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Washington, Saturday, November 3, 1956

## TITLE 5—ADMINISTRATIVE PERSONNEL

### Chapter I—Civil Service Commission

#### PART 6—EXCEPTIONS FROM COMPETITIVE SERVICE

##### FEDERAL MEDIATION AND CONCILIATION SERVICE

Effective upon publication in the FEDERAL REGISTER, paragraph (f) is added to § 6.346 as set out below.

§ 6.346 *Federal Mediation and Conciliation Service.* \* \* \*

(f) One Special Representative.

(R. S. 1753; sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] Wm. C. HULL,  
*Executive Assistant.*

[P. R. Doc. 56-8936; Filed, Nov. 2, 1956; 8:50 a. m.]

### Chapter III—Foreign and Territorial Compensation

[Dept. Reg. 106.302]

#### PART 325—ADDITIONAL COMPENSATION IN FOREIGN AREAS

##### DESIGNATION OF DIFFERENTIAL POSTS

Section 325.11 *Designation of differential posts*, is amended as follows, effective as of the beginning of the first pay period following November 3, 1956:

1. Paragraph (a) is amended by the deletion of the following:

Cuddalore, India.

2. Paragraph (b) is amended by the deletion of the following:

Ecuador, all posts except Guayaquil, Pichilingue, Quevedo and Quito.  
India, all posts except Bangalore, Bhopal, Bombay, Calcutta, Chandigarh, Cuddalore, Gwalior, Hazaribagh, Hyderabad, Izatnagar, Lucknow, Ludhiana, Madras, Nabha, Nagpur, New Delhi, Simla, Trivandrum and Vellore.

3. Paragraph (a) is amended by the addition of the following:

Daule, Ecuador.

4. Paragraph (b) is amended by the addition of the following:

Ecuador, all posts except Daule, Guayaquil, Pichilingue, Quevedo and Quito.  
India, all posts except Bangalore, Bhopal, Bombay, Calcutta, Chandigarh, Gwalior, Hazaribagh, Hyderabad, Izatnagar, Lucknow, Ludhiana, Madras, Nabha, Nagpur, New Delhi, Simla, Trivandrum and Vellore.

(Sec. 102, Part I, E. O. 10,000, 13 F. R. 5453, 3 CFR, 1948 Supp.)

Dated: October 26, 1956.

For the Secretary of State.

I. W. CARPENTER, JR.,  
*Assistant Secretary-Controller.*

[P. R. Doc. 56-8926; Filed, Nov. 2, 1956; 8:48 a. m.]

## TITLE 14—CIVIL AVIATION

### Chapter I—Civil Aeronautics Board

#### Subchapter A—Civil Air Regulations

[Supp. 31]

#### PART 4b—AIRPLANE AIRWORTHINESS; TRANSPORT CATEGORIES

##### ENGINE POWER CALIBRATION

The following new § 4b.110-2 sets forth CAA policies relating to the procedures and methods to be used as a guide for conducting engine power calibration during type certification tests and establishing a calibrated power curve to be applied to the performance evaluation of transport category aircraft.

A new § 4b.110-2 is added to read as follows:

§ 4b.110-2 *Engine power calibration (CAA policies which apply to § 4b.110).*

The performance of an airplane established in accordance with the requirements of §§ 4b.110 through 4b.125 and shown in the performance section of the Airplane Flight Manual should be reproducible by any airplane of a similar model having engines that deliver no more than 100 percent certificated rated power. This means that the power used to drive all accessories, other than those necessary to the functioning of the engine, should be deducted from the certificated rated or installed engine power, whichever is less. To assist in meeting these objectives, the engine power of all new type airplanes as defined by § 4b.11 (e) should be calibrated in accordance with paragraphs (a) through (c) of this section.

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(a) *Corrections to the calibrated power for engines producing power above the certificated ratings.* (1) The applicant should provide engine power output data obtained from dynamometer tests, or the equivalent thereof for all engines that are installed in the airplane which will be used in the power calibration flight tests. The data should be sufficiently complete to allow a direct comparison with the approved certificated ratings of the engines.

(2) If the dynamometer calibration data for any engine selected for the in-flight power calibration in accordance with the provisions of paragraph (b) of this section indicate that the power (based on standard atmospheric conditions for the engine) is higher than the certificated rating for the engine model, the calibrated power curve established as a result of flight tests in paragraphs (b) and (c) of this section should be corrected by applying the following power reduction: 100 percent of the power increment between the dynamometer calibration and the certificated engine rating at sea level, and 47 percent of the sea level power increment applied at an altitude of 20,000 feet with a lineal variation between these two points throughout the operating altitude range of the airplane. If the calibrated power curve established as a result of the flight tests represents an average power for more than one engine, it should be corrected by applying a power reduction equivalent to the average power difference between the dynamometer and the rated power for all engines used in the flight calibration tests. The application of other correction methods and values that will adjust the power data on the basis of the certificated rating of the engine throughout the operating altitude range of the airplane are acceptable if they can be substantiated.

(b) *Selection of engines for power calibration in flight.* With the exception of the critical inoperative engine, the number of engines which will be used as a basis for power calibration is left to the option of the applicant. However, the procedure specified in this paragraph should be followed to determine which engine(s) should be selected for establishing the basic calibrated power curve.

(1) The installed power of all engines should be compared in flight by means of calibrated torqueometers or other equivalent methods. If a calibrated power curve is to be established on the basis that all engine driven accessories will be in operation during flight, the comparison should be made under full accessory load conditions. If a separate calibrated power curve is to be established for application to those test con-

figurations where certain accessories will not be in operation, the power of all engines may be compared when these accessories are in the appropriate idling or off position. In this case it will be necessary to provide data, indicating accessory load requirements for those flight configurations and the particular engine(s) from which the power is obtained.

(2) For two-engine aircraft it is only necessary to calibrate the engine which produces the lesser power determined by comparing the results of the torqueometer indications in accordance with subparagraph (1) of this paragraph for the most critical accessory load condition and taking into consideration the appropriate power reduction when the engine dynamometer test output is above the rated power for the engine. All performance data scheduled in the Airplane Flight Manual should be based on the calibrated power curve established for this engine. If the applicant desires to calibrate the power of both engines, only the all engine operating performance data should be based on a curve representing the average power for the two engines.

(3) When the applicant desires to calibrate the power of one engine for aircraft having more than two engines, the engine selected should be that which delivers the lowest power, determined by comparing the results similarly as in the case of the two-engine aircraft in subparagraph (2) of this paragraph. All performance data scheduled in the Airplane Flight Manual should be based on the calibrated power curve established for this engine. If the applicant desires to calibrate the power of two engines, the calibrated power curve should be based on values representing an average of the two engines delivering the lowest power.

(4) The procedure in subparagraph (3) of this paragraph should be followed if the applicant desires to calibrate the power of more than two engines, however, the Airplane Flight Manual performance data should be based upon an average calibrated power curve which has been derived from not more than the actual number of engines in operation corresponding to the test configuration for which performance is established. This procedure is not necessary, for example, in the case where the average power curve for two and three engines is substantially equal. However, the third engine may be calibrated to obtain additional data which will permit a more accurate fairing of the calibrated power curve.

(5) If the results of the flight tests indicate that the power of any engine selected in accordance with the provisions of this paragraph exceeds rated power after the application of the dynamometer correction specified in paragraph (a) of this section, the calibrated power curve for application to performance testing should be based upon not more than certificated rated power of the engine with the power to drive the accessories deducted.

(c) *Flight test procedure for calibrating engine power.* The engine calibration flight tests should be conducted in accordance with the provisions specified in this paragraph.

(1) The critical altitudes of the engine should be established for takeoff power and maximum continuous power providing these critical altitudes lie below the highest operating altitude desired for certification. Critical altitudes need not be determined above the maximum operating altitude of the airplane.

(2) For engine installations specifically designed to indicate power by means of torqueometers, the engine power calibration tests as well as all performance tests which are affected by power should be obtained with calibrated torqueometers.

(3) All engine adjustments such as ignition timing, valve clearances, air-fuel ratios, fuel flow rates, antidetonant injection flow rates, etc., should be maintained within approved limits for the engine. If any permanent changes are made to the engine or powerplant installation during the type certification tests, and such changes result in an engine power output less than that established in the calibrated power data, then all performance data should be corrected to this lower power.

(4) The engine power calibration tests should be conducted in an atmosphere which is free of any visible moisture.

(5) The engine power calibration tests should be conducted in the configurations that follow:

(i) *Takeoff power.*

Weight—maximum takeoff.  
C. G. position—optional.  
Wing flaps—takeoff position.  
Landing gear—retracted.  
Operating engine(s)—takeoff r. p. m. and manifold pressure or full throttle, mixture setting at normal position for takeoff power, carburetor air heat control at cold and cowl flaps in takeoff position (see § 4b.118-1 (d) (1)).  
Critical inoperative engine—throttle closed on highest powered engine, propeller windmilling in takeoff pitch (may be feathered if automatic feathering device is installed), mixture setting at idle cut-off and cowl flaps in takeoff position (see § 4b.118-1 (d) (1)).

(ii) *Maximum continuous power.*

Weight—maximum takeoff.  
C. G. position—optional.  
Wing flaps—en route position.  
Landing gear—retracted.  
Operating engine(s)—maximum continuous r. p. m. and manifold pressure or full throttle, mixture setting at normal position, carburetor air heat control at cold and cowl flaps at CAA hot day cooling position.  
Critical inoperative engine—throttle closed on highest powered engine, propeller feathered and cowl flaps in minimum drag position.

(6) *Test procedure and required data.*

The engine power calibration tests should be conducted in a climbing attitude at the takeoff safety speed,  $V_2$ , with the use of takeoff power and at the en route climb speed with the use of maximum continuous power. The climbs should be started at the lowest practicable altitude and cover the altitude range desired for certification. During these tests the engine(s) should be operated within the approved limits for r. p. m., manifold pressures, temperatures, etc. The following data should be recorded

## RULES AND REGULATIONS

at reasonable time intervals for each power condition:

Pressure altitude.  
Ambient air temperature.  
Humidity.  
Indicated airspeed.  
Engine(s), r. p. m. and manifold pressure.  
Torque pressure.  
Cylinder head temperatures.  
Carburetor air temperature.  
Fuel flow rate.  
Antidetonant injection flow rate.

In addition, a record should be made of the following items:

Fuel grade.  
Wing flap position.  
Landing gear position.  
Cowl flap position.  
Mixture setting.  
Blower setting.  
Accessory power loads and distribution.

(d) *Engine power checks.* A suitable means should be established by which engine power may be compared after overhauls with the original calibrated power data obtained as a result of the type certification tests.

This supplement shall become effective November 30, 1956.

(Sec. 205, 52 Stat. 984 as amended; 49 U. S. C. 425. Interpret or apply secs. 601, 603, 52 Stat. 1007, as amended, 1009, as amended; 49 U. S. C. 551, 553)

[SEAL]

JAMES T. PYLE,  
Acting Administrator  
of Civil Aeronautics.

[F. R. Doc. 56-8908; Filed, Nov. 2, 1956;  
8:45 a. m.]

[Supp. 41]

PART 42—IRREGULAR AIR CARRIER AND  
OFF-ROUTE RULES

EN ROUTE LIMITATIONS ON CERTAIN  
MULTIENGINE AIRCRAFT

The purpose of this supplement is (1) to establish en route limitations for the Cessna Model 310 and DeHavilland Dove Series 1A, 2A, 5A, and 6A; and (2) to delete the aircraft designations in the introductory paragraph of § 42.80-6 so that en route limitations may be added or changed without affecting the introductory paragraph.

The proposed rules were published on August 14, 1956, in 21 F. R. 6071-6072. All interested persons have been afforded an opportunity to submit written views, data or argument.

The introductory paragraph of § 42.80-6 is amended and the en route limitations for the Cessna Model 310 and DeHavilland Dove Series 1A, 2A, 5A, and 6A are established, by tables and charts, as follows:

§ 42.80-6 *En route limitations on multiengine aircraft with maximum allowable takeoff weight below 12,500 pounds (CAA rules which apply to § 42.80).* The following en route limitations data shall be used in determining compliance with § 42.80. These data are presented in tabular and graphic form by aircraft make and model. En route performance data on other aircraft weighing less than 12,500 pounds and operated under § 42.16 will be made available upon application to the Administrator.

TABLE 1—EN ROUTE LIMITATIONS

CESSNA MODEL 310—WITH ORIGINAL PROPELLER  
DIAMETER LIMITS OF 82 INCHES TO 84 INCHES

Weight in pounds	Terrain clearance <sup>1</sup> in feet and climb speed in m. p. h. (TIAS)	
	Feet	Miles per hour
4,600	6,300	102.0
4,500	6,900	101.8
4,250	8,250	101.4
4,000	9,000	101.0
3,750	10,950	100.6

<sup>1</sup> Highest altitude of terrain over which airplane may be operated in compliance with § 42.82.

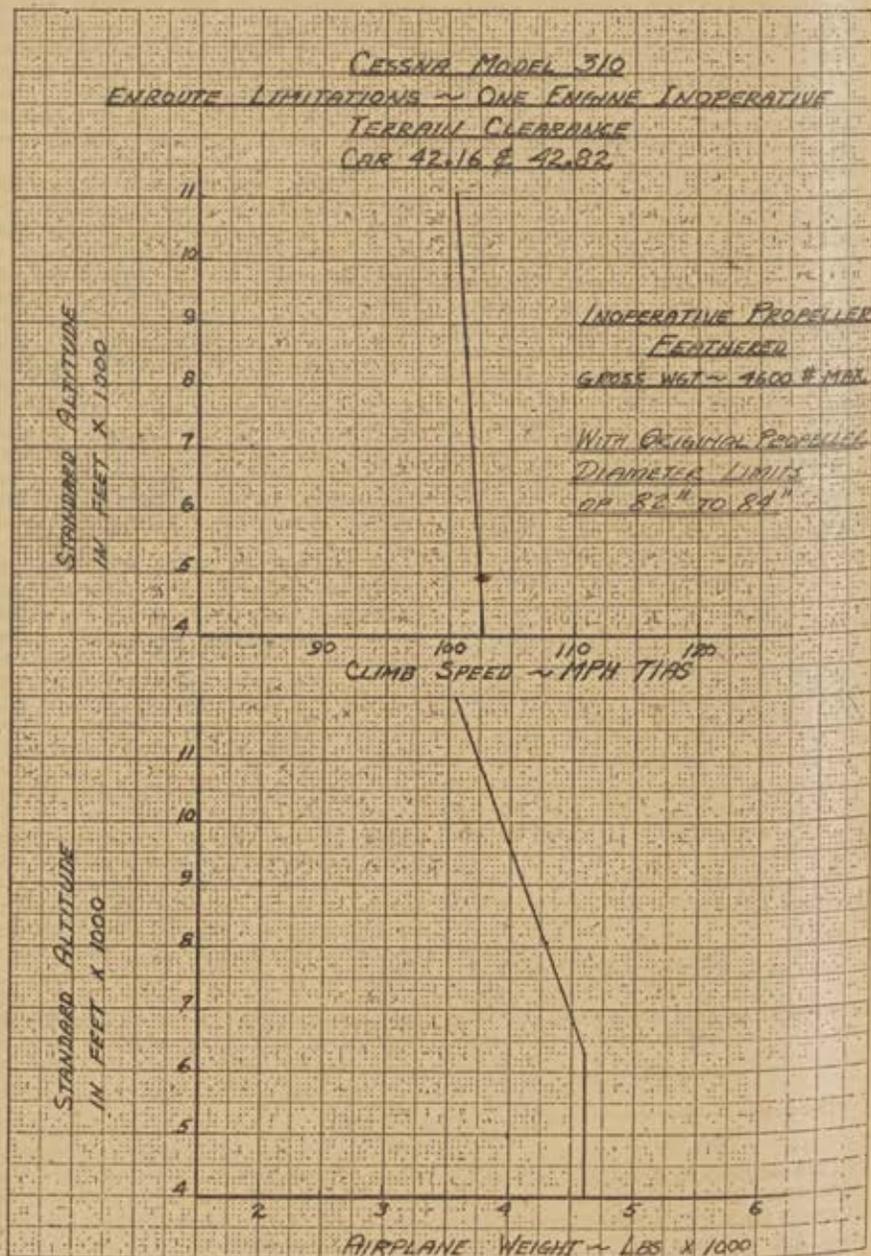
NOTE: Inoperative propeller feathered.

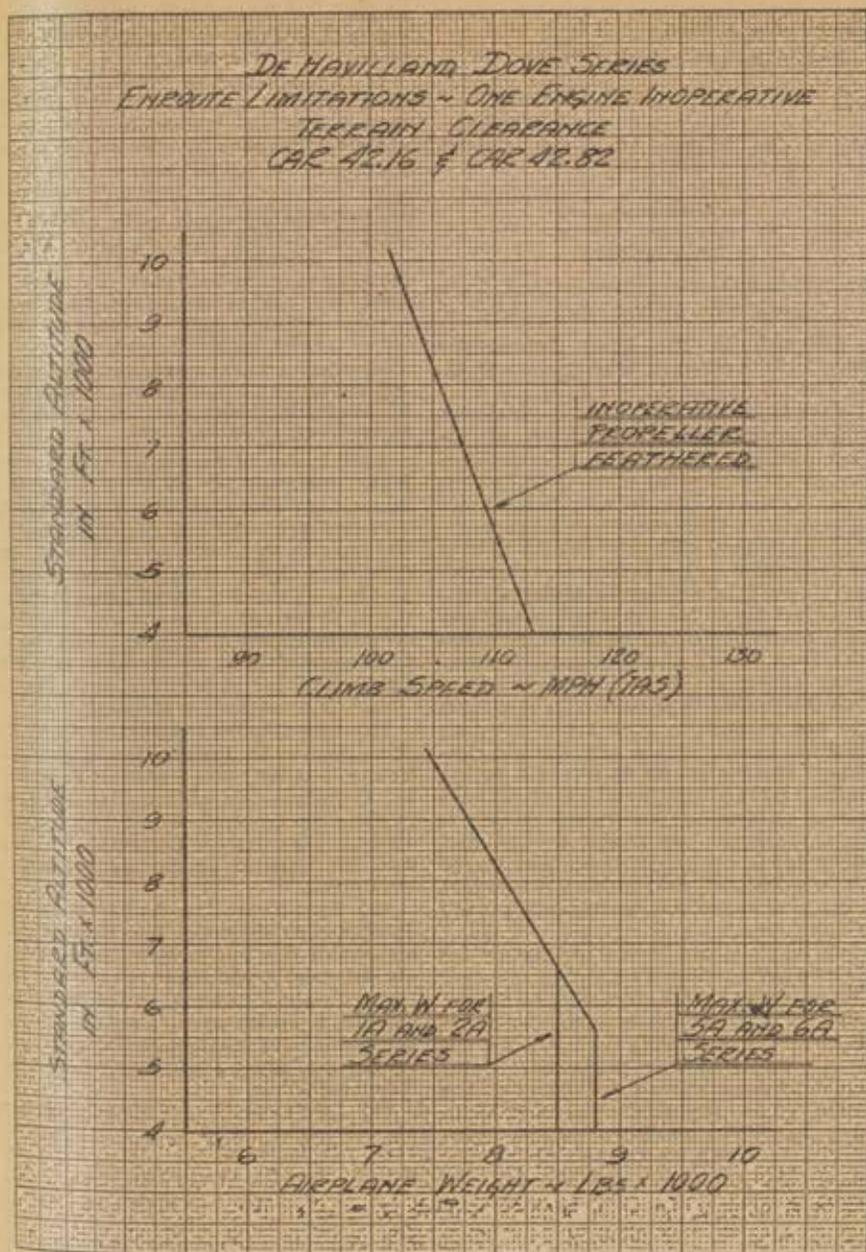
DE HAVILLAND DOVE SERIES

Weight in pounds	Terrain clearance <sup>1</sup> in feet and climb speed in m. p. h. (TIAS)		
	M. p. h.	Feet	
		1A and 2A series	5A and 6A series
8,800	110	-----	5,000
8,500	108	-----	6,000
8,000	105	8,300	8,300
7,500	102	9,900	9,900

<sup>1</sup> Highest altitude of terrain over which airplane may be operated in compliance with § 42.82.

NOTE: Inoperative propeller feathered.





