parent-subsidiary controlled group of which P is the common parent. See section 1563(b)(2)(E). Nevertheless, such controlled group is considered as remaining in existence throughout 1965.

Example (3). Assume the same facts as in example (1) except that P sold its S–1 stock on February 28, 1965, instead of April 1, 1965. Under the principles of paragraph (a)(1) of this section, the parent-subsidiary controlled group ceases to remain in existence on February 28, 1965. Accordingly, under subparagraph (1) of this paragraph, such group is considered as going out of existence with respect to December 31, 1965. Thus, if the group makes a valid election under section 1562(a)(1) with respect to December 31, 1964, such election terminates with respect to December 31, 1965. Moreover, the new controlled group of corporations consisting of P and S–2 is not precluded (by reason of section 1562(d)) from making an election under section 1562(a)(1) with respect to December 31, 1965.

Example (4). Smith, an individual, owns 80 percent of the only class of stock of corporations W and X on each day of 1966 and 1967. W, in turn, owns 80 percent of the only class of stock of corporation Y on each day of 1966. On April 15, 1967, X purchases 80 percent of the only class of stock of corporation Z and on April 30, 1967, W sells all its stock in Y. Under paragraph (a)(3) of this section, the combined group of which Smith is the common owner remains in existence throughout 1966 and 1967 since (i) the brother-sister controlled group of corporations referred to in paragraph (a)(4)(i) of § 1.1563–1 in respect of such combined group remains in existence, and (ii) at least one corporation is a common parent of a parent-subsidiary controlled group referred to in such paragraph.

Example (5). Assume the same facts as in example (4) except that Y and Z are life insurance companies subject to taxation under section 802 of the Code. Further assume that throughout 1966 and 1967 Y owns all the stock of corporation S, and Z owns all the stock of corporation T. S and T are life insurance companies subject to taxation under section 802. Before April 15, 1967, under paragraph (a)(5)(i) of § 1.1563–1, Y and S are treated as an insurance group of corporations. After April 30, 1967, under paragraph (a)(4) of this section, Z and T are treated as an insurance group which remains in existence throughout 1966 and 1967, since the combined group of which Smith is the common owner remains in existence within the meaning of paragraph (a)(3) of this sec-

tion throughout 1966 and 1967, and there are at all times at least two insurance companies which satisfy the requirements of paragraph (a)(5)(i) of § 1.1563-1. (However, after April 30, 1967, Y and S cease to be members of the combined group of which Smith is the common owner and are considered to be a new controlled group of corporations.)

Example (6). Jones, an individual, owns all the stock of corporations M and N on each day of 1966. On February 1, 1967, he gives all the stock of M to his 18-year-old son who continues to hold the M stock throughout the remainder of 1967. Since Jones (or his son) owns, or is considered as owning under paragraph (b)(6)(i) of § 1.1563-3, all the stock of M and N on each day of 1967, Jones (or his son) is considered to be the common owner of the brother-sister controlled group consisting of M and N on each such day. Therefore, under paragraph (a)(2) of this section, the controlled group remains in existence throughout 1967.

(3) *Special rule.* If—

(i) Under subparagraph (1) of this paragraph, a controlled group of corporations would (without regard to this subparagraph) be considered as going out of existence with respect to a December 31 because two or more corporations cease to be members of such group during the calendar year ending on such date,

(ii) Under paragraph (c) of this section, there is no successor group in respect of such group, and

(iii) At least two of such corporations are considered to be component members of such group on such December 31 by reason of the additional member rule of paragraph (b)(3) of § 1.1563-1,

then such group shall be considered as going out of existence with respect to the December 31 immediately succeeding such December 31. For example, assume that corporations P and S file their returns on the basis of the calendar year. P owns all the stock of S from January 1, 1965, through December 1, 1965. On December 2, 1965, P sells the stock of S to the public. Under subparagraph (1) of this paragraph the controlled group consisting of P and S would (without regard to this subparagraph) be considered as going out of existence with respect to December 31, 1965, because P and S ceased to be members of the group on December 2, 1965. However, since there is no successor group in respect of the controlled group, and P and S are considered to be component members of such group on December 31, 1965, by reason of the additional member rule of paragraph (b)(3) of § 1.1563-1, under this subparagraph the group is considered as going out of existence with respect to December 31, 1966, and not December 31, 1965.

(c) *Successor groups*—(1) *Transactions involving a common owner.* If, as a result of the transfer of stock of a corporation or corporations (whether by sale, exchange, distribution, contribution to capital, or otherwise), a controlled group of corporations goes out of existence and a new controlled group comes into existence, then the new controlled group shall be considered to be a successor in respect of the controlled group which went out of existence, provided one of the following applies:

(i) A person who is a common owner of the new controlled group was a common owner of the controlled group which went out of existence;

(ii) A person who is a common owner of the new controlled group owned, directly and with the application of the rules contained in paragraph (b) of § 1.1563-3, more than 50 percent of the fair market value of the stock of the corporation which was the common parent of the controlled group which went out of existence; or

(iii) A person who was a common owner of the controlled group which went out of existence owns, directly and with the application of the rules contained in paragraph (b) of § 1.1563-3, more than 50 percent of the fair market value of the stock of the common parent of the new controlled group.

For purposes of this subparagraph, if, as a result of the transfer of stock, a parent-subsidiary controlled group or a brother-sister controlled group becomes a part of a combined group, then such parent-subsidiary or brother-sister group shall be considered as going out of existence as a result of such transfer. Also for purposes of this subparagraph, if, as a result of the transfer of stock, a combined group goes out of existence and a parent-subsidiary or brother-sister group which was part of such combined group remains, then such parent-subsidiary or brother-sister group shall be considered to be a new controlled group which came into existence as a result of such transfer.

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

Example (1). Brown, an individual, owns 80 percent of the only class of stock of corporations X and Y. Corporation Y owns 80 percent of the only class of stock of corporation Z. Y sells all its stock in Z to the public. The brother-sister controlled group consisting of X and Y (which was part of the combined group consisting of X, Y, and Z) is considered to be a new controlled group which came into existence as a result of the transfer of Z stock. Furthermore, since Brown is the common owner of the new brother-sister controlled group consisting of X and Y, and he was the common owner of the combined group consisting of X, Y, and Z, such new brother-sister controlled group is a successor in respect of the combined group.

Example (2). Jones, an individual, owns 80 percent of the only class of stock of corporations M, N, and O. He transfers all his stock in M and N to O. As a result of the transfer, the brother-sister controlled group consisting of M, N, and O goes out of existence and a parent-subsidiary controlled group consisting of M, N, and O comes into existence. Since Jones, the common owner of the brother-sister controlled group which goes out of existence as a result of the transfer, owns more than 50 percent of the fair market value of the stock of O (the common parent of the new controlled group), the new parent-subsidiary controlled group is a successor in respect of the brother-sister controlled group.

Example (3). Assume the same facts as in example (2) except that Jones transfers only his stock in M to O. As a result of the transfer, the brother-sister controlled group of which Jones was the common owner before the transfer becomes a part of a new combined group (consisting of M, N, and O). Accordingly, the brother-sister controlled group of which Jones was the common owner is considered as going out of existence as a result of such transfer. Furthermore, since Jones is the common owner of the new combined group and was the common owner of the brother-sister controlled group which went out of existence as a result of the transfer, the new combined group is considered to be a successor to the brother-sister controlled group.

Example (4). Corporation P is the common parent of a parent-subsidiary controlled group of corporations consisting of member corporations P, S-1, S-2, W-1, and W-2. Smith, an individual, owns 60 percent of the only class of stock of P, and White, an individual, owns the remaining 40 percent of the P stock. P distributes all the stock of S-1 and S-2 to Smith and all the stock of W-1 and W-2 to White. As a result of the transfer, two new brother-sister controlled groups come into existence (Smith being the common owner of one and White being the common owner of the other). Since Smith, the common owner of the new brother-sister controlled group consisting of S-1 and S-2, owned more than 50 percent of the fair market value of the stock of P (the common parent of the parent-subsidiary controlled group which went out of existence as a result of the transfer) such new brother-sister controlled group is a successor in respect of the parent-subsidiary controlled group. On the other hand, White did not own more than 50 percent of the fair market value of the stock of P and, therefore, the new brother-sister controlled group consisting of W-1 and W-2 of which White is the common owner is not considered to be a successor group in respect of the parent-subsidiary group.

(3) *Transactions involving two common parents.* If, as a result of the transfer of stock of a corporation or corporations (whether by sale, exchange, distribution, contribution to capital, or otherwise)—

(i) A parent-subsidiary controlled group of corporations goes out of existence because its common parent corporation ceases to be a common parent, and

(ii) The stockholders (immediately before the transfer) of such common parent corporation, as a result of owning stock in such common parent, own (immediately after the transfer) more than 50 percent of the fair market value of the stock of a corporation which is the common parent corporation of a controlled group of corporations immediately after the transfer,

the resulting controlled group shall be considered to be a successor group in respect of the controlled group which went out of existence as a result of the transfer.

(4) *Example.* The provisions of subparagraph (3) of this paragraph may be illustrated by the following example:

Example. Corporation Y, the common parent of a parent-subsidiary controlled group, acquires the assets of corporation X, the common parent of another controlled group, in a statutory merger. The stockholders of X exchange their X stock for 60 percent of the fair market value of all of the outstanding shares of Y. Since, as a result of the exchange, (i) the parent-subsidiary controlled group of which X was the common parent goes out of existence because X ceases to be a common parent, and (ii) the stockholders of X, as a result of owning stock in X, own immediately after the exchange more than 50 percent of the fair market value of the stock

of Y (the common parent of a controlled group of corporations immediately after the exchange), the controlled group of which Y is the common parent after the merger is considered to be a successor group in respect of the controlled group of which X was the common parent, and the group of which Y was the common parent before the merger is considered, under paragraph (a)(1) of this section, as no longer in existence. Thus, for example, if before the merger the controlled group of which X was the common parent was not eligible, by reason of the application of section 1562(d), to make an election under section 1562(a)(1) with respect to a December 31 occurring before December 31, 1970, then the successor controlled group would also be ineligible to make an election with respect to a December 31 occurring before December 31, 1970, whether or not the controlled group of which Y was the common parent before the merger had an election in effect pursuant to section 1562(a)(1).

§ 1.1562-6 Election for short taxable years.

(a) *Application of election to short taxable years*—(1) *General.* If the return of a corporation is for a short period which does not include a December 31, and if such corporation is a component member of a controlled group of corporations with respect to such short period, then an election under section 1562(a)(1) by such group shall apply with respect to such short period if—

(i) Such election is in effect with respect to both the December 31 immediately preceding such short period (hereinafter in this section referred to as the "preceding December 31") and the December 31 immediately succeeding such short period (hereinafter in this section referred to as the "succeeding December 31"), or

(ii) Such election is in effect with respect to either the preceding December 31 or the succeeding December 31, and each corporation which is a component member of such group with respect to a short period falling between such dates consents to the application of such election to such short period. See subparagraph (4) of this paragraph for rules relating to an election with respect to certain short taxable years ending during 1964.

(2) *Component members.* For purposes of this section, the determination of whether a corporation is a component member of a controlled group of corporations with respect to a short period shall be made by applying the definition of component member contained in section 1563(b) and paragraph (b) of § 1.1563-1 as if the last day of such short period were a December 31 occurring after December 31, 1963.

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

Example. On December 31, 1964, corporations P, S-1, and S-2 are component members of a parent-subsidiary controlled group of corporations. P, S-1, and S-2 each uses the calendar year as its taxable year. On February 1, 1965, S-1 transfers property to newly formed corporation S-3 (which begins business on that date) and receives all the stock of S-3 in return. S-3 adopts a fiscal year ending on November 30 as its taxable year and, therefore, files a return for the short taxable year beginning on February 1, 1965, and ending on November 30, 1965. On December 5, 1965, S-2 is liquidated, and therefore files a return for the short taxable year beginning on January 1, 1965, and ending on December 5, 1965. S-2 and S-3 are component members of the controlled group of corporations with respect to their short taxable years falling between December 31, 1964, and December 31, 1965, within the meaning of subparagraph (2) of this paragraph. Assume that the controlled group has an election under section 1562(a)(1) in effect with respect to either December 31, 1964, or December 31, 1965, but not both such dates. Under subparagraph (1)(ii) of this paragraph, S-2 and S-3 must both file consents to the application of the section 1562(a)(1) election with respect to their short periods in order for the election to be effective with respect to either such short period.

(4) *Election for certain short taxable years ending during 1964.* If—

(i) A corporation is a component member of a controlled group of corporations with respect to a short taxable year beginning and ending in 1964,

(ii) Each corporation which was a component member of such group on December 31, 1963 (determined without regard to paragraph (b)(2)(iii) of § 1.1563-1, relating to the treatment of a corporation which has a taxable year ending on December 31, 1963 as an excluded member of a controlled group on such date) filed its income tax return on the basis of the calendar year ending on such date, and

(iii) Such controlled group of corporations is considered as going out of existence with respect to December 31, 1964, pursuant to paragraph (b)(4) of § 1.1562-2,

then, for purposes of paragraph (a)(1)(ii) of this section, an election by such controlled group under section 1562(a)(1) shall be deemed to have been in effect for the preceding December 31. Each corporation which is a component member of such group with respect to a short period falling between such preceding and succeeding December 31's must, on or before November 3, 1965, consent to the application of such election to its short period falling between such December 31's.

(b) *Status at time of filing return.* If, on the date a corporation files its income tax return for a short period falling between a preceding and succeeding December 31 (with respect to which period it is a component member of a controlled group of corporations)—

(1) *Election not effective.* An election under section 1562(a)(1) is not effective with respect to either such preceding or succeeding December 31, then such member shall determine its surtax exemption for purposes of such return in accordance with section 1561(b).

(2) *Election effective for preceding December 31.* An election under section 1562(a)(1) is effective with respect to such preceding December 31, and if on the date the return is filed the election has not been terminated with respect to such succeeding December 31, then such member may compute its tax for purposes of such return on the assumption that the conditions of paragraph (a)(1)(i) of this section are satisfied with respect to such short period.

(3) *Election effective for preceding or succeeding December 31.* An election under section 1562(a)(1) is effective with respect to either (but not both) such preceding or succeeding December 31, and the return is filed after such succeeding December 31, then the member's surtax exemption for purposes of such return shall be determined in accordance with section 1561(b) unless—

(i) It attaches to such return its consent to the application of such election to such short period, and

(ii) Each other corporation which is a component member of the group with respect to a short period falling between such December 31's files, within 30 days after such return is filed, a consent to the application of such election to its short period falling between such December 31's.

(c) *Election or termination after returns filed*—(1) *Election.* If, after each component member of a controlled group with respect to a short period falling between a preceding and succeeding December 31 files its return for such short period, the group makes an election under section 1562(a)(1) with respect to such succeeding December 31, then the election shall apply with respect to each such short period only if each such member files, within 30 days after such election is made, a consent to the application of such election to its short period.

(2) *Termination.* If, after each component member of a controlled group with respect to a short period falling between a preceding and succeeding December 31 files its return for such short period, an election under section 1562(a)(1) which is effective with respect to such group with respect to such preceding December 31 is terminated with respect to such succeeding December 31, then such election shall apply with respect to each such short period only if each such member files, within 30 days after the termination occurs, a consent to the application of such election to its short period. For purposes of the preceding sentence, (i) the termination of an election by consent under section 1562(c)(1) shall be considered to occur on the date the termination is made, and (ii) the termination of an election under section 1562(c)(2), (3), or (4) shall be considered to occur on the date the event causing termination occurs (for example, on the date a new member files a refusal to consent, or on the date a consolidated return is filed) unless the election is made after such date, in which case the termination shall be considered to occur on the date the election is made.

(d) *Manner of consenting.* A consent referred to in paragraph (b)(3) or (c) of this section shall be made by means of a statement, signed by any person who is duly authorized to act on behalf of the consenting corporation, stating that such corporation consents to the application of an election under section 1562(a)(1) with respect to its short period. Each such statement shall set forth the name, address, taxpayer account number, and taxable year of (1) each corporation which is a component member of the electing controlled group with respect to a short period falling between the preceding December 31 and the succeeding December 31, and (2) each corporation which is a component member

of such group on either the preceding or succeeding December 31. Each consenting corporation shall file such statement with the District director with whom it files (or filed) its income tax return for the short period.

§ 1.1562–7 Extension of statutory periods of limitation.

(a) (1) Under section 1562(g)(1), the statutory period for assessment of any deficiency against a corporation which is a component member of a controlled group of corporations with respect to any taxable year, to the extent such deficiency is attributable to an election under section 1562(a)(1) or a termination by consent under section 1562(c)(1), shall not expire before the expiration of one year after the date such election or termination is made.

(2) Under section 1562(g)(2), the statutory period for allowing or making credit or refund of any overpayment of tax by a corporation which is a component member of a controlled group of corporations with respect to any taxable year, to the extent such overpayment is attributable to an election under section 1562(a)(1) or a termination by consent under section 1562(c)(1), shall not expire before the expiration of one year after the date such election or termination is made.

(b) For purposes of this section, the deficiency or overpayment in tax attributable to an election under section 1562(a)(1) or a termination by consent under section 1562(c)(1) shall be that amount of the increase or decrease in tax over the amount previously determined (as defined in section 1314(a)) for any taxable year which results from the application or nonapplication of section 1562, as the case may be. In determining the amount of such increase or decrease, due regard shall be given to the effect of any change in the amount of the surtax exemption (or the application or nonapplication of the additional tax under section 1562(b)) on credits allowable for any taxable year. Thus, for example, as a result of such change it may be necessary to recompute the amount of the investment credit allowable under section 38 for a taxable year for which the election or termination is effective and for other taxable years affected, or treated as affected, by an investment credit carryback or carryover (as defined in section 46(b)) determined with reference to the taxable years with respect to which such election or termination is effective.

(c) The provisions of this section shall not be construed to—

(1) Shorten the period within which an assessment of a deficiency may otherwise be made or the credit or refund of an overpayment may otherwise be allowed or made, or

(2) Apply to a deficiency or overpayment for a taxable year if the tax liability for such taxable year has been compromised under section 7122, or is the subject of a closing agreement under section 7121.

§ 1.1563 Statutory provisions; definitions and special rules.

SEC. 1563. *Definitions and special rules*—(a) *Controlled group of corporations.* For purposes of this part, the term "controlled group of corporations" means any group of—

(1) *Parent-subsidiary controlled group.* One or more chains of corporations connected through stock ownership with a common parent corporation if—

(A) Stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned (within the meaning of subsection (d)(1)) by one or more of the other corporations; and

(B) The common parent corporations owns (within the meaning of subsection (d)(1)) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

(2) *Brother-sister controlled group.* Two or more corporations if stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations is owned (within the meaning of subsection (d)(2)) by one person who is an individual, estate, or trust.

(3) *Combined group.* Three or more corporations each of which is a member of a group of corporations described in paragraph (1) or (2), and one of which—

(A) Is a common parent corporation included in a group of corporations described in paragraph (1), and also

(B) Is included in a group of corporations described in paragraph (2).

(4) *Certain insurance companies.* Two or more insurance companies subject to taxation under section 802 which are members of a controlled group of corporations described in paragraph (1), (2), or (3). Such insurance companies shall be treated as a controlled group of corporations separate from any other corporations which are members of the controlled group of corporations described in paragraph (1), (2), or (3).

(b) *Component member*—(1) *General rule.* For purposes of this part, a corporation is a component member of a controlled group of corporations on a December 31 of any taxable year (and with respect to the taxable year which includes such December 31) if such corporation—

(A) Is a member of such controlled group of corporations on the December 31 included in such year and is not treated as an excluded member under paragraph (2), or

(B) Is not a member of such controlled group of corporations on the December 31 included in such year but is treated as an additional member under paragraph (3).

(2) *Excluded members.* A corporation which is a member of a controlled group of corporations on December 31 of any taxable year shall be treated as an excluded member of such group for the taxable year including such December 31 if such corporation—

(A) Is a member of such group for less than one-half the number of days in such taxable year which precede such December 31,

(B) Is exempt from taxation under section 501(a) (except a corporation which is subject to tax on its unrelated business taxable income under section 511) for such taxable year,

(C) Is a foreign corporation subject to tax under section 881 for such taxable year,

(D) Is an insurance company subject to taxation under section 802 or section 821 (other than an insurance company which is a member of a controlled group described in subsection (a)(4)), or

(E) Is a franchised corporation, as defined in subsection (f)(4).

(3) *Additional members.* A corporation which—

(A) Was a member of a controlled group of corporations at any time during a calendar year,

(B) Is not a member of such group on December 31 of such calendar year, and

(C) Is not described, with respect to such group, in subparagraph (B), (C), (D), or (E) of paragraph (2),

shall be treated as an additional member of such group on December 31 for its taxable year including such December 31 if it was a member of such group for one-half (or more) of the number of days in such taxable year which precede such December 31.

(4) *Overlapping groups.* If a corporation is a component member of more than one controlled group of corporations with respect to any taxable year, such corporation shall be treated as a component member of only one controlled group. The determination as to the group of which such corporation is a component member shall be made under regulations prescribed by the Secretary or his delegate which are consistent with the purposes of this part.

(c) *Certain stock excluded*—(1) *General rule.* For purposes of this part, the term "stock" does not include—

(A) Nonvoting stock which is limited and preferred as to dividends,

(B) Treasury stock, and

(C) Stock which is treated as "excluded stock" under paragraph (2).

(2) *Stock treated as "excluded stock"*—(A) *Parent-subsidiary controlled group.* For purposes of subsection (a)(1), if a corporation (referred to in this paragraph as "parent corporation") owns (within the meaning of subsections (d)(1) and (e)(4)), 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock in another corporation (referred to in this paragraph as "subsidiary corporation"), the following stock of the subsidiary corporation shall be treated as excluded stock—

(i) Stock in the subsidiary corporation held by a trust which is part of a plan of deferred compensation for the benefit of the employees of the parent corporation or the subsidiary corporation,

(ii) Stock in the subsidiary corporation owned by an individual (within the meaning of subsection (d)(2)) who is a principal stockholder or officer of the parent corporation. For purposes of this clause, the term "principal stockholder" of a corporation means an individual who owns (within the meaning of subsection (d)(2)) 5 percent or more of the total combined voting power of all classes of stock entitled to vote or 5 percent or more of the total value of shares of all classes of stock in such corporation, or

(iii) Stock in the subsidiary corporation owned (within the meaning of subsection (d)(2)) by an employee of the subsidiary corporation if such stock is subject to conditions which run in favor of such parent (or subsidiary) corporation and which substantially restrict or limit the employee's right (or if the employee constructively owns such stock, the direct owner's right) to dispose of such stock.

(B) *Brother-sister controlled group.* For purposes of subsection (a)(2), if a person who is an individual, estate, or trust (referred to in this paragraph as "common owner") owns (within the meaning of subsection (d)(2)), 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock in a corporation, the following stock of such corporation shall be treated as excluded stock—

(i) Stock in such corporation held by an employees' trust described in section 401(a) which is exempt from tax under section 501

(a), if such trust is for the benefit of the employees of such corporation, or

(ii) Stock in such corporation owned (within the meaning of subsection (d)(2)) by an employee of the corporation if such stock is subject to conditions which run in favor of such common owner (or such corporation) and which substantially restrict or limit the employee's right (or if the employee constructively owns such stock, the direct owner's right) to dispose of such stock. If a condition which limits or restricts the employee's right (or the direct owner's right) to dispose of such stock also applies to the stock held by the common owner pursuant to a bona fide reciprocal stock purchase arrangement, such condition shall not be treated as one which restricts or limits the employee's right to dispose of such stock.

(d) *Rules for determining stock ownership*—(1) *Parent-subsidiary controlled group.* For purposes of determining whether a corporation is a member of a parent-subsidiary controlled group of corporations (within the meaning of subsection (a)(1)), stock owned by a corporation means—

(A) Stock owned directly by such corporation, and

(B) Stock owned with the application of subsection (e)(1).

(2) *Brother-sister controlled group.* For purposes of determining whether a corporation is a member of a brother-sister controlled group of corporations (within the meaning of subsection (a)(2)), stock owned by a person who is an individual, estate, or trust means—

(A) Stock owned directly by such person, and

(B) Stock owned with the application of subsection (e).

(e) *Constructive ownership*—(1) *Options.* If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(2) *Attribution from partnerships.* Stock owned, directly or indirectly, by or for a partnership shall be considered as owned by any partner having an interest of 5 percent or more in either the capital or profits of the partnership in proportion to his interest in capital or profits, whichever such proportion is the greater.

(3) *Attribution from estates or trusts.* (A) Stock owned, directly or indirectly, by or for an estate or trust shall be considered as owned by any beneficiary who has an actuarial interest of 5 percent or more in such stock, to the extent of such actuarial interest. For purposes of this subparagraph, the actuarial interest of each beneficiary shall be determined by assuming the maximum exercise of discretion by the fiduciary in favor of such beneficiary and the maximum use of such stock to satisfy his rights as a beneficiary.

(B) Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners) shall be considered as owned by such person.

(C) This paragraph shall not apply to stock owned by any employees' trust described in section 401(a) which is exempt from tax under section 501(a).

(4) *Attribution from corporations.* Stock owned, directly or indirectly, by or for a corporation shall be considered as owned by any person who owns (within the meaning of subsection (d)) 5 percent or more in value of its stock in that proportion which the value of the stock which such person so owns bears to the value of all the stock in such corporation.

(5) *Spouse.* An individual shall be considered as owning stock in a corporation owned, directly or indirectly, by or for his spouse (other than a spouse who is legally separated from the individual under a decree of divorce whether interlocutory or final, or a decree of separate maintenance), except in the case of a corporation with respect to which each of the following conditions is satisfied for its taxable year—

(A) The individual does not, at any time during such taxable year, own directly any stock in such corporation;

(B) The individual is not a director or employee and does not participate in the management of such corporation at any time during such taxable year;

(C) Not more than 50 percent of such corporation's gross income for such taxable year was derived from royalties, rents, dividends, interest, and annuities; and

(D) Such stock in such corporation is not, at any time during such taxable year, subject to conditions which substantially restrict or limit the spouse's right to dispose of such stock and which run in favor of the individual or his children who have not attained the age of 21 years.

(6) *Children, grandchildren, parents, and grandparents*—(A) *Minor children.* An individual shall be considered as owning stock owned, directly or indirectly, by or for his children who have not attained the age of 21 years, and if the individual has not attained the age of 21 years, the stock owned, directly or indirectly, by or for his parents.

(B) *Adult children and grandchildren.* An individual who owns (within the meaning of subsection (d)(2), but without regard to this subparagraph) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock in a corporation shall be considered as owning the stock in such corporation owned, directly or indirectly, by or for his parents, grandparents, grandchildren, and children who have attained the age of 21 years.

(C) *Adopted child.* For purposes of this section, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(f) *Other definitions and rules*—(1) *Employee defined.* For purposes of this section the term "employee" has the same meaning such term is given in section 3306(i).

(2) *Operating rules*—(A) *In general.* Except as provided in subparagraph (B), stock constructively owned by a person by reason of the application of paragraph (1), (2), (3), (4), (5), or (6) of subsection (e) shall, for purposes of applying such paragraphs, be treated as actually owned by such person.

(B) *Members of family.* Stock constructively owned by an individual by reason of the application of paragraph (5) or (6) of subsection (e) shall not be treated as owned by him for purposes of again applying such paragraphs in order to make another the constructive owner of such stock.

(3) *Special rules.* For purposes of this section—

(A) If stock may be considered as owned by a person under subsection (e) (1) and under any other paragraph of subsection (e), it shall be considered as owned by him under subsection (e)(1).

(B) If stock is owned (within the meaning of subsection (d)) by two or more persons, such stock shall be considered as owned by the person whose ownership of such stock results in the corporation being a component member of a controlled group. If by reason of the preceding sentence, a corporation would (but for this sentence) become a component member of two controlled groups, it shall be treated as a component member of one controlled group. The determination as to the group of which such corporation is a component member shall be made under regulations prescribed by the Secretary or his delegate which are consistent with the purposes of this part.

(C) If stock is owned by a person within the meaning of subsection (d) and such ownership results in the corporation being a component member of a controlled group, such stock shall not be treated as excluded stock under subsection (e)(2), if by reason of treating such stock as excluded stock the result is that such corporation is not a component member of a controlled group of corporations.

(4) *Franchised corporation.* If—

(A) A parent corporation (as defined in subsection (c)(2)(A)), or a common owner (as defined in subsection (c) (2) (B)), of a corporation which is a member of a controlled group of corporations is under a duty (arising out of a written agreement) to sell stock of such corporation (referred to in this paragraph as "franchised corporation") which is franchised to sell the products of another member, or the common owner, of such controlled group;

(B) Such stock is to be sold to an employee (or employees) of such franchised corporation pursuant to a bona fide plan designed to eliminate the stock ownership of the parent corporation or of the common owner in the franchised corporation;

(C) Such plan—

(i) Provides a reasonable selling price for such stock, and

(ii) Requires that a portion of the employee's share of the profits of such corporation (whether received as compensation or as a dividend) be applied to the purchase of such stock (or the purchase of notes, bonds, debentures or other similar evidence of indebtedness of such franchised corporation held by such parent corporation or common owner);

(D) Such employee (or employees) owns directly more than 20 percent of the total value of shares of all classes of stock in such franchised corporation;

(E) More than 50 percent of the inventory of such franchised corporation is acquired from members of the controlled group, the common owner, or both; and

(F) All of the conditions contained in subparagraphs (A), (B), (C), (D), and (E) have been met for one-half (or more) of the number of days preceding the December 31 included within the taxable year (or if the taxable year does not include December 31, the last day of such year) of the franchised corporation,

then such franchised corporation shall be treated as an excluded member of such group, under subsection (b)(2), for such taxable year.

[Sec. 1563 as added by sec. 235(a), Rev. Act 1964 (78 Stat. 116).]

§ 1.1563-1 Definition of controlled group of corporations and component members.

(a) *Controlled group of corporations*—(1) *In general.* For purposes of sections 1561 through 1563 and the regulations thereunder, the term "controlled group of corporations" means any group of corporations which is either a "parent-subsidiary controlled group" (as defined in subparagraph (2) of this paragraph), a "brother-sister controlled group" (as defined in subparagraph (3) of this paragraph), a "combined group" (as defined in subparagraph (4) of this paragraph), or an "insurance group" (as defined in subparagraph (5) of this paragraph). For the exclusion of certain stock for purposes of applying the definitions contained in this paragraph, see section 1563(c) and § 1.1563-2.

(2) *Parent-subsidiary controlled group.* (i) The term "parent-subsidiary controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if—

(*a*) Stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned (directly and with the application of paragraph (b)(1) of § 1.1563–3, relating to options) by one or more of the other corporations; and

(*b*) The common parent corporation owns (directly and with the application of paragraph (b)(1) of § 1.1563–3, relating to options) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

(ii) The definition of a parent-subsidiary controlled group of corporations may be illustrated by the following examples:

Example (1). P Corporation owns stock possessing 80 percent of the total combined voting power of all classes of stock entitled to vote of S Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P and S.

Example (2). Assume the same facts as in example (1). Assume further that S owns stock possessing 80 percent of the total value of shares of all classes of stock of T Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P, S, and T. The result would be the same if P, rather than S, owned the T stock.

Example (3). L Corporation owns 80 percent of the only class of stock of M Corporation and M, in turn, owns 40 percent of the only class of stock of O Corporation. L also owns 80 percent of the only class of stock of N Corporation and N, in turn, owns 40 percent of the only class of stock of O. L is the common parent of a parent-subsidiary controlled group consisting of member corporations L, M, N, and O.

Example (4). X Corporation owns 75 percent of the only class of stock of Y and Z Corporations; Y owns all the remaining stock of Z; and Z owns all the remaining stock of Y. Since intercompany stockholdings are excluded (that is, are not treated as outstanding) for purposes of determining whether X owns stock possessing at least 80 percent of the voting power or value of at least one of the other corporations, X is treated as the owner of stock possessing 100 percent of the voting power and value of Y and of Z for purposes of subdivision (1)(*b*) of this subparagraph. Also, stock possessing 100 percent of the voting power and value of Y and Z is owned by the other corporations in the group within the meaning of subdivision (1)(*a*) of this subparagraph. (X and Y together own stock possessing 100 percent of the voting power and value of Z, and X and Z together own stock possessing 100 percent of the voting power and value of Y.) Therefore, X is the common parent of a parent-subsidiary controlled group of corporations consisting of member corporations X, Y, and Z.

(3) *Brother-sister controlled group.* (i) The term "brother-sister controlled group" means two or more corporations if stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations is owned (directly and with the application of the rules contained in paragraph (b) of § 1.1563–3) by one person who is an individual, estate, or trust. For purposes of this section and § 1.1562–5 (relating to continuing and successor controlled groups), such person shall be referred to as the "common owner" of the brother-sister controlled group.

(ii) The definition of a brother-sister controlled group of corporations may be illustrated by the following example:

Example. Individual A owns stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote of corporation W. A also owns stock possessing at least 80 percent of the total value of shares of all classes of stock of corporations X, Y, and Z. A is the common owner of a brother-sister controlled group consisting of member corporations W, X, Y, and Z.