Various airlines have indicated to the Hoover Commission Task Force on Paper Management that they would prefer the use of a standard form by all the agencies in connection with such requests for access and free transportation. After studying the matter, the Bureau of the Budget has requested the Board to amend its Economic Regulations by prescribing a uniform procedure for the processing of such requests and by standardizing, to the maximum feasible extent, the governmental forms used in making such requests. The staff of the Board has consulted with all interested government agencies and ascertained that there is no objection to such action by any such body and also that it appears that such standardization would tend to minimize the paper work burden imposed upon air carriers complying with such governmental requests. By concurrent action, the Board has this date adopted a revised Part 233 to complement the instant revision.<sup>1</sup>

All of the amendments effectuated by this revision will serve to reduce the burden of complying with the present provisions of this rule and the carriers and governmental agencies affected by such amendments favor the granting of this relief. Other persons are not directly concerned with these rules; and because of the minimal nature of these changes, they are of little or no importance to the traveling public. For these reasons, the Board finds that notice and public procedures in connection with this revision are unnecessary.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 224 of the Economic Regulations (14 CFR Chapter 1) effective February 1, 1957, to read as follows:

- Sec.  
 224.1 Safety inspectors.  
 224.2 Traffic control and communications personnel.  
 224.3 Requests for access to aircraft and free transportation.  
 224.4 Issuance of credentials and transportation request forms by the Civil Aeronautics Administration.

AUTHORITY: §§ 224.1 to 224.4 issued under sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interpret or apply secs. 601, 604, 52 Stat. 1007, as amended, 1010, as amended; 49 U. S. C. 551, 554)

This supplement shall become effective December 1, 1956.

[SEAL] JAMES T. PYLE,  
 Acting Administrator  
 of Civil Aeronautics.

[P. R. Doc. 56-8909; Filed, Nov. 2, 1956; 8:45 a. m.]

Subchapter B—Economic Regulations

[Reg. ER-212]

PART 224—ACCESS TO AIRCRAFT FOR SAFETY PURPOSES; FREE TRANSPORTATION FOR CERTAIN CAA EMPLOYEES

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 2d day of August 1956.

Part 224 of the Economic Regulations presently requires air carriers to furnish

access, during flight, to authorized personnel of the Board and the Civil Aeronautics Administration performing in-flight inspection duties and also requires air carriers to provide free transportation to certain personnel of the Civil Aeronautics Administration traveling in order to increase their familiarity with air traffic control and communication procedures. As presently drafted, Part 224 requires employees of each of these agencies seeking such access or free transportation to present appropriate requests therefor on individual forms prescribed by the agencies concerned. Part 233 of the Economic Regulations, which implements the provisions of section 405 (m) of the Civil Aeronautics Act by requesting air carriers to furnish free transportation to specified classes of Post Office Department employees, similarly empowers that agency to devise an appropriate form for use when requesting such transportation.

§ 224.1 *Safety inspectors.* Every air carrier shall carry, without charge, on any aircraft which it operates any duly authorized official or employee of the Board or of the Civil Aeronautics Administration who has been assigned to the duty of inspecting during flight such aircraft, its engines, propellers, appliances, route facilities, operational procedures or airman competency.

§ 224.2 *Traffic control and communications personnel.* Any air carrier may carry without charge on any aircraft which it operates any traffic controller or aircraft communicator of the Civil Aeronautics Administration (including supervising officers of such persons) for the purpose of more fully and adequately acquainting such persons with the problems affecting air traffic control and

<sup>1</sup> See P. R. Doc. 56-8950, *infra*.

communications: *Provided, however,* That the request for the free carriage hereby authorized shall not be made for the same individual upon any one air carrier more than once (round trips being regarded as one trip for this purpose) in each calendar year unless such request of the carrier is accompanied by a statement in writing by the Administrator of the Civil Aeronautics Administration or any person he may designate, setting forth the information required below, in which case it may be performed to the extent so requested. The requests referred to in this part shall set forth:

(a) The name or names of the persons to be carried, and

(b) A statement that such carriage will be for the sole purpose of indoctrinating and training such personnel in air traffic control and communications procedures and is necessary for the sound development of such control and procedures, and

(c) For each person named, the number of trips and the points between which or particular type of aircraft on which carriage is desired.

§ 224.3 *Requests for access to aircraft and free transportation.* Such access to aircraft and free air transportation shall be granted, to persons eligible under the provisions of this part, upon:

(a) Presentation to the appropriate agents of the air carrier of a certificate certifying the person presenting it as being entitled to such access or free air transportation signed by the Secretary of the Civil Aeronautics Board, or by the Administrator of the Civil Aeronautics Administration or any person he may designate, and signed also by the person presenting it; and

(b) Delivery to the appropriate agents of the air carrier in duplicate, of a "Request for Access to Aircraft or Free Transportation" on U. S. Government Standard Form No. 160, stating that the user thereof desires access to, or free air transportation upon, a certain aircraft of the air carrier from a named point of departure on a designated date and hour to a named destination.

(c) The air carrier shall insert the tariff value of the transportation to be furnished on each "Request for Access to Aircraft or Free Transportation," shall retain one copy of each such request, and on or before the 10th day of each month each air carrier shall forward one copy of all such requests received by it during the second preceding calendar month to the Secretary of the Civil Aeronautics Board, Washington 25, D. C.

§ 224.4 *Issuance of credentials and transportation request forms by the Civil Aeronautics Administration.* With regard to access to aircraft and free air travel by the persons described in §§ 224.1 and 224.2 the Civil Aeronautics Administration shall be responsible for: (a) The issuance of proper credentials for its eligible personnel and (b) the authorization of travel by such persons, subject to such rules and regulations as it may prescribe.

NOTE: The reporting requirements of this regulation have been approved by the Bureau

of the Budget in accordance with the Federal Reports Act of 1942.

By the Civil Aeronautics Board.

[SEAL]

M. C. MULLIGAN,  
Secretary.

[F. R. Doc. 56-8949; Filed, Nov. 2, 1956;  
8:53 a. m.]

[Reg. ER-213]

**PART 233—TRANSPORTATION OF MAIL: FREE TRAVEL FOR POSTAL EMPLOYEES**

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 2d day of August 1956.

Part 233 of the Economic Regulations, which implements the provisions of section 405 (m) of the Civil Aeronautics Act by requesting air carriers to furnish free transportation to specified classes of Post Office Department employees and such additional agents or officers as may be designated by the Postmaster General, empowers that agency to devise an appropriate form for use when requesting such transportation. In the same manner, Part 224 of the Economic Regulations authorizes the Civil Aeronautics Administration to prescribe its own form for use in making such transportation requests in connection with certain personnel seeking access to aircraft during flight and an additional class of personnel seeking free air transportation in order to study air traffic control and communication procedures. The Board has, in the past, also utilized a separate form and procedure in requesting such transportation.

Various airlines have indicated to the Hoover Commission Task Force on Paper Management that they would prefer the use of a standard form by all the agencies in connection with such requests for access and free transportation. After studying the matter, the Bureau of the Budget has requested the Board to amend its Economic Regulations by prescribing a uniform procedure for the processing of such requests and by standardizing to the maximum feasible extent, the governmental forms used in making such requests. The staff of the Board has consulted with all interested government agencies and ascertained that there is no objection to such action by any such body and also that it appears that such standardization would tend to minimize the paper work burden imposed upon air carriers complying with such governmental requests. By concurrent action, the Board has this date adopted a revised Part 224 to complement the instant revision.<sup>1</sup>

All of the amendments effectuated by this revision will serve to reduce the burden of complying with the present provisions of this rule and the carriers and governmental agencies affected by such amendments favor the granting of this relief. Other persons are not directly concerned with these rules; and because of the minimal nature of these changes, they are of little or no importance to the traveling public. For these

<sup>1</sup> See F. R. Doc. 56-8949, *supra*.

reasons, the Board finds that notice and public procedures in connection with this revision are unnecessary.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 233 of the Economic Regulations (14 CFR Chapter 1) effective February 1, 1957, to read as follows:

Sec.

233.1 Postal employees to be carried free.

233.2 Credentials and requests for free carriage.

233.3 Requests to be filed.

233.4 Issuance of credentials and transportation request forms by Post Office Department.

AUTHORITY: §§ 233.1 to 233.4 issued under sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interpret or apply sec. 405, 52 Stat. 984, as amended; 49 U. S. C. 485.

§ 233.1 *Postal employees to be carried free.* Every air carrier transporting the mails shall carry, on any flight that it operates and without charge therefor, the persons in charge of mails when on duty, and the following officers, agents and inspectors of the Post Office Department, when such persons are traveling on official business relating to the transportation of mail by aircraft and are duly accredited as provided in this part:

(a) The Postmaster General.

(b) The Deputy Postmaster General; the Assistant Postmaster General—Transportation; the Assistant Postmaster General—Operations; the Assistant Postmaster General—Facilities; the Assistant Postmaster General—Finance; and the Assistant Postmaster General—Personnel.

(c) The Executive Assistant to the Postmaster General; the Special Assistant to the Postmaster General; the Confidential Assistant to the Postmaster General; the Technical Assistant to the Assistant Postmaster General—Transportation; and the Confidential Assistant to the Assistant Postmaster General—Transportation.

(d) The Chief Post Office Inspector; the Assistant Chief Post Office Inspector; the Solicitor and the Associate Solicitors of the Post Office Department.

(e) The following officers and agents of the Bureau of Transportation, *viz.*: the Executive Director; the Director, Budget and Accounts; the Director and the Assistant Director, Division of Air Service; the Administrative Officers, Division of Air Service; the Director and Assistant Director, Division of International Service; the Director, Division of Employee Relations; the Regional Directors, Air Service; the General Superintendents, Postal Transportation Service; the District Superintendent and the Assistant District Superintendent, 13th Division (Alaska), Postal Transportation Service.

(f) The Executive Director and the Assistant Executive Director, Bureau of Post Office Operations; the Director, Division of Real Estate, Bureau of Facilities.

(g) Any inspector of the Post Office Department.

(h) Any additional agent or officer of the Post Office Department designated by the Postmaster General.

§ 233.2 *Credentials and requests for free carriage.* (a) Any person described in § 233.1 (a) to (f) shall be deemed to be duly accredited upon presentation to an air carrier of a certificate of the Postmaster General that the bearer is one of the persons so described and is entitled to free air transportation when traveling on official business relating to the transportation of mail by aircraft, and bearing the signature of the person so described.

(b) Any person described in § 233.1 (g) and (h) shall be deemed to be duly accredited upon presentation of proper credentials evidencing that he is an inspector, officer, employee, or agent of the Post Office Department, and upon presentation of a "Request for Access to Aircraft or Free Transportation" on U. S. Government Standard Form No. 160, executed in duplicate, stating (1) the points from and to which the person desires free air transportation, and (2) the official position of such traveler and that such travel is on official business relating to the transportation of mail aircraft.

§ 233.3 *Requests to be filed.* Each air carrier shall insert the tariff value of the transportation to be furnished on each "Request for Access to Aircraft or Free Transportation", shall retain one copy of such request, and on or before the 10th day of each month shall forward one copy of all such requests accepted by it during the second preceding calendar month to the Secretary of the Civil Aeronautics Board, Washington 25, D. C.

§ 233.4 *Issuance of credentials and transportation request forms by Post Office Department.* With regard to free air travel by the persons described in § 233.1, the Postmaster General shall be responsible for: (a) The issuance of proper credentials for its eligible personnel and (b) the authorization of travel by such persons, subject to such rules and regulations as he may prescribe.

*NOTE:* The reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN,  
Secretary.

[F. R. Doc. 56-8950; Filed, Nov. 2, 1956; 8:53 a. m.]

**TITLE 7—AGRICULTURE**

**Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture**

**PART 721—CORN**

**PROCLAMATION OF COMMERCIAL CORN-PRODUCING AREAS FOR 1957**

*Correction*

In Federal Register Document 56-8712, published at page 8227 of the issue for Saturday, October 27, 1956, the following change should be made in the list of counties under the heading "Kansas" in § 721.802:

The first 23 counties in the list (Anderson through Washington) should remain

under the heading "Kansas". The balance of the counties (Allen through Webster) should be carried under the heading "Kentucky".

[1023-Allotments—(Maryland Tobacco-57)-1]

**PART 727—MARYLAND TOBACCO**

**MARKETING QUOTA REGULATIONS, 1957-58 MARKETING YEAR**

This amendment is based on the marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended, applicable to tobacco (7 U. S. C. 1311-15) and is made for the purpose of amending § 727.818, paragraph (a), relating to determination of 1957 preliminary farm acreage allotments. Since Maryland tobacco growers will soon be making 1957 farming plans and cannot complete such plans until they are informed as to the 1957 tobacco acreage allotments for their farms, it is imperative that such allotments be determined as soon as possible. Therefore, it is hereby determined and found that compliance with the notice, public procedure, and effective date requirements of section 4 of the Administrative Procedure Act (5 U. S. C. 1003) is impractical and contrary to the public interest, and this amendment shall be effective upon the date of filing with the Director, Division of the Federal Register.

Section 727.818, paragraph (a), of the Maryland tobacco marketing quota regulations, 1957-58 Marketing Year (21 F. R. 6882) is amended to read:

(a) If the harvested acreage (as that term is explained in paragraph (b) of this section) of tobacco on the farm in each of the three years 1954-56 was less than 75 percent of the farm acreage allotment for each of such respective years, the preliminary allotment shall be the larger of (1) the largest acreage of tobacco harvested on the farm in any one of such three years, or (2) the average acreage of tobacco harvested on the farm in the five years 1952-56: *Provided*, That any 1957 preliminary allotment shall not exceed the 1956 farm acreage allotment or be less than 0.01 acre.

(Sec. 375, 52 Stat. 66 as amended; 7 U. S. C. 1375. Interprets or applies Sec. 813, 52 Stat. 47, as amended; 7 U. S. C. 1313)

Done at Washington, D. C., this 30th day of October 1956. Witness my hand and the seal of the Department of Agriculture.

[SEAL] E. L. PETERSON,  
Acting Secretary of Agriculture.

[F. R. Doc. 56-8945; Filed, Nov. 2, 1956; 8:52 a. m.]

**PART 730—RICE**

**SUBPART—REGULATIONS FOR ESTABLISHMENT OF FARM ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR 1957 CROP OF RICE**

**GENERAL**

Sec.  
730.810 Basis and purpose.  
730.811 Definitions.

Sec.  
730.812 Extent of calculations and rule of fractions.  
730.813 Forms and instructions.  
730.814 Supervision, review, and approval by State committees.

**FARM ACREAGE ALLOTMENTS BASED ON PAST PRODUCTION OF RICE BY PRODUCERS**

730.815 Report of producer data.  
730.816 Determination of base acreages for old producers.  
730.817 Determination of preliminary acreage allotments for old producers and allocation to farms.  
730.818 Determination of preliminary acreage allotments for new producers and allocation to farms.  
730.819 1957 acreage allotments for farms with producers having producer allotments and mailing of allotment notices.  
730.820 Right of appeal and application for review.  
730.821 Reapportionment of producer's preliminary acreage allotments released voluntarily to county committee.  
730.822 Succession of interest in producer States.

**FARM ACREAGE ALLOTMENTS BASED ON PAST PRODUCTION OF RICE ON FARMS**

730.823 Report on farm data.  
730.824 Determination of base acreages for old farms.  
730.825 1957 acreage allotments for old farms.  
730.826 Determination of acreage allotments for new farms.  
730.827 Mailing of 1957 farm allotment notices.  
730.828 Allotment for farms divided or combined.  
730.829 Right to appeal and application for review.  
730.830 Reapportionment of farm acreage allotments released voluntarily to county committee.  
730.831 Request to preserve acreage history for the 1957 crop of rice.  
730.832 Farm normal yields.  
730.833 Redelegation of authority.  
730.834 Applicability of regulations.

*AUTHORITY:* §§ 730.810 to 730.834 issued under sec. 375, 52 Stat. 66; 7 U. S. C. 1375. Interpret or apply secs. 301, 353, 363, 52 Stat. 38, 61, 63, as amended, 70 Stat. 188; 7 U. S. C. 1301, 1353, 1363.

**GENERAL**

§ 730.810 *Basis and Purpose.* The regulations contained in §§ 730.810 to 730.834 inclusive, are issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, and govern the establishment of farm acreage allotments for the 1957 crop of rice. The purpose of the regulations in this subpart is to provide the procedure for apportioning in the States of California, Florida, North Carolina, Tennessee, and Texas, the 1957 State rice acreage allotments among rice producers in the State, and, in the States of Arkansas, Illinois, Louisiana, Mississippi, Missouri, Oklahoma, and South Carolina, in which the respective State committees have recommended that the State acreage allotments be apportioned on the basis of the past production of rice on farms and the acreage allotments previously established for farms in lieu of the past production of rice by producers and acreage allotments previously established for producers and for which the Secretary

has determined that such action would facilitate the effective administration of the act, the 1957 county rice acreage allotments among farms in the county. Prior to preparing the regulations in this subpart, public notice (21 F. R. 7025) was given in accordance with the Administrative Procedure Act (5 U. S. C. 1003). The data, views, and recommendations pertaining to the regulations in this subpart which were submitted have been duly considered within the limits permitted by the Agricultural Adjustment Act of 1938, as amended.

§ 730.811 *Definitions.* As used in the regulations in this subpart and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meaning assigned to them unless the context or subject matter otherwise requires.

(a) "Act" means the Agricultural Adjustment Act of 1938 and any amendments or supplements thereto.

(b) "Secretary" means the Secretary of Agriculture of the United States or the officer of the Department acting in his stead pursuant to delegated authority.

(c) "Committees." (1) "Community committee" means the group of persons elected within a community as the community committee pursuant to the regulations governing the selection and function of the Agricultural Stabilization and Conservation county and community committees.

(2) "County committee" means the group of persons elected within a county as the county committee pursuant to the regulations governing the selection and functions of the Agricultural Stabilization and Conservation county and community committees.

(3) "State committee" means a group of persons designated in the State by the Secretary as the Agricultural Stabilization and Conservation county and community committees.

(d) "Farm" means all adjacent or nearby farm or range land under the same ownership which is operated by one person, including also:

(1) Any other adjacent or nearby farm or range land which the county committee determines is operated by the same person as part of the same unit in producing range livestock or with respect to the rotation of crops, and with workstock, farm machinery, and labor substantially separate from that for any other land; and

(2) Any field-rented tract (whether operated by the same or another person) which, together with any other land included in the farm, constitutes a unit with respect to the rotation of crops.

A farm shall be regarded as located in the county or administrative area in which the principal dwelling is situated, or if there is no dwelling thereon, it shall be regarded as located in the county or administrative area in which the major portion of the farm is located.

(e) "Old farm" means a farm on which rice was planted in one or more of the five years 1952 through 1956, including (1) any farm on which rice was planted only in 1955 or 1956 and for

which no acreage allotment was determined for such year and (2) any farm on which all or any part of the 1956 farm rice acreage allotment was diverted from the production of rice under the 1956 acreage reserve or conservation reserve program even though there was no acreage actually planted to rice on the farm in 1956.

(f) "New farm" means a farm on which no rice was planted in 1952, 1953, 1954, 1955, and 1956, or was considered planted in 1956 because all or a part of the farm rice acreage allotment was diverted from the production of rice under the 1956 acreage reserve or conservation reserve program, but on which rice will be planted in 1957.

(g) "Producer" means any person engaged in the production of rice as landlord, tenant, or sharecropper, and includes a person owning and operating his own farm; a tenant operating a farm rented for cash, a tenant operating a farm under a crop-share lease, contract, or agreement, a landlord leasing to share tenants; and a person or irrigation company furnishing water for a share of the crop or the proceeds thereof. For purposes of the regulations in this subpart, the term "tenant" shall be deemed to include a person or irrigation company furnishing water for a share of the rice crop or the proceeds thereof.

(h) "Old producer" means (1) a person engaged in the production of rice during one or more of the five years 1952 through 1956, including a person who was engaged in the production of rice in 1955 or 1956 on a farm for which no acreage allotment was determined for such year and (2) any person who in 1956 allocated his preliminary rice acreage allotment to a farm and all or a part of such farm rice acreage allotment was diverted from the production of rice under the 1956 acreage reserve or conservation reserve program.

(i) "New producer" means a person who was not engaged in the production of rice in any of the years 1952, 1953, 1954, 1955 or 1956, and was not considered as being engaged in the production of rice in 1956 by virtue of having an interest in a farm for which all or a part of the farm rice acreage allotment was diverted from the production of rice under the 1956 acreage reserve or conservation reserve program, but who will be engaged in the production of rice in 1957.

(j) "Engaged in the production of rice" means sharing in a predetermined and fixed portion of the rice crop, or the proceeds thereof, at the time of harvest by virtue of having contributed in the capacity of landlord, tenant, or sharecropper, the land, labor, water or equipment necessary for the production of the rice crop. Any person who shares in a rice crop by virtue of an assignment of the crop for furnishing equipment, seed, fertilizer, or supplies (other than irrigation water), or as security for cash or credit advanced or for furnishing labor only for a particular phase of production shall not be determined to be engaged in the production of rice. Any land owner and any producer who holds a lease or rental agreement, provided the land under lease or rental agreement meets

the definition of "developed rice land," who requests the allocation of his preliminary rice acreage allotment to a farm for the purpose of (1) diverting an acreage from the production of rice under the acreage reserve or conservation reserve program or (2) requesting the preservation of his rice acreage allotment for history purposes shall be considered to be engaged in the production of rice.

(k) "Cropland" means farmland which in 1956 was tilled or was in regular crop rotation, including also land which was established in permanent vegetative cover, other than trees, since 1953, and which was classified as cropland at the time of seeding, but excluding: (1) bearing orchards and vineyards (except the acreage of cropland therein), (2) plowable non-crop open pasture, and (3) any land which constitutes or will constitute if tillage is continued, a wind erosion hazard to the community. Insofar as the acreage of cropland on the farm enters into the determination of the farm acreage allotment, the cropland acreage on the farm shall not be deemed to be decreased during the period of any contract entered into under the conservation reserve program by reason of the establishment and maintenance of vegetative cover or water storage facilities, or other soil-, water-, wildlife-, or forest-conserving uses under such contract.

(l) "Operator" means the person who, as landlord, or tenant, is in charge of the supervision and conduct of the farming operations on the entire farm.

(m) "Person" means an individual, partnership, association, corporation, estate, trust or other business enterprise or legal entity and, whenever applicable, a State, a political subdivision of a State, the Federal Government or any agency thereof.

(n) "Rice acreage" means the acreage planted to rice and the acreage of volunteer rice which reaches maturity, excluding (1) any acreage of non-irrigated rice of three acres or less, (2) any acreage of sweet, glutinous, or candy rice commonly known as Mochi Comi, (3) any acreage of rice grown for experimental purposes only by or under contract to a publicly-owned agricultural experiment station, (4) any acreage planted to rice under a written contract which was or will be entered into and approved by the county and State committees prior to planting with the Fish and Wildlife Service for wildlife feed which was not or will not be harvested, and (5) any excess rice acreage which is destroyed or otherwise handled or treated (by the producer or from some cause beyond his control) not later than the date established by the county committee with the approval of the State committee so that rice cannot be harvested therefrom.

(o) "Rice history acreage" means: (1) For 1952, 1953, 1954, the rice acreage on the farms; (2) for 1955 the acreage determined for the farm as provided by §§ 730.716 (a) and 730.724 (a) of the 1956 rice acreage allotment regulations issued by the Secretary (21 F. R. 73, 76); and (3) for 1956 the acreage determined for the farm as provided by §§ 730.816 (a) and 730.824 (a).

(p) "Developed rice land" means cropland on which rice has been pro-

duced in one or more of the years 1952 through 1956, together with any improved pasture land which is in regular rotation with rice and for which water and other irrigation facilities are readily available for the production of rice in 1957.

(q) "Producer State" means the States of California, Florida, North Carolina, Tennessee, and Texas in which 1957 farm rice acreage allotments are determined on the basis of past production of rice in the State by the producer on the farm and the acreage allotments previously established in the State for the producer.

(r) "Farm State" means the States of Arkansas, Illinois, Louisiana, Mississippi, Missouri, Oklahoma, and South Carolina in which 1957 farm rice acreage allotments are determined on the basis of past production of rice on the farm and the acreage allotments previously established for the farm in lieu of past production of rice by the producer and the acreage allotments previously established for the producer.

§ 730.812 *Extent of calculations and rule of fractions.* All rice acreage allotments and other computations shall be computed to three places beyond the decimal point and rounded to tenths of acres. Fractions of fifty-one thousandths of an acre or more shall be rounded upward, and fractions of less than fifty-one thousandths of an acre shall be dropped. For example, 39.051 would be 39.1 and 39.050 would be 39.0.

§ 730.813 *Forms and instructions.* The Director of the Grain Division, Commodity Stabilization Service, shall cause to be prepared and issued such forms as may be deemed necessary and shall cause to be prepared such instructions with respect to internal management as are necessary for carrying out the regulations in this subpart. The forms and instructions shall be approved by, and the instructions shall be issued by, the Deputy Administrator for Production Adjustment, Commodity Stabilization Service.

§ 730.814 *Supervision, review, and approval by State committees.* State committees shall have over-all responsibility for the administration of the regulations herein in their respective States. All acreage allotments shall be reviewed by or on behalf of the State committee and the State committee may revise or require revision of any determination made under the regulations in this subpart. All acreage allotments for rice shall be approved by or on behalf of the State committee and no official notice thereof shall be mailed until such allotment has been approved by or on behalf of the State committee.

FARM ACREAGE ALLOTMENTS BASED ON PAST PRODUCTION OF RICE BY PRODUCERS

§ 730.815 *Report of producer data.* (a) In the producer States, to the extent that such information is not already available to the county committee, each old producer of rice shall furnish the county committee of the county in which the producer will be engaged in the production of rice in 1957 the names,

addresses, and acreage shares of other persons having an interest in each rice crop in which the producer shared during the years 1952 through 1956, upon the request of the county committee.

(b) Information not so furnished shall be determined or appraised by the county committees on the basis of records in the county offices, available production and sales records, and other available information.

§ 730.816 *Determination of base acreages for old producers.* In the producer States, the State committee, with the assistance of the county committees, shall determine a base acreage of rice for each old producer, except for a person or irrigation company furnishing water for a share of the crop. This acreage shall be determined on the basis of past production of rice by the producer on farms in the State, taking into consideration the 1955 and 1956 rice acreage allotments established for the producer in the State; abnormal conditions affecting the producer's rice acreage; land, labor, and equipment available for the production of rice; crop-rotation practices; and the soil and other physical factors affecting the production of rice. The past production of rice of any person or irrigation company furnishing water for a share of the rice crop shall be credited to other producers on the farm in the same proportion as they shared in the remainder of the rice crop. Each such base acreage determined shall be fair and reasonable in relation to the factors above when compared with the base acreages for other producers in the county. This base acreage shall be determined primarily on the basis of the producer's acreage shares of the rice history acreages on farms in the State during the years 1952 through 1956. Prior to determining such base acreages the county committees shall establish for each old producer a historical average acreage of rice and an adjusted average acreage of rice, where applicable, in accordance with paragraphs (a) and (b) of this section:

(a) *Historical average acreage.* The historical average acreage shall be the average of the producer's acreage shares of rice history acreages on farms in the State during the years 1952 through 1956, including in 1955 and 1956 the producer's released 1955 and 1956 preliminary rice allotment acreages adjusted for diversion credit. The producer's shares of the rice history acreages for each of the years 1952, 1953, and 1954 shall be that acreage which represents his proportionate share, based upon his interest in each rice crop produced on such farms during such years. The producer's shares of 1955 rice history acreages shall be his shares of the 1955 acreages determined for such farms under § 730.716 (a) of the 1956 farm rice acreage allotment regulations. The producer's shares of the 1956 rice history acreage determined for such farms shall be that acreage which represents his proportionate share of such acreages based upon his contribution to the allotments for such farms as established under § 730.719 (a) of the 1956 farm rice acreage allotment regulations. The 1956 rice history acreage for any farm shall be the

rice acreage on the farm in 1956, not in excess of the 1956 farm rice acreage allotment, including any acreage of rice placed under the 1956 acreage reserve or conservation reserve program, plus the acreage diverted or considered diverted from the production of rice under the 1956 rice acreage allotment program, and shall be determined as follows: (1) If the farm rice acreage allotment established under § 730.719 (a) of the 1956 farm rice acreage allotment regulations, or where applicable, as increased under § 730.721, was knowingly exceeded, the rice history acreage for 1956 shall be the 1956 farm rice acreage allotment established under § 730.719 (a); (2) If the 1956 farm rice acreage allotment established under § 730.719 (a) of the 1956 farm rice acreage allotment regulations, or where applicable, as increased under § 730.721, was not knowingly exceeded and the 1956 rice acreage on the farm plus any acreage diverted from the production of rice under the acreage reserve or conservation reserve program was 90 per centum or more of such 1956 farm rice acreage allotment, the farm rice history acreage for 1956 shall be that acreage which is obtained by dividing the 1956 farm rice acreage allotment established under § 730.719 (a) by the 1956 State allotment proration factor determined under § 730.717 (a); or (3) if the 1956 rice acreage on the farm plus any acreage diverted from the production of rice under the acreage reserve or conservation program was less than 90 per centum of the 1956 farm rice acreage allotment established under § 730.719 (a) of the 1956 farm rice acreage allotment regulations, or where applicable, as increased under § 730.721, the 1956 rice history acreage for the farm shall be the smaller of (i) an acreage obtained by dividing the 1956 farm rice acreage allotment established under § 730.719 (a) of the 1956 rice acreage allotment regulations by the 1956 State allotment proration factor determined under § 730.717 (a), or (ii) an acreage obtained by multiplying the 1956 rice acreage on the farm plus any acreage diverted from the production of rice under the acreage reserve or conservation reserve program by a diversion credit factor. In such cases the reciprocal of a decimal fraction which is 90 per centum of the 1956 State allotment proration factor. The 1956 rice history acreage determined for a producer shall be his proportionate share of the 1956 rice history acreages determined under this paragraph for farms in which he contributed to the allotment for such farms as established under § 730.719 (a) of the 1956 farm rice acreage allotment regulations, plus the producer's released 1956 allotment acreage adjusted for diversion credit, which shall be that acreage which is obtained by dividing such released preliminary allotment acreage by the State allotment proration factor determined under § 730.717 (a) of the 1956 farm rice acreage allotment regulations.

(b) *Adjusted average acreage.* (1) The adjusted average acreage shall be obtained by eliminating from the period of years used in determining the historical average acreage the year or years

for which the county committee finds that rice history acreage was:

(i) Abnormally low due to excessive wet weather, flood, or drought;

(ii) Abnormally high because of failure of crops other than rice;

(iii) Not representative for 1957 because of a definitely established crop-rotation system being carried out on the farm;

(iv) Abnormally high or low because of variation in the supply of water available or other physical factors affecting the production of rice; or

(v) Not reliably reported or properly determined.

(2) When one or more of the years are eliminated in accordance with the provisions of subdivisions (i) through (v) of subparagraph (1) of this paragraph, the average of the years not so eliminated shall be considered as the adjusted average acreage. If all years in the applicable period are eliminated, the adjusted average acreage shall be zero.

(c) *1957 base acreage.* The 1957 base acreage for any old producer shall be the historical average acreage determined under paragraph (a) of this section or, if determined, the adjusted average acreage determined under paragraph (b) of this section: *Provided*, That the sum of each producer's pro rata shares of the adjusted base acreages of rice determined for farms on which the producer was engaged in the production of rice in 1956 may be adopted as the 1957 base acreage for such producer if the county committee determines that such base acreage adequately reflects past production of rice by the producer on farms in the State, taking into consideration the 1955 and 1956 preliminary rice acreage allotments established for the producer in the State; abnormal conditions affecting the producer's rice acreage; land, labor, and equipment available for the production of rice; crop-rotation practices; and the soil and other physical factors affecting the production of rice, and that such base acreage will be fair and reasonable in relation to the factors above when compared with the base acreages established for other producers in the county. The 1956 adjusted base acreage for any farm shall be the 1956 rice history acreage for the farm determined under paragraph (a) of this section. If the acreage determined under paragraph (a) or (b) of this section is zero, the county committee shall appraise a base acreage for the producer which is fair and reasonable in relation to the factors above when compared with the base acreages determined for other producers in the county. If the historical average acreage is zero because rice was not planted during the period 1952 through 1955 and was planted in 1956 without an allotment, the appraised acreage shall not exceed the 1957 base acreage determined for a producer who was engaged in the production of rice in 1956 as a new producer.

§ 730.817 *Determination of preliminary acreage allotments for old producers and allocation to farms.* (a) The base acreages of rice determined for producers under § 730.816, adjusted pro rata

to equal the State allotment minus a reserve established by the State committee of not to exceed 3 per centum of the State allotment for new producers and an appropriate reserve established by the State committee of not to exceed 5 per centum of the State allotment for appeals and corrections, missed producers, and adjustments under paragraph (b) of this section, shall be the preliminary rice acreage allotments for old producers. If, as a result of corrections, the total acreage allotted to producers in any State for which corrections are made is less than the total acreage originally allotted to such producers, such difference in acreage shall be added to the State reserve for appeals and corrections provided for in this paragraph without regard to the limitation thereon.

(b) The preliminary acreage allotment determined for any old producer under paragraph (a) of this section may be increased if the State committee, with the assistance of the county committee, determines that the allotment is small in relation to allotments established for other old producers in the county on the basis of the crop-rotation practices, the land, labor, water and equipment available for the production of rice, and the soil and other physical factors affecting the production of rice during the years 1952 through 1956: *Provided*, That such increased allotments shall not exceed the allotments determined for other producers in the county which are similarly situated with respect to the factors set forth above. The acreage used in any State for increasing producers' preliminary allotments under this paragraph shall not exceed the acreage made available therefor under paragraph (a) of this section.

(c) The preliminary acreage allotment determined for any producer under paragraph (a) or (b) of this section may be increased if the State committee, with the assistance of the county committee, determines that such allotment for the producer is inadequate because of an insufficient State acreage allotment or because rice was not planted by the producer during all of the preceding five years, taking into consideration the producer's investment in equipment and other facilities for the production of rice and the acreage required to make such allotment for the producer an economic unit: *Provided*, That the total of such increases in allotments under this paragraph shall not exceed the acreage, if any, made available to the State from the national reserve provided for by section 353 (a) of the act.

(d) Each old producer desiring to have a rice acreage allotment established for a farm on which he will be engaged in the production of rice in 1957 shall file a request with the county committee for allocating his preliminary rice acreage allotment, as determined under paragraphs (a), (b), and (c) of this section, to such farm or farms. Each such request shall state the farm serial number, the total farmland acreage, cropland acreage, and developed rice land acreage on the farm, the name and address of the owner of the farm, if different from the applicant, the location of the farm,

the estimated total acreage of rice to be planted on the farm in 1957, and, if known, the names of other persons who will have an interest in the 1957 rice acreage on the farm. No such request shall be considered unless the producer shows to the satisfaction of the county committee that (1) he will actually be engaged in the production of rice on the farm in 1957 by virtue of contributing in the capacity of landlord, tenant, or sharecropper, the land, labor, water, or equipment necessary for the production of the rice crop, or (2) he, as land owner or a producer who holds a lease or rental agreement, will be considered engaged in the production of rice on the farm in 1957 by virtue of having an interest in the allotment for the farm all or a part of which will be diverted from the production of rice under the 1957 acreage reserve or conservation reserve program.

(e) The State committee, with the assistance of the county committees, shall allocate the preliminary rice acreage allotment determined for the producer under paragraphs (a), (b), and (c) of this section to the farm or farms on which the producer will be engaged in the production of rice in 1957, and shall make such adjustments therein as are necessary to establish an allotment for the farm within its capabilities for producing rice consistent with practical farming operations, taking into consideration crop-rotation practices, the land, water and equipment available for the production of rice, the sizes of fields, the arrangement of levies and drainage facilities, the soil and other physical factors affecting the production of rice on the farm in 1957, and the acreage available for such adjustments: *Provided*, That the total acreage allocated to all farms for any producer shall not exceed the producer's 1957 preliminary rice acreage allotment determined under paragraphs (a), (b), and (c) of this section by more than 5 per centum or 5 acres, whichever is larger. Except as a reserve is available under paragraph (a) of this section, upward adjustments in allocated acreages under this paragraph shall be limited to the sum of the downward adjustments that are not released by the producer and reapportioned to another farm under § 730.821.

§ 730.818 *Determination of preliminary acreage allotments for new producers and allocation to farms.* In the producer States, the State committee, with the assistance of the county committees, shall determine for each eligible new producer a preliminary rice acreage allotment and allocate such allotments to farms in accordance with the provisions of this section.

(a) Each person desiring a preliminary rice acreage allotment as a new producer shall file an application therefor with the county committee not later than February 1, 1957. Each such application shall state the name, address, and age of the applicant; the applicant's past experience in the production of rice; the acreage allotment requested; the arrangements made for land and water; the equipment owned by the applicant or otherwise available for producing rice in 1957; the reason the applicant was not

engaged in the production of rice during the years 1952 through 1956; and whether 50 percent or more of his livelihood in 1957 is expected to be derived from his farming operations. To be eligible for a preliminary rice acreage allotment as a new producer, the applicant must have filed his application for an allotment on or before the date specified herein, and must establish to the satisfaction of the county committee that (1) he has had past rice-producing experience; (2) he has previously arranged for the land and water necessary for the production of rice in 1957; (3) he owns or has available for his use adequate equipment for producing rice in 1957; (4) he expects to derive 50 percent or more of his livelihood in 1957 from farming operations; and (5) he has not filed his application for the purpose of obtaining a preliminary rice acreage allotment as a new producer which would be used, if obtained, as a device to offset a reduction in the 1957 rice acreage for an old producer with whom he was previously associated in financing, producing, or marketing rice.

(b) Each person receiving a preliminary rice acreage allotment as a new producer who desires to have a rice crop acreage allotment established for the farm on which he will be engaged in the production of rice in 1957 shall file a request with the county committee for allocating his preliminary rice acreage allotment to such farm. Each such request shall state the farm serial number, the total farmland acreage, cropland acreage, and developed rice land acreage on the farm, the name and address of the owner of the farm, if different from the applicant, the location of the farm, the estimated total acreage of rice to be planted on the farm in 1957, and, if known, the names of other producers who will have an interest in the 1957 rice acreage on the farm. No such request shall be considered unless the producer shows to the satisfaction of the county committee that he will actually be engaged in the production of rice on the farm in 1957 by virtue of contributing in the capacity of landlord, tenant, or sharecropper, the land, labor, water or equipment necessary for the production of rice crop.

(c) The State committee, with the assistance of county committees, shall allocate the preliminary rice acreage allotments determined for new producers to the farm or farms on which such producers will be engaged in the production of rice in 1957, and shall make such adjustments therein as are necessary to establish an allotment for the farm with its capabilities for producing rice consistent with practical farming operations, taking into consideration crop-rotation practices, the land, labor, water and equipment available for the production of rice, the sizes of fields, the arrangement of levees and drainage facilities, the soil and other physical factors affecting the production of rice on the farm in 1957, and the acreage available for such adjustments: *Provided*, That the total acreage allocated to all farms for any new producer shall not exceed the

producer's 1957 preliminary rice acreage allotment by more than 5 per centum or 5 acres, whichever is larger: *And provided further*, That the total acreage allocated to all farms for any new producer shall not exceed the smaller of (1) the producer's 1957 preliminary rice acreage allotment including the adjustment, if any, under this paragraph, or (2) the sum of the producer's shares in the acreages planted to rice by the new producer on all farms in which he has an interest in the acreage planted to rice. The sum of the upward adjustments in allocated acreages under this paragraph shall be limited to the sum of the downward adjustments that are not released by the producer for reapportionment to other farms under § 730.821. The acreage resulting from the reduction of new producer allotments under this section shall be transferred to the reserve available to the State committee for appeals and corrections, missed farms, and adjustments under § 730.817.

§ 730.819 *1957 acreage allotments for farms with producers having producer allotments and mailing of allotment notices.* (a) The sum of the preliminary rice acreage allotments determined for old producers and allocated to the farm under § 730.817, plus the sum of the preliminary rice acreage allotments determined for new producers and allocated to the farm under § 730.818, shall be the 1957 rice acreage allotment for the farm. The sum of all the farm acreage allotments so determined shall not exceed the State acreage allotment, minus the reserve for appeals, corrections, and missed producers plus any acreage made available to the State from the national reserve provided for by section 353 (a) of the act.

(b) Notice of the 1957 farm acreage allotment shall be mailed by the county committee to the operator of the farm, to each other producer on the farm who will have an interest in the 1957 crop, and to any other person who made known to the county committee that he intended to produce rice on such farm in 1957. Insofar as practicable all allotment notices in a county shall be mailed on the same date and in time to be received prior to the date on which the referendum to determine whether farmers favor or oppose rice marketing quotas will be held. A copy of each allotment notice approved shall be maintained for not less than thirty days in a conspicuous place in the county office and shall thereafter be permanently kept freely available for public inspection in the office of the county committee.