(4) *Combined group.* (i) The term "combined group" means any group of three or more corporations, if—

(*a*) Each such corporation is a member of either a parent-subsidiary controlled group of corporations or a brother-sister controlled group of corporations, and

(*b*) At least one of such corporations is the common parent of a parent-subsidiary controlled group and also is a member of a brother-sister controlled group.

For purposes of this section and § 1.1562–5, the common owner of such brother-sister controlled group shall be referred to as the common owner of the combined group.

(ii) The definition of a combined group of corporations may be illustrated by the following examples:

Example (1). Smith, an individual, owns stock possessing 80 percent of the total combined voting power of all classes of the stock of corporations X and Y. Y, in turn, owns stock possessing 80 percent of the total combined voting power of all classes of the stock of corporation Z. Since—

(*a*) X, Y, and Z are each members of either a parent-subsidiary or brother-sister controlled group of corporations, and

(*b*) Y is the common parent of a parent-subsidiary controlled group of corporations consisting of Y and Z, and also is a member of a brother-sister controlled group of corporations consisting of X and Y,

Smith is the common owner of a combined group consisting of member corporations X, Y, and Z.

Example (2). Assume the same facts as in example (1), and further assume that corporation X owns 80 percent of the total value of shares of all classes of stock of corporation T. Smith is the common owner of a combined group of corporations consisting of member corporations X, Y, Z, and T.

(5) *Insurance group.* (i) The term "insurance group" means two or more insurance companies subject to taxation under section 802 each of which is a member of a controlled group of corporations described in subparagraph (2), (3), or (4) of this paragraph. Such insurance companies shall be treated as a controlled group of corporations separate from any other corporations which are members of the controlled group described in such subparagraph (2), (3) or (4). For purposes of this section and § 1.1562–5, the common parent of the controlled group described in subparagraph (2) of this paragraph, or the common owner of the controlled group described in subparagraph (3) or (4) of this paragraph, shall be referred to as the common parent or the common owner of the insurance group, as the case may be.

(ii) The definition of an insurance group may be illustrated by the following example:

Example. Corporation P owns all the stock of corporation I which, in turn, owns all the stock of corporation X. P also owns all the stock of corporation Y which, in turn, owns all the stock of corporation J. I and J are life insurance companies subject to taxation under section 802 of the Code. Since I and J are members of a parent-subsidiary controlled group of corporations, such companies are treated as members of an insurance group separate from the parent-subsidiary controlled group consisting of P, X, and Y. For purposes of this section and § 1.1563–5, P is referred to as the common parent of the insurance group even though P is not a member of such group.

(6) *Voting power of stock.* For purposes of § 1.1562–5, this section, and §§ 1.1563–2 and 1.1563–3, in determining whether the stock owned by a person (or persons) possesses a certain percentage of the total combined voting power of all classes of stock entitled to vote of a corporation, consideration will be given to all the facts and circumstances of each case. A share of stock will generally be considered as possessing the voting power accorded to such share by the corporate charter, by-laws, or share certificate. On the other hand, if there is any agreement, whether express or implied, that a shareholder will not vote his stock in a corporation, the formal voting rights possessed by his stock may be disregarded in determining the percentage of the total combined voting power possessed by the stock owned by other shareholders in the corporation, if the result is that the corporation becomes a component member of a controlled group of corporations. Moreover, if a shareholder agrees to vote his stock in a corporation in the manner specified by another shareholder in the corporation, the voting rights possessed by the stock owned by the first shareholder may be considered to be possessed by the stock owned by such other shareholder if the result is that the corporation becomes a component member of a controlled group of corporations.

(b) *Component members*—(1) *In general.* For purposes of sections 1561 through 1563 and the regulations thereunder, a corporation is a component member of a controlled group of corporations on a December 31 (and with respect to the taxable year which includes such December 31) if such corporation—

(i) Is a member of such controlled group on such December 31 and is not treated as an excluded member under subparagraph (2) of this paragraph, or

(ii) Is not a member of such controlled group on such December 31 but is treated as an additional member under subparagraph (3) of this paragraph.

(2) *Excluded members.* (i) A corporation, which is a member of a controlled group of corporations on the December 31 included within its taxable year, but was a member of such group for less than one-half of the number of days in such taxable year which precede such December 31, shall be treated as an excluded member of such group on such December 31.

(ii) A corporation which is a member of a controlled group of corporations on any December 31 shall be treated as an excluded member of such group on such date if, for its taxable year including such date, such corporation is—

(*a*) Exempt from taxation under section 501(a) (except a corporation which has unrelated business taxable income for such taxable year which is subject to tax under section 511) or 521,

(*b*) A foreign corporation not engaged in trade or business within the United States,

(*c*) An electing small business corporation (as defined in section 1371(b)),

(*d*) A franchised corporation (as defined in section 1563(f)(4) and § 1.1563–4), or

(*e*) An insurance company subject to taxation under section 802 or 821, except that an insurance company taxable under section 802 which (without regard to this subdivision) is a component member of an insurance group described in paragraph (a)(5) of this section shall not be treated as an excluded member of such insurance group.

(iii) A corporation which has a taxable year ending on December 31, 1963, shall be treated as an excluded member of a controlled group on such date.

(3) *Additional members.* A corporation which—

(i) Is not a member of a controlled group of corporations on the December 31 included within its taxable year, and

(ii) Is not described, with respect to such taxable year, in subparagraph (2)(ii) (*a*), (*b*), (*c*), (*d*), or (*e*), or (2)(iii) of this paragraph,

shall be treated as an additional member of such group on such December 31 if it was a member of such group for one-half (or more) of the number of days in such taxable year which precede such December 31.

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

Example (1). Brown, an individual, owns all the stock of corporations W and X on each day of 1964. W and X each uses the calendar year as its taxable year. On January 1, 1964, Brown also owns all the stock of corporation Y (a fiscal year corporation with a taxable year beginning on July 1, 1964, and ending on June 30, 1965) which stock he sells on October 15, 1964. On December 1, 1964, Brown purchases all the stock of corporation Z (a fiscal year corporation with a taxable year beginning on September 1, 1964, and ending on August 31, 1965). On December 31, 1964, Brown is the common owner of a brother-sister controlled group of corporations consisting of member corporations W, X, and Z. However, the component members of the group on such December 31 are W, X, and Y. Under subparagraph (2)(i) of this paragraph, Z is treated as an excluded member of the group on December 31, 1964, since Z was a member of the group for less than one-half of the number of days (29 out of 121 days) during the period beginning on September 1, 1964 (the first day of its taxable year) and ending on December 30, 1964. Under subparagraph (3) of this paragraph, Y is treated as an additional member of the group on December 31, 1964, since Y was a member of the group for at least one-half of the number of days (107 out of 183 days) during the period beginning on July 1, 1964 (the first day of its taxable year) and ending on December 30, 1964.

Example (2). On January 1, 1964, corporation P owns all the stock of corporation S, which in turn owns all the stock of corporation S–1. On November 1, 1964, P purchases all of the stock of corporation X from the public and sells all of the stock of S to the public. Corporation X owns all the stock of corporation Y during 1964. P, S, S–1, X, and Y file their returns on the basis of the calendar year. On December 31, 1964, P, X, and Y are members of a parent-subsidiary controlled group of corporations; also, corporations S and S–1 are members of a different parent-subsidiary controlled group on such date. However, since X and Y have been members of the parent-subsidiary controlled group of which P is the common parent for less than one-half the number of days during the period January 1 through December 30, 1964, they are not component members of such group on such date. On the other hand, X and Y have been members of a parent-subsidiary controlled group of which X is the common parent for at least one-half the number of days during the period January 1 through December 30, 1964, and therefore they are component members of such group on December 31, 1964. Also since S and S–1 were members of the parent-subsidiary controlled group of which P is the common parent for at least one-half the number of days in the taxable years of each such corporation during the period January 1 through December 30, 1964, P, S, and S–1 are component members of such group on December 31, 1964.

Example (3). Throughout 1964, corporation M owns all the stock of corporation F which, in turn, owns all the stock of corporations L–1, L–2, X, and Y. M is a domestic mutual insurance company subject to taxation under section 821, F is a foreign corporation not engaged in trade or business within the United States, L–1 and L–2 are domestic life insurance companies subject to taxation under section 802, and X and Y are domestic corporations subject to tax under section 11 of the Code. Each corporation uses the calendar year as its taxable year. On December 31, 1964, M, F, L–1, L–2, X, and Y are members of a parent-subsidiary controlled group of corporations. However, under subparagraph (2)(ii) of this paragraph, M, F, L–1, and L–2 are treated as excluded members of the group on December 31, 1964. Thus, on December 31, 1964, the component members of the parent-subsidiary controlled group of which M is the common parent include only X and Y. Furthermore, since subparagraph (2)(ii)(*c*) of this paragraph does not result in L–1 and L–2 being treated as excluded members of an insurance group, L–1 and L–2 are component members of an insurance group on December 31, 1964.

(5) *Application of constructive ownership rules.* For purposes of subparagraphs (2)(i) and (3) of this paragraph, it is necessary to determine whether a corporation was a member of a controlled group of corporations for one-half (or more) of the number of days in its taxable year which precede the December 31 falling within such taxable year. Therefore, the constructive ownerships rules contained in paragraph (b) of § 1.1563–3 (to the extent applicable in making such determination) must be applied on a day-by-day basis. For example, if P Corporation owns all the stock of X Corporation on each day of 1964, and on December 30, 1964, acquires an option to purchase all the stock of Y Corporation (a calendar-year taxpayer which has been in existence on each day of 1964), the application of paragraph (b)(1) of § 1.1563–3 on a day-by-day basis results in Y being a member of the brother-sister controlled group on only one day of Y's 1964 year which precedes December 31, 1964. Accordingly, since Y is not a member of such group for one-half or more of the number of days in its 1964 year preceding December 31, 1964, Y is treated as an excluded member of such group on December 31, 1964.

(c) *Overlapping groups.* If on a December 31 a corporation is a component member of a controlled group of corporations by reason of ownership of stock possessing 80 percent or more of the total value of shares of all classes of stock of the corporation, and if on such December 31 such corporation is also a component member of another controlled group of corporations by reason of ownership of other stock (that is, stock not used to satisfy the 80-percent-or-more total value test) possessing 80 percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote, then such corporation shall be treated as a component member only of the controlled group of which it is a component member by reason of the ownership of 80 percent or more of the total value of its shares.

§ 1.1563–2 Excluded stock.

(a) *Certain stock excluded.* For purposes of sections 1561 through 1563 and the regulations thereunder, the term "stock" does not include—

(1) Nonvoting stock which is limited and preferred as to dividends, and

(2) Treasury stock.

(b) *Stock treated as excluded stock—*(1) *Parent-subsidiary controlled group.* If a corporation (hereinafter in this paragraph referred to as "parent corporation") owns 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock in another corporation (hereinafter in this paragraph referred to as "subsidiary corporation"), the provisions of subparagraph (2) of this paragraph shall apply. For purposes of this subparagraph, stock owned by a corporation means stock owned directly plus stock owned with the application of the constructive ownership rules of paragraph (b) (1) and (4) of § 1.1563–3, relating to options and attribution from corporations. In determining whether the stock owned by a corporation possesses the requisite percentage of the total combined voting power of all classes of stock entitled to vote of another corporation, see paragraph (a)(6) of § 1.1563–1.

(2) *Stock treated as not outstanding.* If the provisions of this subparagraph apply, then for purposes of determining whether the parent corporation or the subsidiary corporation is a member of a parent-subsidiary controlled group of corporations within the meaning of paragraph (a)(2) of § 1.1563–1, the following stock of the subsidiary corporation shall, except as otherwise provided in paragraph (c) of this section, be treated as if it were not outstanding:

(i) *Plan of deferred compensation.* Stock in the subsidiary corporation held by a trust which is part of a plan of deferred compensation for the benefit of the employees of the parent corporation or the subsidiary corporation. The term "plan of deferred compensation" shall have the same meaning such term has in section 406(a)(3) and the regulations thereunder.

(ii) *Principal stockholders and officers.* Stock in the subsidiary corporation owned (directly and with the application of the rules contained in paragraph (b) of § 1.1563–3) by an individual who is a principal stockholder or officer of the parent corporation. A principal stockholder of the parent corporation is an individual who owns (directly and with the application of the rules contained in paragraph (b) of § 1.1563–3) 5 percent or more of the total combined voting power of all classes of stock entitled to vote or 5 percent or more of the total value of shares of all classes of stock of the parent corporation. An officer of the parent corporation includes the president, vice-presidents, general manager, treasurer, secretary, and comptroller of such corporation, and any other person who performs duties corresponding to those normally performed by persons occupying such positions.

(iii) *Employees.* Stock in the subsidiary corporation owned (directly and with the application of the rules contained in paragraph (b) of § 1.1563–3) by an employee of the subsidiary corporation if such stock is subject to conditions which substantially restrict or limit the employee's right (or if the employee constructively owns such stock, the direct owner's right) to dispose of such stock and which run in favor of the parent or subsidiary corporation. In general, any condition which extends, directly or indirectly, to the parent corporation or the subsidiary corporation preferential rights with respect to the acquisition of the employee's (or direct owner's) stock will be considered to be a condition described in the preceding sentence. It is not necessary, in order for a condition to be considered to be in favor of the parent corporation or the subsidiary corporation, that the parent or subsidiary be extended a discriminatory concession with respect to the price of the stock. For example, a condition whereby the parent corporation is given a right of first refusal with respect to any stock of the subsidiary corporation offered by an employee for sale is a condition which substantially restricts or limits the employee's right to dispose of such stock and runs in favor of the parent corporation. Moreover, any legally enforceable condition which prohibits the employee from disposing of his stock without the consent of the parent (or a subsidiary of the parent) will be considered to be a substantial limitation running in favor of the parent corporation.

(3) *Brother-sister controlled group.* If a person (hereinafter in this paragraph referred to as common owner) who is an individual, estate, or trust owns stock possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of all classes of stock in a corporation, the provisions of subparagraph (4) of this paragraph shall apply. For purposes of this subparagraph, stock owned by a person means stock owned directly plus stock owned with the application of the rules contained in paragraph (b) of § 1.1563–3. In determining whether the stock owned by a person possesses the requisite percentage of the total combined voting power of all classes of stock entitled to vote of a corporation, see paragraph (a)(6) of § 1.1563–1.

(4) *Stock treated as not outstanding.* If the provisions of this subparagraph apply, then for purposes of determining whether a corporation is a member of a brother-sister controlled group of corporations within the meaning of paragraph (a)(3) of § 1.1563–1, the following stock of such corporation shall, except as otherwise provided in paragraph (c) of this section, be treated as if it were not outstanding:

(i) *Exempt employees' trust.* Stock in such corporation held by an employees' trust described in section 401(a) which is exempt from tax under section 501(a), if such trust is for the benefit of the employees of such corporation.

(ii) *Employees.* Stock in such corporation owned (directly and with the application of the rules contained in paragraph (b) of § 1.1563–3) by an employee of such corporation if such stock is subject to conditions which run in favor of the common owner of such corporation (or in favor of such corporation) and which substantially restrict or limit the employee's right (or if the employee constructively owns such stock, the direct owner's right) to dispose of such stock. The principles of subparagraph (2)(iii) of this paragraph shall apply in determining whether a condition satisfies the requirements of the preceding sentence. Thus, in general, a condition which extends, directly or indirectly, to the common owner or such corporation preferential rights with respect to the acquisition of the employee's (or direct owner's) stock will be considered to be a condition which satisfies such requirements. For purposes of this subdivision, if a condition which restricts or limits an employee's right (or the direct owner's right) to dispose of his stock also applies to the stock in such corporation held by the common owner pursuant to a bona fide reciprocal stock purchase arrangement, such condition shall not be treated as one which restricts or limits the employee's right to dispose of such stock. An example of a reciprocal stock purchase arrangement is an agreement whereby the common owner and the employee are given a right of first refusal with respect to stock of the employer corporation owned by the other party. If, however, the agreement also provides that the common owner has the right to purchase the stock of the employer corporation owned by the employee in the event that the corporation should discharge the employee for reasonable cause, the purchase arrangement would not be reciprocal within the meaning of this subdivision.

(5) *Other controlled groups.* The provisions of subparagraphs (1), (2), (3), and (4) of this paragraph shall apply in determining whether a corporation is a member of a combined group (within the meaning of paragraph (a)(4) of § 1.1563–1) or an insurance group (within the meaning of paragraph (a)(5) of § 1.1563–1). For example, under paragraph (a)(4) of § 1.1563–1, in order for a corporation to be a member of a combined group such corporation must be a member of a parent-subsidiary group or a brother-sister group. Accordingly, the excluded stock rules provided by this paragraph are applicable in determining whether the corporation is a member of such group.

(6) *Meaning of employee.* For purposes of this section §§ 1.1563–3 and 1.1563–4, the term "employee" has the same meaning such term is given in section 3306(i) of the Code (relating to definitions for purposes of the Federal Unemployment Tax Act). Accordingly, the term employee as used in such sections includes an officer of a corporation.

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

Example (1). Corporation P owns 70 of the 100 shares of the only class of stock of corporation S. The remaining shares of S are owned as follows: 4 shares by Jones (the general manager of P), and 26 shares by Smith (who also owns 5 percent of the total combined voting power of the stock of P). P satisfies the 50 percent stock ownership requirement of subparagraph (1) of this paragraph with respect to S. Since Jones is an officer of P and Smith is a principal stockholder of P, under subparagraph (2)(ii) of this paragraph the S stock owned by Jones and Smith is treated as not outstanding for purposes of determining whether P and S are members of a parent-subsidiary controlled group of corporations within the meaning of paragraph (a)(2) of § 1.1563–1. Thus, P is considered to own stock possessing 100 percent (70÷70) of the total voting power and value of all the S stock. Accordingly, P and S are members of a parent-subsidiary controlled group of corporations.

Example (2). Assume the same facts as in example (1) and further assume that Jones owns 15 shares of the 100 shares of the only class of stock of corporation S–1, and corporation S owns 75 shares of such stock. P satisfies the 50 percent stock ownership requirement of subparagraph (1) of this paragraph with respect to S–1 since P is considered as owning 52.5 percent (70 percent x 75 percent) of the S–1 stock with the application of paragraph (b)(4) of § 1.1563–3. Since Jones is an officer of P, under subparagraph (2)(ii) of this paragraph, the S–1 stock owned by Jones is treated as not outstanding for purposes of determining whether S–1 is a member of the parent-subsidiary controlled group of corporations. Thus, S is considered to own stock possessing 88.2 percent (75÷85) of the voting power and value of the S–1 stock. Accordingly, P, S, and S–1 are members of a parent-subsidiary controlled group of corporations.

Example (3). Corporation X owns 60 percent of the only class of stock of corporation Y. Davis, the president of Y, owns the remaining 40 percent of the stock of Y. Davis has agreed that if he offers his stock in Y for sale he will first offer the stock to X at a price equal to the fair market value of the stock on the first date the stock is offered for sale. Since Davis is an employee of Y within the meaning of section 3306(i) of the Code, and his stock in Y is subject to a condition which substantially restricts or limits his right to dispose of such stock and runs in favor of X, under subparagraph (2)(iii) of this paragraph such stock is treated as if it were not outstanding for purposes of determining whether X and Y are members of a parent-subsidiary controlled group of corporations. Thus, X is considered to own stock possessing 100 percent of the voting power and value of the stock of Y. Accordingly, X and Y are members of a parent-subsidiary controlled group of corporations. The result would be the same if Davis's wife, instead of Davis, owned directly the 40 percent stock interest in Y and such stock was subject to a right of first refusal running in favor of X.

(c) *Exception*—(1) *General.* If stock of a corporation is owned by a person directly or with the application of the rules contained in paragraph (b) of § 1.1563–3 and such ownership results in the corporation being a component member of a controlled group of corporations on a December 31, then the stock shall not be treated as excluded stock under the provisions of paragraph (b) of this section if the result of applying such provisions is that such corporation is not a component member of a controlled group of corporations on such December 31.

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

Example. On each day of 1965, corporation P owns directly 50 of the 100 shares of the only class of stock of corporation S. Jones, an officer of P, owns directly 30 shares of S stock and P has an option to acquire such 30 shares from Jones. The remaining shares of S are owned by unrelated persons. If, pursuant to the provisions of paragraph (b)(2)(ii) of this section, the 30 shares of S stock owned directly by Jones is treated as not outstanding, the result is that P would be treated as owning stock possessing only 71 percent (50÷70) of the total voting power and value of S stock, and S would not be a component member of a controlled group of corporations on December 31, 1965. However, since P is considered as owning the 30 shares of S stock with the application of paragraph (b)(1) of this section, and such ownership plus the S stock directly owned by P (50 shares) results in S being a component member of a controlled group of corporations on December 31, 1965, the provisions of this paragraph apply. Therefore, the provisions of paragraph (b)(2)(ii) of this section do not apply with respect to the 30 shares of S stock, and on December 31, 1965, S is a component member of a controlled group of corporations consisting of P and S.

§ 1.1563–3 Rules for determining stock ownership.

(a) *In general.* In determining stock ownership for purposes of §§ 1.1562–5, 1.1563–1, 1.1563–2, and this section, the constructive ownership rules of paragraph (b) of this section apply to the extent such rules are referred to in such sections. The application of such rules shall be subject to the operating rules and special rules contained in paragraphs (c) and (d) of this section.

(b) *Constructive ownership*—(1) *Options.* If a person has an option to acquire any outstanding stock of a corporation, such stock shall be considered as owned by such person. For purposes of this subparagraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock. For example, assume Smith owns an option to purchase 100 shares of the outstanding stock of M Corporation. Under this subparagraph, Smith is considered to own such 100 shares. The result would be the same if Smith owned an option to acquire the option (or one of a series of options) to purchase 100 shares of M stock.

(2) *Attribution from partnerships.* (i) Stock owned, directly or indirectly, by or for a partnership shall be considered as owned by any partner having an interest of 5 percent or more in either the capital or profits of the partnership in proportion to his interest in capital or profits, whichever such proportion is the greater.

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

Example. Green, Jones, and White, unrelated individuals, are partners in the GJW partnership. The partners' interests in the capital and profits of the partnership are as follows:

Partner	Capital	Profits
	Percent	*Percent*
Green	36	25
Jones	60	71
White	4	4

The GJW partnership owns the entire outstanding stock (100 shares) of X Corporation. Under this subparagraph, Green is considered to own the X stock owned by the partnership in proportion to his interest in capital (36 percent) or profits (25 percent), whichever such proportion is the greater. Therefore, Green is considered to own 36 shares of the X stock. However, since Jones has a greater interest in the profits of the partnership, he is considered to own the X stock in proportion to his interest in such profits. Therefore, Jones is considered to own 71 shares of the X stock. Since White does not have an interest of 5 percent or more in either the capital or profits of the partnership, he is not considered to own any shares of the X stock.

(3) *Attribution from estates or trusts.* (i) Stock owned, directly or indirectly, by or for an estate or trust shall be considered as owned by any beneficiary who has an actuarial interest of 5 percent or more in such stock, to the extent of such actuarial interest. For purposes of this subparagraph, the actuarial interest of each beneficiary shall be determined by assuming the maximum exercise of discretion by the fiduciary in favor of such beneficiary and the maximum use of such stock to satisfy his rights as a beneficiary. A beneficiary of an estate or trust who cannot under any circumstances receive any interest in stock held by the estate or trust, including the proceeds from the disposition thereof, or the income therefrom, does not have an actuarial interest in such stock. Thus, where stock owned by a decedent's estate has been specifically bequeathed to certain beneficiaries and the remainder of the estate is bequeathed to other beneficiaries, the stock is attributable only to the beneficiaries to whom it is specifically bequeathed. Similarly, a remainderman of a trust who cannot under any circumstances receive any interest in the stock of a corporation which is a part of the corpus of the trust (including any accumulated income therefrom or the proceeds from a disposition thereof) does not have an actuarial interest in such stock. However, an income beneficiary of a trust does have an actuarial interest in stock if he has any right to the income from such stock even though under the terms of the trust instrument such stock can never be distributed to him. The factors and methods prescribed in § 20.2031–7 of this chapter (Estate Tax Regulations) for use in ascertaining the value of an interest in property for estate tax purposes shall be used for purposes of this subdivision in determining a beneficiary's actuarial interest in stock owned directly or indirectly by or for a trust.

(ii) For the purposes of this subparagraph, property of a decedent shall be considered as owned by his estate if such property is subject to administration by the executor or administrator for the purposes of paying claims against the estate and expenses of administration notwithstanding that, under local law, legal title to such property vests in the decedent's heirs, legatees or devisees immediately upon death. With respect to an estate, the term "beneficiary" includes any person entitled to receive property of the decedent pursuant to a will or pursuant to laws of descent and distribution. A person shall no longer be considered a beneficiary of an estate when all the property to which he is entitled has been received by him, when he no longer has a claim against the estate arising out of having been a beneficiary, and when there is only a remote possibility that it will be necessary for the estate to seek the return of property or to seek payment from him by contribution or otherwise to satisfy claims against the estate or expenses of administration. When pursuant to the preceding sentence, a person ceases to be a beneficiary, stock owned by the estate shall not thereafter be considered owned by him.

(iii) Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under subpart E, part I, subchapter J of the Code (relating to grantors and others treated as substantial owners) is considered as owned by such person.

(iv) This subparagraph does not apply to stock owned by any employees' trust described in section 401(a) which is exempt from tax under section 501(a).

(4) *Attribution from corporations.* (i) Stock owned, directly or indirectly, by or for a corporation shall be considered as owned by any person who owns (within the meaning of section 1563(d)) 5 percent or more in value of its stock in that proportion which the value of the stock which such person so owns bears

to the value of all the stock in such corporation.

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

Example. Brown, an individual, owns 60 shares of the 100 shares of the only class of outstanding stock of corporation P. Smith, an individual, owns 4 shares of the P stock, and corporation X owns 36 shares of the P stock. Corporation P owns, directly and indirectly, 50 shares of the stock of corporation S. Under this subparagraph, Brown is considered to own 30 shares of the S stock ($^{60}/_{100} \times 50$), and X is considered to own 18 shares of the S stock ($^{36}/_{100} \times 50$). Since Smith does not own 5 percent or more in value of the P stock, he is not considered as owning any of the S stock owned by P. If, in this example, Smith's wife had owned directly 1 share of the P stock, Smith (and his wife) would each own 5 shares of the P stock, and therefore Smith (and his wife) would be considered as owning 2.5 shares of the S stock ($^{5}/_{100} \times 50$).

(5) *Spouse.* (i) Except as provided in subdivision (ii) of this subparagraph, an individual shall be considered to own the stock owned, directly or indirectly, by or for his spouse, other than a spouse who is legally separated from the individual under a decree of divorce, whether interlocutory or final, or a decree of separate maintenance.

(ii) An individual shall not be considered to own stock in a corporation owned, directly or indirectly, by or for his spouse on any day of a taxable year of such corporation, provided that each of the following conditions are satisfied with respect to such taxable year:

(*a*) Such individual does not, at any time during such taxable year, own directly any stock in such corporation.

(*b*) Such individual is not a member of the board of directors or an employee of such corporation and does not participate in the management of such corporation at any time during such taxable year.

(*c*) Not more than 50 percent of such corporation's gross income for such taxable year was derived from royalties, rents, dividends, interest, and annuities.

(*d*) Such stock in such corporation is not, at any time during such taxable year, subject to conditions which substantially restrict or limit the spouse's right to dispose of such stock and which run in favor of the individual or his children who have not attained the age of 21 years. The principles of paragraph (b)(2)(iii) of § 1.1563–2 shall apply in determining whether a condition is a condition described in the preceding sentence.

(iii) For purposes of subdivision (ii)(*c*) of this subparagraph, the gross income of a corporation for a taxable year shall be determined under section 61 and the regulations thereunder. The terms "royalties", "rents", "dividends", "interest", and "annuities" shall have the same meanings such terms are given for purposes of section 1244(c). See paragraph (g)(1)(ii), (iii), (iv), (v), and (vi) of § 1.1244(c)–1.

(6) *Children, grandchildren, parents, and grandparents.* (i) An individual shall be considered to own the stock owned, directly or indirectly, by or for his children who have not attained the age of 21 years, and, if the individual has not attained the age of 21 years, the stock owned, directly or indirectly, by or for his parents.

(ii) If an individual owns (directly, and with the application of the rules of this paragraph but without regard to this subdivision) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock in a corporation, then such individual shall be considered to own the stock in such corporation owned, directly or indirectly, by or for his parents, grandparents, grandchildren, and children who have attained the age of 21 years. In determining whether the stock owned by an individual possesses the requisite percentage of the total combined voting power of all classes of stock entitled to vote of a corporation, see paragraph (a)(6) of § 1.1563–1.

(iii) For purposes of section 1563, and §§ 1.1563–1 through 1.1563–4, a legally adopted child of an individual shall be treated as a child of such individual by blood.

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

Example—(a) Facts. Individual F owns directly 40 shares of the 100 shares of the only class of stock of Z Corporation. His son, M (20 years of age), owns directly 30 shares of such stock, and his son, A (30 years of age), owns directly 20 shares of such stock. The remaining 10 shares of the Z stock are owned by an unrelated person.

(*b*) *F's ownership.* Individual F owns 40 shares of the Z stock directly and is considered to own the 30 shares of Z stock owned directly by M. Since, for purposes of the more-than-50-percent stock ownership test contained in subdivision (ii) of this subparagraph, F is treated as owning 70 shares or 70 percent of the total voting power and value of the Z stock, he is also considered as owning the 20 shares owned by his adult son, A. Accordingly, F is considered as owning a total of 90 shares of the Z stock.

(*c*) *M's ownership.* Minor son, M, owns 30 shares of the Z stock directly, and is considered to own the 40 shares of Z stock owned directly by his father, F. However, M is not considered to own the 20 shares of Z stock owned directly by his brother, A, and constructively by F, because stock constructively owned by F by reason of family attribution is not considered as owned by him for purposes of making another member of his family the constructive owner of such stock. See paragraph (c)(2) of this section. Accordingly, M owns and is considered as owning a total of 70 shares of the Z stock.

(*d*) *A's ownership.* Adult son, A, owns 20 shares of the Z stock directly. Since, for purposes of the more-than-50-percent stock ownership test contained in subdivision (ii) of this subparagraph, A is treated as owning only the Z stock which he owns directly, he does not satisfy the condition precedent for the attribution of Z stock from his father. Accordingly, A is treated as owning only the 20 shares of Z stock which he owns directly.

(c) *Operating rules and special rules—*(1) *In general.* Except as provided in subparagraph (2) of this paragraph, stock constructively owned by a person by reason of the application of subparagraph (1), (2), (3), (4), (5), or (6) of paragraph (b) of this section shall, for purposes of applying such subparagraphs, be treated as actually owned by such person.

(2) *Members of family.* Stock constructively owned by an individual by reason of the application of subparagraph (5) or (6) of paragraph (b) of this section shall not be treated as owned by him for purposes of again applying such subparagraphs in order to make another the constructive owner of such stock.

(3) *Precedence of option attribution.* For purposes of this section, if stock may be considered as owned by a person under subparagraph (1) of paragraph (b) of this section (relating to option attribution) and under any other subparagraph of such paragraph, such stock shall be considered as owned by such person under subparagraph (1) of such paragraph.

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

Example (1). A, 30 years of age, has a 90 percent interest in the capital and profits of a partnership. The partnership owns all the outstanding stock of corporation X and X owns 60 shares of the 100 outstanding shares of corporation Y. Under subparagraph (1) of this paragraph, the 60 shares of Y constructively owned by the partnership by reason of subparagraph (4) of paragraph (b) of this section is treated as actually owned by the partnership for purposes of applying subparagraph (2) of paragraph (b) of this section. Therefore, A is considered as owning 54 shares of the Y stock (90 percent of 60 shares).

Example (2). Assume the same facts as in example (1). Assume further that B, who is 20 years of age and the brother of A, directly owns 40 shares of Y stock. Although the stock of Y owned by B is considered as owned by C (the father of A and B) under paragraph (b)(6)(i) of this section, under subparagraph (2) of this paragraph such stock may not be treated as owned by C for purposes of applying paragraph (b)(6)(ii) of this section in order to make A the constructive owner of such stock.

Example (3). Assume the same facts assumed for purposes of example (2), and further assume that C has an option to acquire the 40 shares of Y stock owned by his son, B. The rule contained in subparagraph (2) of this paragraph does not prevent the reattribution of such 40 shares to A because, under subparagraph (3) of this paragraph, C is considered as owning the 40 shares by reason of option attribution and not by reason of family attribution. Therefore, since A satisfies the more-than-50-percent stock ownership test contained in paragraph (b)(6)(ii) of this section with respect to Y, the 54 shares of Y stock constructively owned by C are reattributed to A, and A is considered as owning a total of 94 shares of Y stock.

(d) *Special rule of section 1563(f)(3)(B)—*(1) *In general.* If the same stock of a corporation is owned (within the meaning of section 1563(d)) by two or more persons, then such stock shall be treated as owned by the person whose ownership of such stock results in the corporation being a component member of a controlled group on a December 31 which has at least one other component member on such date.

(2) *Component member of more than one group.* (i) If, by reason of subparagraph (1) of this paragraph, a corporation would (but for this subparagraph)

become a component member of more than one controlled group on a December 31, such corporation shall be treated as a component member of only one such controlled group on such date. The determination as to which group such corporation is treated as a component member of shall be made in accordance with the rules contained in subdivisions (ii), (iii), and (iv) of this subparagraph.

(ii) In any case in which a corporation is a component member of a controlled group of corporations on a December 31 as a result of treating each share of its stock as owned only by the person who owns such share directly, then each such share shall be treated as owned by the person who owns such share directly.

(iii) If the application of subdivision (ii) of this subparagraph does not result in a corporation being treated as a component member of only one controlled group on a December 31, then the stock of such corporation described in subparagraph (1) of this paragraph shall be treated as owned by the one person described in such subparagraph who owns, directly and with the application of the rules contained in paragraph (b) (1), (2), (3), and (4) of this section, the stock possessing the greatest percentage of the total value of shares of all classes of stock of the corporation.

(iv) If the application of subdivision (ii) or (iii) of this subparagraph does not result in a corporation being treated as a component member of only one controlled group of corporations on a December 31, then the determination as to which group such corporation is treated as a component member of shall be made by the district director with whom such corporation files its income tax return for the taxable year which includes such date, unless the common owner (or the common parent) of each controlled group of which such corporation is a component member (determined without regard to this subparagraph), files an agreement within the time and in the manner provided in this subdivision. The agreement shall be in the form of a statement, signed by each person who is the common owner (or a person authorized to act on behalf of the common parent) of each such controlled group, stating that such corporation is assigned to one such controlled group by agreement of the parties in accordance with the provisions of this subdivision. The statement shall, in addition, provide all the information with respect to stock ownership by each of the common owners (or common parents) and other persons which is reasonably necessary in order to satisfy the district director with whom the statement is filed that the provisions of this paragraph have been properly applied. The statement shall be filed on or before the due date (including extensions of time) for the filing of the income tax return of such corporation for the taxable year including such December 31. (However, in the case of an agreement with respect to December 31, 1963, or December 31, 1964, the statement shall be considered as timely filed if filed on or before November 3, 1965.) An agreement under this subdivision once filed is irrevocable and effective for such taxable year and all subsequent taxable years of the corporation, unless subdivision (ii) or (iii) of this subparagraph applies or there is a substantial change in the stock ownership of such corporation.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples, in which each corporation referred to uses the calendar year as its taxable year and the stated facts are assumed to exist on each day of 1965 (unless otherwise provided in the example):

Example (1). Jones owns all the stock of corporation X and has an option to purchase from Smith all the outstanding stock of corporation Y. Smith does not own stock in any other corporation. Since the Y stock is considered as owned by two or more persons, under subparagraph (1) of this paragraph the Y stock is treated as owned only by Jones since his ownership results in Y being a component member of a controlled group of corporations on December 31, 1965. The result in this example would not be changed if Smith also owned all the stock of corporation Z on December 31, 1965, but had owned such stock for less than one-half of the number of days in Z's 1965 taxable year, since, under paragraph (b)(2)(i) of § 1.1563-1, Z would be treated as an excluded member of the brother-sister controlled group of which Smith is the common owner. Therefore, if Smith were treated as the owner of the Y stock, Y would not be a component member of a controlled group of corporations on December 31, 1965, which has at least one other component member on such date. Accordingly, the rule contained in subparagraph (1) of this paragraph requires that the Y stock be treated as owned by Jones.

Example (2). Individual W (the wife of H) owns directly all the stock of M Corporation, and such stock is not considered as owned by H because each of the conditions prescribed in paragraph (b)(5)(ii) of this section are satisfied with respect to M's 1965 year. Also, H owns directly 80 percent of the only class of stock of N Corporation and W owns the remaining 20 percent of the N stock. H does not own stock in any other corporation. Under the general spouse attribution rule of paragraph (b)(5)(i) of this section, H and W are each considered as owning 100 percent of the stock of N. Under the rule contained in subparagraph (1) of this paragraph, however, W will be treated as owning all the N stock during 1965, since only if the N stock owned directly by H is treated as owned by W (and W is treated as owning the stock she owns directly in N) will N be a component member of a controlled group with respect to its 1965 year.

Example (3). Assume the same facts as in example (2) except that H also owns directly all the stock of P Corporation. The P stock owned by H is not considered as owned by W because each of the conditions prescribed in paragraph (b)(5)(ii) of this section are satisfied with respect to P's 1965 year. Under subparagraph (2)(ii) of this paragraph, the stock of N Corporation owned directly by H and constructively by W (80 percent of the N stock) is treated as owned only by H since H's direct ownership of stock in N results in N being a component member of a brother-sister controlled group consisting of N and P. Accordingly, on December 31, 1965, N is treated as a component member of a brother-sister group of which H is the common owner and is not treated as a member of a brother-sister group consisting of N and M of which W would be the common owner.

Example (4). Assume the same facts assumed for purposes of example (3), except that H owns directly 25 percent of the only class of stock of corporation N, and W owns directly 26 percent of such stock. Further assume that P Corporation owns directly the remaining 49 percent of the N stock. Under section 1563(d)(2), H owns and is considered as owning 100 percent of the N stock (25 percent directly, plus 49 percent with the application of paragraph (b)(4) of this section (relating to attribution from corporations), plus 26 percent with the application of paragraph (b)(5)(i) of this section (relating to general rule of spouse attribution)). Also under section 1563(d)(2), W owns and is considered as owning 100 percent of the N stock (26 percent directly, plus 74 percent with the application of paragraph (b)(5)(i) of this section (relating to general rule of spouse attribution)). However, since H owns, directly and with the application of the rules contained in paragraph (b)(1), (2), (3), and (4) of this section, 74 percent of the N stock, and W owns, directly and with the application of such rules, only 26 percent of the N stock, under subparagraph (2)(iii) of this paragraph 100 percent of the N stock is treated as owned by H. Accordingly, on December 31, 1965, N is treated as a component member of a brother-sister controlled group consisting of N and P and is not treated as a member of a brother-sister group consisting of N and M of which W would be the common owner.

§ 1.1563-4 Franchised corporations.

(a) *In general.* For purposes of paragraph (b)(2)(ii)(*d*) of § 1.1563-1, a member of a controlled group of corporations shall be considered to be a franchised corporation for a taxable year if each of the following conditions is satisfied for one-half (or more) of the number of days preceding the December 31 included within such taxable year (or, if such taxable year does not include a December 31, for one-half or more of the number of days in such taxable year preceding the last day of such year):

(1) Such member is franchised to sell the products of another member, or the common owner, of such controlled group.

(2) More than 50 percent (determined on the basis of cost) of all the goods held by such member primarily for sale to its customers are acquired from members or the common owner of the controlled group, or both.

(3) The stock of such member is to be sold to an employee (or employees) of such member pursuant to a bona fide plan designed to eliminate the stock ownership of the parent corporation (as defined in paragraph (b)(1) of § 1.1563-2) or of the common owner (as defined in paragraph (b)(3) of § 1.1563-2) in such member.

(4) Such employee owns (or such employees in the aggregate own) directly more than 20 percent of the total value of shares of all classes of stock of such member. For purposes of this subparagraph, the determination of whether an employee (or employees) owns the requisite percentage of the total value of the stock of the member shall be made without regard to paragraph (b) of § 1.1563-2, relating to certain stock treated as excluded stock. Furthermore, if the corporation has more than one class of stock outstanding, the relative voting rights as between each such class of stock shall be disregarded in making such determination.

(b) *Plan for elimination of stock ownership.* (1) A plan referred to in paragraph (a) (3) of this section must—

(i) Provide a reasonable selling price for the stock of the member, and

(ii) Require that a portion of the employee's compensation or dividends, or both, from such member be applied to the purchase of such stock (or to the purchase of notes, bonds, debentures, or similar evidences of indebtedness of such member held by the parent corporation or the common owner).

It is not necessary, in order to satisfy the requirements of subdivision (ii) of this subparagraph, that the plan require that a percentage of every dollar of the compensation and dividends be applied to the purchase of the stock (or the indebtedness). The requirements of such subdivision are satisfied if an otherwise qualified plan provides that under certain specified conditions (such as a requirement that the member earn a specified profit) no portion of the compensation and/or dividends need be applied to the purchase of the stock (or indebtedness), provided such conditions are reasonable.

(2) A plan for the elimination of the stock ownership of the parent corporation or of the common owner will satisfy the requirements of paragraph (a) (3) of this section and subparagraph (1) of this paragraph even though it does not require that the stock of the member be sold to an employee (or employees) if it provides for the redemption of the stock of the member held by the parent or common owner and under the plan the amount of such stock to be redeemed during any period is calculated by reference to the profits of such member during such period.

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

[F.R. Doc. 65-8236; Filed, Aug. 4, 1965; 8:45 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Office of Emergency Planning

Section 213.3326 is amended to show the exception under Schedule C of the position of Technical Assistant to the Director of Telecommunications Management (Space Communications). Effective on publication in the FEDERAL REGISTER, subparagraph (2) is added to paragraph (c) of § 213.3326 as set out below.

§ 213.3326 Office of Emergency Planning.

* * * * *

(c) *Office of the Assistant Director for Telecommunications Management.* * * *

(2) One Technical Assistant to the Director of Telecommunications Management (Space Communications).

* * * * *

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633; E.O. 10577, 19 F.R. 7521, 3 CFR, 1954–1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] MARY V. WENZEL,
Executive Assistant to the Commissioners.

[F.R. Doc. 65-8237; Filed, Aug. 4, 1965; 8:47 a.m.]

Title 7—AGRICULTURE

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

SUBCHAPTER C—SPECIAL PROGRAMS

[Amdt. 1]

PART 755—REGIONAL PROGRAMS

Subpart—Appalachian Land Stabilization and Conservation Program

COST-SHARE PAYMENTS

The second sentence of § 755.7(b) of the regulations governing the Appalachian Land Stabilization and Conservation Program, 30 F.R. 8669, is amended to read as follows: "As a further limitation, cost-sharing may not be authorized in excess of a total amount computed by multiplying the number of acres designated under contract times $50, unless a representative of the State committee approves an amount in excess of this limitation on the basis that the income potential and benefits derived from expenditures of the additional money warrant the higher limit."

(Public Law 89-4, 79 Stat. 5, 12 (1965))

Effective date: Date of signature.

Signed at Washington, D.C., on July 30, 1965.

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

[F.R. Doc. 65-8247; Filed, Aug. 4, 1965; 8:48 a.m.]

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

[Pear Reg. 4]

PART 927—BEURRE D'ANJOU, BEURRE BOSC, WINTER NELIS, DOYENNE DU COMICE, BEURRE EASTER, AND BEURRE CLAIRGEAU VARIETIES OF PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

Regulation by Grades and Sizes

§ 927.304 Pear Regulation 4.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 927, as amended (7 CFR Part 927), regulating the handling of the Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in Oregon, Washington, and California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Control Committee, established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of such pears, as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) in that, as hereinafter set forth, the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than August 10, 1965. A reasonable determination as to the composition of the available supplies of such pears, and therefore the extent of grade and size regulation warranted, must await the development of the crop; recommendation as to the need for, and the extent of, regulation of shipments of such pears were made by said committee on July 20, 1965, after consideration of all information then available relative to the supply and demand conditions for such pears, at which time such recommendations and supporting information were submitted to the Department and notice thereof given to handlers and growers; shipments of the current crop of such pears are expected to begin on or about the effective time hereof, and this section should be applicable to all shipments of such pears in order to effectuate the declared policy of the act; and compliance with this section will not require of handlers any preparation therefor which cannot be completed by the effective time hereof.

(b) *Order.* (1) During the period beginning at 12:01 a.m., P.s.t., August 10, 1965, and ending at 12:01 a.m., P.s.t., July 1, 1966, no handler shall ship any pears which do not meet the following requirements for the variety specified:

(i) Beurre D'Anjou pears shall grade at least U.S. No. 2 and be of a size not smaller than the 195 size: *Provided,* That Beurre D'Anjou pears may be shipped when bearing unhealed broken skin punctures measuring not to exceed three-sixteenth ($\frac{3}{16}$) of one inch in diameter or depth, as the case may be, if they otherwise grade at least U.S. No. 1 and are of a size not smaller than the 150 size, and: *Provided, further,* That Beurre D'Anjou pears which fail to meet the requirements specified in the U.S. No. 2

grade only because of serious damage but not very serious damage caused by frost injury, healed hail marks, russeting, or being seriously misshapen may be shipped if they are of a size not smaller than the 150 size;

(ii) Beurre Bosc pears shall grade at least U.S. No. 2 and be of a size not smaller than the 180 size: *Provided*, That Beurre Bosc pears which fail to meet the requirements specified in the U.S. No. 2 grade only because of serious damage but not very serious damage caused by frost injury, healed hail marks, russeting, or being seriously misshapen may be shipped if they are of a size not smaller than the 150 size;

(iii) Doyenne du Comice pears shall grade at least U.S. No. 2 and be of a size not smaller than the 180 size: *Provided*, That Doyenne du Comice pears which fail to meet the requirements specified in the U.S. No. 2 grade only because of serious damage but not very serious damage caused by frost injury, healed hail marks, russeting, or being seriously misshapen may be shipped if they are of a size not smaller than the 150 size;

(iv) Winter Nelis pears shall grade at least U.S. No. 2 and be of a size not smaller than the 225 size: *Provided*, That Winter Nelis pears which fail to meet the requirements specified in the U.S. No. 2 grade only because of serious damage but not very serious damage caused by frost injury, healed hail marks, russeting, or being seriously misshapen may be shipped if they are of a size not smaller than the 150 size; and

(v) Beurre Easter pears shall grade at least U.S. No. 2 and be of a size not smaller than the 165 size: *Provided*, That Beurre Easter pears which fail to meet the requirements specified in the U.S. No. 2 grade only because of serious damage but not very serious damage caused by frost injury, healed hail marks, russeting, or being seriously misshapen may be shipped if they are of a size not smaller than the 150 size.

(2) Each handler may ship on any one conveyance up to, but not to exceed, 200 standard western pear boxes of pears, or an equivalent quantity of pears in other containers computed by weight to the nearest 5 pounds, without regard to the inspection requirements of § 927.60 (b), under the following conditions:

(i) Each handler desiring to make shipment of pears pursuant to this subparagraph shall first apply to the committee on forms furnished by the committee for permission to make such shipments. The application form shall provide a certification by the shipper that all shipments made thereunder during the marketing season shall meet the marketing order requirement, that he agrees such shipments shall be subject to spot check inspection, and that he agrees to report such shipments at time of shipment to the committee on forms furnished by the committee, showing the car or truck number and destination;

(ii) On the basis of such individual reports, the committee shall request spot check inspection of such shipments.

(3) When used herein, "U.S. No. 1," "U.S. No. 2," "frost injury," "healed hail marks," "russeting," and "seriously misshapen" shall have the same meaning as when used in the U.S. Standards for Winter Pears such as Anjou, Bosc, Winter Nelis, Comice, and other Similar Varieties (§§ 51.1300–51.1323 of this title); "150 size," "165 size," "180 size," "195 size," and "225 size" shall mean that the pears are of a size which, as indicated by the size number, will pack, in accordance with the sizing and packing specifications of a standard pack, as specified in said U.S. Standards, 150, 165, 180, 195, or 225 pears, respectively, in a standard western pear box (inside dimensions 18 inches long by 11½ inches wide by 8½ inches deep); "very serious damage" shall mean any injury or defect which very seriously affects the appearance or the edible or shipping quality of the pear; and, except as otherwise specified, all other terms shall have the same meaning as when used in the amended marketing agreement and order.

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

Dated: August 2, 1965.

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

[F.R. Doc. 65-8249; Filed, Aug. 4, 1965; 8:48 a.m.]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 1427—COTTON

Subpart—Standards for Approval of Cotton Warehouses and Continuing Operation Under Price Support Programs

In order to provide for certain changes in procedure, Subpart—Warehouse Approval Standards and Instructions published January 1, 1960 (25 F.R. 3), is revised as follows:

Sec.
1427.1081 General statement and administration.
1427.1082 Exceptions.
1427.1083 Application requirements.
1427.1084 Standards for warehousemen and warehouses.
1427.1085 Inspection of warehouses.
1427.1086 Basis for approval or disapproval.
1427.1087 Other conditions for disapproval.
1427.1088 Bonding requirements.
1427.1089 Approval of warehouse and duration of approval.
1427.1090 Waiver of requirements.

AUTHORITY: The provisions of this subpart issued under sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b.

§ 1427.1081 General statement and administration.

This subpart prescribes the procedure to be followed by warehousemen who desire initial or continuing approval of their warehouses by Commodity Credit Corporation (hereinafter referred to as "CCC") for the storage and handling, under CCC storage agreements, of cotton and cotton linters owned by CCC or held by CCC as security for loans and also prescribes the requirements of CCC for approval of such warehouses. Warehousemen desiring approval of their warehouses should communicate with the New Orleans Agricultural Stabilization and Conservation Service Commodity Office, Wirth Building, 120 Marais Street, New Orleans, La., 70112 (hereinafter referred to as "the New Orleans Office"), which will furnish the warehousemen with full information as to securing approval of a warehouse together with necessary application and other applicable forms. A warehouse must be approved by the New Orleans Office before such warehouse will be used by CCC for the storage of cotton or cotton linters. The approval of a warehouse or the execution of an agreement with the warehouseman shall not constitute a commitment that the warehouse will be used by CCC and no official or employee of the U.S. Department of Agriculture is authorized to make any such commitment.

§ 1427.1082 Exceptions.

Notwithstanding any other provision hereof:

(a) The provisions of this subpart are not applicable to storage and handling outside the continental limits of the United States, except for the Commonwealth of Puerto Rico, to the purchase of cotton or cotton linters in storage for prompt shipment, or to handling of a temporary nature.

(b) Warehousemen licensed under the U.S. Warehouse Act or warehouses operated by the State of South Carolina will not be required to furnish to CCC performance bonds, financial statements, or forms of warehouse receipts and bale tags in order to be approved hereunder. Warehouses licensed under the U.S. Warehouse Act will not be subject to examinations other than those required by that Act, except for such special examinations as may be necessary. However, all other requirements of this subpart shall be met by such warehousemen seeking approval under this subpart. Warehouses operated by the State of South Carolina shall be subject to normally scheduled examinations.

(c) If a Certificate of Competency is issued by the Small Business Administration with respect to a warehouseman, the Certificate will be accepted as establishing conformance by the warehouseman with the standards prescribed in § 1427.1084(a) (1), (2), (4), and (5), (b) (1), and (d) (1), (2), (3), and (4), and the warehouseman will not be required to furnish bond coverage for deficiency in net worth or working capital.

§ 1427.1083 Application requirements.

In applying for approval of a warehouse for storage of cotton or cotton linters, the warehouseman must furnish, except as noted in § 1427.1082(b), a completed Form CCC–49, Application for Approval of Warehouse for Storage of Cotton and/or Cotton Linters; a current financial statement (Form CCC–68, Statement Showing Assets and Liabilities); copies of the warehouseman's tariff; evidence of applicable fire insurance rates; sample copies of warehouse receipts and bale tags; and such other documents or information as may be

required by the New Orleans Office. If the warehouseman employs the services of a public accountant, the financial statement must be certified or otherwise authenticated by the public accountant to the extent consistent with the accountant's verification of facts contained in the statement. Such certification or statement may be separate from the financial statement. A financial statement may also be required with an application for approval of additional storage space under an existing agreement. Financial statements shall show information as of a date not earlier than 90 days prior to date of the statement. In the case of chain warehouses, a separate application, or in lieu thereof such information as may be required by the New Orleans Office, shall be submitted for each warehouse. Only one financial statement is required covering all warehouses of the chain.

§ 1427.1084 Standards for warehousemen and warehouses.

CCC will consider applications for approval of warehouses upon the basis of the applicant's conformance with the standards prescribed in this section.

(a) The warehouseman shall:

(1) Be an individual, or an existing legal entity organized in good faith to operate a public warehousing business and, if organized in the corporate form, must have charter authority to conduct a public warehousing business.

(2) Have sufficient experience in, and knowledge of the warehousing business, as related to the commodity to be stored or handled to enable him to give adequate protection and services for the proper storage and handling of that commodity.

(3) Have satisfactorily complied with all previous agreements with CCC or USDA and instructions issued thereunder: *Provided, however,* That this provision shall not be applied in circumstances other than those excepted from CCC's General Regulations and Policies for Suspension and Debarment, 7 CFR Part 1407, 29 F.R. 10495, unless suspension or debarment action has been taken as provided in such regulations.

(4) Have a net worth equal to at least the product of the total capacity in bales times $5 per bale with a minimum net worth of $10,000. Deficiencies in net worth may be compensated for by additional bond coverage, except that the warehouseman must meet the minimum net worth requirement of $10,000.

(5) Have sufficient funds available to meet ordinary operating expenses which if not paid would cause cessation of operations.

(6) Maintain adequate inventory and operating records.

(7) Make application for approval in the manner specified in § 1427.1083.

(8) Furnish surety bonds as may be required by CCC under § 1427.1088.

(9) Furnish annually, or at such other times as may be required, a current financial statement supported by such supplemental schedules as may be requested for the purpose of evaluating the financial condition of the warehouseman.

(b) Supervisory employees of the warehouse shall meet the requirements of (1) paragraph (a)(2) of this section and (2) paragraph (a)(3) of this section.

(c) Owners, directors, responsible officers and employees of the warehouse shall meet requirements of paragraph (a)(3) of this section.

(d) The warehouse shall meet the following requirements:

(1) Be of sound construction with equipment in good repair.

(2) Be under the control at all times of the warehouseman with whom the storage agreement will be made.

(3) Not be subject to greater than normal risk of fire, flood, or other hazards.

(4) Have such fire-fighting equipment as is customary for the type of warehouse for which approval is sought.

(5) Where State or local law requires licensing to act as a public warehouseman, the license must be made available or posted in the warehouse or a satisfactory notice of approval must have been received by CCC from the licensing authority.

§ 1427.1085 Inspection of warehouses.

Except in the case of a warehouse licensed under the U.S. Warehouse Act, prior to the time CCC approves a warehouse for the storage and handling of cotton, CCC will have the warehouse examined by a warehouse examiner. In addition, CCC will take such other action as it considers necessary to determine whether the requirements of § 1427.1084 have been met. The warehouse examiner will make recommendations regarding the approval or disapproval of the warehouse.

§ 1427.1086 Basis for approval or disapproval.

A review and an analysis will be made of the information disclosed by the warehouseman's application, warehouse examiner's report and recommendation, financial statement, credit reports, and other pertinent information available from other sources. If on the basis of this review and analysis, it is determined that the warehouseman and the warehouse conform with the standards and other requirements set out in this subpart, the warehouse will be approved. If the New Orleans Office determines that the warehouseman fails to meet the standard set forth in paragraph (a)(4) of § 1427.1084, the warehouse will not be approved. If it is determined by the New Orleans Office that one or more of the other standards of § 1427.1084 are not met, the applicant may be disapproved or may be approved if it is determined that the conditions for the storage and handling of cotton within the warehouse provide satisfactory protection for cotton and that the services of the warehouseman are required by CCC in fulfilling its responsibilities under the cotton price support program and additional bond coverage (or acceptable substitute security) is furnished in an amount equal to twice the amount of the bond requirement (other than for deficiency in net worth) under § 1427.1088 (a)(1) and meeting the other requirements of § 1427.1088.

§ 1427.1087 Other conditions for disapproval.

Applications will not be approved (or existing approval continued in effect) in the event that:

(a) The warehouseman (if license is required) is in violation of any provisions of the regulations of the licensing authority, or if any condition which has resulted or many result in the refusal, suspension, or revocation of the applicable warehouse license has not been corrected. Correction of any such condition shall not result in automatic approval of the warehouse and CCC may require the submission of a new application, such additional information as it deems pertinent, and a new inspection of the warehouse to determine whether it meets the requirements of this subpart.

(b) The warehouse for which approval is being sought or any of the owners, directors, responsible officers and employees thereof have been suspended or debarred under the CCC's General Regulations and Policies for Suspension and Debarment, 7 CFR Part 1407, 29 F.R. 10495.

(c) It is determined by CCC that the charges specified in warehousemen's tariffs are in excess of reasonable rates.

§ 1427.1088 Bonding requirements.

(a) Except as otherwise provided in this subpart, the performance bond to be furnished to CCC by each warehouseman shall be on Form CCC–54, Warehouseman's Bond, copies of which may be obtained from the New Orleans Office. Such performance bonds shall be executed by surety companies which have been approved by the U.S. Treasury Department (Circular No. 570) and which maintain an officer or representative authorized to accept service of legal process in the State where the warehouse is located.

(1) Bond coverage for a warehouseman applying for approval of a warehouse for the storage of cotton and cotton linters who fully conforms with all of the standards and requirements specified in this subpart shall be computed by multiplying the total capacity of the warehouse in bales by $5 per bale. Such bond coverage shall not be less than $5,000, and need not be more than $100,000.

(2) Notwithstanding any other provisions of this subpart, if in the light of all the circumstances regarding operation of the warehouse, it is determined that the amount of bond coverage required under this section is not sufficient to protect properly the interests of CCC, additional bond coverage as deemed necessary for such purpose may be required.

(b) If the New Orleans Office determines it to be necessary, limited availability of space may be agreed upon by CCC and the warehouseman. In this case the amount of the bond shall be calculated upon the basis of the capacity agreed upon rather than the total capacity of the warehouse. If additional capacity is later agreed to, the amount of the bond shall be adjusted promptly to cover such additional capacity.

(c) In the case of a warehouseman applying for approval of more than one warehouse in the same State, the total capacity of all warehouses in a State operated by such warehouseman shall be considered as one warehouse for the purpose of determining bond requirements.

(d) State warehouse bonds (statutory bonds), cash, negotiable securities, and legal liability insurance policies may be substituted for bonds on Form CCC-54 under the following conditions.

(1) A State warehouse bond furnished by a warehouseman licensed under State laws and subject to State supervision or a bond furnished under the regulations of nongovernmental supervisory agencies will be accepted in lieu of the equivalent amount of bond coverage required under this section if it is determined that it provides protection equivalent to the type of protection provided by Form CCC-54. Such bond must be executed by satisfactory corporate sureties which have been approved by the U.S. Treasury Department (Circular No. 570) or which have had a blanket rider and endorsement executed by a surety approved by the U.S. Treasury Department. The liability of the sureties under a blanket rider and endorsement shall be the same as that of the surety under the original bond. State warehouse bonds must be noncancellable for a definite period of time not less than 90 days and include a rider providing for not less than 90 day's notice to CCC before cancellation. In case the warehouseman has more than one warehouse in the same State and has State warehouse bonds covering such warehouses which are determined to be acceptable to CCC, the excess coverage on one warehouse may not be applied against insufficient bond coverage on another warehouse.

(2) Cash or negotiable securities may be accepted in lieu of the equivalent amount of required bond coverage. The New Orleans Office will determine the acceptability of and valuation to be placed on any such securities in substitution for bond coverage. When the period for which the bond was required has ended and it is determined that all liability under the agreement has terminated, the cash or securities will be returned to the warehouseman.

(3) Legal liability insurance policies may be accepted in lieu of the equivalent amount of bond coverage running directly to CCC. Such insurance policies, however, must show CCC as the insured and be approved for legal sufficiency by the Regional Attorney or the Attorney-in-Charge, Office of the General Counsel, U.S. Department of Agriculture.

§ 1427.1089 Approval of warehouse and duration of approval.

(a) After a warehouse has been approved and the applicable storage agreement has been signed by CCC, a notice of approval will be forwarded to the warehouseman by the New Orleans Office. The warehouse will then be eligible to store and handle CCC-owned cotton and cotton under CCC's loan and purchase programs. A list of such warehouses will be maintained by the New Orleans Office.

(b) The financial condition of, and the amount of bond or substitute security furnished by, approved warehousemen will be reviewed from time to time to determine that the requirements of CCC are being met and the warehouseman shall furnish any additional bond coverage or substitute security which may be determined to be required under the provisions of this subpart. The warehouse will be re-examined from time to time to determine its continued compliance with the standards and requirements of this subpart. If at any time it is determined that a warehouseman or the warehouse does not conform with the standards and other requirements set out in this subpart, CCC shall remove the warehouse from the list of approved warehouses and take such other appropriate action as may be necessary to protect the interests of CCC.

(c) Approval of the warehouse will remain in effect until the warehouse is removed from the list of approved warehouses, the storage agreement is terminated, or the warehouseman is suspended or debarred from contracting with CCC under the applicable Regulations and Policies for Suspension and Debarment, 7 CFR Part 1407, published at 29 F.R. 10495, on July 29, 1964.

§ 1427.1090 Waiver of requirements.

If warehousing services required in fulfilling responsibilities under CCC programs cannot be secured under the provisions of this subpart and no reasonable and economical alternative is available, CCC may exempt the applicant from one or more of the provisions of this subpart and may establish other requirements in lieu thereof as determined necessary to safeguard the interests of CCC. The authority provided by this § 1427.1090 shall be exercised only by the Executive Vice President, or the Acting Executive Vice President, CCC.

Effective date: Date of publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on August 2, 1965.

H. D. GODFREY,
Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 65-8248; Filed, Aug. 4, 1965; 8:48 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Airspace Docket No. 65-WE-9]

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

Designation of Control Zone and Transition Areas; Revocation of Control Area Extension

On May 27, 1965, a notice of proposed rule making was published in the FEDERAL REGISTER (30 F.R. 7110) stating that the Federal Aviation Agency proposed to alter the controlled airspace in the Montague, Calif., terminal area.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. All comments received were favorable.

Subsequent to the publication of the Notice, it was noted that in the description of the Fort Jones, Calif., transition area the west boundary was incorrectly described as longitude 122°31'00" W. instead of longitude 123°01'00" W. Action is taken herein to correct this discrepancy.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., October 14, 1965, as hereinafter set forth.

1. In § 71.171 (29 F.R. 17581) the following control zone is added:

MONTAGUE, CALIF.

Within a 5-mile radius of Siskiyou County Airport, Montague, Calif. (latitude 41°46'55" N., longitude 122°28'00" W.), and within 2 miles each side of the Siskiyou TACAN 194° radial, extending from the 5-mile radius zone to 7 miles SW of the TACAN, excluding the airspace within a 1-mile radius of Montague-Yreka Airport (latitude 41°43'50" N., longitude 122°32'45" W.).

2. In § 71.165 (29 F.R. 17570), the Montague, Calif., control area extension is revoked.

3. In § 71.181 (29 F.R. 17643), the following transition areas are added:

a. MONTAGUE, CALIF.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Siskiyou County Airport, Montague, Calif. (latitude 41°46'55" N., longitude 122°28'00" W.); that airspace extending upward from 1,200 feet above the surface bounded on the S by latitude 41°25'00" N., on the W by V-23, on the NW by a line extending from latitude 41°55'00" N., longitude 122°45'00" W., to latitude 42°04'00" N., longitude 122°-38'00' W., on the N by latitude 42°04'00" N., on the E by the arc of a 40-mile radius circle centered on the Klamath Falls, Oreg., VORTAC and on the SE by a line extending from latitude 41°41'30" N., longitude 122°-10'00" W., to latitude 41°25'00" N., longitude 122°20'00" W.

b. FORT JONES, CALIF.

That airspace extending upward from 9,500 feet MSL bounded on the NE by V-23 and V-23W, on the S by latitude 41°19'00" N., and on the W by longitude 123°01'00" W.

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

Issued in Los Angeles, Calif., on July 27, 1965.

JOSEPH H. TIPPETS,
Director, Western Region.

[F.R. Doc. 65-8198; Filed, Aug. 4, 1965; 8:45 a.m.]

[Airspace Docket No. 65-CE-63]

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

Alteration of Transition Area

On May 21, 1965, a notice of proposed rule making was published in the FEDERAL REGISTER (30 F.R. 6924) stating that the Federal Aviation Agency proposed to

alter controlled airspace in the Dubuque, Iowa, terminal area.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., September 16, 1965, as hereinafter set forth:

In § 71.181 (29 F.R. 17643) the Dubuque, Iowa, transition area is amended to read:

DUBUQUE, IOWA

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Dubuque Municipal Airport (latitude 42°24'10" N., longitude 90°42'32" W.), and within 8 miles NE and 5 miles SW of the Dubuque VOR 159° and 339° radials, extending from 6 miles NW to 14 miles SE of the VOR; and that airspace extending upward from 1,200 feet above the surface bounded on the N by the S edge of V-100, on the E by the west edge of V-63, on the S by the north edge of V-172, and on the W by the east edge of V-67, excluding the portions which overlie the Cedar Rapids, Iowa, and Waterloo, Iowa, transition areas.

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

Issued in Kansas City, Mo., on July 24, 1965.

DONALD S. KING,
Acting Director,
Central Region.

[F.R. Doc. 65-8199; Filed, Aug. 4, 1965; 8:45 a.m.]

[Airspace Docket No. 65-SO-42]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Area

The purpose of this amendment to Part 73 of the Federal Aviation Regulations is to reduce the designated altitude of Restricted Area R-5301A at Albemarle Sound, N.C.

The Department of the Navy has advised the FAA that R-5301A is no longer needed from the surface to 20,000 feet MSL and that from the surface to 5,000 feet MSL is sufficient airspace to contain the activities being conducted in this restricted area. Therefore, action is taken herein to reduce the designated altitude accordingly.

Since this amendment is less restrictive to the public, notice and public procedure hereon are unnecessary and the amendment may be made effective on less than 30 days notice.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 73.53 (29 F.R. 17760), Restricted Area R-5301A at Albemarle Sound, N.C. is amended by deleting "Designated altitudes. Surface to 20,000 feet MSL." and substituting therefor "Designated altitudes. Surface to 5,000 feet MSL."