§ 730.820 *Right to appeal and application for review.* (a) Any producer in the producer States who is dissatisfied with his 1957 preliminary rice acreage allotment may, within 15 days after the date of mailing of the notice of such allotment, file an appeal to the county committee for reconsideration of such allotment. If the appellant is dissatisfied with the decision of the county committee with respect to his appeal, he may appeal to the State committee within 15 days after the date of mailing the notice

of the decision of the county committee. The decision of the State committee with respect to the producer's preliminary allotment shall be final.

(b) In the event marketing quotas are not applicable to the 1957 crop of rice, any person who as owner, operator, landlord, tenant, or sharecropper, is dissatisfied with his farm rice acreage allotment may file an appeal for reconsideration of such allotment. The appeal and the facts constituting the basis therefor must be submitted in writing and postmarked or delivered to the office of the county committee within 15 days after the mailing of the notice of allotment. If the appellant is dissatisfied with the decision of the county committee with respect to his appeal, he may appeal to the State committee within 15 days after the date of mailing the notice of the decision of the county committee. If the appellant is dissatisfied with the decision of the State committee, he may within 15 days after the date of mailing of the notice of the decision of the State committee, request the Director of the Grain Division, Commodity Stabilization Service, to review his case, whose decision shall be final.

(c) In the event marketing quotas are applicable to the 1957 crop of rice, any producer who is dissatisfied with the farm rice acreage allotment and marketing quota established for his farm may, within 15 days after mailing of the official notice of the farm rice acreage allotment and marketing quota, file application to have such allotment reviewed by a review committee appointed by the Secretary. The procedures governing the review of farm acreage allotments and marketing quotas are contained in the regulations issued by the Secretary (Part 711 of this chapter) which are available at the office of the county committee.

§ 730.821 *Reapportionment of producer's preliminary acreage allotments released voluntarily to county committee.*

(a) In the producer States, a producer may, not later than the closing dates prescribed in this section, voluntarily release to the county committee all or any part of his 1957 preliminary rice acreage allotment on which rice will not be planted in 1957. Such released acreage shall be deducted from the preliminary allotment established for such producer and may be reapportioned by the county committee not later than the closing dates prescribed in this section to other producers (old or new) in the same county receiving allotments in amounts determined to be fair and reasonable on the basis of the production of rice by the producer during the years 1952 through 1956; the 1956 preliminary rice acreage allotment established for the producer; abnormal conditions affecting acreage; land, labor, water, and equipment available for the production of rice; crop-rotation practices; and the soil and other physical factors affecting the production of rice. The closing dates in each State for the release and reapportionment of producer preliminary rice acreage allotment are as follows:

State	Release	Reapportionment
California.....	Apr. 15, 1957	May 1, 1957
Florida.....	Mar. 1, 1957	Mar. 15, 1957
North Carolina.....	Mar. 1, 1957	Mar. 8, 1957
Tennessee.....	May 31, 1957	June 6, 1957
Texas.....	Feb. 22, 1957	Mar. 8, 1957

(b) Any part of a producer's preliminary allotment which is not assigned to a farm by reason of a field-size adjustment under § 730.817 (e) shall, upon request of the producer, be considered as released acreage under this paragraph. In considering producers to receive additional allotment from released acreage, preference shall be given to producers having small allotments. Any preliminary rice acreage allotment released for 1957 shall, in determining future preliminary rice acreage allotments, be regarded as having been planted by the producer releasing such preliminary allotment if rice was seeded by such producer in at least one of the five years immediately preceding the year for which the allotment is determined, and shall not be considered as having been planted by the producer to which such released acreage is reapportioned.

§ 730.822 *Succession of interest in producer States.* (a) If a producer voluntarily retires from the production of rice, dies, or is declared incompetent by a court of competent jurisdiction, his history of rice production shall be apportioned in whole or in part among the heirs, devisees, or members of his family according to the extent to which they may continue or have continued his farming operations if satisfactory proof of such relationship and succession of farming operations is furnished the county committee.

(b) If a producer voluntarily withdraws in whole or in part from the production of rice through the voluntary sale of rice land, all or such part of such producer's history of rice production as may be ascribed to such land shall pass to the purchaser if such transfer of rice history is approved by the State committee.

(c) If a producer voluntarily withdraws in whole from the production of rice through the voluntary sale of a leasehold of rice land of five or more years duration, all of such producer's history of rice production as may be ascribed to such land shall pass to the purchaser if (1) such sale includes all irrigation equipment and other permanently installed rice-producing facilities attached to such land, and (2) such transfer of rice history is approved by the State committee.

#### FARM ACREAGE ALLOTMENTS BASED ON PAST PRODUCTION OF RICE ON FARMS

§ 730.823 *Report on farm data.* (a) In the farm States, to the extent that such information is not already available to the county committee, the owner, operator, or any other person who will have an interest in the rice crop to be produced on the farm in 1957 shall furnish the county committee of the county in which the farm is located information requested by the county committee relative to changes in operations or control

of the farm, size of the farm, or changes in the acreage of developed rice land on the farm.

(b) Information not so furnished shall be determined or appraised by the county committees on the basis of records in the county office, available production and sales records, and other available information.

§ 730.824 *Determination of base acreages for old farms.* In the farm States, the county committees shall determine for each old farm a base acreage of rice. This acreage shall be determined on the basis of past production of rice on the farm, taking into consideration the 1955 and 1956 rice acreage allotments established for the farm; abnormal conditions affecting the acreage of rice on the farm; land, labor, and equipment available for the production of rice on the farm; crop-rotation practices; and the soil and other physical factors affecting the production of rice on the farm. Each such base acreage determined shall be fair and reasonable in relation to the factors above when compared with the base acreages for other farms in the county which are similarly operated. This base acreage shall be determined primarily on the basis of the rice history acreages on the farm during the years 1952 through 1956. Prior to determining such base acreages the county committee shall establish for each old farm a historical average acreage of rice and an adjusted average acreage of rice, where applicable, in accordance with paragraphs (a) and (b) of this section:

(a) *Historical average acreage.* The historical average acreage shall be the average of the rice history acreages on the farm during the years 1952 through 1956, including in 1955 and 1956 the rice allotment acreage released adjusted for diversion credit. The rice history acreages for any farm during the years 1952 through 1954 shall be the rice acreages for the farm during such years. The 1955 rice history acreage for any farm shall be the 1955 acreage that was determined for such farms under § 730.724 (a) of the 1956 farm rice acreage allotment regulations. The 1956 rice history acreage for any farm shall be the rice acreage on the farm in 1956, not in excess of the 1956 farm rice acreage allotment including any acreage of rice placed under the 1956 acreage reserve or conservation reserve program, plus the acreage diverted or considered diverted from the production of rice under the 1956 rice acreage allotment program, and shall be determined as follows: (1) If the 1956 farm rice acreage allotment established under § 730.725 or § 730.726, as increased or decreased under § 730.730, was knowingly exceeded, the rice history acreage for 1956 shall be the 1956 farm rice acreage allotment established under § 730.725 or § 730.726; (2) if the 1956 farm rice acreage allotment established under § 730.725 or § 730.726, as increased or decreased under § 730.730, was not knowingly exceeded and the 1956 rice acreage on the farm plus any acreage diverted from the production of rice under the acreage reserve or conservation reserve program was 90 per centum or more of such 1956

farm rice acreage allotment, the farm rice history acreage for 1956 shall be that acreage which is obtained by dividing the 1956 farm rice acreage allotment established under § 730.725 or § 730.726, by the smaller of (i) the 1956 county allotment proration factor determined under § 730.725 (a) or (ii) 1.0000; or (3) if the 1956 rice acreage on the farm plus any acreage diverted from the production of rice under the 1956 acreage reserve or conservation reserve program was less than 90 per centum of the 1956 farm rice acreage allotment established under § 730.725 or § 730.726, as increased or decreased under § 730.730, the 1956 farm rice history acreage shall be the smaller of (i) an acreage obtained by dividing the 1956 farm rice acreage allotment established under § 730.725 or § 730.726 by the smaller of (a) the 1956 county allotment proration factor determined under § 730.725 or (b) 1.0000; or (ii) an acreage obtained by multiplying the 1956 rice acreage on the farm plus any acreage diverted from the production of rice under the 1956 acreage reserve or conservation reserve program by a diversion credit factor. In such cases the diversion credit factor will be the reciprocal of a decimal fraction which is 90 per centum of the 1956 county allotment proration factor as determined under § 730.725.

(b) *Adjusted average acreage.* (1) The adjusted average acreage shall be obtained by eliminating from the period of years used in determining the historical average acreage the year or years for which the county committee finds that the rice history acreage was:

(i) Abnormally low due to excessive wet weather, flood, or drought;

(ii) Abnormally high because of failure of crops other than rice;

(iii) Not representative for 1957 because of (a) a definitely established crop-rotation system being carried out on the farm, (b) a reduction in the acreage of developed rice land on the farm, (c) a reduction in the number of rice-producing tenants or other labor on the farm, or (d) unavailability of irrigation water;

(iv) Excessive for the farm on the basis of developed rice land, the soil, or other physical factors affecting the production of rice; or

(v) Not reliably reported or properly determined.

No year with zero rice acreage shall be eliminated under subdivision (iii) (a) of this subparagraph if it is determined by the county committee that such zero acreage resulted from the land becoming unsuitable for rice in such year due to continuous production of rice thereon in prior years.

(2) When one or more of the years are eliminated in accordance with the provisions of subdivisions (i) to (v) of subparagraph (1) of this paragraph, the average of the years not so eliminated shall be considered as the adjusted average acreage. If all years in the applicable period are eliminated, the adjusted average acreage shall be zero.

(c) *1957 base acreage.* The 1957 base acreage for any old farm shall be the historical average acreage determined under paragraph (a) of this section, or, if deter-

mined, the adjusted average acreage under paragraph (b) of this section: *Provided*, That the 1956 base acreage determined under § 730.724 (c) of the 1956 farm rice acreage allotment regulations, or where applicable, the 1956 adjusted base acreage may be adopted as the 1957 base acreage if the county committee determines that such base acreage adequately reflects past production of rice on the farm, taking into consideration the 1955 and 1956 rice acreage allotments established for the farm; abnormal conditions affecting the acreage of rice on the farm; land, labor and equipment available for the production of rice on the farm; crop-rotation practices; and the soil and other physical factors affecting the production of rice on the farm and that such base acreage will be fair and reasonable in relation to the factors above when compared with the base acreages established for other farms in the county which are similarly operated. The 1956 adjusted base acreage for any farm shall be the 1956 rice history acreage for the farm determined under paragraph (a) of this section. If the acreage determined under paragraph (a) or (b) of this section is zero, the county committee shall appraise a base acreage for the farm which is fair and reasonable in relation to the base acreages determined for other farms in the county which are similarly operated, taking into consideration the developed rice land, labor, water and equipment available for the production of rice, crop-rotation practices, and the soil and other physical factors affecting the production of rice on the farm. If the historical average acreage is zero because rice was not planted during the period 1952 through 1955 and was planted in 1956 without an allotment the appraised acreage shall not exceed the base acreage determined for a 1956 new farm which is similar with respect to the factors above on which rice was planted. The appraised base acreage for any such farm shall not be greater than an acreage determined by applying to the developed rice land on the farm the ratio of rice acreage to developed rice land in the community, or the ratio of rice acreage to developed rice land in the county if it is determined by the county committee that more equitable base acreages would result by using such ratios.

§ 730.825 *1957 acreage allotments for old farms.* (a) The base acreages of rice determined under § 730.824, adjusted pro rata to the county allotment minus an appropriate reserve established by the county committee with the approval of the State committee of not to exceed 5 per centum of the county allotment for appeals and corrections, missed farms, and adjustments under paragraph (b) of this section, shall be the acreage allotments for old farms. If, as a result of corrections, the total acreage allotted to farms in any county for which corrections are made is less than the total acreage originally allotted to such farms, such difference in acreage shall be added to the county reserve provided for in this paragraph without regard to the limitation thereon.

(b) The acreage allotment determined for any farm under paragraph (a) of this section may be increased if the county committee determined that the allotment is small in relation to allotments for other old farms in the county on the basis of the crop-rotation practices, the land, labor, water and equipment available for the production of rice, and the soil and other physical factors affecting the production of rice, taking into consideration the acreage required for the economic operation of the farm and the acreage available for such increases: *Provided*, That such increased allotments shall not exceed the allotments determined for other farms which are similar with respect to the factors set forth above. The acreage used in any county for increasing allotments under this paragraph shall not exceed the acreage made available therefor under paragraph (a) of this section.

(c) The acreage allotment determined for any farm under paragraph (a) or (b) of this section may be increased if the county committee determines that such allotment is inadequate for the farm because of an insufficient county acreage allotment or because rice was not planted on the farm during all of the preceding five years, taking into consideration the land, labor, water, and equipment available for the production of rice and the acreage required for the economic operation of the farm: *Provided*, That the total of such increases in allotments under this paragraph shall not exceed the acreage made available to the county from the national reserve provided for by section 353 (a) of the act.

§ 730.826 *Determination of acreage allotments for new farms.* In the farm States, the county committees shall determine a 1957 rice acreage allotment for each eligible new farm for which an acreage allotment is requested in writing not later than February 1, 1957, except that in the State of Louisiana such application shall be filed not later than February 15, 1957. The rice acreage allotments for new farms shall be determined on the basis of tillable land suitable for the production of rice, labor, water and equipment available for the production of rice, and the soil and other physical factors affecting the production of rice, and shall not exceed the allotments determined under § 730.825 for old farms which are similar with respect to such factors. The request for a new farm rice acreage allotment shall be made by the farm operator and shall contain a statement as to the location and identification of the farm, the acreage allotment requested for the farm, the acreage of tillable land on the farm suitable for the production of rice and for which water and other irrigation facilities are readily available, reason why rice was not produced on the farm in any of the years 1952 through 1956, the rice-producing equipment owned by the applicant or otherwise available for his use in 1957, location and identification of other rice farms in which the owner or operator has an interest, the past experience of the applicant in producing rice, and whether 50 percent or

more of his livelihood in 1957 is expected to be derived from farming operations on the farm: *Provided*, That to be eligible for a new farm rice acreage allotment (a) the land for which an allotment is requested must be well suited to the production of rice and for which water and other irrigation facilities are readily available for use on such land in 1957; (b) the applicant must establish to the satisfaction of the county committee that he owns or has available for his use in 1957 adequate rice-producing equipment and that he expects to derive 50 percent or more of his livelihood in 1957 from farming operations on this farm; and (c) the owner or the operator of the farm must not have an interest in the rice produced on any other farm in 1957. Subject to reserves available, the rice acreage allotment for any such farm shall not exceed the rice acreage allotment requested for the farm or the acreage determined by applying to the tillable acreage on the farm suitable for the production of rice and for which water and other irrigation facilities are readily available for 1957 the ratio of rice acreage to developed rice land in the community or county (applicable only if there is developed rice land in the community or county), except that such ratio limitation shall not apply if it would result in an allotment which would be relatively small in relation to the allotments established for old rice farms which are similar with respect to such factors: *Provided*, That if the acreage planted to rice on the farm in 1957 is less than the allotment established under this section, the rice allotment for the farm shall be reduced to the acreage planted to rice on the farm, and the acreage resulting from such reductions in each county shall be transferred to the reserve available to the county committee for appeals and corrections, missed farms, and adjustments as provided under § 730.825. The sum of all such new farm rice acreage allotments in the State determined under this section shall not exceed the reserve for new farms established by the State committee which shall not exceed 3 per centum of the State rice acreage allotment.

§ 730.827 *Mailing of 1957 farm allotment notices.* Notice of the 1957 farm acreage allotment shall be mailed by the county committee to the operator of the farm and to each other producer on the farm who will have an interest in the 1957 rice crop. Insofar as practicable all allotment notices in the county shall be mailed on the same date and in time to be received prior to the date on which the referendum to determine whether farmers favor or oppose rice marketing quotas will be held. A copy of each allotment notice approved shall be maintained for not less than thirty days in a conspicuous place in the county office and shall thereafter be permanently kept freely available for public inspection in the office of the county committee.

§ 730.828 *Allotment for farms divided or combined—(a) Divisions.* If land operated as a single farm in 1956 will be operated in 1957 as two or more farms, the 1957 farm rice acreage allot-

ment determined for the entire farm shall be apportioned among the divided farms in the same proportion as the developed rice land for each such divided farm bears to the total developed rice land for the entire tract; except that the farm rice acreage allotment determined for the entire farm shall, if the farm to be divided for 1957 consists of two or more tracts which were separate and distinct farms before being combined for the 1955 or 1956 program year, be apportioned among the tracts in the same proportion that each contributed to the farm rice acreage allotment for the year for which combined. If, however, the county committee determines that this method would result in allotments not representative of the farming operations normally carried out on each part, an allotment may be determined for each part in the same manner as would have been done if such part had been a completely separate farm: *Provided*, That the sum of the allotments thus determined under this section for each part shall not exceed the allotment originally determined for the entire farm which is being divided.

(b) *Combinations.* If two or more farms, or parts thereof, for which 1957 rice acreage allotments are determined are combined and operated as a single farm in 1957, the 1957 allotment shall be the sum of the allotments determined for each of the units comprising the combination.

(c) *Division of farms involving government owned land.* If a farm, a part of which is owned by the Federal Government and under a restrictive lease to a producer, is to be divided for 1957 the rice acreage allotment attributed to or established for the government owned tract shall become frozen and shall not be available for apportionment to any other farm.

§ 730.829 *Right to appeal and application for review.* (a) In the event marketing quotas are not applicable to the 1957 crop of rice, any person who as owner, operator, landlord, tenant, or sharecropper, is dissatisfied with his farm rice acreage allotment may file an appeal for reconsideration of such allotment. The appeal and the facts constituting the basis therefor must be submitted in writing and postmarked or delivered to the office of the county committee within 15 days after the date of mailing of the notice of allotment. If the applicant is dissatisfied with the decision of the county committee with respect to his appeal, he may appeal to the State committee within 15 days after the date of mailing of the notice of the decision of the county committee. If the appellant is dissatisfied with the decision of the State committee, he may within 15 days after the date of mailing of the notice of the decision of the State committee, request the Director of the Grain Division, Commodity Stabilization Service, to review his case, whose decision shall be final.

(b) In the event marketing quotas are applicable to the 1957 crop of rice, any

producer who is dissatisfied with the farm rice acreage allotment and marketing quota established for his farm may, within 15 days after mailing of the official notice of the farm rice acreage allotment and marketing quota, file application to have such allotment reviewed by a review committee appointed by the Secretary. The procedures governing the review of farm acreage allotments and marketing quotas are contained in the regulations issued by the Secretary (Part 711 of this chapter) which are available at the office of the county committee.

§ 730.830 *Reapportionment of farm acreage allotments released voluntarily to county committee.* (a) In the farm states, any part of any 1957 farm rice acreage allotment on which rice will not be planted in 1957 and which is voluntarily released by the owner or operator of the farm to the county committee not later than the closing dates prescribed in this section shall be deducted from the rice acreage allotment determined for such farm and may be reapportioned by the county committee not later than the closing dates prescribed in this section to other farms (old or new) in the same county receiving allotments in amounts determined by the county committee to be fair and reasonable on the basis of the production of rice on the farm during the years 1952 through 1956; the 1956 farm acreage allotment; abnormal conditions affecting acreage; land, labor, water and equipment available for the production of rice; crop-rotation practices; and the soil and other physical factors affecting the production of rice. The closing dates in each State for the release and reapportionment of farm rice acreage allotments are as follows:

State	Release	Reapportionment
Arkansas.....	May 1, 1957	May 10, 1957
Illinois.....	May 1, 1957	May 8, 1957
Louisiana.....	Apr. 26, 1957	May 3, 1957
Mississippi.....	Apr. 26, 1957	May 3, 1957
Missouri.....	May 1, 1957	May 8, 1957
Oklahoma.....	May 1, 1957	May 10, 1957
South Carolina.....	Apr. 1, 1957	Apr. 15, 1957

(b) In considering farms to receive additional allotments from released acreage, preference shall be given to farms having small allotments. Any rice acreage allotment released for 1957 shall, in determining future farm rice acreage allotments, be regarded as having been planted on the farm releasing such allotment of rice was seeded on such farm in at least one of the five years immediately preceding the year for which the allotment is determined, and shall not be considered as having been planted on the farm to which such released acreage is reapportioned.