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

Issued in Washington, D.C. on July 28, 1965.

CLIFFORD P. BURTON,
Acting Director,
Air Traffic Service.

[F.R. Doc. 65-8200; Filed, Aug. 4, 1965; 8:45 a.m.]

[Airspace Docket No. 65-WE-80]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Area

The purpose of these amendments to Part 73 of the Federal Aviation Regulations is to alter Restricted Area R-6404 at Wendover, Utah by subdividing the area and naming the subdivisions R-6404A and R-6404B.

The complex and diversified activities being conducted in R-6404 necessitate a considerable amount of shared use of the airspace involved by the various military users. As a result of a concentrated study made by FAA and military representatives, satisfactory operational procedures for use of the airspace were achieved. Although the airspace presently designated for R-6404 is in no way changed by the amendments herein, the Agency has determined, in accord with requirements of the military and the public, that subdivision of the restricted area is necessary to insure the most effective utilization of the airspace. In addition, a change in the using agency is made from "Commander, Ogden Air Material Area, Ogden, Utah" to "Commander, Hill AFB, Utah." This change is reflected in both R-6404A and R-6404B. Finally, the name of R-6404, as subdivided, is changed from "Wendover, Utah" to "Hill AFB Range (South or North), Utah."

Since these changes are the result of procedural modifications that permit a more efficient use of the airspace involved by both the public and military users and since the amendments are totally editorial in nature, notice and public procedure hereon are unnecessary and the amendments may be made effective on less than 30 days' notice.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 73.64 (29 F.R. 17768), Restricted Area R-6404 at Wendover, Utah, is amended by subdividing the area into R-6404A and R-6404B as follows:

a. R-6404A, HILL AFB RANGE SOUTH, UTAH

Boundaries. Beginning at latitude 41°00'-00" N., longitude 112°56'30" W.; to latitude 40°51'30" N., longitude 112°56'30" W.; to latitude 40°48'30" N., longitude 113°40'00" W.; to latitude 41°00'00" N., longitude 113°41'40" W.; to the point of beginning.

Designated altitudes. Surface to flight level 600.

Time of designation. Sunrise to sunset.

Controlling agency. Federal Aviation Agency, Salt Lake City ARTC Center.

Using agency. Commander, Hill AFB, Utah.

b. R-6404B, HILL AFB RANGE NORTH, UTAH

Boundaries. Beginning at latitude 41°10'-40" N., longitude 112°45'00" W.; to latitude 41°00'00" N., longitude 112°45'00" W.; to latitude 41°00'00" N., longitude 113°41'40" W.; to latitude 41°15'00" N., longitude 113°43'50" W.; to the point of beginning.

Designated altitudes. Surface to flight level 600.

Time of designation. Sunrise to sunset.

Controlling agency. Federal Aviation Agency, Salt Lake City ARTC Center.

Using agency. Commander, Hill AFB, Utah.

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

Issued in Washington, D.C., on July 28, 1965.

CLIFFORD P. BURTON,
Acting Director,
Air Traffic Service.

[F.R. Doc. 65-8201; Filed, Aug. 4, 1965; 8:45 a.m.]

Chapter II—Civil Aeronautics Board

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. No. ER-441]

PART 208—TERMS, CONDITIONS AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

Amendment of Liability Insurance Requirements

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 30th day of July 1965.

By notice of proposed rule making EDR-75, dated November 18, 1964, Docket 13984 (29 F.R. 15657), the Board proposed certain amendments to the liability insurance requirements for supplemental air carriers contained in Part 208. The amendments were designed to relieve the supplemental carriers of the excessive costs of "open-end" worldwide insurance coverage, and to facilitate administration of the regulation. Comments were received from Zantop Air Transport, Inc., a supplemental air carrier; Associated Aviation Underwriters, the aviation department of member insurance companies; and the British Aviation Insurance Co. Ltd., a corporation of the United Kingdom not licensed to do business in any State of the United States.

In response to comments, the proposed amendments and insurance forms have been further modified and clarified. For example, it was intended that coverage for aircraft passengers be based on passenger seats actually installed in the aircraft, not the certificated seating capacity in a passenger configuration. Zantop states that it operates convertible aircraft in the cargo configuration with only four seats for couriers and Zantop understands that such aircraft are "four passenger" aircraft for insurance exposure. The regulation and the certificate will now specify "passenger seats installed" in the aircraft.

The 30-day advance filing of endorsements adding aircraft to or removing aircraft from coverage has also been eliminated. Emergencies may require the lease or purchase of aircraft for immediate use, and many of the insurance

policies provide for automatic coverage of such replacement or additional aircraft when of the same type or power of the other aircraft operated. The Board will permit newly acquired aircraft to be operated immediately provided that such aircraft is covered by insurance before it is listed in the carrier's operations specifications, and provided the carrier files the endorsement extending coverage within 5 days after the effective date of the endorsement. Aircraft may also be deleted from coverage simultaneously with removal from the operations specifications and without advance notice to the Board. Removal of these restrictions should result in considerable savings and flexibility for the supplemental carriers without affecting the protection afforded the public.

The 30-day notice for cancellation of a policy, formerly required of both parties to the contract, will be applicable only to the insurer. However, as the supplemental carriers realize, Board-approved insurance must be in effect at all times, and sufficient time should be allowed before cancellation of an approved policy for the Board to review the replacement certificate of insurance.

Associated Aviation Underwriters (Associated) emphasized that many different insurers may provide only limited types and amounts of coverage to make up the total minimum coverage for a carrier and, hence, no one insurer could certify that the insurance afforded meets minimum requirements for a carrier. The proposed certificate was designed to permit a broker representing several insurers to issue the certificate, certifying both as to minimum coverage and the types and amounts of liability assumed by each insurer. Associated states, however, that not all insurers authorize brokers to issue certificates binding the insurer. The certificate has now been modified to require only the certification of actual coverage afforded by each insurer. The Board will assume the task of determining whether minimum requirements have been met. When the certificate is signed by a broker on behalf of an insurer, the Board may request at any time a statement of authorization from the insurer.

Associated also suggested that the endorsement provide for insertion of specific types of coverage assumed by an insurer, rather than require a general assumption of liability "within the limits of liability specified in the policy." If the policy itself does not provide limits for a particular type of coverage, the endorsement is not to be construed as adding a type of coverage not afforded by the policy. To make this clear, however, the phrase will read "within the limits of liability for coverages specified in the policy."

The Board has also decided to permit the exclusion of cargo, in addition to passengers' baggage and personal effects, from mandatory insurance coverage. The limitations on liability for cargo in tariffs filed with the Board greatly decrease the exposure to risk of losses which a carrier would be unable to meet from its own resources. A shipper may purchase a higher limit of liability by payment of extra charges, or may insure the goods in transit on his account. In any event, the considerations which dictate liability insurance as security for compensation to passengers and the general public, where damages could be far beyond the carrier's ability to pay, are not so compelling with respect to cargo. Furthermore, the exposure to liability on cargo operations varies widely, and those carriers which operate cargo civil charters can be expected to tailor their cargo liability insurance to cover risks peculiar to their own individual operations.

The British Aviation Insurance Co., Ltd., a United Kingdom corporation not licensed to do business in any State of the United States, requests that the regulation provide that policies issued by such alien insurer be accepted if the insurer has a trust fund of at least $500,000 in the United States for the protection of its American policyholders. British Aviation maintains such a trust fund. Although the requirement that insurers be licensed in a State or the District of Columbia no doubt does exclude reputable alien insurers, the Board believes that the screening by a State regulatory agency is desirable for an insurer of a U.S. air carrier. The Board cannot assume the burden of analyzing financial statements or inquiring into the insurance laws of domiciliary nations to determine the financial soundness of alien insurers. Many alien insurers have qualified to do business in a State of the United States; for example, the underwriters at Lloyd's, London, have qualified in three States. The requirement is not impossible to satisfy, and will be retained.

Since strict compliance with this regulation may occasion some adjustment in a supplemental carrier's insurance program, the regulation will become effective not less than 90 days after adoption to allow for these arrangements and Board action on requests for waivers or exceptions permitted by the regulation.

Accordingly, the Board hereby amends the liability insurance requirements of Part 208 of the Economic Regulations (14 CFR 208.10–208.15), and prescribes CAB Forms 606, 607, 608, and 609 attached hereto as Appendices A through D,[1] effective November 1, 1965, to read as follows:

§ 208.10 Applicability of liability insurance requirements.

(a) No supplemental air carrier shall engage in air transportation unless such carrier has and maintains in effect liability insurance coverage evidenced by a currently effective certificate of liability insurance filed with and accepted by the Board as complying with the requirements of this part; and no supplemental carrier shall operate in air transportation any aircraft, or perform services within any geographical area, to which such insurance does not apply. "Insurance certificate", as used herein, means one or more than one certificate, evidencing one or more than one policy of aircraft liability insurance properly endorsed, issued by one or more than one insurer, which alone or in combination provides the minimum coverage prescribed in § 208.11. When more than one insurer is involved in providing the minimum coverage prescribed herein, the limits and types of liability assumed by each insurer shall be clearly stated in the certificate of insurance.

(b) The insurance coverage and certificate required by this part shall be obtained from a reputable and financially responsible insurance company or association which is legally authorized to issue aircraft liability policies in one or more States of the United States or in the District of Columbia.

§ 208.11 Minimum limits of liability.

The minimum limits of liability insurance coverage maintained by a supplemental air carrier shall be as follows:

(a) Liability for bodily injury to or death of aircraft passengers: A limit for any one passenger of at least fifty thousand dollars ($50,000), and a limit for each occurrence in any one aircraft of at least an amount equal to the sum produced by multiplying fifty thousand dollars ($50,000) by seventy-five percent (75%) of the total number of passenger seats installed in the aircraft.

(b) Liability for bodily injury to or death of persons (excluding passengers): A limit of at least fifty thousand dollars ($50,000) for any one person in any one occurrence, and a limit of at least five hundred thousand dollars ($500,000) for each occurrence.

(c) Liability for loss of or damage to property: A limit of at least five hundred thousand dollars ($500,000) for each occurrence.

§ 208.12 Terms and conditions of insurance coverage.

With respect to insurance required by this part:

(a) Insurance contracts shall provide for payment by the insurer on behalf of the insured supplemental air carrier, within the specified limits of liability, of all sums which the insured carrier shall become legally obligated to pay as damages for bodily injury to or death of any person, or for loss of or damage to property of others, resulting from the negligent operation, maintenance or use of aircraft in air transportation by the insured carrier.

(b) The liability of the insurer shall apply to all operations by the insured carrier in air transportation. The liability of the insurer shall not be subject to any exclusion by virtue of violations, by the insured carrier, of any applicable safety or economic provision of the Federal Aviation Act of 1958, as amended, or Public Law 87–528; or of any applicable safety or economic rule, regulation, order, or other legally imposed requirement prescribed thereunder by the Federal Aviation Agency or the Civil Aeronautics Board, respectively.

(c) The liability of the insurer shall not be contingent upon the financial condition, solvency, or freedom from bankruptcy of the insured. The limits of the insurer's liability for the amounts prescribed herein shall apply separately to each occurrence, and any payment made under the policy because of any one occurrence shall not reduce the liability

[1] Filed as part of the original document.

of the insurer for payment of other damages resulting from any other occurrence.

(d) Within the limits of liability herein prescribed, the insurer shall not be relieved from liability by any condition in the policy or any endorsement thereon, or violation thereof by the insured air carrier, other than the exclusions set forth in § 208.13, or such other exclusions as may be individually approved by the Board. Cancellation of an approved policy shall be effected only upon written notice to the Board, in accordance with § 208.14(d).

(e) Except for the geographical exclusions authorized in § 208.13(g) and (h), the coverage shall be worldwide. For good cause shown, however, the Board may waive this requirement or amend the certificate or other operating authority to describe the geographical areas actually served by the supplemental air carrier. Authority for any general restriction (e.g., North American continent, Western Hemisphere, etc.) shall be recited in any endorsement containing a general restriction.

§ 208.13 Authorized exclusions of liability.

Unless other exclusions are individually approved by the Board, no policy or certificate of insurance required by this part shall contain any exclusion other than the following authorized exclusions:

The insurance afforded under this policy shall not apply to:

(a) Any loss against which the Named Insured has other valid and collectible insurance, except that the limits of liability provided under this policy shall be excess of the limits provided by such other valid and collectible insurance up to the limits certified in a Certificate of Insurance issued to the Civil Aeronautics Board in Washington, D.C., but in no event exceeding the limits of liability expressed elsewhere in this policy;

(b) Any loss arising from the ownership, maintenance or use of any aircraft not declared to the Insurer in accordance with the terms and conditions of this policy;

(c) Liability assumed by the Named Insured under any contract or agreement, unless such liability would have attached to the Insured even in the absence of such contract or agreement;

(d) Bodily injury, sickness, disease, mental anguish or death of any employee of the Named Insured while engaged in the duties of his employment, or any obligation for which the Named Insured or any company as his Insurer may be held liable under any workmen's compensation or occupational disease law;

(e) Loss of or damage to property owned, rented, occupied, or used by, or in the care, custody or control of the Named Insured, or carried in or on any aircraft with respect to which the insurance afforded by this policy applies;

(f) Personal injuries or death, or damage to or destruction of property, caused directly or indirectly, by hostile or warlike action, including action in hindering, combating or defending against an actual, impending or expected attack by any government or sovereign power, de jure or de facto, or military, naval, or air forces, or by an agent of such government, power, authority or forces; the discharge, explosion, or use of any weapon of war employing atomic fission or atomic fusion, or radio-active materials; insurrection, rebellion, revolution, civil war or usurped power, including any action in hindering, combating, or defending against such an occurrence; or confiscation by any government or public authority.

(g) Any loss arising from operations by the Named Insured within any country of the Sino-Soviet bloc or Cuba: *Provided*, That a loss caused by mere misadventure in flying over or landing in such territory shall not be excluded. The "Sino-Soviet bloc" is defined to include Lithuania, Latvia, Estonia, Czechoslovakia, Bulgaria, Rumania, Hungary, Poland, Albania, East Germany (Soviet zone of Germany and Soviet sector of Berlin), Communist China, North Korea, North Viet-Nam, Outer Mongolia, and the Union of Soviet Socialist Republics;

(h) Any loss arising from operations by the Named Insured to or from installations of the Distant Early Warning System (DEW-line) or the Ballistic Missile Early Warning System (BMEWS).

§ 208.14 Filing of certificates, endorsements and notices.

(a) Certificates of insurance, endorsements, and notices of cancellation shall be filed in duplicate on forms prescribed and furnished by the Board. All documents shall be signed in ink by an authorized officer or agent of the insurer; no facsimile signatures will be accepted.

NOTE: CAB Forms 606, 607, 608, and 609 are available, upon request, from the Publications Section, Civil Aeronautics Board, Washington, D.C., 20428.

(b) Endorsements that add previously unlisted aircraft to coverage or that delete listed aircraft from coverage shall be filed with the Board not more than five (5) days after the effective date of such endorsement: *Provided, however*, That aircraft shall not be listed in the carrier's operations specifications with the Federal Aviation Agency and shall not be operated unless liability insurance coverage has attached.

(c) A supplemental carrier which intends to operate a charter flight to or from a country of the Sino-Soviet bloc or Cuba or to or from a DEWline or BMEWS installation and whose approved insurance coverage excludes operations within such areas shall file an endorsement waiving the applicable exclusion, or a separate certificate of insurance expressly applicable to such flight, at least 30 days before the proposed flight date, unless the Board finds that waiver of this requirement is in the public interest.

(d) Certificates of insurance approved by the Board shall not be canceled by the insurer upon less than thirty (30) days' notice to the Board and the insured carrier by registered mail. An insured carrier shall not cancel an approved certificate during the effectiveness of any operating authorization from the Board unless the notice of cancellation is accompanied by a replacement certificate of insurance, complying in all respects with this part and effective upon the date of cancellation of the approved certificate and policy, or by a notice that the carrier has ceased operations.

(e) If any certificate of insurance, endorsement, notice of cancellation or other document relating to liability insurance required to be filed with the Board does not comply with these regulations, the Board will notify the air carrier and the insurer by registered mail, or by telegram, stating the deficiencies. If the carrier is not notified of objections by the Board within 20 days after filing of any document, such document shall be deemed approved by the Board as complying with the requirements of this part, but such approval may be rescinded by the Board upon reasonable notice.

(f) All documents required to be filed with respect to liability insurance shall be filed with the Civil Aeronautics Board, Attention of Bureau of Accounts and Statistics, B-42b, Washington, D.C., 20428.

§ 208.15 Compliance.

In addition to all other applicable sanctions provided by law or the regulations of the Board, operation in air transportation of any aircraft, or performance of services within any geographical area, to which Board-approved liability insurance does not apply shall be cause for immediate suspension of all operating authority, pursuant to section 401(n)(5) of the Act and Subpart J of Part 302 of this chapter.

(Secs. 204(a), 401 and 417 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 76 Stat. 144, 145; 49 U.S.C. 1324, 1371, 1387; and secs. 7 and 9 of Pub. Law 87-528, 76 Stat. 146, 148)

By the Civil Aeronautics Board.

[SEAL] MABEL MCCART,
Acting Secretary.

[F.R. Doc. 65-8238; Filed, Aug. 4, 1965; 8:48 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER A—GENERAL

PART 8—COLOR ADDITIVES

Subpart H—Listing of Color Additives for Cosmetic Use Exempt From Certification

HENNA; CONFIRMATION OF EFFECTIVE DATE OF ORDER LISTING FOR COSMETIC USE EXEMPT FROM CERTIFICATION

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 706 (b)(1), (c)(2), (d), 74 Stat. 399, 402; 21 U.S.C. 376 (b)(1), (c)(2), (d)), and in accordance with the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (21 CFR 2.90), notice is given that no objections were filed to the order published in the FEDERAL REGISTER of June 15, 1965 (30 F.R. 7705), that listed the color additive henna for cosmetic use as a color for the hair and exempted it from certification requirements. Accordingly, the regulation promulgated by that order will become effective August 14, 1965.

(Secs. 706 (b)(1), (c)(2), (d), 74 Stat. 399, 402; 21 U.S.C. 376 (b)(1), (c)(2), (d))

Dated: July 28, 1965.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 65-8240; Filed, Aug. 4, 1965; 8:48 a.m.]

SUBCHAPTER C—DRUGS

PART 148i—NEOMYCIN SULFATE

Neomycin Sulfate-Amphotericin B Tablets

In accordance with the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended; 21 U.S.C. 357) and the authority delegated by the Secretary of Health, Education, and Welfare to the Commissioner of Food and Drugs (21 CFR 2.90), Part 148i is amended by adding thereto the following new section to provide for tests and methods of assay and certification of the subject antibiotic drug:

§ 148i.45 Neomycin sulfate-amphotericin B tablets.

(a) *Requirements for certification—(1) Standards of identity, strength, quality, and purity.* Neomycin sulfate-amphotericin B tablets are tablets composed of neomycin sulfate and amphotericin B, with one or more suitable binders, fillers, buffers, lubricants, and dispersants. Each tablet contains 350 milligrams of neomycin and 25 milligrams of amphotericin B. Its moisture content is not more than 10 percent. Tablets shall disintegrate within 1 hour. The neomycin sulfate used conforms to the standards prescribed by § 148i.1(a)(1) (i), (iv), (v), (vi), and (vii). The amphotericin B used conforms to the standards prescribed by § 148b.1(a)(1) of this chapter. Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Request for certification; samples.* In addition to the requirements of § 146.2 of this chapter, each such request shall contain.

(i) Results of tests and assays on:

(a) The neomycin sulfate used in making the batch for potency, toxicity, moisture, pH, and identity.

(b) The amphotericin B used in making the batch for potency, amphotericin A content, toxicity, moisture, pH, residue on ignition, and identity.

(c) The batch for neomycin content, amphotericin B content, moisture, and disintegration time.

(ii) Samples required:

(a) The neomycin sulfate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(b) The amphotericin B used in making the batch: 10 packages, each containing approximately 500 milligrams.

(c) The batch:

(1) For all tests except disintegration time: A minimum of 30 tablets.

(2) For disintegration time: Six tablets.

(d) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees.* $1.00 for each tablet submitted in accordance with subparagraph (3)(ii)(c)(*1*) of this paragraph; $3.00 for all tablets in the sample submitted in accordance with subparagraph (3)(ii)(*c*)(2) of this paragraph; $4.00 for each package in the samples submitted in accordance with subparagraph (3)(ii)(*a*), (*b*), and (*d*) of this paragraph.

(b) *Tests and methods of assay—(1) Potency—(a) Neomycin content.* Proceed as directed in § 148i.5(b)(1). Its content of neomycin is satisfactory if it is not less than 90 percent nor more than 125 percent of the number of milligrams of neomycin that it is represented to contain.

(*b*) *Amphotericin B content.* Place a representative number of tablets in a high-speed glass blender with sufficient dimethylsulfoxide to give a stock solution of convenient concentration. Blend for 3 to 5 minutes and dilute with sufficient dimethylsulfoxide to give a concentration of 20 micrograms of amphotericin B per milliliter. Remove an aliquot and dilute to a concentration of 1.0 microgram of amphotericin B per milliliter, using 0.2*M* potassium phosphate buffer pH 10.5. Proceed as directed in § 148b.1(b)(1) of this chapter. Its content of amphotericin B is satisfactory if it is not less than 90 percent nor more than 125 percent of the number of milligrams of amphotericin B that it is represented to contain.

(2) *Moisture.* Proceed as directed in § 141a.5(a) of this chapter.

(3) *Disintegration time.* Proceed as directed in § 141a.9(c) of this chapter.

Effective date. This order shall become effective 30 days from the date of its publication in the FEDERAL REGISTER.

This order provides for the certification of a new antibiotic drug product, neomycin sulfate-amphotericin B tablets, which has been found to be safe and efficacious for use, conditions pertinent to its certification. Since the basic requirements of section 507 of the Federal Food, Drug, and Cosmetic Act have been complied with and since the interest of the public health will be served by making this antibiotic preparation available for use, the requirements for notice and public procedure are not deemed necessary in this instance.

(Sec. 507, 59 Stat. 463 as amended; 21 U.S.C. 357)

Dated: July 28, 1965.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 65-8241; Filed, Aug. 4, 1965; 8:48 a.m.]

Title 32—NATIONAL DEFENSE

Chapter V—Department of the Army

SUBCHAPTER E—ORGANIZED RESERVES

PART 564—NATIONAL GUARD REGULATIONS

Miscellaneous Amendments

Paragraph (a) in § 564.2 and paragraph (b)(2) in § 564.4 are revised to read as follows:

§ 564.2 Appointment.

(a) *Policy.* (1) The appointment, assignment, or transfer of officers in the Army National Guard will be made without regard to race, color, religion, or national origin.

(2) The appointment of officers in the Army National Guard is a function of the State concerned, as distinguished from the Federal recognition of such appointment. Upon appointment in the Army National Guard of a State and subscribing to an oath of office, an individual has a State status under which he can function. Such individual acquires a Federal status when he is federally recognized and appointed as a Reserve of the Army.

(3) When required by State law, an appointment is not complete until the appointee has executed the oath of office (§ 564.3).

(4) The assignment of individuals to units of the Army National Guard, including authority to detail qualified officers to duty as inspectors general and as general staff officers in the category "General Staff with troops," is a function of the State concerned.

* * * * *

§ 564.4 Promotion.

* * * * *

(b) *Policy.* * * *

(2) Promotion will be based upon efficiency, length of service in grade, demonstrated command and staff ability at the appropriate level and, except as provided in paragraph (h)(3) of this section, will be accomplished only when an appropriate TO, TOE, or TD vacancy in the higher grade exists in the unit. Promotions will be made without regard to race, color, religion, or national origin.

* * * * *

[C2, NGR 20-1, 10 May 1965, and C3, NGR 20-3, 10 May 1965.] (Sec. 110, 70A Stat. 600; 32 U.S.C. 110)

J. C. LAMBERT,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 65-8218; Filed, Aug. 4, 1965; 8:46 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 203—BRIDGE REGULATIONS

PART 207—NAVIGATION REGULATIONS

Delaware and Schuylkill Rivers, N.J. and Pa.; Chesapeake and Delaware Canal, Del. and Md.

Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 499) and section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), § 203.227 governing the operation of bridges across the Delaware and Schuylkill Rivers is hereby amended, revising paragraph (a) to provide for changes in

audio signals at bridges across these rivers and the establishment of supplementary bridge operating lights at bridges across the Delaware River, and § 207.100 governing the use, administration and navigation of the Chesapeake and Delaware Canal is hereby amended, deleting the reference to Lorewood Grove in paragraph (i) and revising paragraph (j) in its entirety to provide changes in audio signals and lights at drawbridges, effective 30 days after publication in the FEDERAL REGISTER, as follows:

§ 203.277 Delaware and Schuylkill Rivers, N.J. and Pa., in vicinity of Philadelphia and Bristol; bridges.

(a) *Signals and lights*—(1) *Signals.* When at any time during the day or night any vessel, tug, or other watercraft unable to pass under a closed drawbridge, approaches it with the intention of passing through the draw, the signal for the draw to be opened shall be three blasts of a whistle or horn blown on the vessel or craft. If the drawspan is to be opened immediately when the signal is given on the vessel or craft, the bridgetender will reply with one blast of a whistle or horn indicating he is preparing to open the bridge. If at any time after signal from the vessel the drawbridge is not ready to be opened, the bridgetender will immediately sound four blasts of a whistle or horn. When the bridge is open and clear for vessel passage, the bridgetender will sound two blasts of a whistle or horn.

(2) *Lights.* The foregoing whistle or horn signals by the bridgetender will be supplemented by the following lights in the center of the drawspan, on both the upstream and downstream sides of the bridge:

(i) *Supplementary bridge operating lights*—(a) *Fixed amber light.* Bridge being prepared for opening. (b) *Flashing red light.* Bridge opening to be delayed.

(ii) *Fixed navigation lights required by the Coast Guard*—(a) *Fixed red light.* Bridge closed to navigation. Vessel unable to pass under closed drawspan must be kept under control so it can be stopped if necessary.

(b) *Fixed green light.* Bridge open to navigation. Vessel may proceed.

(iii) The fixed navigation lights referred to in subdivision (ii) of this subparagraph are those prescribed by the Coast Guard under Part 68 of this title. The supplementary bridge operating lights referred to in subdivision (i) of this subparagraph shall be of such visibility and placed at such locations as are satisfactory to the Coast Guard, so as not to conflict with the locations and intended purpose of the fixed lights. Supplementary bridge operating lights are not required for bridges across the Schuylkill River.

* * * * *

§ 207.100 Inland waterway from Delaware River to Chesapeake Bay, Del. and Md. (Chesapeake and Delaware Canal); use, administration and navigation.

* * * * *

(i) *Traffic lights.* (1) Navigation in and through the waterway shall be governed by the following system of traffic control lights. These lights, which are of fixed type, are located on the outer end of the north jetty at the eastern entrance to the waterway, at Summit Bridge approximately 1.5 miles west of the Pennsylvania Railroad bridge, on the Chesapeake City bridge, Chesapeake City, Md., and at Old Town Point wharf, Maryland.

(i) *Green light.* Waterway open to navigation. Vessel may proceed.

(ii) *Amber light.* Caution. Traffic restricted.

(iii) *Red light.* Waterway closed to traffic. Vessel must stop.

(2) In addition to the above system of lights, navigation shall be governed by the lights installed at the drawbridges crossing the waterway as described in paragraph (j) of this section.

(j) *Drawbridges*—(1) *Signals.* When at any time during the day or night any vessel, tug, or other watercraft unable to pass under a closed drawbridge, approaches it with the intention of passing through the draw, the signal for the draw to be opened shall be three blasts of a whistle or horn blown on the vessel or craft. If the drawspan is to be opened immediately when the signal is given on the vessel or craft, the bridgetender will reply with one blast of a whistle or horn indicating he is preparing to open the bridge. If at any time after signal from the vessel the drawbridge is not ready to be opened, the bridgetender will immediately sound four blasts of a whistle or horn. When the bridge is open and clear for vessel passage, the bridgetender will sound two blasts of a whistle or horn.

(2) *Lights.* The foregoing whistle or horn signals by the bridgetender will be supplemented by the following lights in the center of the drawspan, on both the upstream and downstream sides of the bridge:

(i) *Supplementary bridge operating lights*—(a) *Fixed amber light.* Bridge being prepared for opening.

(b) *Flashing red light.* Bridge opening to be delayed.

(ii) *Fixed navigation lights required by the Coast Guard*—(a) *Fixed red light.* Bridge closed to navigation. Vessel unable to pass under closed drawspan must be kept under control so it can be stopped if necessary.

(b) *Fixed green light.* Bridge open to navigation. Vessel may proceed.

(iii) The fixed navigation lights referred to in subdivision (ii) of this subparagraph are those prescribed by the Coast Guard under Part 68 of this title. The supplementary bridge operating lights referred to in subdivision (i) of this subparagraph shall be of such visibility and placed at such locations as are satisfactory to the Coast Guard, so as not to conflict with the locations and intended purpose of the fixed lights. Supplementary bridge lighting is not required at the drawbridge across Branch Channel at Delaware City, Del.

(3) [Reserved].

(4) The drawbridge crossing Branch Channel at Delaware City will be opened for the passage of vessels only between 8:00 a.m. and 4:00 p.m. Whenever a vessel, unable to pass under the closed bridge, desires to pass through the draw, at least two hours' advance notice of the time the opening is required shall be given to the dispatcher at Chesapeake City, Maryland.

* * * * *

[Regs., July 19, 1965, 1507-32 (Chesapeake and Delaware Canal, Del. and Md.; Delaware and Schuylkill Rivers, N.J. and Pa.)—ENGCW-ON] (Sec. 5, 28 Stat. 362, and sec. 7, 40 Stat. 266; 33 U.S.C. 1, 499)

J. C. LAMBERT,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 65-8219; Filed, Aug. 4, 1965; 8:46 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 1—Federal Procurement Regulations

PART 1-1—GENERAL

Subpart 1-1.0—Regulations System

INTERAGENCY PROCUREMENT POLICY COMMITTEE

To assure the participation of procurement and related agencies in the development of regulations to be issued under the Federal Procurement Regulations System, General Services Administration has established an Interagency Procurement Policy Committee to advise and assist in the Government-wide program for uniform procurement policies and procedures. The importance of this Committee is emphasized by inclusion of a formal statement concerning its establishment in the Federal Procurement Regulations.

1. The table of contents for Part 1-1 is amended by the addition of the following entry:

Sec.
1-1.010 Interagency Procurement Policy Committee.

2. Subpart 1-1.0 is amended by adding § 1-1.010 as follows:

§ 1-1.010 Interagency Procurement Policy Committee.

For the purpose of advising and assisting the General Services Administration in its Government-wide program for the development of uniform procurement policies and procedures, an Interagency Procurement Policy Committee, chaired by GSA, has been established. It is comprised of representatives of procurement and related Federal agencies designated by the heads of the agencies concerned.

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

Effective date. This regulation is effective upon publication in the FEDERAL REGISTER.

Dated: July 29, 1965.

LAWSON B. KNOTT, Jr.,
Administrator of General Services.

[F.R. Doc. 65-8246; Filed, Aug. 4, 1965; 8:48 a.m.]

Chapter 5—General Services Administration

PART 5–10—BONDS AND INSURANCE

Rescission of Part

The provisions in Part 5–10, Bonds and insurance, are no longer required in view of the regulations which currently are prescribed in Part 1–10, Bonds and insurance, of the Federal Procurement Regulations. Accordingly, Part 5–10 is rescinded in its entirety.

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

Effective date. This amendment is effective upon publication in the FEDERAL REGISTER.

Dated: July 29, 1965.

LAWSON B. KNOTT, Jr.,
Administrator of General Services.

[F.R. Doc. 65–8232; Filed, Aug. 4, 1965; 8:47 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sports Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

SUBCHAPTER B—HUNTING AND POSSESSION OF WILDLIFE

PART 13—IMPORTATION OF WILDLIFE OR EGGS THEREOF

Correction

In F.R. Doc. 65–8126, appearing at page 9640 of the issue for Tuesday, August 3, 1965, the following change should be made:

In § 13.1(d) the phrase "of this chapter" should follow "§ 10.1" so the reference as corrected reads "§ 10.1 of this chapter".

SUBCHAPTER C—NATIONAL WILDLIFE REFUGE SYSTEM

PART 32—HUNTING

Ouray National Wildlife Refuge, Utah

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.32 **Special regulations; big game; for individual wildlife refuge areas.**

UTAH

OURAY NATIONAL WILDLIFE REFUGE

Public hunting of deer and antelope on the Ouray National Wildlife Refuge, Utah, is permitted for the 1965 archery and rifle seasons, except in those areas designated by signs as closed to hunting. The open area, comprising 9,500 acres, is delineated on maps available at refuge headquarters, Vernal, Utah, and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, N. Mex., 87103.

August 28 through September 12, 1965, has been designated as archery deer season, and October 23 through November 2, 1965, as rifle deer season. August 21, 22, and 23, and 28, 29, and 30, 1965, constitute the antelope season.

Hunting shall be in accordance with all applicable State regulations covering the hunting of deer and antelope subject to the following special conditions:

(1) Hunting on Indian lands east of Green River, as posted, requires the possession of a Ute Tribal Permit.