#### MISCELLANEOUS

§ 730.821 *Request to preserve acreage history for the 1957 crop of rice.* If the acreage planted to rice on a farm in 1957 is less than the 1957 farm rice acreage allotment for such farm, except

where the allotment is under-planted and the quantity of rice previously stored to avoid or postpone payment of the marketing quota penalty has been reduced because of such reduction in acreage, the entire farm acreage allotment established under §§ 730.819 and 730.825 shall be considered to have been planted for the purposes of establishing future State, county, and farm acreage allotments, provided the owner or operator of the farm files or has filed a request in writing for such preservation of rice history acreage on or before June 1, 1957.

§ 730.832 *Farm normal yields.* The normal yield for any farm for the 1957 crop of rice shall be the average yield per acre of rice for the farm during the period 1952 through 1956, adjusted for abnormal weather conditions and for trends in yields. If for any such year the data are not available or there is no actual yield, then the normal yield for the farm shall be appraised taking into consideration abnormal weather conditions, trends in yields, the normal yield for the county, the yields, obtained on adjacent farms during such year, and the yield in years for which data are available. If on account of drought, flood, insect pests, plant disease, or other uncontrollable natural cause, the yield for any year of such period is less than 75 per centum of the average, 75 per centum of such average shall be substituted therefor in calculating the normal yield per acre for the farm. If, on account of abnormally favorable weather conditions, the yield for any year of such period is in excess of 125 per centum of the average, 125 per centum of such average shall be substituted therefor in calculating the normal yield per acre for the farm.

§ 730.833 *Redelegation of authority.* Any authority delegated to the State committee by §§ 730.810 to 730.834 may be redelegated by the State committee.

§ 730.834 *Applicability of regulations.* (a) Sections 730.810 to 730.834, inclusive, shall govern the establishment of farm and producer rice acreage allotments in connection with the marketing quota and price support programs for the 1957 crop of rice.

(b) The regulations in this subpart are contingent upon the proclamation of a national acreage allotment of rice for 1957 by the Secretary pursuant to section 353 of the Agricultural Adjustment Act of 1938, as amended.

NOTE: The reporting and record-keeping requirements contained herein have been approved by, and subsequent reporting record-keeping requirements will be subject to the approval of, the Bureau of Budget in accordance with the Federal Reports Act of 1942.

Done at Washington, D. C., this 30th day of October 1956. Witness my hand and the seal of the Department of Agriculture.

[SEAL] E. L. PETERSON,  
Acting Secretary of Agriculture.

[F. R. Doc. 56-8944; Filed, Nov. 2, 1956; 8:52 a. m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

PART 911—MILK IN TEXAS PANHANDLE MARKETING AREA

ORDER AMENDING THE ORDER, AS AMENDED

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

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

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

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

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

(b) Additional findings. It is necessary in the public interest to make this order amending the aforesaid order effective at the earliest possible date. Any delay in the effective date will tend to disrupt the orderly marketing of milk in the aforesaid marketing area and would defeat the purpose of the amendment. The amendment action of this order amending the order, as amended, is known to handlers, the public hearing having been held on October 22, 1956, and the decision having been issued heretofore. Reasonable time, under the circumstances, has been afforded persons

affected to prepare for its effective date. In view of the foregoing, it is hereby found and determined that good cause exists for not delaying the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (See sec. 4 (c), Administrative Procedure Act, 5 U. S. C. 1001 et seq.).

(c) Determinations. It is hereby determined that handlers (excluding cooperative associations of producers who are not engaged in processing, distributing or shipping milk covered by this order, amending the order, as amended, which is marketed within the Texas Panhandle marketing area) or more than 50 percent of the milk which is marketed within the said marketing area, refused or failed to sign the proposed marketing agreement regulating the handling of milk in the said marketing area, and it is hereby further determined that:

(1) The refusal or failure of such handlers to sign said proposed marketing agreement tends to prevent the effectuation of the declared policy of the act;

(2) The issuance of the order amending the order, as amended, is the only practical means, pursuant to the declared policy of the act, of advancing the interests of producers of milk which is produced for sale in the said marketing area; and

(3) The issuance of this order amending the order, as amended, is approved or favored by at least two-thirds of the producers who, during the determined representative period (August 1956), were engaged in the production of milk for sale in the said marketing area.

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

Amend § 911.51 (a) by adding thereto the following: "Provided: That such price shall be increased or decreased by a like amount, in any month in which the supply-demand adjustment computed pursuant to § 943.51 (a) (1) (2) and (3), regulating the handling of milk in the North Texas marketing area, increases or decreases the Class I price computed pursuant to § 943.51 (a)."

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Issued at Washington, D. C., this 31st day of October 1956, to be effective on and after the first day of November 1956.

[SEAL]

E. L. PETERSON,  
Acting Secretary.

[F. R. Doc. 56-8942; Filed, Nov. 2, 1956; 8:52 a. m.]

[Navel Orange Reg. 89]

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

LIMITATION OF HANDLING

§ 914.389 Navel Orange Regulation 89—(a) Findings. (1) Pursuant to the

marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914; 21 F. R. 4707), regulating the handling of navel oranges grown in Arizona and designated part of California, effective September 22, 1953, under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because 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, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The Navel Orange Administrative Committee held an open meeting on November 1, 1956, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed on or before the effective date hereof.

(b) Order. (1) The quantity of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a. m., P. s. t., November 4, 1956, and ending at 12:01 a. m., P. s. t., November 11, 1956, is hereby fixed as follows:

- (i) District 1: 29,036 cartons;
- (ii) District 2: Unlimited movement;
- (iii) District 3: Unlimited movement;
- (iv) District 4: Unlimited movement.

(2) All navel oranges handled during the period specified in this section are subject also to all applicable size restrictions which are in effect pursuant to this part during such period.

(3) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: November 2, 1956.

[SEAL] G. R. GRANGE,  
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 56-9031; Filed, Nov. 2, 1956; 11:46 a. m.]

[Lemon Reg. 666]

**PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA**

**LIMITATION OF SHIPMENTS**

§ 953.773 *Lemon Regulation 666—(a) Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953; 20 F. R. 8451; 21 F. R. 4393), regulating the handling of lemons grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of the quantity of such lemons which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because 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, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of lemons, grown in the State of California or in the State of Arizona, are currently subject to regulation pursuant to said amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Lemon Administrative Committee on October 31, 1956; such meeting was held, after giving due notice thereof to consider recommendations for regulation, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including its effective time, are identical with the

aforsaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter specified; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time thereof.

(b) *Order.* (1) The quantity of lemons grown in the State of California or in the State of Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., November 4, 1956, and ending at 12:01 a. m., P. s. t., November 11, 1956, is hereby fixed as follows:  
(i) District 1: Unlimited movement;  
(ii) District 2: 173,910 cartons;  
(iii) District 3: 21,390 cartons.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: November 1, 1956.

[SEAL] G. R. GRANGE,  
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 56-9018; Filed, Nov. 2, 1956; 8:55 a. m.]

**TITLE 45—PUBLIC WELFARE**

**Subtitle A—Department of Health, Education, and Welfare, General Administration**

**PART 14—MINIMUM STANDARDS OF OPERATION FOR STATE AGENCIES FOR SURPLUS PROPERTY**

Part 14 of Title 45 CFR is hereby amended to read as follows:

Sec.	Definitions.
14.1	Basic policy.
14.2	Geographic scope.
14.3	Organization.
14.4	Plan of operation for health and educational donations.
14.5	Plan of operation for civil defense donation.
14.6	Books and records.
14.7	Service charges and funds.
14.8	Audits.
14.9	Handling of property.
14.10	Utilization and compliance responsibility.
14.11	Assistance to the Department.
14.12	Nonconformance.
14.13	Amendments.
14.14	

**AUTHORITY:** §§ 14.1 to 14.14 issued under sec. 203, 63 Stat. 385, as amended; 40 U. S. C. 484.

§ 14.1 *Definitions.* (a) "Act" means the Federal Property and Administrative Services Act of 1949, Public Law 152, 81st Congress (63 Stat. 377), as amended (40 U. S. C. 471 et seq.). Terms defined in the act and not defined in this section shall have in this part the meaning given to them in the act.

(b) "Accredited screener" means a person who has been certified by the

Department to visit specified installations and who has been issued an appropriate identification card for the purpose of inspecting and listing personal property for possible donation.

(c) "Department" means the Department of Health, Education, and Welfare.

(d) "Donable property" means surplus equipment, materials, books or other supplies under the control of any executive agency (including surplus property in working capital funds established pursuant to section 405 of the National Security Act of 1947, as amended, or in similar management-type funds) except:

(1) Such property as may be specified from time to time by the Administrator of General Services;

(2) Surplus agricultural commodities, food, and cotton or woolen goods determined from time to time by the Secretary of Agriculture to be commodities requiring special handling in order to assist him in carrying out his responsibilities with respect to price support or stabilization;

(3) Property in the custody of an agency or an organizational unit thereof which is subject to the Government Corporation Control Act (59 Stat. 597; 31 U. S. C. 841);

(4) Property in trust funds.  
(e) "Need" means the lack or inadequacy of anything usable and necessary by eligible applicants in the conduct of health, educational, or civil defense activities.

(f) "Non-profit institution" used in connection with a medical institution, hospital, clinic, health center, or other health facility, or a school, college, university, or other educational facility, means one which is operated by one or more nonprofit corporations or associations, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by the Internal Revenue Service to be tax-exempt under either the provisions of section 101 (6) of the 1939 Internal Revenue Code or section 501 (c) (3) of the 1954 Internal Revenue Code.

(g) "Overage" means the excess occurring upon the receipt of a larger number of a specific item or a larger number of items than either (1) requested on an "Application for Surplus Property" (Form HEW 135), or (2) listed on a shipping document.

(h) "Screening" means the act of reviewing and inspecting property which is surplus or which is expected to become surplus for the purpose of determining whether or not such property is usable and necessary for health, educational, or civil defense purposes.

(i) "Service charge" means the fee or charge made by a State Agency to the donee when distributing surplus property under section 203 (j) of the act.

(j) "Shortage" means the deficiency occurring upon the receipt of a smaller number of a specific item or a smaller number of items than either (1) requested on an "Application for Surplus Property" (Form HEW 135), or (2) listed on a shipping document.

(k) "State Agency" means the agency designated by State statute or executive order to make the certifications concerning and distribution of donable property to eligible applicants within the State as provided for in section 203 (j) of the act.

(l) "Tax-supported institution" used in connection with a medical institution, hospital, clinic, health center, school, school system, college or university, means one which receives a major portion of its financial support from moneys derived from State or local government revenues.

§ 14.2 *Basic policy.* It is the policy of the Department to strengthen and promote the improvement of operations of State Agencies so as to achieve maximum efficiency, responsibility and equity in the distribution and utilization of surplus property for health, educational and civil defense purposes.

§ 14.3 *Geographic scope.* This part is applicable to states within the continental United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

§ 14.4 *Organization.* (a) Each State Agency shall be administered under the direction and supervision of a chief executive officer who shall be responsible for carrying out all phases of the State's program in accordance with the approved plan submitted pursuant to § 14.5 and/or § 14.6.

(b) Each State Agency shall maintain a staff adequate to enable it to carry out the program as set forth in its approved plan of operation.

§ 14.5 *Plan of operation for health and educational donations.* (a) Each State Agency shall submit to the appropriate regional office of the Department two signed copies of its plan of operation for health and educational donations which conforms to the provisions of this part. Unless such plan is approved by the Department no allocations of donable property will be made to such State Agency under section 203 (j) (3) of the act. Notice of the Department's approval or disapproval of the plan, together with a statement of the respects in which it is deficient, in the event of disapproval, shall be given to the State Agency as soon after submission of such plan as practicable. No subsequent amendments to or modifications of approved plans shall be placed in effect without prior approval of the Department.

(b) The State Agency plan of operation for health and educational donations shall be supported by satisfactory evidence establishing its authority to:

(1) Acquire, warehouse, and distribute donable personal property to eligible tax-supported and non-profit educational and health institutions under section 203 (j) of the act; and

(2) Execute the certifications and agreements required by section 203 (j) of the act and the Federal Government.

(c) The evidence required by paragraph (b) of this section shall include copies of State Statutes or Executive Orders. Where express statutory au-

thority does not exist or is ambiguous, or where the authority exists by virtue of Executive Order, the State Agency shall furnish the opinion of the State's Attorney General as to the existence of such authority.

(d) The State Agency plan of operation shall include, in the following order:

(1) The provisions and procedures for attaining fair and equitable distribution of surplus property to eligible health and educational institutions.

(2) Assurance that all warehousing and distributive functions are a direct part of the State Agency's operation and are under the direction and control of its chief executive officer.

(3) A schedule of service charges or an explanation of the method used in determining service charges, if such charges are made.

(4) Procedures for:

(i) Ascertaining the eligibility of an applicant and the authority of its representative to receive property on its behalf.

(ii) Determining the actual need and usability of donable property.

(iii) Screening surplus property at Federal installations by accredited screeners, when this function is contemplated.

(iv) Spot check inspections at educational and health institutions to determine that property donated to them is actually put to use in accordance with the donee's certification.

(v) Redistribution of donated property not being used.

(vi) Reporting surplus property that has been in the custody of the State Agency for over twelve months.

(5) Provisions for obtaining certification of eligibility from institutions in connection with each transfer of donable property.

(6) Provisions for obtaining certification by donee institutions of need and usability in connection with each transfer of property.

(e) The plan of operation shall be accompanied by samples of the State Agency forms used.

§ 14.6 *Plan of operation for civil defense donations.* (a) A State Agency, in order to become eligible to receive donable property for distribution for civil defense purposes, shall submit to the appropriate regional office of the Department, two signed copies of its plan of operation. The plan of operation shall include and be supported by all the documents, assurances, schedules, samples, provisions and procedures relative to its proposed operation for civil defense purposes as are required of other State Agencies by § 14.5 with respect to health and educational donations.

(b) In the case of a State Agency administering health and educational donations, under a plan previously submitted under § 14.5 and approved by the Department, which is also authorized under State law to perform the same functions respecting civil defense donations, such State Agency shall submit to the appropriate regional office of the Department two signed copies of a supplement to its present plan of operation.

This supplement shall be supported by the same type of evidence respecting the authority of the State Agency to carry out the civil defense functions as is required under paragraph (b) (1) and (2) of § 14.5 in connection with health and educational donations, and shall be accompanied by any additional amended or revised assurances, schedules, samples and procedures, as are necessary to adapt its activities and the plan previously submitted and approved to encompass the civil defense responsibilities. Where the provisions and procedures to be utilized in connection with civil defense functions are different from those described in the approved plan for health and educational activities, the supplement shall include a description of such differences. Where they are the same, a statement to that effect shall be included.

(c) No donable property will be allocated for civil defense purposes until the State Agency has submitted a plan or a supplement, as provided in paragraph (a) or (b) of this section, and such plan or supplement has been approved by the Department. Donable property allocated to a State Agency for health and educational purposes is not available and may not be distributed for civil defense purposes until the State Agency has complied with the provisions of this part and received the Department's approval, and unless the property has been allocated for civil defense purposes or for the three purposes of health, education and civil defense.

§ 14.7 *Books and records.* (a) The accounting system of the State Agency shall conform to generally accepted accounting principles and practices including an inventory record system which, in the absence of written approval by the State Auditor or other State official responsible for this phase of State fiscal policy, must be approved by the Department.

(b) Financial records and all other books and records of the State Agency shall be subject to inspection by authorized representatives of the Department. Annual financial statements (including a balance sheet and a statement of receipts and disbursements or income and expense) shall be furnished to or made available for inspection by the appropriate regional office of the Department.

(c) Each State Agency shall maintain accurate records of all donable property received and distributed. Records of distribution of all single items having an acquisition cost of \$2,500 or more shall be kept separate from those of lesser amount.

(d) All single items or units of measure having a fair value of \$35.00 or more, as determined by the State Agency, must be identified by the State serial number on the "Application for Surplus Property," Form HEW 135, under which the items were received, so long as the items are in the custody of the State Agency, and records must be kept to show ultimate delivery of the items to the eligible applicant.

(e) All official records and correspondence of the State Agency shall be kept for a minimum period of five years.

§ 14.8 *Service charges and funds.* (a) Service charges, as a whole, for handling donable surplus property shall be limited to the amount necessary to pay actual expenses of current operations and purchase necessary equipment, plus the accumulation and maintenance of a working capital reserve.

(b) A working capital reserve shall be computed, as of the end of the State Agency's fiscal year, as follows:

(1) Add together the following items of current assets:

- (i) Cash on hand and in bank;
- (ii) Accounts receivable;
- (iii) Costs of acquiring surplus property inventory on hand.

(2) Deduct from the total of current assets:

(i) An appropriate allowance for uncollectible accounts receivable;

(ii) Liabilities, including any obligation represented by funds not accumulated from handling charges and which are to be returned eventually to the source from which they were derived.

(c) The working capital reserve shall not exceed an amount equivalent to the estimated cost of operation during one year in the immediate future. Under exceptional circumstances a larger reserve may be retained with the approval of the Department.

(d) Accounting records shall be maintained in such manner as to identify and separately account for funds accumulated from the assessment of service charges against donee institutions and organizations. Integrity of these funds shall be maintained, and they shall be used for promotion and extension of the program and shall not be available for other State purposes.

(e) The service charge assessed by a State Agency for the transfer of any single item of donable surplus property shall be reasonable in relation to the costs incident to the transfer.

(f) A State Agency shall accept payment of a service charge only in the form of a warrant, check, or other official instrument drawn or issued by an authorized representative of the donee institution or organization.

(g) Any funds accumulated by a State Agency from service charges against donee institutions and organizations, over and above the working capital re-

serve as provided for in this part, shall be refunded to donee institutions and organizations (1) on a pro rata basis (based upon total charges collected during the preceding fiscal year) or (2) reduced service charges during the current and the next ensuing fiscal year.

(h) When surplus property in the custody of a State Agency is sold for the benefit and account of the United States of America, the State Agency will be permitted to retain from the proceeds of the sale the costs of advertising and costs of preparation for sales (including transportation costs incurred in recovering property from institutions). Under exceptional circumstances, additional proceeds may be retained upon approval by the Department.

§ 14.9 *Audits.* The operations and financial affairs of the State Agency shall be audited by an appropriate State authority or by a recognized auditing firm. Such audits shall conform to State laws, rules and regulations, fiscal policies and practices, and to any applicable State limitations. An audit shall be made at least every two years by a recognized auditing firm, where State law or regulations do not, as a minimum, require biennial audits. Copies of the reports of the audits of the State Agencies shall be forwarded to or made available for review by the appropriate regional office of the Department.

§ 14.10 *Handling of property.* (a) Donable surplus property shall be inventoried immediately upon receipt, and any shortage or overage shall be reported within 30 days to the donor holding agency with a copy to the appropriate regional office of the Department.

(b) State Agencies shall maintain adequate provision for protecting property in their custody including reasonable protection against the hazards of fire, theft, vandalism and weather.

§ 14.11 *Utilization and compliance responsibility.* (a) Each State Agency shall assist the Department in effecting utilization and compliance by health and educational donees, with the terms and conditions established for any single item of donated property having an acquisition cost of \$2,500 or more.

(b) State Agencies shall take reasonable measures to assure that single items

of personal property with an acquisition cost of less than \$2,500 that are donated under the provisions of the act for health or educational purposes are actually used for such purposes.

(c) State Agencies shall make appropriate investigations of personal property donated for health and educational purposes and based upon the results of such investigations, take any action necessary to correct and prevent misuse of such property and to assure its utilization for the purposes for which it was donated.

(d) State Agencies shall report to the Department the circumstances pertaining to any known misuse of donated personal property, regardless of the purpose for which the donation was made.

§ 14.12 *Assistance to the Department.* Each State Agency shall cooperate with the Department by releasing property from its custody upon request, and will assist the Department in obtaining voluntary release by donee institutions of property needed for defense or emergency use.

§ 14.13 *Nonconformance.* If the Department determines that a State Agency is not operating in accordance with its previously approved plan of operation or this part, allocation of property to the State Agency may be suspended until the nonconformance is corrected to the satisfaction of the Department.

§ 14.14 *Amendments.* The Department reserves the right at any time to modify or amend this part. Upon issuance of amendments to this part requiring State Agencies to modify their operations, reasonable opportunity will be afforded the State Agencies to conform their operations to such amended standards.

Dated: October 26, 1956.

[SEAL] M. B. FOLSOM,  
Secretary.

I concur in the foregoing regulation.

Dated: October 31, 1956.

VAL PETERSON,  
Administrator of Federal Civil Defense.

[F. R. Doc. 56-8932; Filed, Nov. 1, 1956;  
8:53 a. m.]

## PROPOSED RULE MAKING

### DEPARTMENT OF THE TREASURY

#### Internal Revenue Service

#### [ 26 CFR (1954) Part 1 ]

INCOME TAX; TAXABLE YEARS BEGINNING  
AFTER DECEMBER, 31, 1953

SALES AND EXCHANGE OF COAL, TIMBER AND  
GAS OR OIL PROPERTIES

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. Prior to the final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D. C., within the period of thirty days from the date of publication of this notice in 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).

RUSSELL C. HARRINGTON,  
Commissioner of Internal Revenue.

The following regulations are hereby prescribed under sections 272, 631, and 632 of chapter 1 of the Internal Revenue Code of 1954, and are applicable to taxable years beginning after December 31, 1953, and ending after August 16, 1954:

Sec.	
1.272	Statutory provisions; disposal of coal.
1.272-1	Expenditures relating to disposal of coal.
SALES AND EXCHANGES	
1.631	Statutory provisions; gain or loss in the case of timber or coal.
1.631-1	Election to consider cutting as sale or exchange.

- Sec.  
 1.631-2 Gain or loss upon the disposal of timber under cutting contract.  
 1.631-3 Gain or loss upon the disposal of coal with a retained economic interest.  
 1.632 Statutory provisions; sale of oil or gas properties.  
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§ 1.272 Statutory provisions; disposal of coal.

Sec. 272. *Disposal of coal.* Where the disposal of coal is covered by section 631, no deduction shall be allowed for expenditures attributable to the making and administering of the contract under which such disposition occurs and to the preservation of the economic interest retained under such contract, except that if in any taxable year such expenditures plus the adjusted depletion basis of the coal disposed of in such taxable year exceed the amount realized under such contract, such excess, to the extent not availed of as a reduction of gain under section 1231, shall be a loss deductible under section 165 (a). This section shall not apply to any taxable year during which there is no income under the contract.

§ 1.272-1 *Expenditures relating to disposal of coal—(a) Introduction.* Section 272 provides special treatment for certain expenditures paid or incurred by a taxpayer in connection with a contract (hereafter sometimes referred to as a "coal royalty contract") for the disposal of coal the gain or loss from which is treated under section 631 (c) as a section 1231 gain or loss on the sale of coal. The expenditures covered by section 272 are those which are attributable to the making and administering of such a contract or to the preservation of the economic interest retained under the contract. For examples of such expenditures, see paragraph (d) of this section. For a taxable year in which gross royalty income is realized under the contract of disposal, such expenditures shall not be allowed as a deduction. Instead, they are to be added to the adjusted depletion basis of the coal disposed of in such taxable year in computing gain or loss under section 631 (c). However, where no gross royalty income is realized under the contract of disposal in a particular taxable year, such expenditures shall be treated without regard to section 272.

(b) *In general.* (1) Where the disposal of coal is covered by section 631 (c), the provisions of section 272 and this section shall be applicable for a taxable year in which there is income under the contract of disposal. (For purposes of section 272 and this section, the term "income" means gross amounts received or accrued which are royalties or bonuses in connection with a contract to which section 631 (c) applies.) All expenditures paid or incurred by the taxpayer during such taxable year which are attributable to the making and administering of the contract disposing of the coal and all expenditures paid or incurred during such taxable year in order to preserve the owner's economic interest retained under the contract shall be disallowed as deductions in computing taxable income for such taxable year. The sum of such expenditures and the adjusted depletion basis of the coal disposed of in such taxable year shall be

used in determining the amount of gain or loss with respect to the disposal. See § 1.631-3. For special rule in case of loss, see paragraph (c) of this section. Section 272 and this section are not applicable to capital expenditures and such expenditures are not taken into account in computing gain or loss under section 631 (c) except to the extent they are properly part of the depletable basis of such coal.

(2) The expenditures covered under section 272 and this section are disallowed as a deduction only with respect to a taxable year in which income is realized under the coal royalty contract to which such expenditures are attributable. Where no income is realized under such contract in a taxable year, these expenditures shall be deducted as expenses for the production of income, as a business expense, or may be treated under section 266 (relating to taxes and carrying charges) if applicable.

(3) The provisions of section 272 and this section apply to a taxable year in which income from the disposal by the owner of coal held by him for more than six months is subject to the provisions of section 631 (c) even though the actual mining of coal under the coal royalty contract does not take place during such year. Where the right under the contract to mine coal for which advance payment has been made expires terminates, or is abandoned before such coal is mined, and § 1.631-3 (c) requires the owner to recompute his tax with respect to such payment the recomputation must be made without applying the provisions of section 272 and this section.

(c) *Losses.* If, in any taxable year, the expenditures referred to in section 272 and this section plus the adjusted depletion basis under section 612 of the coal disposed of during the taxable year exceed the amount realized under the contract during the taxable year, such excess shall be considered under section 1231 as a loss from the sale of property used in the trade or business and, to the extent not availed of as a reduction of gain under that section, shall be a loss deductible under section 165 (a) (relating to the deduction of losses generally).

(d) *Examples of expenditures.* (1) The expenditures referred to in section 272 include, but are not limited to, the following items attributable to the contract or property covered by the contract: ad valorem taxes imposed by State or local authorities, costs of fire protection, costs of insurance (other than liability insurance), costs incurred in administering the contract (including costs of book-keeping and technical supervision), interest on loans, expenses of flood control, legal and technical expenses, and expenses of measuring and checking quantities of coal disposed of under the contract.

(2) Any expenditure referred to in this section which is applicable to more than one coal royalty contract shall be reasonably apportioned to each such contract. Furthermore, if an expenditure applies only in part to the making or administering of the contract or the preservation of the economic interest, then only such part shall be treated under section 272.

The apportionment of the expenditure shall be made on a reasonable basis. For example, where a taxpayer has other income (such as income from oil or gas royalties, rentals, right of way fees, interest, or dividends) as well as income under section 631 (c), and where the salaries of some of its employees or other expenses relate to both classes of income, such expenses shall be allocated reasonably between the income subject to section 631 (c) and the other income. Where a taxpayer has more than one coal royalty contract, expenditures under this section relating to a contract from which no income has been received in the taxable year may not be allocated to income from another contract from which income has been received in the taxable year.

(3) The taxpayer may have expenses which are not attributable even partly to making and administering a coal royalty contract or to the preservation of the economic interest retained under the contract and, accordingly, are not included in the expenditures described in section 272. These include such items as ad valorem taxes imposed by State or local authorities on property not covered by the contract, salaries, wages, or other expenses entirely incident to the ownership and protection of such property and depreciation of improvements thereon, fire insurance on such property, charitable contributions, and similar expenses unrelated to the making or to the administering of coal royalty contracts or preserving the taxpayer's economic interest retained therein.

SALES AND EXCHANGES

§ 1.631 Statutory provisions; gain or loss in the case of timber or coal.

Sec. 631. *Gain or loss in the case of timber or coal—(a) Election to consider cutting as sale or exchange.* If the taxpayer so elects on his return for a taxable year, the cutting of timber (for sale or for use in the taxpayer's trade or business) during such year by the taxpayer who owns, or has a contract right to cut, such timber (providing he has owned such timber or has held such contract right for a period of more than 6 months before the beginning of such year) shall be considered as a sale or exchange of such timber cut during such year. If such election has been made, gain or loss to the taxpayer shall be recognized in an amount equal to the difference between the fair market value of such timber, and the adjusted basis for depletion of such timber in the hands of the taxpayer. Such fair market value shall be the fair market value as of the first day of the taxable year in which such timber is cut, and shall thereafter be considered as the cost of such cut timber to the taxpayer for all purposes for which such cost is a necessary factor. If a taxpayer makes an election under this subsection, such election shall apply with respect to all timber which is owned by the taxpayer or which the taxpayer has a contract right to cut and shall be binding on the taxpayer for the taxable year for which the election is made and for all subsequent years, unless the Secretary or his delegate, on showing of undue hardship, permits the taxpayer to revoke his election; such revocation, however, shall preclude any further elections under this subsection except with the consent of the Secretary or his delegate. For purposes of this subsection and subsection (b), the term "timber" includes evergreen trees which are more than

6 years old at the time severed from the roots and are sold for ornamental purposes.

(b) *Disposal of timber with a retained economic interest.* In the case of the disposal of timber held for more than 6 months before such disposal, by the owner thereof under any form or type of contract by virtue of which such owner retains an economic interest in such timber, the difference between the amount realized from the disposal of such timber and the adjusted depletion basis thereof, shall be considered as though it were a gain or loss, as the case may be, on the sale of such timber. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. The date of disposal of such timber shall be deemed to be the date such timber is cut, but if payment is made to the owner under the contract before such timber is cut the owner may elect to treat the date of such payment as the date of disposal of such timber. For purposes of this subsection, the term "owner" means any person who owns an interest in such timber, including a sublessor and a holder of a contract to cut timber.

(c) *Disposal of coal with a retained economic interest.* In the case of the disposal of coal (including lignite), held for more than 6 months before such disposal, by the owner thereof under any form of contract by virtue of which such owner retains an economic interest in such coal, the difference between the amount realized from the disposal of such coal and the adjusted depletion basis thereof plus the deductions disallowed for the taxable year under section 272 shall be considered as though it were a gain or loss, as the case may be, on the sale of such coal. Such owner shall not be entitled to the allowance for percentage depletion provided in section 613 with respect to such coal. This subsection shall not apply to income realized by any owner as a co-adventurer, partner, or principal in the mining of such coal, and the word "owner" means any person who owns an economic interest in coal in place, including a sublessor. The date of disposal of such coal shall be deemed to be the date such coal is mined. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. This subsection shall have no application, for purposes of applying subchapter G, relating to corporations used to avoid income tax on shareholders (including the determinations of the amount of the deductions under section 535 (b) (6) or section 545 (b) (5)).

§ 1.631-1 *Election to consider cutting as sale or exchange—(a) Effect of election.* (1) Section 631 (a) provides an election to certain taxpayers to treat the difference between the actual cost or other basis of certain timber cut during the taxable year and its fair market value as standing timber on the first day of such year as gain or loss from a sale or exchange under section 1231. Thereafter, any subsequent gain or loss shall be determined in accordance with paragraph (e) of this section.

(2) For the purposes of section 631 (a) and this section, timber shall be considered cut at the time when in the ordinary course of business the quantity of timber felled is first definitely determined.

(3) The election may be made with respect to any taxable year even though such election was not made with respect to a previous taxable year. If an election has been made under the provisions

of section 631 (a), or corresponding provisions of prior internal revenue laws, such election shall be binding upon the taxpayer not only for the taxable year for which the election is made but also for all subsequent taxable years, unless the Commissioner on showing by the taxpayer of undue hardship permits the taxpayer to revoke his election for such subsequent taxable years. If the taxpayer has revoked a previous election, such revocation shall preclude any further elections unless the taxpayer obtains the consent of the Commissioner.

(4) Such election shall apply with respect to all timber which the taxpayer has owned, or has had a contract right to cut, for a period of more than six months prior to the beginning of the taxable year in which such timber is cut for sale or for use in the taxpayer's trade or business, irrespective of whether such timber or contract right was acquired before or after the election. However, timber which is not cut for sale or for use in the taxpayer's trade or business (for example, firewood cut for the taxpayer's own household consumption) shall not be considered to have been sold or exchanged upon the cutting thereof.

(b) *Who may make election.* (1) A taxpayer who has owned, or has held a contract right to cut, timber for a period of more than six months before the beginning of the taxable year may elect under section 631 (a) to consider the cutting of such timber during such year for sale or for use in the taxpayer's trade or business as a sale or exchange of the timber so cut. In order to have a "contract right to cut timber" within the meaning of this section and section 631 (a) a taxpayer must have a right under the contract to sell or to use the cut timber in his trade or business.

(2) For purposes of section 631 (a) and this section, the term "timber" includes evergreen trees which are more than six years old at the time severed from their roots and are sold for ornamental purposes, such as Christmas decorations. Section 631 (a) is not applicable to evergreen trees which are sold in a live state, whether or not for ornamental purposes. Tops and other parts of standing timber are not considered as evergreen trees within the meaning of section 631 (a). The term "evergreen trees" is used in its commonly accepted sense and includes pine, spruce, fir, hemlock, cedar, and other coniferous trees.

(c) *Manner of making election.* The election under section 631 (a) must be made by the taxpayer in his income tax return for the taxable year for which the election is applicable, and such return must be filed not later than the time prescribed by law for filing such return (including extensions thereof). The election in such return shall take the form of a computation under the provisions of section 631 (a) and section 1231.

(d) *Computation of gain or loss under the election.* (1) If the cutting of timber is considered as a sale or exchange pursuant to an election made under section 631 (a), gain or loss shall be recognized to the taxpayer in an amount equal to the difference between the adjusted basis

for depletion in the hands of the taxpayer of the timber which has been cut during the taxable year and the fair market value of such timber as of the first day of the taxable year in which such timber is cut. The adjusted basis for depletion of the cut timber shall be based upon the number of units of timber cut during the taxable year which are considered to be sold or exchanged and upon the depletion unit of the timber in the timber account or accounts pertaining to the timber cut, and shall be computed in the same manner as is provided in section 611 and the regulations thereunder with respect to the computation of the allowance for depletion.

(2) The fair market value of the timber as of the first day of the taxable year in which such timber is cut shall be determined, subject to approval or revision by the district director upon examination of the taxpayer's return, by the taxpayer in the light of the most reliable and accurate information available with reference to the condition of the property as it existed at that date, regardless of all subsequent changes, such as changes in surrounding circumstances, methods of exploitation, degree of utilization, etc. The value sought will be the selling price, assuming a transfer between a willing seller and a willing buyer as of that particular day. Due consideration will be given to the factors and the principles involved in the determination of the fair market value of timber as described in the regulations under section 611.

(3) The fair market value as of the beginning of the taxable year of the standing timber cut during the year shall be considered to be the cost of such timber, in lieu of the actual cost or other basis of such timber, for all purposes for which such cost is a necessary factor. See paragraph (e) of this section.

(4) For any taxable year for which the cutting of timber is considered to be a sale or exchange of such timber under section 631 (a), the timber so cut shall be considered as properly used in the trade or business for the purposes of section 1231 along with other property of the taxpayer used in the trade or business as defined in section 1231 (b). Whether the gain or loss considered to have resulted from the cutting of the timber will be considered to be gain or loss resulting from the sale or exchange of capital assets held for more than six months depends upon the application of section 1231 to the taxpayer for the taxable year. See section 1231 and the regulations thereunder.

(e) *Computation of subsequent gain or loss.* (1) In case the products of the timber are sold after cutting, either in the form of logs or lumber or in the form of manufactured products, the income from such actual sales shall be considered ordinary income. When the election under section 631 (a) is in effect, the cost of standing timber cut during the taxable year is determined as if the taxpayer had purchased such timber on the first day of the taxable year. Thus, in determining the cost of the products so sold, the cost of the timber shall be the fair market value

on the first day of the taxable year in which the standing timber was cut, in lieu of the actual cost or other basis of such timber.

(2) This is also the rule in case the products of the timber cut during one taxable year, with respect to which an election has been made under section 631 (a), are sold during a subsequent taxable year, whether or not the election provided in section 631 (a) is applicable with respect to such subsequent year. If the products of the timber cut during a taxable year with respect to which an election under section 631 (a) was made were not sold during such year and are included in inventory at the close of such year, the fair market value as of the beginning of the year of the timber cut during the year shall be used in lieu of the actual cost of such timber in computing the closing inventory for such year and the opening inventory for the succeeding year. With respect to the costs applicable in the determination of the amount of such inventories, there shall be included the fair market value of the timber cut, the costs of cutting, logging, and all other expenses incident to the cost of converting the standing timber into the products in inventory. See section 471 and the regulations thereunder. The fact that the fair market value as of the first day of the taxable year in which the timber is cut is deemed to be the cost of such timber shall not preclude the taxpayer from computing its inventories upon the basis of cost or market, whichever is lower, if such is the method used by the taxpayer. Nor shall it preclude the taxpayer from computing its inventories under the last-in-first-out inventory method provided by section 472 if such section is applicable to, and has been elected by, the taxpayer.

§ 1.631-2 *Gain or loss upon the disposal of timber under cutting contract—*  
(a) *In general.* (1) If an owner disposes of timber held for more than six months before such disposal, under any form or type of contract whereby he retains an economic interest in such timber, the disposal shall be considered to be a sale of such timber. The difference between the amounts realized from disposal of such timber in any taxable year and the adjusted basis for depletion thereof shall be considered to be a gain or loss upon the sale of such timber for such year. Such adjusted basis shall be computed in the same manner as provided in section 611 and the regulations thereunder with respect to the allowance for depletion. See paragraph (e) (2) of this section for definition of "owner".

(2) In the case of such a disposal, the provisions of section 1231 apply and such timber shall be considered to be property used in the trade or business for the taxable year in which it is considered to have been sold, along with other property of the taxpayer used in the trade or business as defined in section 1231 (b).

(b) *Determination of date of disposal.*  
(1) For purposes of section 631 (b) and this section, the date of disposal of tim-

ber shall be deemed to be the date such timber is cut. However, if payment is made to the owner under the contract for timber before such timber is cut the owner may elect to treat the date of payment as the date of disposal of such timber. Such election shall be effective only for purposes of determining the holding period of such timber. Neither section 631 (b) nor the election thereunder has any effect on the time of reporting gain or loss. See subchapter E and the regulations thereunder. See paragraph (c) (2) of this section for the effect of exercising the election with respect to the payment for timber held for six months or less. See paragraph (d) of this section for the treatment of payments received in advance of cutting.

(2) For purposes of section 631 (b) and this section, the "date such timber is cut" means the date when in the ordinary course of business the quantity of timber felled is first definitely determined.

(c) *Manner and effect of election to treat date of payment as the date of disposal.* (1) The election to treat the date of payment as the date of disposal of timber shall be evidenced by a statement attached to the taxpayer's income tax return filed on or before the due date (including extensions thereof) for the taxable year in which the payment is received. The statement shall specify the advance payments which are subject to the election and shall identify the contract under which the payments are made. However, in no case shall the time for making the election under section 631 (b) expire before the close of the 90th day after the regulations adopted under section 631 are published in the FEDERAL REGISTER.

(2) Where the election to treat the date of payment as the date of disposal is made with respect to a payment made in advance of cutting, and such payment is made six months or less from the date the timber disposed of was acquired, section 631 (b) shall not apply to such payment, irrespective of the date such timber is cut, since the timber was not held for more than six months prior to disposal.

(d) *Payments received in advance of cutting.* (1) Where the conditions of paragraph (a) of this section are met, amounts received or accrued prior to cutting shall be treated under section 631 (b) as realized from the sale of tim-

ber if the contract of disposal provides that such amounts are to be applied as payment for timber subsequently cut. Such amounts will be so treated irrespective of whether or not an election has been made under paragraph (c) of this section to treat the date of payment as the date of disposal. For example, if no election has been made under paragraph (c), amounts received or accrued prior to cutting will be treated as realized from the sale of timber, provided the timber paid for is cut more than six months after the date of acquisition of such timber. Advance royalty payments or minimum royalty payments received or accrued by an owner of timber may qualify under this section where the contract of disposal grants the lessee the right to apply such royalties in payment of timber cut at a later time.

(2) However, if the right to cut timber under the contract expires, terminates, or is abandoned before the timber which has been paid for is cut, the taxpayer shall treat payments attributable to the uncut timber as ordinary income and not as received from the sale of timber under section 631 (b). Accordingly, the taxpayer shall recompute his tax liability for the taxable year in which such payments were received or accrued. The recomputation shall be made in the form of an amended return where necessary.

(3) (i) Bonuses received or accrued by an owner in connection with the grant of a contract of disposal shall be treated under section 631 (b) as amounts realized from the sale of timber to the extent attributable to timber held for more than six months.