(2) Every deer or antelope killed must be checked out at refuge subheadquarters before hunters leave the area.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through November 2, 1965.

H. J. JOHNSON,
Refuge Manager, Ouray National Wildlife Refuge, Vernal, Utah.

JULY 26, 1965.

[F.R. Doc. 65–8228; Filed, Aug. 4, 1965; 8:46 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 65–701]

PART 1—PRACTICE AND PROCEDURE

Forfeiture Proceedings

Order. At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 28th day of July 1965.

The Commission, having under consideration § 1.80(i) of the rules, which provides in part that after the Commission considers a respondent's reply to a notice of apparent liability, it will send a notice of its action to the respondent by certified mail; and

It appearing, that the use of certified mail can cause difficulties in delivery, that the Communications Act of 1934, as amended, does not require the use of certified mail for said notices, and therefore that an amendment to § 1.80(i) of the Rules to permit regular mailing of said notices instead of requiring certified mail would be in the public interest; and

It further appearing, that authority for the amendment adopted herein is contained in sections 4 (i) and (j), 303(r) and 510 of the Communications Act of 1934, as amended; and

It further appearing, that the amendment adopted herein is procedural in nature, and hence that the notice and effective date provisions of section 4 of the Administrative Procedure Act are inapplicable;

It is ordered, Effective August 6, 1965, that the rules of practice and procedure are amended as set forth below.

(Secs. 4, 303, 510; 48 Stat. 1066, 1082, as amended, 76 Stat. 68; 47 U.S.C. 154, 303, 510)

Released: July 30, 1965.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

Section 1.80(i) is amended to read as follows:

§ 1.80 **Forfeiture proceedings (excluding those pertaining to broadcast licensees and permittees or ships and ship masters).**

* * * * *

(i) *Commission action after written statement or interview.* After the submission of a written statement and/or after a personal interview, as prescribed in paragraphs (g) and (h) of this section, the Commission will consider all relevant information available to it. Based on such considerations, the Commission will (1) cancel the forfeiture, or (2) offer to reduce the amount of the forfeiture, or (3) require the forfeiture to be paid in full. A notice of such Commission action, stating the amount of the forfeiture (if any), and the date by which it must be paid, will thereupon be mailed to the station licensee or radio operator involved. The forfeiture in the amount stated shall be paid by check or money order drawn to the order of the Treasurer of the United States and shall be mailed to the Federal Communications Commission, Washington, D.C., 20554. The Commission does not accept responsibility for cash payments sent through the mails.

* * * * *

[F.R. Doc. 65–8243; Filed, Aug. 4, 1965; 8:48 a.m.]

[1] Commissioner Hyde absent; Commissioner Loevinger dissenting.

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Certain Reacquisitions of Real Property

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C., 20224, within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] SHELDON S. COHEN,
Commissioner of Internal Revenue.

In order to conform the Income Tax Regulations (26 CFR Part 1) to section 2 of the Act of September 2, 1964 (Public Law 88-570, 78 Stat. 854), relating to certain reacquisitions of real property, such regulations are amended as follows:

PARAGRAPH 1. Section 1.166-6 is amended by adding a new paragraph (e) thereto as follows:

§ 1.166-6 Sale of mortgaged or pledged property.

* * * * *

(e) *Special rules applicable to certain reacquisitions of real property.* Notwithstanding this section, special rules apply for taxable years beginning after September 2, 1964 (and for certain taxable years beginning after December 31, 1957), to the gain or loss on certain reacquisitions of real property, to indebtedness remaining unsatisfied as a result of such reacquisitions, and to the basis of the reacquired real property. See §§ 1.1038 through 1.1038-3.

PAR. 2. Section 1.453-5 is amended by revising paragraph (b) to read as follows:

§ 1.453-5 Sale of real property treated on installment method.

* * * * *

(b) *Defaults and repossessions*—(1) *Effective date.* This paragraph shall apply only with respect to taxable years beginning before September 3, 1964, in respect of which an election has not been properly made to have the provisions of section 1038 apply. For rules applicable to taxable years beginning after September 2, 1964, and for taxable years beginning after December 31, 1957, to which such an election applies, see §§ 1.1038 through 1.1038-3.

(2) *Gain or loss on reacquisition of property.* If the purchaser of real property on the installment plan defaults in any of his payments, and the vendor returning income on the installment method reacquires the property sold, whether title thereto had been retained by the vendor or transferred to the purchaser, gain or loss for the year in which the reacquisition occurs is to be computed upon any installment obligations of the purchaser which are satisfied or discharged upon the reacquisition or are applied by the vendor to the purchase or bid price of the property. Such gain or loss is to be measured by the difference between the fair market value at the date of reacquisition of the property reacquired (including the fair market value of any fixed improvements placed on the property by the purchaser) and the basis in the hands of the vendor of the obligations of the purchaser which are so satisfied, discharged, or applied, with proper adjustment for any other amounts realized or costs incurred in connection with the reacquisition.

(3) *Fair market value of reacquired property.* If the property reacquired is bid in by the vendor at a foreclosure sale, the fair market value of the property shall be presumed to be the purchase or bid price thereof in the absence of clear and convincing proof to the contrary.

(4) *Basis of obligations.* The basis in the hands of the vendor of the obligations of the purchaser satisfied, discharged, or applied upon the reacquisition of the property will be the excess of the face value of such obligations over an amount equal to the income which would be returnable were the obligations paid in full. For definition of the basis of an installment obligation, see section 453(d)(2) and paragraph (b)(2) of § 1.453-9.

(5) *Bad debt deduction.* No deduction for a bad debt shall in any case be taken on account of any portion of the obligations of the purchaser which are treated by the vendor as not having been satisfied, discharged, or applied upon the reacquisition of the property, unless it is clearly shown that after the property was reacquired the purchaser remained liable for such portion; and in no event shall the amount of the deduction exceed the basis in the hands of the vendor of the portion of the obligations with respect to which the purchaser remained liable after the reacquisition. See section 166 and the regulations thereunder.

(6) *Basis of reacquired property.* If the property reacquired is subsequently sold, the basis for determining gain or loss is the fair market value of the property at the date of reacquisition, including the fair market value of any fixed improvements placed on the property by the purchaser.

PAR. 3. Section 1.453-6 is amended by revising paragraphs (b) and (c) and by adding a new paragraph (d). These amended and added provisions read as follows:

§ 1.453-6 Deferred payment of real property not on installment method.

* * * * *

(b) *Repossession of property where title is retained by vendor*—(1) *Gain or loss on repossession.* If the vendor in sales referred to in paragraph (a) of this section has retained title to the property and the purchaser defaults in any of his payments, and the vendor repossesses the property, the difference between—

(i) The entire amount of the payments actually received on the contract and retained by the vendor plus the fair market value at the time of repossession of fixed improvements placed on the property by the purchaser, and

(ii) The sum of the profits previously returned as income in connection therewith and an amount representing what would have been a proper adjustment for exhaustion, wear and tear, obsolescence, amortization, and depletion of the property during the period the property was in the hands of the purchaser had the sale not been made,

will constitute gain or loss, as the case may be, to the vendor for the year in which the property is repossessed.

(2) *Basis of repossessed property.* The basis of the property described in subparagraph (1) of this paragraph in the hands of the vendor will be the original basis at the time of the sale plus the fair market value at the time of repossession of fixed improvements placed on the property by the purchaser, except that, with respect to repossessions occurring after September 18, 1958, the basis of the property shall be reduced by what would have been a proper adjustment for exhaustion, wear and tear, obsolescence, amortization, and depletion of the property during the period the property was in the hands of the purchaser if the sale had not been made.

(c) *Reacquisition of property where title is transferred to purchaser*—(1) *Gain or loss on reacquisition.* If the vendor in sales described in paragraph (a) of this section has previously transferred title to the purchaser, and the

purchaser defaults in any of his payments, and the vendor accepts a voluntary reconveyance of the property, in partial or full satisfaction of the unpaid portion of the purchase price, the receipt of the property so reacquired, to the extent of its fair market value at that time, including the fair market value of fixed improvements placed on the property by the purchaser, shall be considered as the receipt of payment on the obligations satisfied. If the fair market value of the property is greater than the basis of the obligations of the purchaser so satisfied (generally, such basis being the fair market value of such obligations previously recognized in computing income), the excess constitutes ordinary income. If the value of such property is less than the basis of such obligations, the difference may be deducted as a bad debt if uncollectible, except that, if the obligations satisfied are securities (as defined in section 165(g)(2)(C)), any gain or loss resulting from the transaction is a capital gain or loss subject to the provisions of sections 1201 through 1241.

(2) *Basis of reacquired property.* If the reacquired property described in subparagraph (1) of this paragraph is subsequently sold, the basis for determining gain or loss is the fair market value of the property at the date of reacquisition, including the fair market value of the fixed improvements placed on the property by the purchaser. See section 166 and the regulations thereunder with respect to property reacquired by the vendor in a foreclosure proceeding.

(d) *Effective date.* Paragraphs (b) and (c) of this section shall apply only with respect to taxable years beginning before September 3, 1964, in respect of which an election has not been properly made to have the provisions of section 1038 apply. For rules applicable to taxable years beginning after September 2, 1964, and for taxable years beginning after December 31, 1957, to which such an election applies, see §§ 1.1038 through 1.1038–3.

PAR. 4. Section 1.1034–1 is amended by adding a new sentence at the end of paragraph (a) thereof. This amended provision reads as follows:

§ 1.1034–1 Sale or exchange of residence.

(a) *Nonrecognition of gain; general statement.* Section 1034 provides rules for the nonrecognition of gain in certain cases where a taxpayer sells one residence after December 31, 1953, and buys or builds, and uses as his principal residence, another residence within specified time limits before or after such sale. In general, if the taxpayer invests in a new residence an amount at least as large as the adjusted sales price of his old residence, no gain is recognized on the sale of the old residence (see paragraph (b) of this section for definitions of "adjusted sales price", "new residence", and "old residence"). On the other hand, if the new residence costs the taxpayer less than the adjusted sales price of the old residence, gain is recognized to the extent of the difference. Thus, if an amount equal to or greater than the adjusted sales price of an old residence is invested in a new residence, according to the rules stated in section 1034, none of the gain (if any) realized from the sale shall be recognized. If an amount less than such adjusted sales price is so invested, gain shall be recognized, but only to the extent provided in section 1034. If there is no investment in a new residence, section 1034 is inapplicable and all of the gain shall be recognized. Whenever, as a result of the application of section 1034, any or all of the gain realized on the sale of an old residence is not recognized, a corresponding reduction must be made in the basis of the new residence. The provisions of section 1034 are mandatory, so that the taxpayer cannot elect to have gain recognized under circumstances where this section is applicable. Section 1034 applies only to gains; losses are recognized or not recognized without regard to the provisions of this section. Section 1034 affects only the amount of gain recognized, and not the amount of gain realized (see also section 1001 and the regulations issued thereunder). Any gain realized upon disposition of other property in exchange for the new residence is not affected by section 1034. For special rules relating to a case where real property with respect to the sale of which no gain is recognized under this section is reacquired by the seller in partial or full satisfaction of the indebtedness arising from such sale and resold by him within one year after such reacquisition, see §§ 1.1038–1 and 1.1038.2.

* * * * *

PAR. 5. There are inserted immediately after § 1.1036–1 the following new sections:

§ 1.1038 Statutory provisions; certain reacquisitions of real property.

SEC. 1038. *Certain reacquisitions of real property*—(a) *General rule.* If—

(1) A sale of real property gives rise to indebtedness to the seller which is secured by the real property sold, and

(2) The seller of such property reacquires such property in partial or full satisfaction of such indebtedness,

then, except as provided in subsections (b) and (d), no gain or loss shall result to the seller from such reacquisition, and no debt shall become worthless or partially worthless as a result of such reacquisition.

(b) *Amount of gain resulting*—(1) *In general.* In the case of a reacquisition of real property to which subsection (a) applies, gain shall result from such reacquisition to the extent that—

(A) The amount of money and the fair market value of other property (other than obligations of the purchaser) received, prior to such reacquisition, with respect to the sale of such property, exceeds

(B) The amount of the gain on the sale of such property returned as income for periods prior to such reacquisition.

(2) *Limitations.* The amount of gain determined under paragraph (1) resulting from a reacquisition during any taxable year beginning after the date of the enactment of this section shall not exceed the amount by which the price at which the real property was sold exceeded its adjusted basis, reduced by the sum of—

(A) The amount of the gain on the sale of such property returned as income for periods prior to the reacquisition of such property, and

(B) The amount of money and the fair market value of other property (other than obligations of the purchaser received with respect to the sale of such property) paid or transferred by the seller in connection with the reacquisition of such property.

For purposes of this paragraph, the price at which real property is sold is the gross sales price reduced by the selling commissions, legal fees, and other expenses incident to the sale of such property which are properly taken into account in determining gain or loss on such sale.

(3) *Gain recognized.* Except as provided in this section, the gain determined under this subsection resulting from a reacquisition to which subsection (a) applies shall be recognized, notwithstanding any other provision of this subtitle.

(c) *Basis of reacquired real property.* If subsection (a) applies to the reacquisition of any real property, the basis of such property upon such reacquisition shall be the adjusted basis of the indebtedness to the seller secured by such property (determined as of the date of reacquisition), increased by the sum of—

(1) The amount of the gain determined under subsection (b) resulting from such reacquisition, and

(2) The amount described in subsection (b)(2)(B).

If any indebtedness to the seller secured by such property is not discharged upon the reacquisition of such property, the basis of such indebtedness shall be zero.

(d) *Indebtedness treated as worthless prior to reacquisition.* If, prior to a reacquisition of real property to which subsection (a) applies, the seller has treated indebtedness secured by such property as having become worthless or partially worthless—

(1) Such seller shall be considered as receiving, upon the reacquisition of such property, an amount equal to the amount of such indebtedness treated by him as having become worthless, and

(2) The adjusted basis of such indebtedness shall be increased (as of the date of reacquisition) by an amount equal to the amount so considered as received by such seller.

(e) *Principal residences.* If—

(1) Subsection (a) applies to a reacquisition of real property with respect to the sale of which—

(A) An election under section 121 (relating to gain from sale or exchange of residence of an individual who has attained age 65) is in effect, or

(B) Gain was not recognized under section 1034 (relating to sale or exchange of residence); and

(2) Within one year after the date of the reacquisition of such property by the seller, such property is resold by him,

then, under regulations prescribed by the Secretary or his delegate, subsections (b), (c), and (d) of this section shall not apply to the reacquisition of such property and, for purposes of applying sections 121 and 1034, the resale of such property shall be treated as a part of the transaction constituting the original sale of such property.

(f) *Reacquisitions by domestic building and loan associations.* This section shall not apply to a reacquisition of real property by an organization described in section 593(a) (relating to domestic building and loan associations, etc.).

[Sec. 1038 as added by sec. 2, Act of Sept. 2, 1964 (Pub. Law 88–570, 78 Stat. 854)]

§ 1.1038–1 Reacquisitions of real property in satisfaction of indebtedness.

(a) *Scope of section 1038*—(1) *General rule on gain or loss.* If a sale of real property gives rise to indebtedness to the

seller which is secured by the real property which is sold, and the seller of such property reacquires such property in a taxable year beginning after September 2, 1964, in partial or full satisfaction of such indebtedness, then, except as provided in paragraphs (b) and (f) of this section, no gain or loss shall result to the seller from such reacquisition. The treatment so provided is mandatory; however, see § 1.1038–3 for an election to apply the provisions of this section to certain taxable years beginning after December 31, 1957. It is immaterial, for purposes of applying this subparagraph, whether the seller realized a gain or sustained a loss on the sale of the real property, or whether it can be ascertained at the time of the sale whether gain or loss occurs as a result of the sale. It is also immaterial what method of accounting the seller used in reporting gain or loss from the sale of the real property or whether at the time of reacquisition such property has depreciated or appreciated in value since the time of the original sale. Moreover, the character of the gain realized on the original sale of the property is immaterial for purposes of applying this subparagraph. The provisions of this section shall apply, except as provided in § 1.1038–2, to the reacquisition of real property which was used by the seller as his principal residence and with respect to the sale of which an election under section 121 is in effect or with respect to the sale of which gain was not recognized under section 1034.

(2) *Sales giving rise to indebtedness.* For purposes of this section, it is not necessary for title to the property to have passed to the purchaser in order to have a sale. Ordinarily, a sale of property has occurred in a transaction in which title to the property has not passed to the purchaser, if the purchaser has a contractual right to retain possession of the property so long as he performs his obligations under the contract and to obtain title to the property upon the completion of the contract. However, a sale may have occurred even if the purchaser does not have the right to possession until he partially or fully satisfies the terms of the contract. For example, if S contracts to sell real property to P, and if S promises to convey title to P upon the completion of all of the payments due under the contract and to allow P to obtain possession of the property after ten percent of the purchase price has been paid, there has been a sale on the date of the contract for purposes of this section. This section shall not apply to a disposition of real property which constituted an exchange of property or was treated as a sale under section 121(d)(4) or section 1034(i); nor shall it apply to a sale of stock in a cooperative housing corporation described in section 121(d)(3) or section 1034(f). A sale of real property may give rise to an indebtedness to the seller although the seller is limited in his recourse to the property for payment of the indebtedness in the case of a default. An indebtedness to the seller is secured by the real property for purposes of this section whenever the seller has the right to take title or possession of the property or both if the purchaser defaults in his obligations under the contract.

(3) *Reacquisitions in partial or full satisfaction of indebtedness*—(i) *Purpose of reacquisition.* This section applies only where the seller reacquires the property in partial or complete satisfaction of the indebtedness to him that arose from the sale of the real property. That is, the reacquisition must be in furtherance of the seller's security rights in the property. Accordingly, this section generally shall not apply where the seller repurchases the real property by paying consideration in addition to discharging the purchaser's indebtedness unless such repurchase and the payment of the additional consideration is provided for in the original contract for the sale of the property. However, even if the seller pays additional consideration in the reacquisition of the property, this section generally shall apply if the seller, for purposes of protecting his security rights, reacquires the property either when the purchaser has defaulted in his obligations under the contract or when such a default is imminent. Thus, if the purchaser is in arrears on the payment of interest or principal or has in any other way defaulted on his contract for the purchase of the property, or if the facts of the case indicates that the purchaser is unable to satisfactorily perform his obligations under the contract, and the seller reacquires the property from the purchaser in a transaction in which the seller pays additional consideration, this section shall apply to the reacquisition. Additional consideration paid by the seller includes money and other property paid or transferred by the seller. Also, the reacquisition by the seller of real property subject to an indebtedness (or the assumption, upon the reacquisition, of indebtedness) which arose subsequent to the original sale shall be considered as a payment by the seller of additional consideration. However, the reacquisition by the seller of real property subject to an indebtedness (or the assumption, upon the reacquisition, of an indebtedness) which arose prior to or arose out of the original sale shall not be considered as a payment by the seller of additional consideration.

(ii) *Manner of reacquisition.* The method by which the seller reacquires the real property is immaterial for purposes of the application of this section. Thus, the property may be reduced to ownership or possession or both, as the case may require, by agreement or by process of law. The reduction of the secured property to ownership or possession includes, where valid under local law, such methods as voluntary conveyance from the purchaser and abandonment to the seller. The reduction to ownership or possession by process of law includes foreclosure proceedings in which a competitive bid is entered, such as foreclosure by judicial sale or by power of sale contained in the loan agreement without recourse to the courts, as well as those types of foreclosure proceedings in which a competitive bid is not entered, such as strict foreclosure and foreclosure by entry and possession, by writ of entry, or by publication or notice.

(4) *Persons from whom real property may be reacquired.* The real property reacquired in satisfaction of the indebtedness need not be reacquired from the purchaser but may be reacquired from the purchaser's transferee or assignee, or from a trustee holding title to such property pending the purchaser's satisfaction of the terms of the contract, so long as the indebtedness that is partially or completely satisfied in the reacquisition of such property arose in the original sale of the property and was secured by the property so reacquired. Thus, for example, this section will apply if the seller reacquires the property from a purchaser from the original purchaser and either the property is subject to, or the subsequent purchaser assumes, the liability to the seller on the indebtedness.

(5) *Reacquisitions not included.* This section shall not apply to reacquisitions of real property by mutual savings banks, domestic building and loan associations, and cooperative banks, described in section 593(a). However, for rules respecting the reacquisition of real property by such organizations, see § 1.595–1.

(b) *Amount of gain resulting from a reacquisition*—(1) *Determination of amount*— (i) *In general.* As a result of a reacquisition to which paragraph (a) of this section applies gain shall be derived by the seller to the extent that the amount of money and the fair market value of other property (other than obligations of the purchaser arising with respect to the sale) which are received by the seller, prior to such reacquisition, with respect to the sale of the property exceed the amount of the gain derived by the seller on the sale of such property which is returned as income for periods prior to the reacquisition. However, the amount of gain so determined shall in no case exceed the amount determined under paragraph (c) of this section with respect to such reacquisition.

(ii) *Amount of gain returned as income for prior periods.* For purposes of this subparagraph and paragraph (c)(1) of this section, the amount of gain on the sale of the property which is returned as income for periods prior to the reacquisition of the real property does not include any amount of income determined under paragraph (f)(2) of this section which is considered to be received at the time of the reacquisition of the property. However, the amount of gain on the sale of the property which is returned as income for such periods does include gain on the sale resulting from payments received in the taxable year in which the date of reacquisition occurs if such payments are received prior to such reacquisition. The application of this subdivision may be illustrated by the following example:

Example. In 1965 S, who uses the calendar year as the taxable year, sells to P for $10,000 real property which has an adjusted basis of $3,000. S properly elects under section 453 to report the income from the sale on the installment method. In 1965 and 1966, S receives a total of $4,000 on the contract. On May 15, 1967, S receives $1,000 on the contract. Because of P's default, S reacquires the property on August 31, 1967.

The gain on the sale which is returned as income for periods prior to the reacquisition is $3,500 ($5,000×$7,000/$10,000).

(2) *Amount of money and other property received with respect to the sale*—(i) *In general.* Amounts of money and other property received by the seller with respect to the sale of the property include payments made by the purchaser for the seller's benefit, as well as payments made and other property transferred directly to the seller. If the purchaser of the real property makes payments on a mortgage or other indebtedness to which the property is subject at the time of the sale of such property to him, or on which the seller was personally liable at the time of such sale, such payments are considered amounts received by the seller with respect to the sale. However, if after the sale the purchaser borrows money and uses the property as security for the loan, payments by the purchaser in satisfaction of the indebtedness are not considered as amounts received by the seller with respect to the sale, although the seller does in fact receive some indirect benefit when the purchaser makes such payments.

(ii) *Payments by purchaser at time of reacquisition.* All payments made by the purchaser at the time of the reacquisition of the real property that are with respect to the original sale of the property shall be treated, for purposes of subparagraph (1) of this paragraph, by the seller as having been received prior to the reacquisition with respect to such sale. For example, if the purchaser, at the time of the reacquisition by the seller, pays money or other property to the seller in partial or complete satisfaction of the purchaser's indebtedness on the original sale, the seller shall treat such amounts as having been received prior to the reacquisition with respect to the sale.

(iii) *Interest received.* For purposes of this subparagraph and paragraph (c)(1) of this section any amounts received by the seller as interest, stated or unstated, are excluded from the computation of gain on the sale of the property and are not considered amounts of money or other property received with respect to the sale.

(iv) *Amounts received on sale of purchaser's indebtedness.* Money or other property received by the seller on the sale of the purchaser's indebtedness that arose at the time of the sale of the real property are amounts received by the seller with respect to the sale of such real property. For example, if S sells real property to P for $25,000, and under the contract receives $10,000 down and a note from P for $15,000, S would receive $22,000 with respect to the sale if he were to discount the note for $12,000.

(3) *Obligations of the purchaser received with respect to the sale.* The term "obligations of the purchaser which are received by the seller of the real property with respect to the sale of such property" includes, for purposes of subparagraph (1) of this paragraph and paragraph (c)(1) of this section, only that indebtedness on which the purchaser is liable to the seller and which arises out of the sale of such property. Thus, the term does not include any indebtedness in respect of the property that the seller owes to a third person which the purchaser assumes, or to which the property is subject, at the time of the sale of the property to the purchaser.

(c) *Limitation upon amount of gain*—(1) *In general.* Except as provided by subparagraph (2) of this paragraph, the amount of gain on a reacquisition of real property, as determined under paragraph (b) of this section, shall in no case exceed—

(i) The amount by which the price at which the real property was sold exceeded its adjusted basis at the time of the sale, as determined under § 1.1011–1, reduced by

(ii) The amount of gain on the sale of such real property which is returned as income for periods prior to the reacquisition, and by

(iii) The amount of money and the fair market value of other property (other than obligations of the purchaser received with respect to the sale of such real property) paid or transferred by the seller in connection with the reacquisition of such real property.

(2) *Cases where limitation does not apply.* The limitation provided by subparagraph (1) of this paragraph shall not apply in a case where the selling price of property is indefinite in amount and cannot be ascertained at the time of the reacquisition of such property, as, for example, where the selling price is stated as a percentage of the profits to be realized from the development of the property which is sold. Moreover, the limitation so provided shall not apply to a reacquisition of real property occurring in a taxable year beginning before September 3, 1964, to which the provisions of this section are applied pursuant to an election under § 1.1038–3.

(3) *Determination of sales price.* The price at which the real property was sold shall be, for purposes of subparagraph (1) of this paragraph, the gross sales price reduced by the selling commissions, legal fees, and other expenses incident to the sale of such property which are properly taken into account in determining gain or loss on the sale. For example, the amount of selling commissions paid by a nondealer will be deducted from the gross sales price in determining the price at which the real property was sold; on the other hand, selling commissions paid by a real estate dealer will be deducted as a business expense. Examples of other expenses incident to the sale of the property are expenses for appraisal fees, advertising expense, cost of preparing maps, recording fees, and documentary stamp taxes. Payments on indebtedness to the seller which are for interest, stated or unstated, are not included in determining the price at which the property was sold. See paragraph (b)(2)(iii) of this section.

(4) *Determination of amounts paid or transferred in connection with a reacquisition*—(i) *In general.* Amounts of money or property paid or transferred by the seller of the real property in connection with the reacquisition of such property include payments of money or transfers of property to persons from whom the real property is reacquired as well as to other persons. Payments or transfers in connection with the reacquisition do not include the transfer, by the seller to the purchaser, of obligations of the purchaser received with respect to the sale of the property, as defined in paragraph (b)(3) of this section, but they do include payments of money by the seller to reacquire obligations of the purchaser received by the seller with respect to the sale of the property. Thus, for example, payments of money made by the seller in reacquiring from a person (other than the person from whom the real property is reacquired) an obligation of the purchaser of the real property which was received with respect to the sale of the property and subsequently discounted by the seller are payments of money in connection with the reacquisition of the property. Amounts paid by the seller in connection with the reacquisition of the property also include payments for such items as court costs and fees for services of an attorney, master, trustee, or auctioneer, or for publication, acquiring title, clearing liens, or filing and recording.

(ii) *Assumption of indebtedness.* The assumption by the seller, upon reacquisition of the real property, of any indebtedness which at such time is secured by such property will be considered a payment of money by the seller in connection with the reacquisition. Also, if at the time of reacquisition such property is subject to an indebtedness which, within the meaning of paragraph (b)(3) of this section, is not an obligation of the purchaser received with respect to the sale of the property, the seller shall be considered to have paid money, in an amount equal to such indebtedness, in connection with the reacquisition of the property. Thus, for example, if at the time of the sale the purchaser executes in connection with the sale a first mortgage to a bank and a second mortgage to the seller and at the time of reacquisition the seller reacquires the property subject to the first mortgage which he does not assume, the seller will be considered to have paid money, in an amount equal to the unpaid amount of the first mortgage, in connection with the reacquisition.

(d) *Character of gain resulting from a reacquisition.* Paragraphs (b) and (c) of this section set forth the extent to which gain shall be derived from a reacquisition to which paragraph (a) of this section applies, but the rules provided by section 1038 and this section do not affect the character of the gain so derived. The character of the gain resulting from such a reacquisition is determined on the basis of whether the gain on the original sale was returned on the installment method or, if not, on the basis of whether title was transferred to the purchaser; and, if title was transferred to the purchaser, whether the reconveyance of the property to the seller was voluntary. For example, if the gain on the original sale of the reacquired property was returned on the installment method, the character of the gain on

reacquisition by the seller shall be determined in accordance with the rules provided in paragraph (a) of § 1.453–9. If the original sale was not on the installment method but was a deferred-payment sale where title to the real property was transferred to the purchaser and the seller accepts a voluntary reconveyance of the property, the gain on the reacquisition shall be ordinary income; however, if the obligations satisfied are obligations (as defined in section 1232 (a)), any gain resulting from the reacquisition is capital gain subject to the provisions of sections 1201 through 1241.

(e) *Recognition of gain.* The entire amount of the gain determined under paragraphs (b) and (c) of this section with respect to a reacquisition to which paragraph (a) of this section applies shall be recognized notwithstanding any other provision of subtitle A (relating to income taxes) of the Code.

(f) *Special rules applicable to worthless indebtedness*—(1) *Worthlessness resulting from reacquisition.* No debt shall be considered as becoming worthless or partially worthless as a result of a reacquisition of real property to which paragraph (a) of this section applies. Accordingly, no deduction for a bad debt and no charge against a reserve for bad debts shall be allowed, as a result of the reacquisition, in order to reflect the noncollectibility of any indebtedness to the seller which arose out of the sale of such property and was secured by such property.

(2) *Indebtedness treated as worthless prior to reacquisition*—(i) *Prior taxable years.* If for any taxable year ending before the taxable year in which occurs a reacquisition of real property to which paragraph (a) of this section applies, the seller of such property has treated the indebtedness which is secured by such property as having become worthless or partially worthless by taking a bad debt deduction under section 166(a), he shall be considered as receiving, at the time of such reacquisition, income in an amount equal to the amount of such indebtedness previously treated by him as having become worthless. The amount so treated as income received shall be treated as a recovery of a bad debt previously deducted as worthless or partially worthless. Accordingly, the amount of such income shall be excluded from gross income, as provided in § 1.111–1, to the extent of the "recovery exclusion" with respect to such item. For purposes of § 1.111–1, if the indebtedness was treated as partially worthless in a prior taxable year, the amount treated under this subparagraph as a recovery shall be considered to be with respect to the part of the indebtedness that was previously deducted as worthless. The seller shall not be considered to have treated an indebtedness as worthless in any taxable year for which he took the standard deduction under section 141 or paid the tax imposed by section 3 if a deduction in respect of such indebtedness was not allowed in determining adjusted gross income for such year under section 62.

(ii) *Current taxable year.* No deduction shall be allowed under section 166(a), for the taxable year in which occurs a reacquisition of real property to which paragraph (a) of this section applies, in respect of indebtedness secured by such property which has been treated by the seller as having become worthless or partially worthless in such taxable year but prior to the date of such reacquisition.

(3) *Basis adjustment.* The basis of any indebtedness described in subparagraph (2)(i) of this paragraph shall be increased (as of the date of the reacquisition) by an amount equal to the amount which, under such subparagraph of this paragraph, is treated as income received by the seller with respect to such indebtedness, but only to the extent the amount so treated as received is not excluded from gross income by reason of the application of § 1.111–1.

(g) *Rules for determining gain or loss on disposition of reacquired property*—(1) *Basis of reacquired real property.* The basis of any real property acquired in a reacquisition to which paragraph (a) of this section applies shall be the sum of the following amounts, determined as of the date of such reacquisition:

(i) The amount of the adjusted basis, determined under sections 453 and 1011, and the regulations thereunder, of the indebtedness to the seller which is secured by such property, including any increase by reason of paragraph (f)(3) of this section,

(ii) The amount of gain determined under paragraphs (b) and (c) of this section with respect to such reacquisition, and

(iii) The amount of money and the fair market value of other property (other than obligations of the purchaser received with respect to the sale of such real property) paid or transferred by the seller in connection with the reacquisition of such real property, determined as provided in paragraph (c) of this section even though such paragraph does not apply to the reacquisition.

(2) *Basis of undischarged indebtedness.* The basis of any indebtedness to the seller which arises from the sale of the real property described in subparagraph (1) of this paragraph and which is secured by such real property shall, to the extent that such indebtedness is not discharged upon the reacquisition of such property, be zero. Therefore, to the extent not discharged upon the reacquisition of the real property, indebtedness on the original obligation of the purchaser, a substituted obligation of the purchaser, a deficiency judgment entered into in a court of law into which the purchaser's obligation has merged, or any other obligation, shall be zero if such obligation constitutes an indebtedness to the seller which arose from the sale of the real property and was secured by such property.

(3) *Holding period of reacquired property.* Since the reacquisition described in subparagraph (1) of this paragraph is in a sense considered a nullification of the original sale of the real property, for purposes of determining gain or loss on a disposition of such property after its reacquisition the period for which the seller has held the real property at the time of such disposition shall include the period for which such property is held by him prior to the original sale. However, the holding period shall not include the period of time commencing with the date following the date on which the property is originally sold to the purchaser and ending with the date on which the property is reacquired by the seller. The period for which the property was held by the seller prior to the original sale shall be determined as provided in § 1.1223–1. For example, if under paragraph (a) of § 1.1223–1 real property, which was acquired as the result of an involuntary conversion, has been held for five months on January 1, 1965, the date of its sale, and such property is reacquired on July 2, 1965, and resold on July 3, 1965, the seller will be considered to have held such property for five months and one day for purposes of this subparagraph.