(ii) The adjusted depletion basis attributable to the bonus shall be determined under the provisions of the regulations under section 612. This subdivision may be illustrated as follows:

*Example.* Taxpayer A has held timber having a depletion basis of \$90,000 for two months when he enters into a contract of disposal with B. B pays A a bonus of \$5,000 upon the execution of the contract and agrees to pay X dollars per unit of timber to A as the timber is cut. A does not exercise the election to treat the date of payment as the date of disposal. It is estimated that there are 50,000 units of timber subject to the contract and that the total estimated royalties to be paid to A will be \$95,000. A must report the bonus in the taxable year it is received or accrued by him. The portion of the basis of the timber attributable to the bonus is determined by the following formula:

$$\frac{\text{Bonus}}{\text{Bonus} + \text{amount of expected royalties}} \times \text{Basis of timber} = \text{Basis attributable to bonus}$$

$$\frac{\$5,000}{\$100,000} \times \$90,000 = \$4,500$$

(iii) To the extent attributable to timber not held for more than six months, such bonuses shall be treated as ordinary income subject to depletion. In order to determine the amount of the bonus allocable to timber not held for more than six months, the bonus shall be apportioned ratably over the estimated number of units of timber covered by the contract of disposal. This subdivision may be illustrated as follows:

*Example.* Assume under the facts stated in the example in subdivision (ii) of this paragraph that B cuts 10,000 units of timber that have been held by A for six months or less. The amount of the bonus (as well as the royalties) attributable to these units must be re-

ported as ordinary income subject to depletion. The amount of the bonus attributable to these units is determined by the following formula:

$$\frac{\text{Number of units cut held for six months or less}}{\text{Total units covered by the contract}} \times \text{Amount of bonus} = \text{Amount of bonus treated as ordinary income subject to depletion.}$$

$$\frac{10,000}{50,000} \times \$5,000 = \$1,000$$

The amount of the depletion attributable to the portion of the bonus received for timber held for six months or less is determined by the following formula:

$$\frac{\text{Amount of bonus attributable to timber held for six months or less}}{\text{Total bonus}} \times \text{Adjusted basis for depletion of bonus} = \text{Depletion allowance on timber held for six months or less.}$$

$$\frac{\$1,000}{\$5,000} \times \$4,500 = \$900$$

The amount of the bonus attributable to timber held for more than six months, and which is treated under section 631 (b) as realized from the sale of timber would be \$4,000. The gain on such amount is \$400 (\$4,000 - \$3,600).

(iv) If the right to cut timber under the contract of disposal expires, terminates, or is abandoned before any timber is cut, the taxpayer shall treat the bonus received under such contract as ordinary income, not subject to depletion. Accordingly, the taxpayer shall recompute his tax liability for the taxable year in which such bonus was received. The recomputation shall be made in the form of an amended return where necessary.

(e) *Other rules for application of section.* (1) Amounts paid by the lessee for timber or the acquisition of timber cutting rights, whether designated as such or as a rental, royalty, or bonus, shall be treated as the cost of timber and constitute part of the lessee's depletable basis of the timber, irrespective of the treatment accorded such payments in the hands of the lessor.

(2) The provisions of section 631 (b) apply only to an owner of timber. An owner of timber means any person who owns an interest in timber, including a sublessor and a holder of a contract to cut timber. The interest required to be owned must include the right to cut timber for sale or for use.

(3) For purposes of section 631 (b) and this section, the term "timber" includes evergreen trees which are more than 6 years old at the time severed from their roots and are sold for ornamental purposes such as Christmas decorations. Tops and other parts of standing timber are not considered as evergreen trees within the meaning of section 631 (b). The term "evergreen trees" is used in its commonly accepted sense and includes pine, spruce, fir, hemlock, cedar, and other coniferous trees.

§ 1.631-3 *Gain or loss upon the disposal of coal with a retained economic interest—(a) In general.* (1) The provisions of section 631 (c) apply to an owner who disposes of coal (including lignite) held for more than 6 months before such disposal under any form or type of contract whereby he retains an economic interest in such coal. The difference between the amount realized from disposal of such coal in any taxable year, and the adjusted depletion basis

thereof plus the deductions disallowed for the taxable year under section 272, shall be gain or loss upon the sale of such coal. See paragraph (b) (4) of this section for definition of "owner".

(2) In the case of such a disposal, such coal shall be property used in the trade or business, within the meaning of section 1231 (b), for the taxable year in which it is considered to have been sold. Whether gain or loss resulting from the disposal of the coal is long-term capital gain or ordinary loss depends upon the application of section 1231.

(b) *Rules for application of section.*

(1) For purposes of section 631 (c) and this section, the date of disposal of such coal shall be deemed to be the date the coal is mined. If the coal has been held for more than 6 months on the date it is mined, it is immaterial that it had not been held for more than 6 months on the date of the contract. There shall be no allowance for percentage depletion provided in section 613 with respect to amounts which are considered to be realized from the sale of coal under section 631 (c).

(2) The term "adjusted depletion basis" as used in section 631 (c) and in this section means the basis for allowance of cost depletion provided in section 612 and the regulations thereunder, such "adjusted depletion basis" shall include exploration or development expenditures treated as deferred expenses under section 615 (b) or 616 (b), or corresponding provisions of prior income tax laws, and be reduced by adjustments under section 1016 (a) (9) and (10) relating to deductions of deferred expenses for exploration, or development expenditures in the taxable year or any prior taxable years. The depletion unit of the coal disposed of shall be determined under the rules provided in the regulations under section 611 relating to cost depletion.

(3) (i) In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties (except rents and royalties paid by a lessee with respect to coal disposed of by the lessee as an "owner" under section 631 (c)) shall be determined without regard to the provisions of section 631 (c). Thus, the amounts of rents and royalties paid or incurred by a lessee with respect to coal shall be excluded from the lessee's gross income from the property

for the purpose of determining his percentage depletion without regard to the treatment of such rents or royalties in the hands of the recipient under this section. See section 613 and the regulations thereunder.

(ii) However, a lessee who is also a sublessor may dispose of coal as an "owner" under section 631 (c). Rents and royalties paid with respect to coal disposed of by such a lessee under section 631 (c) shall increase the adjusted depletion basis of the coal and are not otherwise deductible. For example, B is a sublessor of a coal lease; A is the lessor; and C is the sublessee. B pays A a royalty of 50 cents per ton. C pays B a royalty of 60 cents per ton. The amount realized by B under section 631 (c) is 60 cents per ton and will be reduced by the adjusted depletion basis of 50 cent per ton, leaving a gain of 10 cents per ton taxable under section 631 (c).

(4) (i) The provisions of this section apply only to an owner who has disposed of coal and retained an economic interest. For the purposes of section 631 (c) and this section, the word "owner" means any person who owns an economic interest in coal in place, including a sublessor thereof. A person who merely acquires an economic interest, such as a royalty interest, in return for contributing toward the development of a mine, or one who acquires such an interest in return for a sum of money paid to the owner of an operating interest, does not qualify under section 631 (c) since he has not disposed of coal under a contract retaining an economic interest. A successor to the interest of a person who has disposed of coal under a contract by virtue of which he retained an economic interest in such coal is also entitled to the benefits of this section. Such sections shall not apply with respect to any income realized by any owner as coadventurer, partner, or principal in the mining of such coal.

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

*Example (1).* A has owned a seam of coal more than six months. A leases to B the right to mine all the coal in return for a royalty of 30 cents per ton. More than six months after the date of the above lease, B subleases to C who agrees to pay A the 30 cents per ton and to pay to B an additional royalty of 10 cents per ton. Both A and B shall treat their royalties under section 631 (c).

*Example (2).* Assume the same facts as in example (1) except that A dies leaving his royalty interest to D. D has an economic interest in the coal in place and qualifies for section 631 (c) treatment with respect to his share of the royalties since he is a successor in title to A.

*Example (3).* Assume the same facts as in example (1) except that E agrees to furnish C equipment for the development of the mine in return for 10 cents per ton on the coal mined by C. E has an economic interest since he must look solely to the extraction of the coal for the return of his investment. However, E has not made a disposal of coal under a contract wherein he retains an economic interest, and, therefore, does not qualify under section 631 (c). E is entitled to depletion on his royalties.

(c) *Payments received in advance of mining.* (1) Where the conditions of

paragraph (a) of this section are met, amounts received prior to mining shall be treated under section 631 (c) as received from the sale of coal if the contract of disposal provides that such amounts are to be applied as payment for coal subsequently mined. For example, advance royalty payments or minimum royalty payments received by an owner of coal qualify under such section where the contract of disposal grants the lessee the right to apply such royalties in payment of coal mined at a later time. Thus, if A acquires coal rights on January 1, and on January 30 enters into a contract of disposal providing that mining shall begin July 2, and mining actually begins no earlier, any advance payments which A receives qualify under section 631 (c).

(2) However, if the right to mine coal under the contract expires, terminates, or is abandoned before the coal which has been paid for is mined, the taxpayer shall treat payments attributable to the unmined coal as ordinary income and not as received from the sale of coal under section 631 (c). Accordingly, the taxpayer shall recompute his tax liability for the taxable year in which such payments were received. The re-computation shall be made in the form of an amended return where necessary.

(3) Bonuses received or accrued by an owner in connection with the grant of a contract of disposal shall be treated under section 631 (c) as received from the sale of coal to the extent attributable to coal held for more than six months. The rules contained in § 1.631-2 (d) relating to bonuses in the case of contracts for the disposal of timber shall be equally applicable in the case of bonuses received for the grant of a contract of disposal of coal under this section.

(d) *Non-application of section.* Section 631 (c) and this section shall not affect the application of the provisions of subchapter G, relating to corporations used to avoid income tax on shareholders. See the regulations under sections 535 (b) (6) and 545 (b) (4).

§ 1.632 *Statutory provisions; sale of oil or gas properties.*

Sec. 632. *Sale of oil or gas properties.* In the case of a bona fide sale of any oil or gas property, or any interest therein, where the principal value of the property has been demonstrated by prospecting or exploration or discovery work done by the taxpayer, the portion of the surtax imposed by section 1 attributable to such sale shall not exceed 30 percent of the selling price of such property or interest.

§ 1.632-1 *Surtax on sale of oil or gas properties.* (a) If the taxpayer, by prospecting and locating claims or by exploring or discovering undeveloped claims, has demonstrated the principal value of oil or gas property, which prior to his efforts had a relatively minor value, the portion of the surtax imposed by section 1 (see section 1 (c)) attributable to a sale of such property, or of any interest of the taxpayer therein, shall not exceed 30 percent of the selling price of such property or such interest. Shares of stock in a corporation owning oil or gas property do not constitute an inter-

est in such property. To determine the application of section 632 to a particular case, the taxpayer should first compute the surtax imposed by section 1 upon his entire taxable income, including the taxable income from any sale of such property or interest therein, without regard to section 632. The proportion of the surtax, so computed, indicated by the ratio which the taxpayer's taxable income from the sale of the property or interest therein, computed as prescribed in this section, bears to his total taxable income is the portion of the surtax attributable to such sale and, if it exceeds 30 percent of the selling price of such property or interest, such portion of the surtax shall be reduced to that amount.

(b) In determining the portion of the taxable income attributable to the sale of such oil or gas property or interest therein, the taxpayer shall allocate to the gross income derived from such sale, and to the gross income derived from all other sources, the expenses, losses, and other deductions properly appertaining thereto and shall apply any general expenses, losses, and deductions (which cannot properly be otherwise allocated) ratably to the gross income from all sources. The gross income derived from the sale of such oil or gas property or interest therein, less the deduction properly appertaining thereto and less its proportion of any general deductions, shall be the taxable income attributable to such sale. The taxpayer shall submit with his return a statement fully explaining the manner in which such expenses, losses, and deductions are allocated or apportioned.

[F. R. Doc. 56-8927; Filed, Nov. 2, 1956; 8:49 a. m.]

### [ 26 CFR (1954) Part 1 ]

#### INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

##### NATURAL RESOURCES

Notice is hereby given that, pursuant to the Administrative Procedure Act, approved June 11, 1946, 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. Prior to final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D. C., within the period of 30 days from the date of publication of this notice in 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] RUSSELL C. HARRINGTON,  
Commissioner of Internal Revenue.

In order to provide regulations under sections 611, 612, 613, 614, 615, 616, and 621 of the Internal Revenue Code of 1954, the following regulations are hereby prescribed:

##### NATURAL RESOURCES

###### DEDUCTIONS

- Sec.
- 1.611 Statutory provisions; allowance of deduction for depletion.
- 1.611-1 Allowance of deduction for depletion.
- 1.611-2 Rules applicable to mines, oil and gas wells, and other natural deposits.
- 1.611-3 Rules applicable to timber.
- 1.611-4 Depletion as a factor in computing earnings and profits for dividend purposes.
- 1.611-5 Depreciation of improvements.
- 1.612 Statutory provisions; basis for cost depletion.
- 1.612-1 Basis for allowance of cost depletion.
- 1.612-2 Allowable capital additions in case of mines.
- 1.612-3 Depletion; treatment of bonus and advanced royalty.
- 1.612-4 Charges to capital and expense in case of oil and gas wells.
- 1.613 Statutory provisions; percentage depletion.
- 1.613-1 Percentage depletion; general rule.
- 1.613-2 Percentage depletion rates.
- 1.613-3 Gross income from the property.
- 1.613-4 Taxable income from the property.
- 1.613-5 Statement to be attached to return when depletion is claimed on percentage basis.
- 1.614 Statutory provisions; definition of property.
- 1.614-1 Definition of property.
- 1.614-2 Election to aggregate separate operating mineral interests.
- 1.614-3 Special rules as to aggregating non-operating mineral interests.
- 1.614-4 Rules applicable to basis, holding period and abandonment losses where mineral interests have been aggregated.
- 1.615 Statutory provisions; exploration expenditures.
- 1.615-1 Discovery or exploration expenditures.
- 1.615-2 Deduction of exploration expenditures in the year paid or incurred.
- 1.615-3 Election to defer exploration expenditures.
- 1.615-4 Limitation of amount deductible.
- 1.615-5 Time for making election with respect to returns due prior to ninety days after adoption of regulations.
- 1.616 Statutory provisions; development expenditures.
- 1.616-1 Development expenditures.
- 1.616-2 Election to defer.
- 1.616-3 Time for making election with respect to returns due prior to ninety days after adoption of regulations.

###### EXCLUSIONS FROM GROSS INCOME

- 1.621 Statutory provisions; payments to encourage exploration, development, and mining for defense purposes.
- 1.621-1 Payments to encourage exploration, development, and mining for defense purposes.

##### NATURAL RESOURCES

###### DEDUCTIONS

§ 1.611 *Statutory provisions; allowance of deduction for depletion.*

Sec. 611. *Allowance of deduction for depletion—(a) General rule.* In the case of mines, oil and gas wells, other natural deposits, and timber, there shall be allowed as a deduction in computing taxable income a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such

reasonable allowance in all cases to be made under regulations prescribed by the Secretary or his delegate. For purposes of this part, the term "mines" includes deposits of waste or residue, the extraction of ores or minerals from which is treated as mining under section 613 (c). In any case in which it is ascertained as a result of operations or of development work that the recoverable units are greater or less than the prior estimate thereof, then such prior estimate (but not the basis for depletion) shall be revised and the allowance under this section for subsequent taxable years shall be based on such revised estimate.

(b) *Special rules*—(1) *Leases*. In the case of a lease, the deduction under this section shall be equitably apportioned between the lessor and lessee.

(2) *Life tenant and remainderman*. In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant.

(3) *Property held in trust*. In the case of property held in trust, the deduction under this section shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

(4) *Property held by estate*. In the case of an estate, the deduction under this section shall be apportioned between the estate and the heirs, legatees, and devisees on the basis of the income of the estate allocable to each.

(c) *Cross reference*. For other rules applicable to depreciation of improvements, see section 167.

§ 1.611-1 *Allowance of deduction for depletion*—(a) *Depletion of mines, oil and gas wells, other natural deposits, and timber; in general*. (1) Section 611 provides that there shall be allowed as a deduction in computing taxable income in the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion. In the case of standing timber, the depletion allowance shall be computed solely upon the adjusted basis of the property. In the case of other exhaustible natural resources the allowance for depletion shall be computed upon either the adjusted depletion basis of the property (see section 612, relating to cost depletion) or upon a percentage of gross income from the property (see section 613, relating to percentage depletion), whichever results in the greater allowance for depletion. In no case will depletion based upon discovery value be allowed.

(2) See § 1.611-5 for methods of depreciation relating to improvements connected with mineral or timber properties.

(3) See paragraph (d) of this section for definition of terms.

(b) *Economic interest*. (1) Annual depletion deductions are allowed only to the owner of an economic interest in mineral deposits or standing timber. An economic interest is possessed in every case in which the taxpayer has acquired by investment or otherwise a capital interest in mineral in place or standing timber and secures, by any form or legal relationship, income derived from the severance or sale of the mineral or timber, to which he must look for a return of his capital. But a person who has no

capital interest in the mineral deposit or standing timber does not possess an economic interest merely because through a contractual relation he possesses a mere economic or pecuniary advantage derived from production. Thus, an agreement between the owner of an economic interest and another entitling the latter to purchase or process the product upon production or entitling the latter to compensation for extraction or cutting does not convey a depletable economic interest. Further, depletion deductions with respect to an economic interest of a corporation are allowed to the corporation and not to its shareholders.

(2) No depletion deduction shall be allowed the owner with respect to any timber or coal that such owner has disposed of under any form of contract by virtue of which he retains an economic interest in such timber or coal, if such disposal is considered a sale of timber or coal under section 631 (b) or (c).

(c) *Special rules*—(1) *In general*. For the purpose of the equitable apportionment of depletion among the several owners of economic interests in a mineral deposit or standing timber, if the value of any mineral or timber must be ascertained as of any specific date for the determination of the basis for depletion, the values of such several interests therein may be determined separately, but, when determined as of the same date, shall together never exceed the value at that date of the mineral or timber as a whole.

(2) *Leases*. In the case of a lease, the deduction for depletion under section 611 shall be equitably apportioned between the lessor and lessee. In the case of a lease or other contract providing for the sharing of economic interests in a mineral deposit or standing timber, such deduction shall be computed by each taxpayer by reference to the adjusted basis of his property determined in accordance with sections 611 and 612, or computed in accordance with section 613, if applicable, and the regulations thereunder.

(3) *Life tenant and remainderman*. In the case of property held by one person for life with remainder to another person, the deduction for depletion under section 611 shall be computed as if the life tenant were the absolute owner of the property so that he will be entitled to the deduction during his life, and thereafter the deduction, if any, shall be allowed to the remainderman.

(4) *Property held in trust*. If property is held in trust, the allowable deduction for depletion is to be apportioned between the income beneficiaries and the trustee on the basis of the trust income allocable to each, unless the governing instrument (or local law) requires or permits the trustee to maintain a reserve for depletion in any amount. In the latter case, the deduction is first allocated to the trustee to the extent that income is set aside for a depletion reserve, and any part of the deduction in excess of the income set aside for the reserve shall be apportioned between the income beneficiaries and the trustee on the basis of the trust income (in excess of the income

set aside for the reserve) allocable to each. For example:

(i) If under the trust instrument or local law the income of a trust computed without regard to depletion is to be distributed to a named beneficiary, the beneficiary is entitled to the deduction to the exclusion of the trustee.

(ii) If under the trust instrument or local law the income of a trust is to be distributed to a named beneficiary, but the trustee is directed to maintain a reserve for depletion in any amount, the deduction is allowed to the trustee (except to the extent that income set aside for the reserve is less than the allowable deduction). The same result would follow if the trustee sets aside income for a depletion reserve pursuant to discretionary authority to do so in the governing instrument.

No effect shall be given to any allocation of the depletion deduction which gives any beneficiary or the trustee a share of such deduction greater than his pro rata share of the trust income, irrespective of any provisions in the trust instrument, except as otherwise provided in this paragraph when the trust instrument or local law requires or permits the trustee to maintain a reserve for depletion.

(5) *Property held by estate*. In the case of property held by an estate, the deduction for depletion under section 611 shall be apportioned between the estate and the heirs, legatees, and devisees on the basis of income of the estate which is allocable to each.

(d) *Definitions*. As used in this part, and the regulations thereunder, the term—

(1) "Property" means (i) in the case of minerals, each separate economic interest acquired in each mineral deposit in each separate tract or parcel of land or an aggregation of such mineral interests permitted under sections 614 (b) and (c); and (ii) in the case of timber, an economic interest in standing timber in each tract or block representing a separate timber account (see § 1.611-3 (d)). For purposes of the preceding sentence, waste or residue of prior mining is deemed to be a part of the mineral deposit from which it was extracted if the extraction of ores or minerals therefrom is treated as mining under section 613 (c) (3). When, in the regulations under this part, either the word "mineral" or "timber" precedes the word "property", such adjectives are used only to classify the type of "property" involved. For further explanation of the term "property" see section 614 and the regulations thereunder.