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

Example (1). (a) S purchases real property for $20 and sells it to P for $100, the property not being mortgaged at the time of sale. Under the contract P pays $10 down and executes a note for $90, with stated interest at 6 percent, to be paid in nine annual installments. S properly elects to report the gain on the installment method. After the second $10 annual payment P defaults and S accepts a voluntary reconveyance of the property in complete satisfaction of the indebtedness. S pays $5 in connection with the reacquisition of the property. The fair market value of the property at the time of the reacquisition is $110.

(b) The gain derived by S on the reacquisition of the property is $6, determined as follows:

Gain before application of limitation:		
Money with respect to the sale received by S prior to the reacquisition		$30
Less: Gain returned by S as income for periods prior to the reacquisition ($30 × [($100 − $20)/$100])		24
Gain before application of limitation		6
Limitation on amount of gain:		
Sales price of real property		100
Less:		
Adjusted basis of the property at the time of sale	$20	
Gain returned by S as income for periods prior to the reacquisition	24	
Amount of money paid by S in connection with the reacquisition	5	
		49
Limitation on amount of gain		51
Gain resulting from the reacquisition of the property		6

(c) The basis of the reacquired real property at the date of the reacquisition is $25, determined as follows:

Adjusted basis of P's indebtedness to S ($70 − [$70 × $80/$100])	$14
Gain resulting from the reacquisition of the property	6
Amount of money paid by S in connection with the reacquisition	5
Basis of reacquired property	25

Example (2). (a) The facts are the same as in example (1) except that S purchased the property for $80.

(b) The gain derived by S on the reacquisition of the property is $9, determined as follows:

Gain before application of limitation:		
Money with respect to the sale received by S prior to the reacquisition		$30
Less: Gain returned by S as income for periods prior to the reacquisition ($30×[($100−$80)/$100])		6
Gain before application of limitation		24
Limitation on amount of gain:		
Sales price of real property		100
Less:		
Adjusted basis of the property at the time of sale	$80	
Gain returned by S as income for periods prior to the reacquisition	6	
Amount of money paid by S in connection with the reacquisition	5	
		91
Limitation on amount of gain		9
Gain resulting from the reacquisition of the property		9

(c) The basis of the reacquired real property at the date of the reacquisition is $70, determined as follows:

Adjusted basis of P's indebtedness to S ($70−[$70×$20/$100])	$56
Gain resulting from the reacquisition of the property	9
Amount of money paid by S in connection with the reacquisition	5
Basis of reacquired property	70

Example (3). (a) S purchases real property for $70 and sells it to P for $100, the property not being mortgaged at the time of sale. Under the contract P pays $10 down and executes a note for $90, with stated interest at 6 percent, to be paid in nine annual installments. S properly elects to report the gain on the installment method. After the first $10 annual payment P defaults and S accepts a voluntary reconveyance of the property in complete satisfaction of the indebtedness. S pays $5 in connection with the reacquisition of the property. The fair market value of the property at the time of the reacquisition is $50.

(b) The gain derived by S on the reacquisition of the property is $14, determined as follows:

Gain before application of limitation:		
Money with respect to the sale received by S prior to the reacquisition		$20
Less: Gain returned by S as income for periods prior to the reacquisition ($20×[($100−$70)/$100])		6
Gain before application of limitation		14
Limitation on amount of gain:		
Sales price of real property		100
Less:		
Adjusted basis of the property at time of sale	$70	
Gain returned by S as income for periods prior to the reacquisition	6	
Amount paid by S in connection with the reacquisition	5	
		81
Limitation on amount of gain		19
Gain resulting from the reacquisition of the property		14

(c) The basis of the reacquired real property at the date of the reacquisition is $75, determined as follows:

Adjusted basis of P's indebtedness to S ($80−[$80×$30/$100])	$56
Gain resulting from the reacquisition the property	14
Amount of money paid by S in connection with the reacquisition	$5
Basis of reacquired property	75

Example (4). (a) S purchases real property for $20 and sells it to P for $100, the property not being mortgaged at the time of sale. Under the contract P pays $10 down and executes a note for $90, with stated interest at 6 percent, to be paid in nine annual installments. S properly elects to report gain on the installment method. After the second $10 annual payment P defaults and S accepts from P in complete satisfaction of the indebtedness a voluntary reconveyance of the property plus cash in the amount of $20. S does not pay any amount in connection with the reacquisition of the property. The fair market value of the property at the time of the reacquisition is $30.

(b) The gain derived by S on the reacquisition of the property is $10, determined as follows:

Gain before application of the limitation:		
Money with respect to the sale received by S prior to the reacquisition ($30+$20)		$50
Less: Gain returned by S as income for periods prior to the reacquisition ($50×[($100−$20)/$100])		40
Gain before application of limitation		10
Limitation on amount of gain:		
Sales price of real property		100
Less:		
Adjusted basis of the property at time of sale	$20	
Gain returned by S as income for periods prior to the reacquisition	40	
		60
Limitation on amount of gain		40
Gain resulting from the reacquisition of the property		10

(c) The basis of the reacquired real property at the date of the reacquisition is $20, determined as follows:

Adjusted basis of P's indebtedness to S ($50−[$50×$80/$100])	$10
Gain resulting from the reacquisition of the property	10
Basis of reacquired property	20

Example (5). (a) S purchases real property for $80 and sells it to P for $100, the property not being mortgaged at the time of sale. Under the contract P pays $10 down and executes a note for $90, with stated interest at 6 percent, to be paid in nine annual installments. At the time of sale P's note has a fair market value of $90. S does not elect to report the gain on the installment method but treats the transaction as a deferred-payment sale. After the third $10 annual payment P defaults and S forecloses. Under the foreclosure sale S bids in the property at $70, cancels P's obligation of $60, and pays $10 to P. There are no other amounts paid by S in connection with the reacquisition of the property. The fair market value of the property at the time of the reacquisition is $70.

(b) The gain derived by S on the reacquisition of the property is $0, determined as follows:

Gain before application of the limitation:		
Money with respect to the sale received by S prior to the reacquisition		$40
Less: Gain returned by S as income for periods prior to the reacquisition ([$10+$90]−$80)		20
Gain before application of limitation		20
Limitation on amount of gain:		
Sales price of real property		$100
Less:		
Adjusted basis of the property at time of sale	$80	
Gain returned by S at income for periods prior to the reacquisition	20	
Amount of money paid by S in connection with the reacquisition	10	
		110
Limitation on amount of gain (not to be less than zero)		0
Gain resulting from the reacquisition of the property		0

(c) The basis of the reacquired real property at the date of the reacquisition is $70, determined as follows:

Adjusted basis of P's indebtedness to S (face value at time of reacquisition)	$60
Gain resulting from the reacquisition of the property	0
Amount of money paid by S in connection with the reacquisition	10
Basis of reacquired property	70

§ 1.1038–2 Reacquisition and resale of property used as a principal residence.

(a) *Application of special rules*—(1) *In general.* If paragraph (a) of § 1.1038–1 applies to the reacquisition of real property which was used by the seller as his principal residence and with respect to the sale of which an election under section 121 is in effect or with respect to the sale of which gain was not recognized under section 1034, the provisions of § 1.1038–1 (other than paragraph (a) thereof) shall not, and this section shall, apply to the reacquisition of such property if the property is resold by the seller within one year after the date of the reacquisition. For purposes of this section an election under section 121 shall be considered to be in effect with respect to the sale of the property if, at the close of the last day for making such an election under section 121(c) with respect to such sale, an election under section 121 has been made and not revoked. Thus, a taxpayer who properly elects, subsequent to the reacquisition, to have section 121 apply to a sale of his residence may be eligible for the treatment provided in this section. The treatment provided by this section is mandatory; however, see § 1.1038–3 for an election to apply the provisions of this section to certain taxable years beginning after December 31, 1957.

(2) *Sale and resale treated as one transaction.* In the case of a reacquisition to which this section applies, the resale of the reacquired property shall be treated, for purposes of applying sections 121 and 1034, as part of the transaction constituting the original sale of such property. In effect, the reacquisition is generally disregarded pursuant to this section and, for purposes of applying sections 121 and 1034, the resale of the property is considered to constitute a sale of such property occurring on the date of the original sale of such property.

(b) *Transactions not included.* (1) If with respect to the original sale of the property there was no nonrecognition of

gain under section 1034 and an election under section 121 is not in effect, the provisions of § 1.1038–1, and not this section, shall apply to the reacquisition. Thus, for example, if in the case of a taxpayer not entitled to the benefit of section 121 there is no gain on the original sale of the property, the provisions of § 1.1038–1, and not this section, shall apply even though a redetermination of gain under this section would result in the nonrecognition of gain on the sale under section 1034. Also, if in the case of such a taxpayer there was gain on the original sale of the property but after the application of section 1034 all of such gain was recognized, the provisions of § 1.1038–1, and not this section, shall apply to the reacquisition.

(2) If the original sale of the property was not eligible for the treatment provided by section 121 and section 1034, the provisions of § 1.1038–1, and not this section, shall apply to the reacquisition of the property even though the resale of such property is eligible for the treatment provided by either or both of sections 121 and 1034.

(c) *Redetermination of gain required*—(1) *Sale of old residence.* The amount of gain excluded under section 121 on the sale of the property and the amount of gain recognized under section 1034 on the sale of the property shall be redetermined under this section by recomputing the adjusted sales price and the adjusted basis of the property, and any adjustments resulting from the redetermination of the gain on the sale of such property shall be reflected in the income of the seller for his taxable year in which the resale of the property occurs.

(2) *Sale of new residence.* If gain was not recognized under section 1034 on the original sale of the property, the adjusted basis of the new residence shall be redetermined under this section. If the new residence has been sold, the amount of gain returned on such sale of the new residence which is affected by the redetermination of the recognized gain on the sale of the old residence shall be redetermined under this section, and any adjustments resulting from the redetermination of the gain on the sale of the new residence shall be reflected in income of the seller for his taxable year in which the resale of the old residence occurs.

(d) *Redetermination of adjusted sales price.* For purposes of applying sections 121 and 1034 pursuant to this section, the adjusted sales price of the reacquired real property shall be redetermined by taking into account both the sale and the resale of the property and shall be an amount which is equal to—

(1) The sum of—

(i) The amount realized on the resale of the property, as determined under paragraph (b)(4) of § 1.1034–1, and

(ii) The amount realized on the original sale of the property, determined as provided in paragraph (b)(4) of § 1.1034–1 but without taking into account that portion of any obligations of the purchaser received by the seller with respect to the original sale of the property which is unpaid at the time of the reacquisition of such real property, reduced by

(2) The sum of—

(i) The amount of money and the fair market value of other property (other than the obligations described in subparagraph (1)(ii) of this paragraph) paid or transferred by the seller in connection with the reacquisition of such real property, and

(ii) The total of the fixing-up expenses (as defined in paragraph (b)(6) of § 1.1034–1) incurred for work performed on such real property to assist in both its original sale and its resale.

For purposes of subparagraph (2)(ii) of this paragraph, there shall be two 90-day periods in applying section 1034 (b)(2), the first ending on the day on which the contract to sell is entered into in connection with the original sale of the property, and the second ending on the day on which the contract to sell is entered into in connection with the resale of the property. There shall also be two 30-day periods for such purposes, the first ending on the 30th day after the date of the original sale, and the second ending on the 30th day after the date of the resale. For determination of the obligations of the purchaser which are received by the seller with respect to the original sale of the property, see paragraph (b)(3) of § 1.1038–1. For determination of amounts paid or transferred by the seller in connection with the reacquisition of the property, see paragraph (c)(4) of § 1.1038–1.

(e) *Determination of adjusted basis at time of resale.* For purposes of applying sections 121 and 1034 pursuant to this section, the adjusted basis of the reacquired real property at the time of its resale shall be the adjusted basis of such property at the time of the original sale, with proper adjustment under section 1016(a) in respect of such property for the period occurring after the reacquisition of such property, reduced by any indebtedness of the purchaser received by the seller with respect to the original sale of such property which, for any taxable year ending before the taxable year in which occurs the reacquisition of such property, was treated by the seller as having become worthless or partially worthless by taking a bad debt deduction under section 166(a). The reduction under the preceding sentence by reason of having treated indebtedness as worthless or partially worthless shall not exceed the amount by which there would be an increase in the basis of such indebtedness under paragraph (f)(3) of § 1.1038–1 if section 1038(d) had been applicable to the reacquisition of such property.

(f) *Treatment of indebtedness with respect to original sale*—(1) *Year of reacquisition.* No debt shall be considered as becoming worthless or partially worthless as a result of a reacquisition of real property to which this section applies. Accordingly, no deduction for a bad debt shall be allowed, as a result of the reacquisition, in order to reflect the noncollectibility of any indebtedness to the seller which arose out of the sale of such property and was secured by such property. In addition, no deduction shall be allowed, for the taxable year in which occurs a reacquisition of real property to which this section applies, in respect of indebtedness secured by such property which has been treated by the seller as having become worthless or partially worthless in such taxable year but prior to the date of such reacquisition.

(2) *Prior taxable years.* For reduction of the basis of the real property for indebtedness treated as worthless or partially worthless for taxable years ending before the taxable year in which occurs the reacquisition, see paragraph (e) of this section.

(3) *Basis of indebtedness.* In the redetermination under paragraph (d)(1)(ii) of this section of the amount realized on the original sale of the real property obligations of the purchaser received by the seller with respect to such sale are excluded; accordingly, the basis of such indebtedness, to the extent not discharged upon the reacquisition of such property, shall be zero.

(g) *Date of sale.* Since the resale of the property, by being treated as part of the transaction constituting the original sale of the property, is treated as having occurred on the date of the original sale, in determining whether any of the time requirements of section 121 or section 1034 are satisfied for purposes of this section the date of the original sale is used, except to the extent provided in paragraph (d)(2) of this section.

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

Example (1). (a) On June 30, 1964, S, a single individual over 65 years of age, sells his principal residence to P for an adjusted sales price of $25,000, the property not being mortgaged at the time of sale. Under the contract, P pays $5,000 down and executes a note for $20,000, with stated interest at 6 percent, the principal being payable in installments of $5,000 each on January 1 of each year. At the time of sale P's note has a fair market value of $20,000. S does not elect to report the gain on the installment method but treats the transaction as a deferred-payment sale, title to the property being transferred to P at the time of sale. S uses the calendar year as the taxable year and the cash receipts and disbursements method of accounting. After making two annual payments of $5,000 each on the note, P defaults on the contract, and on March 1, 1967, S reacquires the real property in full satisfaction of P's indebtedness, title to the property being voluntarily reconveyed to S. On November 1, 1967, S sells the property to T for an adjusted sales price of $35,000. The assumption is made, in determining the adjusted sales price, that no fixing-up expenses are incurred for work performed on the principal residence in order to assist in the sale of the property in 1964 or in the resale of the property in 1967. At the time of sale in 1964 the property has an adjusted basis of $15,000. S does not treat any indebtedness with respect to the sale in 1964 as being worthless or partially worthless or make any capital expenditures with respect to the property after such sale. In his return for 1964, S includes in income $2,000 capital gain from the sale of his residence.

(b) The results obtained before and after the reacquisition of the property are as follows:

	Before reacquisition	After reacquisition
Adjusted sales price:		
$5,000+$20,000	$25,000	
$15,000+$35,000		$50,000
Less: Adjusted basis of property at time of sale	15,000	15,000
Gain on sale	10,000	35,000
Gain excluded from income under sec. 121:		
$10,000×$20,000/$25,000	8,000	
$35,000×$20,000/$50,000		14,000
Gain included in income after applying sec. 121:		
$10,000−$8,000	2,000	
$35,000−$14,000		21,000

(c) S is required to show the additional inclusion of $19,000 capital gain ($21,000 −$2,000) in income on his return for 1967.

Example (2). (a) The facts are the same as in example (1) except that on April 1, 1965, S purchases a new residence at a cost of $30,000 and qualifies for the nonrecognition of gain under section 1034 in respect of the sale of his principal residence on June 30, 1964. In his return for 1964, S does not include any capital gain in income as a result of the sale of the old residence.

(b) The results obtained before and after the reacquisition of the property are as follows:

	Before reacquisition	After reacquisition
Application of sec. 121 (See example (1)):		
Adjusted sales price	$25,000	$50,000
Less: Adjusted basis of property at time of sale	15,000	15,000
Gain on sale	10,000	35,000
Gain excluded from income under sec. 121	8,000	14,000
Gain not excluded from income under sec. 121	2,000	21,000
Application of sec. 1034:		
Adjusted sales price:		
$25,000-$8,000	17,000	
$50,000-$14,000		36,000
Less: Cost of new residence	30,000	30,000
Gain recognized under sec. 1034 on sale of old residence	0	6,000
Gain not recognized under sec. 1034 on sale of old residence:		
($10,000−[$8,000+$0])	2,000	
($35,000−[$14,000+$6,000])		15,000
Adjusted basis of new residence on April 1, 1965:		
$30,000−$2,000	28,000	
$30,000−$15,000		15,000

(c) The $6,000 of capital gain on the sale of the old residence is required to be included in income on the return for 1967. The adjusted basis on April 1, 1965, for determining gain on a sale or exchange of the new residence at any time on or after that date is $15,000, after taking into account the reacquisition and resale of the old residence.

Example (3). The facts are the same as in example (2) except that S sells the new residence on June 20, 1965, for $40,000 and includes $12,000 of capital gain ($40,000−$28,000) on its sale in his income on the return for 1965. S is required to include the additional capital gain of $13,000 ([$40,000−$15,000]−$12,000) on the sale of the new residence in his income on the return for 1967. For this purpose, the assumption is also made that there are no additional adjustments to the basis of the new residence after April 1, 1965.

§ 1.1038–3 Election to have section 1038 apply for taxable years beginning after December 31, 1957.

(a) *In general.* If an election is made in the manner provided by paragraph (b) of this section, the applicable provisions of § 1.1038–1 and § 1.1038–2 shall apply to reacquisitions of real property occurring in all taxable years beginning after December 31, 1957, and before September 3, 1964, for which the assessment of a deficiency, or the credit or refund of an overpayment, is not prevented on September 2, 1964, by the operation of any law or rule of law. An election so made shall apply to all reacquisitions occurring within a taxable year and to all taxable years beginning after December 31, 1957, and before September 3, 1964, for which the assessment of a deficiency, or the credit or refund of an overpayment, is not prevented on September 2, 1964, by the operation of any law or rule of law. The fact that the assessment of a deficiency, or the credit or refund of an overpayment, is prevented for any other taxable year or years affected by the election will not prohibit the making of an election under this section. For example, if an individual who uses the calendar year as the taxable year were to sell in 1960 real property used as his principal residence in respect of the sale of which gain is not recognized under section 1034, and if such property were reacquired by the seller in 1962 and resold within one year, he would be permitted to make an election under this section with respect to such reacquisition even though on September 2, 1964, the period of limitations on assessment or refund has run for 1960. An election under this section shall be deemed a consent to the application of the provisions of this section.

(b) *Time and manner of making election*—(1) *In general.* (i) An election to have the provisions of § 1.1038–2 apply to reacquisitions of real property occurring in taxable years beginning after December 31, 1957, and before September 3, 1964, shall be made by filing on or before September 3, 1965, a return, an amended return, or a claim for refund, whichever is proper, for each taxable year in which the resale of such real property occurs. If the return for any such year is not due on or before such date and has not been filed, the election with respect to such taxable year shall be made by filing on or before such date the statement described in subparagraph (2) of this paragraph.

(ii) An election to have the provisions of § 1.1038–1 apply to reacquisitions of real property occurring in taxable years beginning after December 31, 1957, and before September 3, 1964, shall be made by filing on or before September 3, 1965, a return, an amended return, or a claim for refund, whichever is proper, for each taxable year in which such reacquisitions occur. If the return for any such year is not due on or before such date and has not been filed, the election with respect to such taxable year shall be made by filing on or before such date the statement described in subparagraph (2) of this paragraph.

(iii) If the facts are such that § 1.1038–2 applies to a reacquisition of property except that the reacquisition occurs in a taxable year beginning after December 31, 1957, and before September 3, 1964, an election may not be made under this paragraph to have the provisions of § 1.1038–1 apply to such reacquisition.

(iv) Once made, an election under this paragraph may not be revoked after September 3, 1965. To any return, amended return, or claim for refund filed under this subparagraph there shall be attached the statement described in subparagraph (2) of this paragraph.

(2) *Statement to be attached.* The statement described in subparagraph (1) of this paragraph shall indicate—

(i) The name, address and account number of the taxpayer, and the fact that the taxpayer is electing to have the provisions of section 1038 apply to the reacquisitions of real property,

(ii) The taxable years in which the reacquisitions of property occur and any other taxable year or years the tax for which is affected by the application of section 1038 to such reacquisitions,

(iii) The office of the district director where the return or returns for such taxable year or years were or will be filed,

(iv) The dates on which such return or returns were filed and on which the tax for such taxable year or years was paid,

(v) The type of real property reacquired, the terms under which such property was sold and reacquired, and an indication of whether the taxpayer is applying the provisions of § 1.1038–2 to the reacquisition of such property,

(vi) If § 1.1038–2 is being applied to the reacquisition, the terms under which the old residence was resold and, if applicable, the terms under which the new residence was sold, and

(vii) The office where, and the date when, the election to apply section 121 in respect of any sale of such property was or will be made.

(3) *Place for filing.* Any claim for refund, amended return, or statement, filed under this paragraph in respect of any taxable year, whether the taxable year in which occurs the reacquisition of property or the taxable year in which occurs the resale of the old residence, shall be filed in the office of the district director in which the return for such taxable year was or will be filed.

(c) *Extension of period of limitations on assessment or refund*—(1) *Assessment of tax.* If an election is properly made under paragraph (b) of this section and the assessment of a deficiency for the taxable years to which such election applies is not prevented on September 2, 1964, by the operation of any law or rule of law, the period within which a deficiency for such taxable years may be assessed shall, to the extent such deficiency is attributable to the application of section 1038, not expire prior to one year after the date on which such election is made.

(2) *Refund of tax.* If an election is properly made under paragraph (b) of this section and the credit or refund of any overpayment for the taxable years to which such election applies is not prevented on September 2, 1964, by the operation of any law or rule of law, the period within which a claim for credit or refund of any overpayment for such taxable years may be filed shall, to the extent such overpayment is attributable to the application of section 1038, not expire prior to one year after the date on which such election is made.

(d) *Payment of interest for period prior to September 2, 1964.* No interest shall be payable with respect to any deficiency attributable to the application

of the provisions of section 1038, and no interest shall be allowed with respect to any credit or refund of any overpayment attributable to the application of such section, for any period prior to September 2, 1964. See section 2(c)(3) of the Act of September 2, 1964 (Public Law 88-570, 78 Stat. 856).

[F.R. Doc. 65-8227; Filed, Aug. 4, 1965; 8:45 a.m.]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 52]

CANNED GREEN BEANS AND CANNED WAX BEANS

United States Standards for Grades [1]

Notice is hereby given that the U.S. Department of Agriculture is considering an amendment to the U.S. Standards for Grades of Canned Green Beans and Canned Wax Beans (7 CFR 52.441-52.456) pursuant to the authority contained in the Agricultural Marketing Act of 1946 (Secs. 202-208, 60 Stat. 1087, as amended; 7 U.S.C. 1621-1627).

All persons who desire to submit written data, views, or arguments for consideration in connection with the proposed amendment should file the same in duplicate, not later than 60 days after publication hereof in the FEDERAL REGISTER, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C., 20250. All written submissions made pursuant to this notice will be available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27 (b)).

Statement of consideration leading to the proposed amendment. The current U.S. Standards for Grades of Canned Green Beans and Canned Wax Beans have been in effect since 1961. Since that time the Department has received several requests to lower slightly the drained weight recommendations for whole style beans in No. 303 container and certain other smaller container sizes.

Studies indicate that when the current recommended drained weights of whole beans in smaller containers are consistently met, the quality of the product may be impaired by an excessive amount of broken beans. This problem is more acute in the smallest size beans—Nos. 1, 2, and 3 designations and blends of these sizes—because the specific gravity is lower in the smaller sizes than larger sizes of beans.

To conform with what is more attainable under good commercial practice as to drained weights and maintaining less breakage of whole bean pods, the proposal would amend the recommended drained weights:

(1) In whole style beans only;

(2) of Size 1, 2, and 3 designations or blends of these sizes only; and

(3) in No. 303 containers and certain other small containers. The amendment proposed is:

In Table I of this subpart, delete the first two lefthand columns only, and substitute in lieu thereof:

Container size or designation	Whole—Other than vertical or asparagus style packs	
	Sizes 1, 2, or 3 or blends of only these sizes	Size 4 or larger and blends containing size 4 or larger
	Ounces	*Ounces*
8Z tall	4.0	4.0
8 oz. glass	3.9	3.9
No. 1 (picnic)	5.2	5.6
No. 300	7.2	8.2
No. 300 glass	7.2	8.2
No. 1 tall	7.9	8.5
No. 303	8.0	8.5
No. 303 glass	8.5	9.0
No. 2	10.5	10.5
No. 2½	16.0	16.0
No. 2½ glass	15.8	15.8
No. 3 cylinder	26.6	26.6
No. 10	59.0	59.0

(Secs. 202-208, 60 Stat. 1087, as amended; 7 U.S.C. 1621-1627)

Dated: August 2, 1965.

G. R. GRANGE,
Deputy Administrator,
Marketing Services.

[F.R. Doc. 65-8250; Filed, Aug. 4, 1965; 8:48 a.m.]

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or with applicable state laws and regulations.

FEDERAL AVIATION AGENCY

[14 CFR Part 25]

[Docket No. 4025; Ref. Notice 64-12]

PREVENTION OF CRASH FIRES IN TRANSPORT AIRPLANES

Withdrawal of Notice of Proposed Rule Making

The purpose of this action is to withdraw Notice 64-12 (29 F.R. 3012; March 5, 1964).

On February 27, 1964, the Federal Aviation Agency issued Notice No. 64-12, an advance notice of proposed rule making soliciting public comment on the practicability and availability of various techniques for the prevention of crash fires in transport category airplanes.

Many segments of the aviation industry submitted written comments in response to the notice and after thorough consideration of the comments received the Agency has concluded that presently available technical information does not provide a sufficient basis on which to develop precise regulatory standards on this subject. However, the comments did serve the purpose of identifying the various courses of action available to the Agency and indicated those areas requiring further investigation. The Agency has, therefore, extended its crash fire prevention program in an effort to develop the necessary information. For these reasons, it is considered appropriate to withdraw Notice No. 64-12.

Withdrawal of a notice of proposed rule making constitutes only such action, and does not preclude the Agency from issuing another notice in the future, nor commit the Agency to any course of action in the future.

In consideration of the foregoing, the advance notice of proposed rule making published in the FEDERAL REGISTER (29 F.R. 3012; March 5, 1964) and circulated as Notice No. 64-12, is withdrawn.

This withdrawal is made under the authority of section 313(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1354).

Issued in Washington, D.C., on July 30, 1965.

C. W. WALKER,
Acting Director,
Flight Standards Service.

[F.R. Doc. 65-8251; Filed, Aug. 4, 1965; 8:48 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[Portland Area Office Redelegation Order 1, Amdt. 16]

FORESTRY MATTERS

Redelegation of Authority

Section 2.230 under Part 2 of Portland Area Office Redelegation Order 1, an Order by which the Area Director delegates authority to superintendents, as amended, is further amended by changing the section title and by the addition of paragraph (e), to read as follows:

FUNCTIONS RELATING TO FOREST AND RANGE MANAGEMENT

SEC. 2.230 *Forest management.* (a) Issue advertisements and approve timber sale contracts on approved forms involving an estimated stumpage volume of not to exceed 100,000 feet, board measure, pursuant to 25 CFR 141.8 and 25 CFR 141.13.

(b) Approve contracts, pursuant to 25 CFR 141.13 for the sale of timber from individual allotments, without regard to estimated volumes, on approved forms executed under authority of an approved general contract; with such provisions incorporated therein as the approving officer of the general contract shall stipulate.

(c) Issue timber cutting permits on approved forms pursuant to 25 CFR 141.19, paragraphs (a) and (b) but not including paragraph (c).

(d) Hire temporary labor, rent equipment, purchase tools and supplies, and pay for their transportation to extinguish forest or range fires pursuant to 25 CFR 141.21.

(e) Accept payment of damages in full in settlement of civil trespass cases, pursuant to 25 CFR 141.22, when such settlement does not exceed $1,000. "Payment of damages in full" means payment of the maximum amount due under applicable law.

JOHN O. CROW,
Acting Commissioner.

JULY 26, 1965.

[F.R. Doc. 65-8216; Filed, Aug. 4, 1965; 8:46 a.m.]

Bureau of Land Management

[Montana 070506]

MONTANA

Order Providing for Opening of Public Lands

JULY 27, 1965.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934 (48 Stat. 1269), as amended, the following described land has been reconveyed to the United States:

PRINCIPAL MERIDIAN, MONT.

T. 7 S., R. 12 W.,
Sec. 13, NW¼, and W½SW¼.

The area described contains 240 acres.

2. The lands are located approximately 18 miles west of Dillon, Mont. A country road crosses the north end of the tract. There is no permanent stockwater on it. The vegetative cover of these lands consists of sagebrush, western wheatgrass, and Sandburg bluegrass. The vegetation is in fair condition and has a carrying capacity of eight acres per AUM. The lands are not suited to cultivation.

3. Pursuant to authority delegated to me in section 2.5 of Bureau of Land Management Order No. 701, dated July 23, 1964, the lands described in paragraph 1 hereof are restored to the operation of the public land laws and shall become subject to application, petition, and selection generally under the nonmineral public land laws, except applications under the Small Tract Act, subject to valid existing rights, effective 10 a.m., September 1, 1965. Applications received at or prior to that date will be considered as simultaneously filed at that time.

4. The United States did not acquire minerals in the lands described above.

5. Inquiries should be addressed to the Land Office Manager, Bureau of Land Management, 316 North 26th Street, Billings, Mont., 59101.

R. PAUL RIGTRUP,
Land Office Manager.

[F.R. Doc. 65-8220; Filed, Aug. 4, 1965; 8:46 a.m.]

[Oregon 016677]

OREGON

Notice of Proposed Withdrawal and Reservation of Land

JULY 28, 1965.

The Bureau of Land Management, U.S. Department of the Interior, has filed an application, Serial No. Oregon 016677, for the withdrawal of the Revested Oregon and California Railroad Grant lands described below, from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws, or disposal of materials under the Act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601-604), as amended, or forest products under the Act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a), subject to valid existing rights.

The applicant desires the land for protection of a site containing gravel deposits to be used for surfacing resource management roads.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal, may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 710 Northeast Holladay, Portland, Oreg., 97232.

The authorized officer of the Bureau of Land Management will prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the Bureau of Land Management.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The lands involved in the application are:

OREGON

WILLAMETTE MERIDIAN

T. 30 S., R. 7 W.,
Sec. 35, N½S½NW¼.

The area described aggregates 40 acres.

DOUGLAS E. HENRIQUES,
Land Office Manager.

[F.R. Doc. 65-8221; Filed, Aug. 4, 1965; 8:46 a.m.]

[Washington 05829]

WASHINGTON

Notice of Proposed Withdrawal and Reservation of Lands

The Forest Service, U.S. Department of Agriculture, has filed an application, Washington 05829, for the withdrawal of the lands described below, from all forms of appropriation under the public land laws, including the general mining laws. The applicant desires the land for public recreational purposes.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 680 Bon Marche Building, Spokane, Wash.

The Department's regulations (43 CFR 2311.1-3c) provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant, a public hearing will be held at a convenient time and place which will be announced.

The lands affected are:

WILLAMETTE MERIDIAN

OKANOGAN NATIONAL FOREST

T. 37 N., R. 17 E.,
In Sections 13 and 24.
T. 34 N., R. 18 E.,
In Section 11.

The areas described aggregate approximately 77.50 acres.

JOHN E. BURT, Jr.,
Officer in Charge.

[F.R. Doc. 65-8222; Filed, Aug. 4, 1965; 8:46 a.m.]

[Washington 05830]

WASHINGTON

Notice of Proposed Withdrawal and Reservation of Lands

The Forest Service, U.S. Department of Agriculture, has filed an application, Washington 05830, for the withdrawal of the lands described below, from all forms of appropriation under the public land laws, including the general mining laws. The applicant desires the land for public recreational purposes.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 680 Bon Marche Building, Spokane, Wash.

The Department's regulations (43 CFR 2311.1-3c) provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant, a public hearing will be held at a convenient time and place which will be announced.

The lands affected are:

WILLAMETTE MERIDIAN

OLYMPIC NATIONAL FOREST

South Fork Skokomish Geological Area

T. 22 N., R. 5 W.
Sec. 26, S½NW¼NE¼, NE¼SW¼NE¼, S½SW¼NE¼, SE¼NE¼, NE¼NW¼, E½SE¼NW¼.

The area described aggregates approximately 150 acres.

JOHN E. BURT, Jr.,
Officer in Charge.

[F.R. Doc. 65-8223; Filed, Aug. 4, 1965; 8:46 a.m.]

[Wyoming 0317603]

WYOMING

Notice of Proposed Withdrawal and Reservation of Lands

JULY 29, 1965.

The Forest Service, U.S. Department of Agriculture, has filed an application, serial number Wyoming 0317603, for the withdrawal of lands described below, from location and entry under the general mining laws, but not the mineral leasing laws, subject to valid existing rights.

The applicant wishes to assure tenure of the described lands which contain valuable recreational improvements.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 2120 Capitol Avenue, Cheyenne, Wyo., 82001.

The Department's regulations 43 CFR 2311.1-3(c) provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant, a public hearing will be held at a convenient time and place, which will be announced.

The lands involved in the application are:

SIXTH PRINCIPAL MERIDIAN, WYOMING

TETON NATIONAL FOREST

Fox Park Administrative Site

T. 48 N., R. 112 W.,
Sec. 22, NE¼NE¼NW¼ (Protraction Diagram No. 5).

Crystal Creek Campground

T. 42 N., R. 113 W.,
Sec. 17, N½NE¼NE¼.

Gros Ventre Slide Geologic Area

T. 42 N., R. 114 W.,
Sec. 4, W½NW¼, NW¼SW¼, W½NW¼SW¼SW¼, S½SW¼SW¼, S½SE¼SW¼;
Sec. 5;
Sec. 8 (Protraction Diagram No. 8);
Sec. 9, NW¼, W½SW¼ (Protraction Diagram No. 8);
Sec. 17, N½, N½SW¼, NW¼SE¼ (Protraction Diagram No. 8).

Crystal Springs Administrative Site

T. 42 N., R. 117 W.,
Sec. 24, S½SE¼NE¼ (S½ of lot 2).

The areas described aggregate 2,175.15 acres.

ED PIERSON,
State Director.

[F.R. Doc. 65-8224; Filed, Aug. 4, 1965; 8:46 a.m.]

[BLM 080980]

LOUISIANA

Notice of Proposed Withdrawal and Reservation of Land

JULY 30, 1965.

The U.S. Army Engineer District, New Orleans, Corps of Engineers, has filed application BLM 080980 for the withdrawal of the lands described below for use in (1) connection with the Bayous La Loutre, St. Malo, and Yscloskey, La., Project; (2) maintenance of the Mississippi River Passes, and (3) connection with the Atchafalaya Basin Floodway Project.

For a period of 30 days from the date of publication of this notice all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Eastern States Office, Bureau of Land Management, Washington, D.C., 20240.

The Department's regulations, 43 CFR 2311.1-3(c), provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration of the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant, a public hearing will be held at a convenient time and place, which will be announced.

The lands included in the application are:

LOUISIANA MERIDIAN, LOUISIANA

PLAQUEMINES PARISH

T. 22 S., R. 32 E.,
Sec. 16, lot 16.
T. 24 S., R. 31 E.,
Sec. 23, all fractional.
T. 23 S., R. 31 E.,
Sec. 16, all.

ST. BERNARD PARISH

T. 14 S., R. 16 E.,
Sec. 13, SE¼NW¼.

ST. MARTIN PARISH

T. 9 S., R. 9 E.,
Sec. 29, lot 15.
T. 10 S., R. 9 E.,
Sec. 36, lot 12.
T. 14 S., R. 11 E.,
Sec. 22, lot 1;
Sec. 26, lots 1, 2, 3, 4, 5, 6, 7.

ST. MARY PARISH

T. 14 S., R. 9 E.,
Sec. 59, all.
T. 14 S., R. 10 E.,
Sec. 24, lot 1.

The areas described aggregate 1062.25 acres.

HAROLD E. WALDO,
Acting Manager, Land Office.

[F.R. Doc. 65-8225; Filed, Aug. 4, 1965; 8:46 a.m.]

CIVIL AERONAUTICS BOARD

WORLD AIRWAYS, INC. ET AL.

Proposed Approval of Control Relationships

Application of World Airways, Inc., National Interests, Inc., and Mr. and Mrs. Edward J. Daly, for approval of control relationships pursuant to section 408 of the Federal Aviation Act of 1958, as amended, Docket 16190.

Notice is hereby given, pursuant to the statutory requirements of section 408(b), that the undersigned intends to issue the attached order under delegated authority. Interested parties are hereby afforded a period of 15 days from the date of service within which to file comments or request a hearing with respect to the action proposed in the order.

Dated at Washington, D.C., August 2, 1965.

J. W. ROSENTHAL,
Chief, Routes and Agreements Division, Bureau of Economic Regulation.

[Docket 16190]

WORLD AIRWAYS INC. ET AL.

ORDER APPROVING CONTROL RELATIONSHIPS

Issued under delegated authority.

Application of World Airways, Inc., National Interests, Inc., and Mr. and Mrs. Edward J. Daly, for approval of control relationships pursuant to section 408 of the Federal Aviation Act of 1958, as amended.

By joint application filed May 26, 1965, World Airways, Inc. (World), National Interests, Inc. (National), and Mr. and Mrs. Edward J. Daly request approval, without hearing, pursuant to section 408 of the Federal Aviation Act of 1958, as amended (the Act), of the control relationship arising by reason of the ownership of 50 percent of the issued and outstanding stock of National by Mrs. Daly and her daughter, Charlotte Daly.

The application states that Mr. Daly owns all the issued and outstanding shares of capital stock of World, a supplemental air carrier, and that his wife, Mrs. Daly, owns 25 percent of the issued and outstanding shares of stock in National, a person engaged in a phase of aeronautics, in her own name, and an additional 25 percent as custodian for their daughter, Charlotte Daly.[1] The remaining 50 percent is held by Russell K. Lamm, president, treasurer, and director of National. Since its incorporation in January 1964, the entirety of National's business has been the purchase of two DC-6 aircraft in April 1964, the lease of one of these for a three-month period in the summer of 1964, and the negotiation of a contract to sell the two aircraft and certain spare parts in March 1965.[2] National retains an inventory of assorted spare parts worth about $30,000.

It is further represented that National has no present plan for further business activities; that it has not had nor does it presently contemplate any transactions with World. The applicants indicate their willingness to agree to the imposition of all reasonable conditions designed to insure against transactions between National and World which would be adverse to the public interest. The applicants contend that the existing control relationships were entered into without awareness of the Board's doctrine that for the purposes of section 408 of the Act members of the same family will be treated as one person; they consequently request that the Sherman[3] doctrine be waived.

No comments relative to the joint application or requests for a hearing have been received.

Notice of intent to dispose of the application without a hearing has been published in the FEDERAL REGISTER, and a copy of such notice has been furnished by the Board to the Attorney General not later than the day following the date of such publication, both in accordance with the requirements of section 408(b) of the Act.

Upon consideration of the joint application it is concluded that World is an air carrier, and National is a person engaged in a phase of aeronautics, both within the meaning of section 408 of the Act, and that the common control by the individual applicants of the corporate applicants is subject to that section. However, it has been further concluded that such control relationships do not affect a carrier directly engaged in the operation of aircraft in air transportation, do not result in creating a monopoly, and do not restrain competition. Furthermore, no person disclosing a substantial interest in the proceeding is currently requesting a hearing, and it is found that the public interest does not require a hearing. In the circumstances disclosed in the application, whereby National's sole interest appears to be the retention, subject to resale, of the residue of approximately $30,000 worth of certain spare airplane parts remaining from its purchase in April 1964, as above, the control relationships present no new or consequental substantive issues. It therefore appears that approval of the control relationships, subject to appropriate conditions, would not be inconsistent with the public interest.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.13, it is found that the foregoing control relationships, subject to the attached conditions, should be approved under section 408(b) of the Act, without a hearing.

Accordingly, it is ordered:

That the common control by Mr. and Mrs. Daly of World and National be and it hereby is approved: *Provided, however,* That such approval shall continue only so long as National's sole activity is limited to the ownership of approximately $30,000 worth of assorted spare airplane parts: *And provided, further,* That there shall be no transactions between National and World.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within five days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon the expiration of the above period unless within such period a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

By J. W. Rosenthal,
Chief, Routes and Agreements Division,
Bureau of Economic Regulation.

[SEAL] MABEL MCCART,
Acting Secretary.

[F.R. Doc. 65-8239; Filed, Aug. 4, 1965; 8:48 a.m.]

[1] The application states: "Neither Mr. or Mrs. Daly or any representative or nominee of either of them or of World Airways serves as an officer or director of National. Hence, there are now no relationships involving the parties which would be subject to section 409."

[2] The applicants state: "The participation of the Daly family in National took place in large part as an accommodation to the principal stockholder, Mr. Lamm, in order to make it possible to take advantage of a business opportunity." (Application, Page 2, numbered paragraph 6.)

[3] Sherman Control and Interlocking Relationships, 15 CAB 876 (1952). It has been decided not to enforce the said doctrine with respect to the instant control relationships, and to consider the application on its own merits.

FEDERAL AVIATION AGENCY

[OE Docket No. 65-WE-4]

SKYLINE DEVELOPMENT CO.

Notice of Petition for Review

The Agency's Western Regional Office issued the following Determination of No Hazard to Air Navigation in Aeronautical Study No. WE-OE-4600 on June 16, 1965:

On April 19, 1965, the Skyline Development Co., 1345 Howard Avenue, Suite 201, Burlingame, Calif., submitted a notice of proposed construction for a 13-story apartment building to be located in Millbrae, Calif., at north latitude 37°34'57", west longitude 122°24'07". The overall height of the proposed structure would be

135 feet above ground, 741 feet above mean sea level.

The buildings would be located 9,900 feet south of the approach end of Runway 1 Right, San Francisco International Airport, and 1,600 feet northwest of the extended runway centerline. It would exceed the standards for determining obstructions to air navigation defined in Part 77, Federal Aviation Regulations, § 77.25(b)(3) (conical surface), by 479 feet as applied to the San Francisco International Airport. It is to be noted that terrain at the site exceeds the same standard by 345 feet.

The Federal Aviation Agency has conducted an aeronautical study of the effects the proposal would have on the safe and efficient utilization of navigable airspace. The aeronautical study included discussion of the proposal at an informal airspace meeting held on May 4, 1965, and the circularized agenda made allowance for the submission of written comments until five days after the airspace meeting.

Numerous objections to the proposal were voiced at the meeting and in the written comments that have been submitted to the Agency. These comments and objections have all been given consideration by the FAA in the aeronautical study.

The study revealed that the proposed apartment building would not adversely affect instrument flight rule operations, procedures, or minimum flight altitudes utilized by pilots operating to or from the San Francisco International Airport. Established ceiling and visibility minimums for circling approaches to Runways 1 Left and Right are 1,000 feet and one mile.

It was found that use of the north/south runway complex for takeoffs to the south and landings to the north is low. Under the preferential runway and aircraft noise abatement program, Runways 1 L/R are last in priority for landing and 19 L/R are last for takeoff. An authoritative study indicates that landings on Runways 1 L/R occur 1 percent of the time, and takeoffs on Runways 19 L/R also occur 1 percent of the time. Statements at the May 14 meeting confirmed this.

A detailed analysis of ceiling and visibility conditions as related to the wind factor for a 2-year period was made as a part of the study.

The analysis of 17,520 weather observations taken during 1963 and 1964 revealed that northerly winds exceeding 15 knots occurred only 42 times. In all 42 observations, the ceiling exceeded 1,000 feet and the visibility was 3 miles or more. It can be concluded that strong northerly winds do not prevail and, when they do occur, they are accompanied by ceilings and visibility that permit visual navigation. Both south takeoffs and north landings are based on visual navigation with respect to the ground and structures. In this regard, the notice of construction submitted by the Skyline Development Co. stated that the building will be obstruction lighted. The Agency will make its lighting recommendation by separate letter to the proponent.

It was established at the meeting that aircraft departing to the south normally make left turns prior to reaching the vicinity of the proposed building. While aircraft effecting a landing on Runways 1 L/R would fly a pattern in the vicinity of the proposed building, existing structures in the area are governing factors with respect to the altitude flown. The proposed building would not materially alter this condition.

Therefore, it has been determined that the proposed building would not substantially affect the safety of aircraft and efficient utilization of the navigable airspace and would not be a hazard to air navigation.

This determination is effective and will become final 30 days after the date of issuance unless an appeal is filed. If the appeal is denied, the determination will then become final as of the date of denial or 30 days after the issuance of the determination, whichever is later. Unless otherwise revised or terminated, a final determination hereunder will expire 18 months from the date of issuance or upon earlier abandonment of the construction proposal.

Notice to this office is required at least 48 hours before the start of construction and again within five days after the construction reaches its greatest height.

Take notice that on July 15, 1965, the Millbrae Association for Residential Survival, by Mr. Dean G. Elchinoff, President, timely filed a Petition for Review by the Administrator in appeal of this determination pursuant to § 77.37 (30 F.R. 1387), Part 77, FAR.

Take further notice that, pursuant to the authority delegated to me by the Administrator (30 F.R. 9499), and the Director, Air Traffic Service (30 F.R. 9499) the determination issued by the Agency's Western Regional Office in Aeronautical Study No. WE-OE-4204 is not and will not be a final determination pending final disposition of this petition.

Issued in Washington, D.C., on July 30, 1965.

JOSEPH VIVARI,
Acting Chief,
Obstruction Evaluation Branch.

[F.R. Doc. 65-8203; Filed, Aug. 4, 1965; 8:45 a.m.]

[OE Docket No. 65-EA-9 Amended]

TRIANGLE PUBLICATIONS, INC.

Revision of Coordinates and Height Regarding Television Antenna Tower

On July 9, 1965, the Federal Aviation Agency issued a Review, Affirmation and Conditional Amendment of Determination of Hazard to Air Navigation with regard to a proposal by Triangle Publications, Inc., New Haven, Conn., to construct a television antenna tower at latitude 41°25'13" N., longitude 72°57'16" W., with a total height of 1,549 feet above mean sea level (829 feet above ground level).

On July 27, 1965, Triangle Publications, Inc., filed a request for a change in coordinates and height above ground level. The proposal was amended as follows:

Latitude 41°25'23" N., longitude 72°-57'06" W., with a total height of 1,549 feet above mean sea level (909 feet above ground level).

The Agency has reviewed the effects this proposal would have on the safe and efficient utilization of the navigable airspace. The review disclosed that the amended proposal would have no greater effect upon aeronautical operations, procedures, or minimum flight altitudes than the original proposal.

Therefore, pursuant to the authority delegated to me by the Administrator, this determination is hereby revised to amend the coordinates and height to latitude 41°25'23" N., longitude 72°57'-06" W., with a total height of 1,549 feet above mean sea level (909 feet above ground level).

This amended determination is effective as of the date of issuance.

Issued in Washington, D.C., on July 29, 1965.

GEORGE R. BORSARI,
Chief,
Obstruction Evaluation Branch.

[F.R. Doc. 65-8204; Filed, Aug. 4, 1965; 8:45 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 15735; FCC 65-726]

GLOBAL COMMERCIAL COMMUNICATION-SATELLITE SYSTEM

Ownership and Operation of Initial Earth Stations; Notice of Conference

In the matter of amendment of Part 25 of the Commission's rules and regulations with respect to ownership and operation of initial earth stations in the United States for use in connection with the proposed global commercial communication-satellite system, Docket No. 15735, RM-644.

The Commission believes that a further informal oral presentation by the interested parties in the above-entitled proceeding would contribute to a resolution of the technical questions raised by the petition for reconsideration, on file herein, insofar as the "interface" between the earth station and the terrestrial facilities of the carriers is concerned. The specific issue raised is the technical or engineering consequences, from the point of view of the public interest, of location of the "interface" at a point in close proximity to the central point at which international traffic is normally processed.

Accordingly, pursuant to sections 4(j) and 5(d)(1) of the Communications Act of 1934, as amended, and § 1.423 of the Commission's rules (47 CFR 1.423), notice is given of an informal conference to be held on September 9, 1965, at 10 a.m., at the Commission's offices in Washington, D.C., before the staff members of the Commission with respect to the

technical issues raised in connection with the "interface."

At said time and place, petitioner American Telephone & Telegraph Co. (AT&T) and interested parties having the same or similar views shall be given an opportunity to make a detailed technical presentation regarding the problems it believes would result from a continuation of the outstanding rules and regulations (§ 25.103 (d), (e), and (f)) and why and how other rules, if any, would better serve the public interest. The Communications Satellite Corporation (Comsat), and other parties interested in this facet of the proceeding shall be given an opportunity to participate in the informal conference. In addition, Comsat and other interested parties having views different from those presented by AT&T will, upon request, be given an opportunity, either at said conference or, if more appropriate, at a further informal conference, to make a detailed presentation setting forth their views.

Such parties shall give written notice of their intention to attend said conference at least ten days in advance thereof and shall exchange any written materials intended to be used in support of its views at least five days in advance thereof. The presentation made at said conference (or any further conference) shall be incorporated in, and made a part of the above-entitled proceeding.

Any further formal conferences shall be held at the call of the Chief, Common Carrier Bureau upon appropriate notice to the interested parties.

Adopted: July 28, 1965.

Released: August 2, 1965.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 65-8244; Filed, Aug. 4, 1965; 8:48 a.m.]

[Docket No. 16070; FCC 65-705]

COMMUNICATIONS SATELLITE CORP.

Order Regarding Tariff Schedules

In the matter of Communications Satellite Corp., Docket No. 16070; charges, practices, classifications, rates and regulations for and in connection with the leasing of voice grade and television channels to common carriers authorized by the Federal Communications Commission, between Andover, Maine, and a communications-satellite in connection with the establishment of communication paths between points in the United States and Europe for the transmission and reception of voice, record, data, telephoto, facsimile, television and other signals.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 28th day of July 1965;

The Commission having under consideration its Memorandum Opinion and Order of June 23, 1965, herein, instituting an investigation into the lawfulness of certain tariff schedules as specified therein and setting forth other orders and authorizations relevant to the investigation; and

It appearing, that the investigation herein and the orders and authorizations relevant to the investigation were intended also to include consideration of the charges, classifications, regulations and practices contained in amendments of the above-mentioned tariff schedules and successive issues thereof filed subsequent to the issuance of the above-mentioned Memorandum Opinion and Order on June 23, 1965;

It is ordered, That the above-mentioned Memorandum Opinion and Order of June 23, 1965, is amended to include consideration of, and investigation into the lawfulness of, any amendments to the tariff schedule specified in such Memorandum Opinion and Order as well as any successive issues of such tariff schedules as may hereafter be made until the close of the record herein;

It is further ordered, That the provision of the ordering clause of the designated Memorandum Opinion and Order, to wit:

> * * * all revenues obtained from satellite communications by the Communications Satellite Corporation under the provision of the tariff shall be placed in a "Deferred Credit" account as proposed by the Communications Satellite Corporation and shall not be reclassified or otherwise disposed of in any manner, except as may be authorized or ordered by the Commission, until the investigation herein is concluded and the appropriate reclassification or disposition has been finally determined by the Commission;

is applicable to any amendments of the above-mentioned tariff schedules as well as any successive issues of such tariff schedules as may hereafter be made until the close of the record herein.

Released: August 2, 1965.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 65-8245; Filed, Aug. 4, 1965; 8:48 a.m.]

[1] Commissioner Hyde absent.

FEDERAL MARITIME COMMISSION

AMERICAN WEST AFRICAN FREIGHT CONFERENCE

Notice of Agreement Filed for Approval

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 301; or may inspect agreement at the offices of the District Managers, New York, N.Y.; New Orleans, La.; and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Mr. Herman Goldman, Attorney and Counselor at Law, Equitable Building, 120 Broadway, New York, N.Y., 10005.

Agreement 9480, between 8 of the 12 members of the American West African Freight Conference (Agreement 7680), establishes a sailing arrangement in the trade from Canadian Atlantic and St. Lawrence ports and United States North Atlantic ports to West African ports between Port Etienne, Mauritania and Pointe Noire, Congo (Conference trade range A, Eastbound Group), in accordance with terms and conditions set forth therein.

Dated: July 30, 1965.

By order of the Federal Maritime Commission.

THOMAS LISI, *Secretary.*

[F.R. Doc. 65-8233; Filed, Aug. 4, 1965; 8:47 a.m.]

CHINA NAVIGATION CO., LTD. AND AMERICAN MAIL LINE, LTD.

Notice of Agreement Filed for Approval

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1321 H Street NW., room 301; or may inspect agreement at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Mr. W. R. Purnell, District Manager, American Mail Line, 601 California Street, Suite 610, San Francisco, Calif., 94108.

Agreement 9478, between the China Navigation Co., Ltd. (initial carrier) and American Mail Line, Ltd. (delivering carrier) covers and is restricted to the transportation of cocoa beans and coffee beans under through bills of lading from

[1] Commissioner Hyde absent.

ports of the initial carrier in New Guinea to ports of the delivering carrier in Washington and Oregon with transhipment at Hong Kong under terms and conditions set forth in said agreement.

Dated: July 30, 1965.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 65-8234; Filed, Aug. 4, 1965; 8:47 a.m.]

JOE I. REES

Revocation of License

Whereas, by Order to Show Cause served July 21, 1965, the Federal Maritime Commission ordered that Joe I. Rees, Post Office Box 245, Easton, Pa., on or before July 28, 1965, either (1) submit a valid bond effective on or before July 31, 1965, or (2) show cause in writing or request a hearing to show cause why its license should not be suspended or revoked pursuant to section 44(d), Shipping Act, 1916;

Whereas, Joe I. Rees has failed within the time allotted to comply with the Commission's Order to Show Cause.

Now, therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in its Order to Show Cause dated July 21, 1965.

It is ordered, That the independent ocean freight forwarder license of Joe I. Rees be and is hereby cancelled, effective 12:01 a.m., August 1, 1965.

It is further ordered, That Joe I. Rees return Independent Ocean Freight Forwarder License No. 1043 to the Federal Maritime Commission for cancellation.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served on the licensee.

EDWARD SCHMELTZER,
Director,
Bureau of Domestic Regulation.

[F.R. Doc. 65-8235; Filed, Aug. 4, 1965; 8:47 a.m.]

FEDERAL POWER COMMISSION

[Docket No. RI66-23, etc.]

CALIFORNIA OIL CO.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates [1]

JULY 28, 1965.

The Respondents named herein have filed proposed increased rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in Appendix A below.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before September 13, 1965.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in Docket Nos.
RI66-23	California Oil Co., Western Division, Post Office Box 780, Denver, Colo., 80201, Attn.: Mr. U. P. Cline.	2	50	El Paso Natural Gas Co. (Red Wash Area, Uintah County, Utah).	$41,602	6-28-65	[2] 8-1-65	1-1-66	[4] 15.384	[3] [4] 16.384	
RI66-24	Humble Oil & Refining Co. (Operator), et al., Post Office Box 2180, Houston 1, Tex.	236	6	Southern Natural Gas Co. (Hub Field, Marion County, Miss.).	327,330	7- 6-65	[2] 8-6-65	1-6-66	[7] 20.6	[6] [8] 24.0	
RI66-25	Sohio Petroleum Co. (Operator), et al., 970 First National Annex, Oklahoma City, Okla.	91	19	El Paso Natural Gas Co. (Spraberry Area, Reagan and Upton Counties, Tex.) (R.R. District No. 7-c) (Permian Basin Area).	7,960	6-30-65	[2] 8-1-65	1-1-66	13.984	[10] [11] 18.243	G-16477.

[2] The stated effective date is the first day after expiration of the required statutory notice.
[3] Periodic rate increase.
[4] Pressure base is 15.025 p.s.i.a.
[5] No announced ceiling price for Utah—15.384 cents per Mcf is an initial rate for Red Wash Field, authorized in Commission Opinion No. 359.
[6] Instant filing reflects only a portion of the redetermined rate of 24.9843 cents per Mcf and is considered a "fractured" rate increase.
[7] Rate provided in Opinion No. 445.
[8] The stated effective date is the effective date proposed by Respondent.
[9] Includes 0.5 cent per Mcf tax reimbursement.
[10] Renegotiated rate increase.
[11] Pressure base is 14.65 p.s.i.a.

The rate filing of California Oil Co., Western Division, covers a sale from the Red Wash Field, Uintah County, Utah, where no formal guideline prices have been established for the area. The initial rate of 15.384 cents per Mcf used as a price ceiling is the highest rate permanently certificated in Northeastern Utah. This rate, based on the neighboring Wyoming initial service ceiling was established by the Commission in Opinion No. 359, issued June 11, 1962, which certificated four sales in the Red Wash Field, including the subject sale. Since the proposed rate of 16.384 cents per Mcf is the highest rate filed in Northeastern Utah and exceeds both the adjacent Wyoming 13.0 cents per Mcf increased rate ceiling and the Commission's day, or in the alternative, the earliest date informal initial price ceiling of 15.384 cents per Mcf, it is suspended as hereinbefore ordered. The placing of the proposed rate into effect upon expiration of the suspension period will establish a new price plateau for Northeastern Utah. Such a rate, however, is not expected to trigger favored-nation and price redetermination clauses for other contracts for sales in the area.

Humble Oil & Refining Co. (Operator), et al. (Humble), request that should the Commission suspend their rate filing that the suspension period be shortened to one allowed by the Commission. Good cause has not been shown for granting Humble's request for an earlier effective date or for limiting to one day the suspension period with respect to such rate filing and Humble's request is denied.

Humble and Sohio's proposed increased rates and charges exceed the applicable area price level for increased rates as set forth in the Commission's Statement of General Policy No. 61-1, as amended (18 CFR Ch. I, Part 2, § 2.56).

[1] Does not consolidate for hearing or dispose of the several matters herein.

[F.R. Doc. 65-8210; Filed, Aug. 4, 1965; 8:45 a.m.]

[Docket No. G-11815 etc.]

MARATHON OIL CO., ET AL.

Findings and Order After Statutory Hearing; Correction

JULY 1, 1965.

Marathon Oil Co., et al., Docket Nos. G-11815, et al.; Chase Petroleum Co. (Operator), Agent for John M. Clark, et al., Docket No. CI65-941 (G-20538); Estate of Kay Kimbell, et al., Docket No. G-13558.

In the Findings and Order After Statutory Hearing Issuing Certificates of Public Convenience and Necessity, Amending Certificates, Making Successor Co-Respondent, Redesignating Proceeding, Making Rate Change Effective, Accepting Agreement and Undertaking for Filing and Accepting Related Rate Schedules and Supplements for Filing, issued June 2, 1965 and published in the FEDERAL REGISTER June 11, 1965 (F.R. Doc. 65-6018; 30 F.R. 7621); Ordering paragraph (J) should read as follows:

(J) The 17.0-cent per Mcf increased rate set forth in Supplement No. 1 to Kay Kimbell Estate, et al., FPC Gas Rate Schedule No. 3 shall be effective, subject to refund, as of March 22, 1965, with respect to gas sold under Chase Petroleum Co. (Operator), Agent for John M. Clark, et al., FPC Gas Rate Schedule No. 4; and Chase Petroleum Co.'s agreement and undertaking is hereby accepted for filing. Said 17.0-cent per Mcf increased rate shall be charged and collected as of the effective date, subject to any future orders of the Commission in Docket No. G-20538.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 65-8213; Filed, Aug. 4, 1965; 8:45 a.m.]

[Docket No. G-6080 etc.]

SHARPLES AND CO. PROPERTIES ET AL.

Findings and Order

JULY 28, 1965.

In the matter of Sharples & Co. Properties (Operator), et al. (successor to Williams Bros. Co.), Docket No. G-6080; Pan American Petroleum Corp. (successor to Williams Bros. Co.), Docket No. G-7500; Williams Bros. Co. (successor to Sharples & Co. Properties (Operator), et al.), Docket No. CI63-202; Williams Bros. Co. (successor to Pan American Petroleum Corp.), Docket No. CI65-135; Sharples & Co. Properties (Operator), et al., and Williams Bros. Co., Docket No. G-14624;[1] W. H. Hudson Co., Sharples & Co. Properties (Operator), et al., and Pan American Petroleum Corp., Docket No. RI60-156;[1] and Pan American Petroleum Corp. and Williams Bros. Co., Docket No. RI65-111.

Applicants herein have filed applications pursuant to section 7(c) of the Natural Gas Act for authorization to sell natural gas from various portions of the W/2, Section 48, Township 5 South, T&P Railway Co. Survey, Block 37, Reagan County, Tex., from the surface to the base of the Lower Spraberry Formation which properties have been acquired by Applicants as a result of a cross-assignment between The Sharples Oil Corp. (succeeded to by Sharples & Co. Properties) and Hudson Oil & Metals Co. (succeeded to first by W. H. Hudson Co. and then by Williams Bros. Co.) and between Hudson Oil & Metals Co. and Pan American Petroleum Corp. All sales are to El Paso Natural Gas Co. Details of the subject sales are more fully set forth in the respective applications.

On November 16, 1964, Sharples filed in Docket No. G-6080 an application, together with related rate schedule supplements, to amend the order issuing a certificate of public convenience and necessity in said docket to reflect the conveyance to Williams of an undivided one-half interest in the N/2 NW/4 and the addition of an undivided one-half interest in the S/2 NW/4 acquired from Williams. Sales from the acquired interest have heretofore been authorized in Docket No. CI63-202. The application states that the proposed rate is 10.096 cents per Mcf[2] presently being collected and that an increased rate of 17.2295 cents per Mcf was filed and suspended in Docket No. G-14624. Although Sharples' contract provides for reimbursement of three-fourths of any additional taxes after January 1, 1950, Sharples has not filed for the tax increase except as part of the suspended rate increase. Accordingly, the proper rates are 10.0 cents per Mcf for the interest Sharples retains and 11.0 cents per Mcf, Williams' rate, for the interest acquired from Williams. Williams has filed an increased rate of 17.0 cents per Mcf which has been suspended in Docket No. RI60-156 and has not been made effective.

On August 17, 1964, Williams filed in Docket No. CI63-202 an application, together with related rate schedule supplements, to amend the order issuing a certificate of public convenience and necessity in said docket to reflect the conveyance to Sharples of an undivided one-half interest in the S/2 NW/4 and the addition of an undivided one-half interest in the N/2 NW/4 acquired from Sharples. Sales from the acquired interest have heretofore been authorized in Docket No. G-6080. The application states that the proposed rate is 17.1632 cents per Mcf; however, this is an increased rate which has been suspended in Docket No. G-14624 and has not been made effective. Accordingly, the proper rates are 11.0 cents per Mcf for the interest Williams retains and 10.0 cents per Mcf, Sharples' rate, for the interest acquired from Sharples.

On July 20, 1964, Williams filed in Docket No. CI65-135 an application, together with a related rate schedule and supplements thereto, for a certificate of public convenience and necessity to reflect the conveyance to Pan American of an undivided one-half interest in the N/2 SW/4 and the acquisition from Pan American of an undivided one-half interest in the S/2 SW/4. Sales from the acquired interest have heretofore been authorized in Docket No. G-7500. Williams has filed Pan American's contract as its own rate schedule for sales from the acquired interest. The application states that the proposed rate is 17.1632 cents per Mcf which is in effect subject to refund in Docket No. RI61-44; however, prior to the time that Williams filed the Pan American contract as its own rate schedule, Pan American had filed for an increased rate of 18.243 cents per Mcf which was suspended in Docket No. RI65-111 and has since been made effective subject to refund. Inasmuch as all the rate filings related to the cross-assignment will be accepted for filing effective the date of this order, the proper rate is 18.243 cents per Mcf, Pan American's rate, for the interest acquired from Pan American.

On March 20, 1961, Pan American filed in Docket No. G-7500 an application, together with related rate schedule supplements, to amend the order issuing a certificate of public convenience and necessity in said docket to reflect the conveyance to Williams of an undivided one-half interest in the S/2 SW/4, the acquisition from Williams of an undivided one-half interest in the N/2 SW/4, and the deletion of the acquired interest from Williams' contract and the addition thereof to Pan American's contract. Sales from the acquired interest have heretofore been authorized in Docket No. CI63-202. The proper rates are 18.243 cents per Mcf for the interest Pan American retains and 11.0 cents per Mcf, Williams' rate, for the interest acquired from Williams.

Sharples and Pan American will be made co-respondents in the proceeding pending in Docket No. RI60-156, and the proceeding will be redesignated accordingly. Williams will be made a co-respondent in the proceeding pending in Docket No. G-14624, and the proceeding will be redesignated accordingly. Williams will be made a co-respondent in the proceeding pending in Docket No. RI65-111, the proceeding will be redesignated accordingly, and Williams will be required to file an agreement and undertaking to assure the refund of any amount, together with interest at the rate of seven percent per annum, collected by it for sales of natural gas from the interest acquired from Pan American in excess of the amount determined to be just and reasonable in said proceeding.

After due notice no petition to intervene or protest to the granting of the applications has been received. A notice of intervention was filed on September 8, 1964, in Docket No. CI65-135 by the Public Utilities Commission of the State of California and was withdrawn on June 4, 1965. No further notices of intervention have been received.

At a hearing held on July 21, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits thereto, submitted in support of the respective authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant in Docket No. CI65-135, Williams Bros. Co., is a "natural-gas

[1] Consolidated with Docket No. AR61-1, et al.

[2] All rates are stated at 14.65 p.s.i.a.

company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The sale of natural gas proposed in Docket No. CI65–135, as hereinbefore described and more fully described in the application in said proceeding, will be made in interstate commerce subject to the jurisdiction of the Commission, and such sale by Williams Bros. Co., together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

(3) Applicant in Docket No. CI65–135 is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The sale of natural gas by Applicant in Docket No. CI65–135, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the orders issuing certificates of public convenience and necessity in Docket Nos. G–6080, G–7500, and CI63–202 should be amended by authorizing the sale of natural gas from additional interests and by deleting therefrom authorization to sell natural gas from assigned interests, all as hereinbefore described and as more fully described in the applications in said proceedings.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the rate schedule submitted by Williams Bros. Co. and the supplements to rate schedules submitted by other Applicants should be accepted for filing and designated as hereinafter ordered.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Sharples and Pan American should be made co-respondents in the proceeding pending in Docket No. RI60–156, that Williams should be made a co-respondent in the proceedings pending in Docket Nos. G–14624 and RI65–111, and that Williams should be required to file an agreement and undertaking in Docket No. RI65–111.

The Commission orders:

(A) A certificate of public convenience and necessity is issued, upon the terms and conditions of this order, to Williams Bros. Co., Applicant in Docket No. CI65–135, authorizing the sale for resale of natural gas in interstate commerce, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the application in Docket No. CI65–135.

(B) The certificate granted in paragraph (A) above is not transferable and shall be effective only so long as Williams Bros. Co. continues the acts and operations thereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission.

(C) The grant of the certificate issued in paragraph (A) above shall not be construed as a waiver of the requirements of section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Williams Bros. Co. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the contract, particularly as to the cessation of service upon termination of said contract, as provided by section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificate.

(D) The orders issuing certificates in Docket Nos. G–6080, G–7500, and CI63–202 are amended by adding thereto authorization to sell natural gas from the acquired interests and by deleting therefrom authorization to sell natural gas from the assigned interests, all as hereinbefore described and as more fully described in the applications to amend filed in said dockets; and in all other respects said orders shall remain in full force and effect.

(E) Sharples and Pan American are made co-respondents in the proceedings pending in Docket Nos. RI60–156; Williams is made a co-respondent in the proceedings pending in Docket Nos. G–14624 and RI65–111; and said proceedings are redesignated accordingly.[8]

(F) Within 30 days from the issuance of this order Williams Bros. Co. shall execute, in the form set out below, and shall file with the Secretary of the Commission an acceptable agreement and undertaking in Docket No. RI65–111 to assure the refund of any amount, together with interest at the rate of seven percent per annum, collected by it for sales of natural gas from the interest acquired from Pan American in excess of the amount determined to be just and reasonable in said proceeding. Unless notified to the contrary by the Secretary of the Commission within 30 days from the date of submission, such agreement and undertaking shall be deemed to have been accepted for filing.

(G) Williams Bros. Co. shall comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, and Williams' agreement and undertaking filed in Docket No. RI65–111 shall remain in full force and effect until discharged by the Commission.

(H) The following rate filings are accepted effective the date of this order and are designated as follows:

Docket No.	Applicant	Description and date of instrument	Designation	
			Rate schedule No.	Supplement No.
G–6080	Sharples & Co. Properties (Operator), et al.	Cross-assignment (undated)[4]	2	7
		Supplement 11–9–64 [5]	2	8
CI63–202	Williams Bros. Co.	Cross-assignment (undated)[1 6]	2	1–9
G–7500	Pan American Petroleum Corp.	Cross-assignment (undated)[7]	129	31
		Supplemental agreement 12–28–60[8]	129	32
CI65–135	Williams Bros. Co.	Contract 7–14–52	3	
		Cross-assignment (undated)[9]	3	1
		Supplemental agreement 12–28–60	3	2
		Assignment 10–30–61	3	3

[4] Between Sharples and Williams of certain leasehold interests to the base the Lower Spraberry Formation.
[5] Adds and deletes leasehold interests.
[6] Between Williams, Sharples, and Pan American of certain leasehold interests to the base of the Lower Spraberry Formation.
[7] Between Pan American and Williams of certain leasehold interests to the base of the Lower Spraberry Formation.
[8] Between Pan American and El Paso to dedicate the leasehold interest acquired from Williams to Pan American's existing contract and to delete the interest from Williams' contract.
[9] Between Williams and Pan American of certain leasehold interests to the base of the Lower Spraberry Formation

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 65–8214; Filed, Aug. 4, 1965; 8:45 a.m.]

[Docket No. RP66–2]

UNITED FUEL GAS CO.

Notice of Proposed Changes in Rates and Charges

JULY 28, 1965.

Take notice that on July 20, 1965, United Fuel Gas Co. (United Fuel) tendered for filing its proposed FPC Gas Tariff, Sixth Revised Volume No. 1, subject to the provisions of section 4 of the Natural Gas Act, to become effective on September 15, 1965. The proposed revised tariff supersedes Fifth Revised

[8] Docket No. G–14624, Sharples & Co. Properties (Operator), et al., and Williams Bros. Co.; Docket No. RI60–156, W. H. Hudson Co., Sharples & Co. Properties (Operator), et al., and Pan American Petroleum Corp.; Docket No. RI65–111, Pan American Petroleum Corp. and Williams Bros. Co.

Volume No. 1 and includes, among its proposed changes in classifications of service, rates and charges: A new Winter Service (WS) Rate Schedule; a new Contract Demand Service—Partial Requirements (CDS–PR–1) Rate Schedule; new Emergency Service (ES) and Excess Gas Service (EX) Rate Schedules replacing the present Authorized Overrun Service (AOS) Rate Schedule; the elimination of the billing demand ratchet provisions in the CDS rate schedule; changes in rate design which result in increases in demand charges and decreases in commodity charges in the CDS rate schedule which are also reflected in the new CDS–PR rate schedule; and the elimination of present restrictions on the use of gas for boiler fuel. United Fuel states that the total effect of these changes would result in an annual reduction in its revenues of $1,922,100 for the year 1966.

Protests, petitions to intervene or notices of intervention may be filed with the Federal Power Commission, Washington, D.C., 20426, pursuant to the Commission's rules of practice and procedure on or before August 27, 1965.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 65–8215; Filed, Aug. 4, 1965; 8:45 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70–4296]

ALLEGHENY POWER SYSTEM, INC. AND POTOMAC EDISON CO.

Notice of Proposed Issue and Sale of Short-Term Notes by Subsidiary Company to Holding Company

JULY 30, 1965.

Notice is hereby given that the Potomac Edison Co. ("Potomac"), 200 East Patrick Street, Frederick, Md., 21701, a registered holding company, an electric public-utility company, and a subsidiary company of Allegheny Power System, Inc. ("APS"), 320 Park Avenue, New York, N.Y., 10022, also a registered holding company, have filed a joint application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6, 7, 9, 10, and 12(b) of the Act and Rule 45 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the joint application-declaration for a statement of the transactions therein proposed which are summarized as follows:

Potomac proposes to issue to APS and APS proposes to acquire, from time to time prior to December 31, 1966, unsecured promissory notes in an aggregate principal amount not in excess of $5,000,000. Each note will be dated when issued, will mature 12 months after said date, will bear interest at the New York commercial bank prime rate (currently 4½ percent per annum) in effect on the issue date thereof, and will be prepayable, in whole or in part, at any time without penalty or premium. The proceeds from the notes will be used by Potomac for the temporary financing of the 1965 and 1966 construction program of Potomac and its subsidiary companies, estimated to aggregate $37,000,000.

The joint application-declaration states that no regulatory commission other than this Commission has jurisdiction over the proposed transactions. Expenses to be incurred in connection with the proposed transactions are esetimated not to exceed $500.

Notice is further given that any interested person may, not later than August 27, 1965, 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 the filing 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 (air mail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed contemporaneously with the request. At any time after said date, the joint application-declaration, as filed or as it may be amended, may be granted and 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.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 65–8205; Filed, Aug. 4, 1965; 8:45 a.m.]

[File No. 1–3882]

BELOCK INSTRUMENT CORP.

Order Suspending Trading

JULY 30, 1965.

The common stock, 50 cents par value, and the 6 percent convertible subordinated debentures, series A (due 1975), of Belock Instrument Corp., being listed and registered on the American Stock Exchange, pursuant to provisions of the Securities Exchange Act of 1934 and the 6 percent cumulative preferred stock and the 6 percent convertible subordinated debentures, series B (due 1975), being traded over the counter; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such Exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to sections 15(c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in such securities on the American Stock Exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period August 1, 1965, through August 10, 1965, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 65–8206; Filed, Aug. 4, 1965; 8:45 a.m.]

[811–508]

CHINA INDUSTRIES, INC.

Notice of Application for Order Declaring That Company Has Ceased To Be an Investment Company

JULY 30, 1965.

Notice is hereby given that China Industries, Inc. ("Applicant"), 345 East 56th Street, New York, N.Y., 10022, a New York corporation and a management, closed-end, non-diversified investment company registered under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 8(f) of the Act for an order declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application and exhibits thereto on file with the Commission for a statement of the representations contained therein.

Applicant registered under section 8(a) of the Act by filing a Notification of Registration on November 5, 1945.

On February 17, 1945 the Securities and Exchange Commission issued an order (Investment Company Act Release No. 2095) exempting the company from the provisions of the Act. The order stated "Applicant has not made, is not now making, and does not propose to make, any public offering of its securities."

On February 25, 1960, Applicant was merged into another corporation which at the time of the merger held all of Applicant's stock. Therefore, Applicant has no shares of capital stock outstanding and is no longer a corporate entity.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the taking effect of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than August 16, 1965, 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 should 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 per-

sonally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon China Industries, Inc., at the address set forth 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 matter may be issued by the Commission upon the basis of the information stated in this notice, unless an order for hearing upon this matter shall be issued upon request or upon the Commission's own motion.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 65–8207; Filed, Aug. 4, 1965; 8:45 a.m.]

[File No. 811–1210]

PUTNAM INCOME FUND

Notice of Application for Order Declaring That Company Has Ceased To Be an Investment Company

JULY 30, 1965.

Notice is hereby given that The Putnam Income Fund ("applicant"), 60 Congress Street, Boston, Mass., 02109, a Massachusetts trust and a management open-end diversified investment company registered under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 8(f) of the Act for an order declaring that applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below.

Applicant represents that it has been liquidated in accordance with a Plan of Reorganization and Liquidation ("Liquidating Agreement") which was approved by its shareholders on March 31, 1965. Pursuant to that plan, applicant sold all of its assets (except for cash sufficient to pay its liabilities and expenses, including cash payments to its shareholders in lieu of fractional shares) to Incorporated Income Fund ("Incorporated"), a registered open-end management investment company, on April 5, 1965, in return for shares of Incorporated.

The shares of Incorporated have been distributed to those shareholders of applicant who have surrendered their certificates for applicant's shares. As of June 29, 1965, 51 of applicant's shareholders had not exchanged their certificates for Incorporated shares as provided by the Liquidation Agreement. On that date applicant deposited all of its then remaining assets, consisting of $211.89 in cash and 12,371 shares of Incorporated, with State Street Bank & Trust Co. ("Bank"). Pursuant to a Deposit Agreement dated June 29, 1965, with applicant, the Bank is to deliver to applicant's remaining shareholders upon surrender of their shares, the Incorporated shares and cash they are entitled to under the Liquidating Agreement. The Deposit Agreement also provides that upon such surrender the Bank shall also make pro rata distribution to such shareholders of the dividends and other distributions received on the Incorporated shares held on deposit.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, on application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than August 25, 1965, 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 should 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 (air mail if the person being served is located more than 500 miles from the point of mailing) upon applicant. 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.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 65–8208; Filed, Aug. 4, 1965; 8:45 a.m.]

[812–1811]

TAX EXEMPT INCOME FUND, SERIES 1

Notice of Application for Order of Exemption

JULY 30, 1965.

Notice is hereby given that Tax Exempt Income Fund, Series 1 ("applicant") 45 Wall Street, New York, N.Y., a unit investment trust registered under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 6(c) of the Act for an order of the Commission exempting applicant from compliance with the provisions of section 14(a) of the Act. In substance, section 14(a) of the Act provides that no registered investment company shall make a public offering of securities of which it is the issuer unless it has a net worth of at least $100,000. All interested persons are referred to the application on file with the Commission for a full statement of the representations which are summarized below.

Applicant has filed a registration statement under the Securities Act of 1933 under which there will be offered for sale to the public 5,000 units of undivided interest in a portfolio of municipal bonds. This registration statement has not yet become effective. Applicant will be governed by a Trust Agreement under which Goodbody & Co. will act as Sponsor and United States Trust Co. of New York will act as Trustee. Applicant states that the Sponsor, acting as underwriter, will deposit with the Trustee $5,000,000 principal amount of bonds and will receive from the Trustee simultaneously with such deposit registered certificates for 5,000 units. No additional bonds are to be deposited during the life of the trust and no additional units will be issued. The Trust Agreement provides that bonds may from time to time be sold under certain circumstances, or may be redeemed or may mature in accordance with their terms, and the proceeds from such dispositions will be distributed to unitholders.

Units will remain outstanding until redeemed or until the termination of the Trust, which may be terminated by 100 percent agreement of the unitholders of the applicant, or, in the event that the value of the bonds shall fall below $2,000,000, upon direction of the Sponsor to the Trustee. In connection with the requested exemption the Sponsor has agreed to refund the sales load to purchasers of units, from the Sponsor or any Dealer participating in the distribution, if within 90 days after the registration statement becomes effective, the net worth of the Trust shall be reduced to less than $100,000 or if the Trust is terminated. The Sponsor will instruct the Trustee on the date the bonds are deposited that if the Trust shall at any time have a net worth of less than $2,000,000 as a result of redemption by the Sponsor of unsold units, the Trustee shall terminate the Trust in the manner provided in the Trust Agreement and distribute any bonds or other assets deposited with the Trustee pursuant to the Trust Agreement as provided therein. The Sponsor has agreed on behalf of the underwriter and such dealers to refund any sales load to any purchaser of units on demand and without any deduction in the event of such termination. Applicant further represents that at the present time the Sponsor maintains a market for the units of the many Municipal Investment Trust Funds with which it is similarly connected, and continually offers to purchase such units at prices which exceed the redemption price for such units by amounts which depend upon general market conditions and that as of the date of this application, partly as a result of these activities, no unit of any of the previous Municipal Investment Trust Funds has ever been redeemed. It is the Sponsor's intention to maintain a market for the units of the applicant and to continuously offer to purchase such units at prices in excess of the redemption price as set forth in the

Trust Agreement, although the Sponsor is not obligated to do so.

Notice is further given that any interested person may, not later than August 18, 1965, 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 (air mail 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 such 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.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 65-8209; Filed, Aug. 4, 1965; 8:45 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

CERTIFICATES AUTHORIZING THE EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM RATES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), and Administrative Order No. 579 (28 F.R. 11524) the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the act. The effective and expiration dates, occupations, wage rates, number or proportion of learners and learning periods, for certificates issued under general learner regulations (29 CFR 522.1 to 522.9), and the principal product manufactured by the employer are as indicated below. Conditions provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.20 to 522.25, as amended).

The following learner certificates were issued authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

William Atkin Co., Inc., Eighth and Pittston Streets, Allentown, Pa.; effective 7-23-65 to 7-22-66 (men's dress and sport shirts).

Bee Bee Togs, Inc., 955 Live Oak Street, Tarpon Springs, Fla.; effective 7-24-65 to 7-23-66 (children's lingerie and shorts; infants' crawlers and overalls).

Benton Shirt Co., Inc., Colley Street, Benton, Pa.; effective 8-5-65 to 8-4-66 (men's and boys' sport shirts).

Bestform Foundations of Pa., Inc., Johnstown, Pa.; effective 8-3-65 to 8-2-66 (brassieres, corselettes and girdles).

Clayburne Manufacturing Co., Inc., Post Office Box 666, Clayton, Ga.; effective 8-5-65 to 8-4-66 (men's sport shirts).

Colonial Corp. of America, Woodbury, Tenn.; effective 8-6-65 to 8-5-66 (men's and boys' dress shirts).

The Hercules Trouser Co., Wellston, Ohio; effective 7-30-65 to 7-29-66 (men's and boys' pants).

McMinnville Garment Co., McMinnville, Tenn.; effective 7-24-65 to 7-23-66 (men's and boys' pants).

Ozark Manufacturing Co., Inc., 231 By Pass, Ozark, Ala.; effective 7-24-65 to 7-23-66 (women's blouses).

Henry I. Siegel Co., Inc., Dickson, Tenn.; effective 8-1-65 to 7-31-66 (men's, boys', women's and girls' pants).

Henry I. Siegel Co., Inc., Hohenwald, Tenn.; effective 8-3-65 to 8-2-66 (men's and boys' pants).

The following learner certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

Atlantic Sportwear Co., 613 Main Street, Rockland, Maine; effective 7-23-65 to 7-22-66; 10 learners (men's and boys' pants).

Morris Maier Manufacturing Co., 320 North Arizona, Prescott, Ariz.; effective 7-22-65 to 7-21-66; 10 learners (women's blouses).

The following learner certificates were issued for plant expansion purposes. The effective and expiration dates and the number of learners authorized are indicated.

Cowden-Greenville Co., 419 North Main Street, Greenville, Ky.; effective 7-22-65 to 1-21-66; 100 learners (work clothes).

The Eastern Isles Manufacturing Corp., Richlands, Va.; effective 7-23-65 to 1-22-66; 20 learners (women's pajamas and night gowns).

The H. D. Lee Co., Inc., Houston, Mo.; effective 7-22-65 to 1-21-66; 50 learners (men's and women's western pants).

Glove Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.60 to 522.65, as amended).

Indianapolis Glove Co., Inc., Richmond, Ind.; effective 7-30-65 to 7-29-66; 10 learners for normal labor turnover purposes (work gloves).

Indianapolis Glove Co., Inc., Houlka, Miss.; effective 7-30-65 to 7-29-66; 10 learners for normal labor turnover purposes (work gloves).

Indianapolis Glove Co., Inc., Coshocton, Ohio; effective 8-3-65 to 8-2-66; 10 percent of the total number of machine stitchers for normal labor turnover purposes (work gloves).

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.30 to 522.35, as amended).

Penngora Knitting Mills, Inc., 304 West Ninth Street, Berwick, Pa.; effective 7-29-65 to 7-28-66; 5 learners for normal labor turnover purposes (men's sweaters).

Each learner certificate has been issued upon the representations of the employer which, among other things, were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within 15 days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9. The certificates may be annuled or withdrawn, as indicated therein, in the manner provided in 29 CFR, Part 528.

Signed at Washington, D.C., this 28th day of July 1965.

ROBERT G. GRONEWALD, *Authorized Representative of the Administrator.*

[F.R. Doc. 65-8217; Filed, Aug. 4, 1965; 8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 19]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

AUGUST 2, 1965.

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 in Ex Parte No. MC 67 (49 CFR Part 240), 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 notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protest must be served on the applicant, or its authorized representative, if any, and the protest must certify that such service has been made. The protest must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) 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 the field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 76032 (Sub-No. 198 TA), filed July 29, 1965. Applicant: NAVAJO FREIGHT LINES, INC., 1205 South Platte River Drive, Denver, Colo., 80223. Applicant's representative: O. Russell Jones, Post Office Box 2228, Santa Fe, N. Mex. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General*

commodities, including Class A, B, and C explosives (but excepting commodities in bulk, those of unusual value, household goods as defined by the Commission and those requiring special equipment), serving the Indian Hills plant of the Marathon Oil Co., located approximately 23 miles south and 10 miles west of Artesia, N. Mex., as an off-route point in connection with carrier's otherwise authorized regular-route operations, for 180 days. Supporting shipper: Olsen Engineering Corp., 3813 Buffalo Speedway, Post Office Box 66428, Houston, Tex., 77006. Send protests to: District Supervisor Luther H. Oldham, 2022 Federal Building, Denver, Colo., 80202.

No. MC 77972 (Sub-No. 6 TA), filed July 29, 1965. Applicant: MERCHANTS TRUCK LINE, INC., Post Office Box 209, New Albany, Miss. Applicant's representative: Rubel L. Phillips, Deposit Guaranty Bank Building, Jackson, Miss., 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), (1) between Starkville, Miss., and Ackerman, Miss.: From Starkville over Mississippi Highway 25 to Louisville, Miss., thence over Mississippi Highway 15 to Ackerman, and return over the same route, serving Louisville, Miss., as an intermediate point; and (2) between Starkville, Miss., and Ackerman, Miss.: From Starkville over Mississippi Highway 12 to Ackerman, and return over the same route, serving no intermediate points, as an alternate route for operating convenience only, in connection with applicant's regular route operations, for 180 days. Supporting shipper: The application is supported by over 60 letters of support which may be examined at the Commission here at Washington, D.C. Send protests to: William W. Garland, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, Room 390 Federal Office Building, 167 North Main Street, Memphis, Tenn., 38103.

No. MC 107002 (Sub-No. 262 TA), filed July 29, 1965. Applicant: HEARIN-MILLER TRANSPORTERS, INC., Highway 80 West, Post Office Box 1123, Jackson, Miss. Applicant's representative: D. D. Kennedy, Post Office Box 1123, Jackson, Miss. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Molasses and corn syrup*, in bulk, in tank vehicles, from New Orleans, La., to Fort Wayne, Ind., for 180 days. Supporting shipper: Pennick & Ford, Ltd., Post Office Box 70150, New Orleans, La. Supporting shipper: Ray G. Atherton, Jr., District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, Room 320 U.S. Post Office Building, Jackson, Miss., 332901.

No. MC 110098 (Sub-No. 64 TA), filed July 29, 1965. Applicant: ZERO REFRIGERATED LINES, 815 Merida Street, Post Office Box 7249, Station A, San Antonio, Tex., 78207. Applicant's representative: T. W. Cothren, executive vice president (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, from Freeport, Tex., to points in Texas, Colorado, South Dakota, Wisconsin, Illinois, Kansas, Indiana, Arkansas, New Mexico, North Dakota, Minnesota, Iowa, Nebraska, Missouri, Oklahoma, and Louisiana, for 180 days. Supporting shipper: United Fruit Sales Corp., subsidiary of United Fruit Co., Pier 3, North River, New York, N.Y., 10006. Send protests to: James H. Berry, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 206 Manion Building, San Antonio, Tex., 78205.

No. MC 123157 (Sub-No. 10 TA), filed July 29, 1965. Applicant: CEMENT TRANSPORTERS, INC., Rillito, Ariz. Applicant's representative: A. Michael Bernstein, 1327 Guaranty Bank Building, Phoenix, Ariz. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, in sacks, from Rillito, Ariz., to Shiprock, N. Mex., for 180 days. Supporting shipper: Arizona Portland Cement Co., 222 West Osborn Road, Phoenix, Ariz., 85013. Send protests to: Andrew V. Baylor, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 5045 Federal Building, Phoenix, Ariz., 85025.

No. MC 127450 TA, filed July 29, 1965. Applicant: T. G. GARLAND, doing business as B&W Freight Lines, Inc., Post Office Box 181, Wellington, Tex. Applicant's representative: Paul Spillman, 916 West Avenue, Wellington, Tex. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, (1) between Amarillo and Dodson, Tex., from Amarillo over U.S. Highway 287 to Hedley, Tex., thence over Texas Highway 203 to Wellington, Tex., thence over Texas Farm Road 338 to Dodson, and return over the same route, serving the intermediate points of Quail and Wellington, Tex., and (2) between Wellington and Childress, Tex., over U.S. Highway 82 serving all intermediate points, for 180 days. Supporting shippers: Owens Super Service, Brooks Auto Supply, Brown Paint & Body Shop, Sullivan Hardware & Furniture Co., White Auto Store, Saied's Department Store, Barjenbruch Implement Co., Farmers Co-op Society No. 1, Kelso Funeral Home, Stevenson Implement Co., Owens & Sons Wholesale Distributors, John Holton Oil & Butane Co., Cudd Brothers, OK Rubber Welders, Kendrick Olds Co., S&R Hardware & Appliance, Clark Chevrolet Co., all of Wellington, Tex.; Quail Mercantile Co., Quail, Tex.; Farmers Cooperative Gin Society No. 1, Trimline Shops, Dodson Lumber & Supply Co., Davis Gin, all of Dodson, Tex. Send protests to: Harold M. Gregory, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 918 Tyler Street, Amarillo, Tex.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 65-8230; Filed, Aug. 4, 1965; 8:46 a.m.]

ASSIGNMENT OF WORK, BUSINESS AND FUNCTIONS

Organization

At a general session of the Interstate Commerce Commission, held at its Office in Washington, D.C., on the 27th day of July A.D. 1965.

Section 17 of the Interstate Commerce Act, as amended (49 U.S.C. 17), and other provisions of law being under consideration, with a view to reflecting changes in assignment of work resulting from the Commission's reorganization of its headquarters staff as announced June 7, 1965:

It is ordered, That the organization minutes of the Interstate Commerce Commission relating to the organization of divisions and boards and assignment of work, issue of March 7, 1961, revised to May 1, 1961, as amended, 26 F.R. 4773, 5167, 8434, 10991, and 12789; 27 F.R. 1234, 1747, 2500, 3830, and 9997; 28 F.R. 198, 896, 8013, and 8185; 29 F.R. 3027, 4935, 11401, 12503, 14517, 16846, 17020 and 18403; 30 F.R. 598, 2628, 5723, 8246, and 8982, be, and it is hereby, further amended in the following particulars:

(A) Under the heading "Assignment of Duties to Divisions":

(1) Paragraphs (c), (i), (q), and (r) of item 4.2 are amended by deleting the words "a Motor Carrier Board" and substituting in lieu thereof "an Operations and Compliance Board."

(2) Paragraphs (b) and (n) of item 4.4 are amended by deleting the words "Safety and Service Boards" and substituting in lieu thereof "Railroad Safety and Service Board."

(3) Paragraph (o) of item 4.4 is amended by deleting the words "Safety and Service Boards pursuant to Item 7.7" and substituting in lieu thereof "Explosives and Other Dangerous Articles Board pursuant to Item 7.8(d)."

(4) Paragraph (aa) of item 4.4 is amended by deleting the words "Transportation of Explosives and Dangerous Articles Act" and "Safety and Service Boards pursuant to Item 7.7" and substituting in lieu thereof, respectively, "Explosives and Other Dangerous Articles Act", and "Railroad Safety and Service Board pursuant to Item 7.7, or by the Explosives and Other Dangerous Articles Board pursuant to Item 7.8(d)".

(B) Under the heading "Assignments to Boards".

(1) The title of item 7.5 reading "The Transfer Board" is amended to read "Transfer Board".

(2) Paragraph (d) of Item 7.6 is amended by deleting "Appendix B" and substituting in lieu thereof "Appendix A".

(3) The title of item 7.7, reading "Safety and Service Boards:", is amended to read "Railroad Safety and Service Board:".

(4) The title of paragraph 7.7(a) is deleted, and existing subparagraphs (1), (2), and (3) thereof are redesignated (a), (b), and (c).

(5) Paragraph (b) of item 7.7 is amended and redesignated as new paragraph (d) of item 7.8, which is described infra under (12).

(6) Existing paragraph (c) of item 7.7 is redesignated (d) and amended to substitute the words "Railroad Safety and Service Board" in lieu of "Safety and Service Boards".

(7) Existing paragraph (d) of item 7.7 is redesignated (e) and amended to substitute the words "The Railroad Safety and Service Board" in lieu of "Any Safety and Service Board" and "the Railroad Safety and Service Board" in lieu of "a Safety and Service Board".

(8) The title of item 7.8, reading "Motor Carrier Boards:", is amended to read "Operations and Compliance Boards:".

(9) The title of item 7.8(a), reading "Motor Carrier Board No. 1:", is amended to read "Insurance Board".

(10) The title of item 7.8(b), reading "Motor Carrier Board No. 2:", is amended to read "Motor Carrier Safety Board:".

(11) The title of item 7.8(c), reading "Motor Carrier Board No. 3:", is amended to read "Motor Carrier Leasing Board:".

(12) New paragraph (d) of item 7.8 (as redesignated in paragraph (5) above) is amended by deleting the words "Explosives Act" and substituting in lieu thereof "Explosives and Other Dangerous Articles Act", paragraph (d) as thus amended reading as follows:

(d) Explosives and Other Dangerous Articles Board: Proceedings relating to the establishment of reasonable requirements for the safe transportation of explosives and other dangerous articles, including flammable liquids, flammable solids, oxidizing materials, corrosive liquids, compressed gases, radioactive materials, etiologic agents, and poisonous substances, under provisions of the Explosives and Other Dangerous Articles Act, 18 U.S.C. 831–835 and Section 204(a)(1), (2), (3), and (5) of Part II, except provisions relating to the use of other Governmental agencies and facilities for the making of tests and experiments to be paid for by the Commission, which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(13) Existing paragraph (d) of item 7.8 is redesignated (e) and amended to substitute the words "an Operations and Compliance Board" in lieu of "a Motor Carrier Board".

(14) Existing paragraph (e) of item 7.8 is redesignated (f) and amended to read as follows:

(f) Any Operations and Compliance Board may certify to the appropriate division any matter which in the Board's judgment should be passed on by that division, or the Commission; and the appropriate division may recall any matter from an Operations and Compliance Board.

(15) Paragraph (c) of item 7.11 is amended by deleting "Appendix C" and substituting in lieu thereof "Appendix B".

(16) Item 8.4 is amended by deleting the words "Motor Carrier Boards" and substituting in lieu thereof "Operations and Compliance Boards".

(17) Paragraph (b) of item 8.6 is amended by deleting the words "Safety and Service Boards under Item 7.7(a) and (b)" and substituting in lieu thereof "Railroad Safety and Service Board under Item 7.7 and the Explosives and Other Dangerous Articles Board under Item 7.8(d)".

(18) New appendix B is amended by deleting the word "Bureau" in the proviso paragraph and substituting in lieu thereof the word "Section".

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 65-8231; Filed, Aug. 4, 1965; 8:46 a.m.]

CUMULATIVE LIST OF CFR PARTS AFFECTED—AUGUST

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during August.

3 CFR

EXECUTIVE ORDERS:
- 7548 (revoked in EO 11239) — 9671
- 10402 (superseded in part by EO 11239) — 9671
- 11239 — 9671

5 CFR

- 213 — 9673, 9758

7 CFR

- 70 — 9673
- 755 — 9758
- 855 — 9673
- 908 — 9673
- 910 — 9623
- 925 — 9623
- 927 — 9758
- 948 — 9674
- 1427 — 9759
- 1443 — 9674

PROPOSED RULES:
- 52 — 9776
- 911 — 9648
- 915 — 9648
- 980 — 9649
- 991 — 9650

12 CFR

- 570 — 9639

14 CFR

- 39 — 9624
- 71 — 9624, 9625, 9761
- 73 — 9762
- 97 — 9625
- 208 — 9762

PROPOSED RULES:
- 25 — 9776
- 71 — 9648

18 CFR

PROPOSED RULES:
- 141 — 9697
- 260 — 9697

21 CFR

- 8 — 9764
- 121 — 9639
- 148i — 9765

26 CFR

- 1 — 9739
- 19 — 9739

PROPOSED RULES:
- 1 — 9768

29 CFR

- 1601 — 9676

32 CFR

- 564 — 9765
- 1453 — 9640

33 CFR

- 203 — 9765
- 207 — 9765

39 CFR

PROPOSED RULES:
- 22 — 9695

41 CFR

- 1–1 — 9766
- 1–15 — 9676
- 5–10 — 9767

47 CFR

- 1 — 9686, 9767
- 73 — 9687, 9690, 9693

PROPOSED RULES:
- 2 — 9695
- 73 — 9695–9697
- 87 — 9695

50 CFR

- 13 — 9640, 9767
- 32 — 9694, 9767
- 260 — 9643
- 262 — 9644

Latest Edition in the series of . . .

PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES

John F. Kennedy, 1963

Contains verbatim transcripts of the President's news conferences and speeches and full texts of messages to Congress and other materials released by the White House during the period January 1–November 22, 1963.

Among the 478 items in the book are: special messages to the Congress on education, youth conservation, needs of the Nation's senior citizens, and on improving the Nation's health; radio and television addresses to the American people on civil rights and on the nuclear test ban treaty and the tax reduction bill; joint statements with leaders of foreign governments; and the President's final remarks at the breakfast of the Fort Worth Chamber of Commerce. Also included is the text of two addresses which the President had planned to deliver on the day of his assassination; President Johnson's proclamation designating November 25 a national day of mourning; and remarks at the White House ceremony in which President Kennedy was posthumously awarded the Presidential Medal of Freedom.

A valuable reference source for scholars, reporters of current affairs and the events of history, historians, librarians, and Government officials.

1007 Pages *Price: $9.00*

VOLUMES *of* PUBLIC PAPERS *of the* PRESIDENTS
currently available:

HARRY S. TRUMAN

1945	$5.50	1947	$5.25
1946	$6.00	1948	$9.75
1949	$6.75		

DWIGHT D. EISENHOWER:

1953	$6.75	1957	$6.75
1954	$7.25	1958	$8.25
1955	$6.75	1959	$7.00
1956	$7.25	1960–61	$7.75

JOHN F. KENNEDY:

1961	$9.00	1962	$9.00
1963	$9.00		

Volumes are published annually, soon after the close of each year. Earlier volumes are being issued periodically, beginning with 1945.

Contents:

- Messages to the Congress
- Public speeches
- The President's news conferences
- Radio and television reports to the American people
- Remarks to informal groups
- Public letters

Order from the: Superintendent of Documents
Government Printing Office
Washington, D.C. 20402