(2) "Fair market value" of a property is that amount which would induce a willing seller to sell and a willing buyer to purchase.

(3) "Mineral enterprise" is the mineral deposit or deposits and improvements, if any, used in mining or in the production of oil and gas, and only so much of the surface of the land as is necessary for purposes of mineral extraction. The value of the mineral enterprise is the combined value of its component parts.

(4) "Mineral deposit" refers to minerals in place in each separate tract or

parcel of land. When a mineral enterprise is purchased as a unit the cost of any interest in the mineral deposit or deposits is that proportion of the total cost of the mineral enterprise which the value of the interest in the deposit or deposits bears to the value of the entire enterprise at the time of its acquisition.

(5) "Minerals" includes ores of the metals, coal, oil, gas, and all other natural metallic and nonmetallic deposits, except minerals derived from sea water, the air, or from similar inexhaustible sources. It includes but is not limited to all of the minerals and other natural deposits subject to depletion based upon a percentage of gross income from the property under section 613 and the regulations thereunder.

§ 1.611-2 *Rules applicable to mines, oil and gas wells, and other natural deposits*—(a) *Computation of cost depletion of mines, oil and gas wells, and other natural deposits.* (1) The basis upon which cost depletion is to be allowed in respect of any mineral property is the basis provided for in section 612 and the regulations thereunder. After the amount of such basis applicable to the mineral property has been determined for the beginning of the period for which a deduction for depletion must be computed, the deduction for cost depletion for that period shall be computed by dividing such basis by the number of units of mineral remaining as of the beginning of the period (see subparagraph (3) of this paragraph), and by multiplying the depletion unit, so determined, by the number of units of mineral sold within the period (see subparagraph (2) of this paragraph). In the selection of a unit of mineral for depletion, preference shall be given to the principal or customary unit or units paid for in the products sold, such as tons of ore, barrels of oil, or thousands of cubic feet of natural gas.

(2) As used in this paragraph, the phrase "number of units sold within the period"—

(i) In the case of a taxpayer reporting income on the cash receipts and disbursements method, includes units for which payments were received within the period although produced or sold prior to the period, and excludes units sold but not paid for in the period, and

(ii) In the case of a taxpayer reporting income on the accrual method, shall be determined from the taxpayer's inventories kept in physical quantities and consistently with his method of inventory accounting under section 471 or 472.

The phrase does not include units with respect to which depletion deductions were allowed or allowable prior to the taxable year.

(3) "The number of units of mineral remaining as of the beginning of the period" is the number of units of mineral remaining at the end of the period to be recovered from the property (including units recovered but not sold) plus the "number of units sold within the period" as defined in this paragraph.

(4) In the case of a natural gas well where the annual production is not me-

tered and is not capable of being estimated with reasonable accuracy, the taxpayer may compute the cost depletion allowance in respect of such property for the taxable year by multiplying the adjusted basis of the property by a fraction, the numerator of which is equal to the decline in rock pressure during the taxable year and the denominator of which is equal to the expected total decline in rock pressure from the taxable year to the economic limit of production. Taxpayers computing depletion by this method must keep accurate records of periodical pressure determinations.

(5) The apportionment of the deduction among the several owners of economic interests in the mineral deposit or deposits will be made as provided in § 1.611-1 (c).

(b) *Depletion accounts of mineral property.* (1) Every taxpayer claiming and making a deduction for depletion of mineral property shall keep a separate account in which shall be accurately recorded the cost or other basis provided by section 1012, of such property together with subsequent allowable capital additions to each account and all the other adjustments required by section 1016.

(2) Mineral property accounts shall thereafter be credited annually with the amounts of the depletion computed in accordance with section 611 or 613 and the regulations thereunder; or the amounts of the depletion so computed shall be credited to depletion reserve accounts. No further deductions for cost depletion shall be allowed when the sum of the credits for depletion equals the cost or other basis of the property, plus allowable capital additions. However, depletion deductions may be allowable thereafter computed upon a percentage of gross income from the property. See section 613 and the regulations thereunder. In no event shall percentage depletion in excess of cost or other basis of the property be credited to the improvements account or the depreciation reserve account.

(c) *Determination of mineral contents of deposits.* (1) If it is necessary to estimate or determine with respect to any mineral deposit as of any specific date the total recoverable units (tons, pounds, ounces, barrels, thousands of cubic feet, or other measure) of mineral products reasonably known, or on good evidence believed, to have existed in place as of that date, the estimate or determination must be made according to the method current in the industry and in the light of the most accurate and reliable information obtainable. In the selection of a unit of estimate, preference shall be given to the principal unit (or units) paid for in the product marketed. The estimate of the recoverable units of the mineral products in the deposit for the purposes of valuation and depletion shall include as to both quantity and grade:

(i) The ores and minerals "insight," "blocked out," "developed," or "assured," in the usual or conventional meaning of these terms with respect to the type of the deposit, and

(ii) "Probable" or "prospective" ores or minerals (in the corresponding sense), that is, ores or minerals that are believed to exist on the basis of good evidence al-

though not actually known to occur on the basis of existing development. Such "probable" or "prospective" ores or minerals may be estimated:

(a) As to quantity, only in case they are extensions of known deposits or are new bodies or masses whose existence is indicated by geological surveys or other evidence to a high degree of probability, and

(b) As to grade, only in accordance with the best indications available as to richness.

(2) If the number of recoverable units of mineral in the deposit has been previously estimated for the prior year or years, and if there has been no known change in the facts upon which the prior estimate was based, the number of recoverable units of mineral in the deposit as of the taxable year will be the number remaining from the prior estimate. However, in any case in which it is ascertained either by the taxpayer or the district director from any source such as operations or development work prior to the close of the taxable year that the remaining recoverable mineral units as of the taxable year are materially greater or less than the number remaining from the prior estimate, then the estimate of the remaining recoverable units shall be revised, and the annual cost depletion allowance with respect to the property for the taxable year and for subsequent taxable years will be based upon the revised estimate until a change in the facts requires another revision. Such revised estimate will not, however, change the adjusted basis for depletion.

(d) *Determination of fair market value of mineral properties, and improvements, if any.* (1) If the fair market value of the mineral property and improvements at a specified date is to be determined for the purpose of ascertaining the basis, such value must be determined, subject to approval or revision by the district director, by the owner of such property and improvements in the light of the conditions and circumstances known at that date, regardless of later discoveries or developments or subsequent improvements in methods of extraction and treatment of the mineral product. The district director will give due weight and consideration to any and all factors and evidence having a bearing on the market value, such as cost, actual sales and transfers of similar properties and improvements, bona fide offers, market value of stock or shares, royalties and rentals, valuation for local or State taxation, partnership accountings, records of litigation in which the value of the property and improvements was in question, the amount at which the property and improvements may have been inventoried or appraised in probate or similar proceedings, and distinterested appraisals by approved methods.

(2) If the fair market value must be ascertained as of a certain date, analytical appraisal methods of valuation, such as the present value method will not be used:

(i) If the value of a mineral property and improvements, if any, can be determined upon the basis of cost or com-

parative values and replacement value of equipment, or

(ii) If the fair market value can reasonably be determined by any other method.

(e) *Determination of the fair market value of mineral property by the present value method.* (1) To determine the fair market value of a mineral property and improvements by the present value method, the essential factors must be determined for each deposit. The essential factors in determining the fair market value of mineral deposits are:

(i) The total quantity of mineral in terms of the principal or customary unit (or units) paid for in the product marketed,

(ii) The quantity of mineral expected to be recovered during each operating period,

(iii) The average quality or grade of the mineral reserves,

(iv) The allocation of the total expected profit to the several processes or operations necessary for the preparation of the mineral for market,

(v) The probable operating life of the deposit in years,

(vi) The development cost,

(vii) The operating cost,

(viii) The total expected profit,

(ix) The rate at which this profit will be obtained, and

(x) The rate of interest commensurate with the risk for the particular deposit.

(2) If the deposit has been sufficiently developed the valuation factors specified in subparagraph (1) of this paragraph may be determined from past operating experience. In the application of factors derived from past experience, full allowance should be made for probable future variations in the rate of exhaustion, quality or grade of the mineral, percentage of recovery, cost of development, production, interest rate, and selling price of the product marketed during the expected operating life of the mineral deposit. Mineral deposits for which these factors cannot be determined with reasonable accuracy from past operating experience may also be valued by the present value method; but the factors must be deduced from concurrent evidence, such as the general type of the deposit, the characteristics of the district in which it occurs, the habit of the mineral deposits, the intensity of mineralization, the oil-gas ratio, the rate at which additional mineral has been disclosed by exploitation, the stage of the operating life of the deposit, and any other evidence tending to establish a reasonable estimate of the required factors.

(3) Mineral deposits of different grades, locations, and probable dates of extraction should be valued separately. The mineral content of a deposit shall be determined in accordance with paragraph (c) of this section. In estimating the average grade of the developed and prospective mineral, account should be taken of probable increases or decreases as indicated by the operating history. The rate of exhaustion of a mineral deposit should be determined with due regard to the limitations imposed by plant capacity, by the character of the deposit, by the ability to market the mineral

product, by labor conditions, and by the operating program in force or reasonably to be expected for future operations. The operating life of a mineral deposit is that number of years necessary for the exhaustion of both the developed and prospective mineral content at the rate determined as above. The opening life of oil and gas wells is also influenced by the natural decline in pressure and flow, and by voluntary or enforced curtailment of production. The operating cost includes all current expense of producing, preparing, and marketing the mineral product sold (due consideration being given to taxes) exclusive of allowable capital additions, as described in §§ 1.612-2 and 1.612-4, and deductions for depreciation and depletion, but including cost of repairs. This cost of repairs is not to be confused with the depreciation deduction by which the cost of improvements is returned to the taxpayer free from tax. In general, no estimates of these factors will be approved by the district director which are not supported by the operating experience of the property or which are derived from different and arbitrarily selected periods.

(4) The value of each mineral deposit is measured by the expected gross income (the number of units of mineral recoverable in marketable form multiplied by the estimated market price per unit) less the estimated operating cost, reduced to a present value as of the date for which the valuation is made at the rate of interest commensurate with the risk for the operating life, and further reduced by the value at that date of the improvements and of the capital additions, if any, necessary to realize the profits. The degree of risk is generally lowest in cases where the factors of valuation are fully supported by the operating record of the mineral enterprise before the date for which the valuation is made; relatively higher risks attach to appraisals upon any other basis.

(f) *Revaluation of mineral property not allowed.* No revaluation of a mineral property whose value as of any specific date has been determined and approved will be made or allowed during the continuance of the ownership under which the value was so determined and approved, except in the case of misrepresentation or fraud or gross error as to any facts known on the date as of which the valuation was made. Revaluation on account of misrepresentation or fraud or such gross error will be made only with the written approval of the Commissioner.

(g) *Statement to be attached to return when valuation, depletion, or depreciation of mineral property or improvements are claimed.* (1) For the first taxable year for which a taxpayer asserts a value for any mineral property or improvement as of a specific date or claims a deduction for depletion, or depreciation, there shall be attached to the return of the taxpayer for such taxable year a statement setting forth the pertinent information required by this paragraph with respect to each such mineral property or improvement (including oil and gas properties or improvements). The required information shall be furnished

in a single statement, shall be summarized, and shall be deemed a part of the income tax return to which it relates. After such first taxable year the taxpayer need attach to his return only an explanation of the changes, if any, in the information previously furnished. For example, when a taxpayer has filed adequate maps with the district director he may be relieved of filing further maps of the same area, if all additional information necessary for keeping the maps up-to-date is filed each year. In any case in which any of the information required by this paragraph has been previously filed by the taxpayer (including information furnished in accordance with corresponding provisions of prior regulations), such information need not be filed again but a statement should be attached to the return of the taxpayer indicating clearly when and in what form such information was previously filed.

(2) The information referred to in subparagraph (1) of this paragraph is as follows:

(i) An adequate map showing the name, description, location, date of surveys, and identification of the deposit or deposits;

(ii) A description of the character of the taxpayer's property, accompanied by a copy of the instrument or instruments by which it was acquired;

(iii) The date of acquisition of the property, the exact terms and dates of expiration of all leases involved and if terminated, the reasons therefor;

(iv) The cost of the mineral property and improvements, stating the amount paid to each vendor, with his name and address;

(v) The date as of which the mineral property and improvements are valued, if a valuation is necessary to establish the basis as provided by section 1012;

(vi) The value of the mineral property and improvements on that date with a statement of the precise method by which it was determined;

(vii) An allocation of the cost or value among the mineral property, improvements and the surface of the land for purposes other than mineral production;

(viii) The estimated number of units of each kind of mineral at the end of the taxable year, and also at the date of acquisition, if acquired during the taxable year or at the date as of which any valuation is made, together with an explanation of the method used in the estimation, the name and address of the person making the estimate, and an average analysis which will indicate the quality of the mineral valued, including the grade or gravity in the case of oil;

(ix) The number of units sold and the number of units for which payment was received or accrued during the year for which the return is made (in the case of newly developed oil and gas deposits it is desirable that this information be furnished by months);

(x) The gross amount received from the sale of mineral;

(xi) The amount of depreciation for the taxable year and the amount of cost depletion for the taxable year;

(xii) The amounts of depletion and depreciation, if any, stated separately, which for each and every prior year:

(a) Were allowed (see section 1016 (a) (2)),

(b) Were allowable, and

(c) Would have been allowable without reference to percentage or discovery depletion;

(xiii) The fractions (however measured) of gross production from the deposit or deposits to which the taxpayer and other persons are entitled together with the names and addresses of such other persons; and

(xiv) Any other data which will be helpful in determining the reasonableness of the valuation asserted or of the deductions claimed.

(3) In the case of oil and gas properties the statements attached to the returns shall contain, in addition to the foregoing, the following information with respect to each property:

(i) The number of acres of producing oil or gas land and, if additional acreage is claimed to be proven, the amount of such acreage and the reasons for believing it to be proven;

(ii) The number of wells producing at the beginning and end of the taxable year;

(iii) The date of completion of each well finished during the taxable year;

(iv) The date of abandonment of each well abandoned during the taxable year;

(v) Maps showing the location of the tracts or leases and of the producing and abandoned wells, dry holes, and proven oil and gas lands (the maps should show depth, initial production, and date of completion of each well, etc., to the extent that these data are available);

(vi) The number of pay sands and average thickness of each pay sand or zone;

(vii) The average depth to the top of each of the different pay sands;

(viii) The annual production of the deposit or of the individual wells, if the latter information is available, from the beginning of its productivity to the end of the taxable year, the average number of wells producing during each year, and the initial daily production of each well (the extent to which oil or gas is used for fuel on the premises should be stated with reasonable accuracy);

(ix) All available data regarding change in operating conditions, such as unit operation, proration, flooding, use of air-gas lift, vacuum, shooting, and similar information, which have a direct effect on the production of the deposit; and

(x) Available geological information having a probable bearing on the oil and gas content; information with respect to edge water, water drive, bottom hold pressures, oil-gas ratio, porosity of reservoir rock, percentage of recovery, expected date of cessation of natural flow, decline in estimated potential, and characteristics similar to characteristics of other known fields.

(4) For rules relating to an additional statement to be attached to the return when the depletion deduction is computed upon a percentage of gross income from the property, see § 1.613-5.

§ 1.611-3 *Rules applicable to timber—(a) Capital recoverable through depletion allowance in case of timber.* In general, the capital remaining in any year recoverable through depletion allowances is the basis provided by section 612 and the regulations thereunder. For the method of determining fair market value and quantity of timber, see paragraphs (d), (e) and (f) of this section. For capitalization of carrying charges, see section 1016 (a) (1) (A). Amounts paid or incurred in connection with reforestation, including planting and preparation for planting or natural seeding (including planting for Christmas tree purposes), shall be capitalized and such amounts shall be recoverable through depletion allowances. The apportionment of deductions between the several owners of economic interests in standing timber will be made as provided in § 1.611-1 (c).

(b) *Computation of allowance for depletion of timber for taxable year.* (1) The depletion of timber takes place at the time timber is cut but the amount of depletion allowable with respect to timber that has been cut may be computed when, in the process of exploitation the quantity of cut timber is first accurately measured. However, the deduction for depletion in the case of timber shall be allowed in the taxable year in which the cut timber is sold and shall be based upon the number of units of timber sold during the year and the depletion unit of the timber account or accounts pertaining to such timber.

(2) The depletion unit of the timber for a given timber account in a given year shall be the quotient obtained by dividing (i) the basis provided by section 1012 and adjusted as provided by section 1016, of the timber on hand at the beginning of the year plus the cost of the number of units of timber acquired during the year plus proper additions to capital, by (ii) the total number of units of timber on hand in the given account at the beginning of the year plus the number of units acquired during the year plus (or minus) the number of units required to be added (or deducted) by way of correcting the estimate of the number of units remaining available in the account. The number of units of timber of a given timber account cut during any taxable year multiplied by the depletion unit of that timber account applicable to the year shall be the amount of depletion allowable as a deduction at the time such timber is sold. Such amount shall be charged to a depletion account which shall be credited as the timber, with respect to which the charge was made, is sold. Those taxpayers who keep their accounts on a monthly basis may at their option, keep their depletion accounts on such basis in which case the amount charged to the depletion account for a given month will be determined in the manner outlined for a given year. The total amount of the deduction for depletion in any taxable year shall be the sum of the amounts of depletion attributable to the cut timber sold during the year. For a description of timber accounts, see paragraphs (c) and (d) of this section.

(3) When a taxpayer has elected to treat the cutting of timber as a sale or exchange of such timber under the provisions of section 631 (a), he shall reduce the timber account containing such timber by an amount equal to the adjusted depletion basis of such timber. In computing any further gain or loss on such timber, see § 1.631-1 (e).

(c) *Timber depletion accounts on books.* (1) Every taxpayer claiming or expecting to claim a deduction for depletion of timber property shall keep accurate ledger accounts in which shall be recorded the cost or other basis provided by section 1012 of the property and land together with subsequent allowable capital additions in each account and all other adjustments provided by section 1016 and the regulations thereunder.

(2) In such accounts there shall be set up separately the quantity of timber, the quantity of land, and the quantity of other resources, if any, and a proper part of the total cost or value shall be allocated to each after proper provision for immature timber growth. See paragraph (d) of this section. The timber accounts shall be credited each year with the amount of the charges to the depletion accounts computed in accordance with paragraph (b) of this section or the amount of the charges to the depletion accounts shall be credited to depletion reserve accounts. When the sum of the credits for depletion equals the cost or other basis of the property, plus subsequent allowable capital additions, no further deduction for depletion will be allowed.

(d) *Aggregating timber and land for purposes of valuation and accounting.*

(1) With a view to logical and reasonable valuation of timber, the taxpayer shall include his timber in one or more accounts. In general, each such account shall include all of the taxpayer's timber which is located in one "block". A block may be an operation unit which includes all the taxpayer's timber which would logically go to a single given point of manufacture. In those cases in which the point of manufacture is at a considerable distance, or in which the logs or other products will probably be sold in a log or other market, the block may be a logging unit which includes all of the taxpayer's timber which would logically be removed by a single logging development. Blocks may also be established by geographical or political boundaries, or by logical management areas. Timber acquired under cutting contracts should be carried in separate accounts and shall not constitute part of any block. In exceptional cases, provided there are good and substantial reasons, and subject to approval or revision by the district director on audit, the taxpayer may divide the timber in a given block into two or more accounts. For example, timber owned on February 28, 1913, and that purchased subsequently may be kept in separate accounts, or timber owned on February 28, 1913, and the timber purchased since that date in several distinct transactions may be kept in several distinct accounts. Individual tree species or groups of tree species may be carried in distinct ac-

counts, or special timber products may be carried in distinct accounts. Blocks may be divided into two or more accounts based on the character of the timber or its accessibility, or scattered tracts may be included in separate accounts. If such a division is made, a proper portion of the total value or cost, as the case may be, shall be allocated to each account.

(2) The timber accounts mentioned in subparagraph (1) of this paragraph shall not include any part of the value or cost, as the case may be, of the land. In a manner similar to that prescribed in subparagraph (1) of this paragraph, the land in a given "block" may be carried in a single land account or may be divided into two or more accounts on the basis of its character or accessibility. When such a division is made, a proper portion of the total value or cost, as the case may be, shall be allocated to each account.

(3) The total value or total cost, as the case may be, of land and timber shall be equitably allocated to the timber and land accounts, respectively. In cases in which immature timber growth is a factor, a reasonable portion of the total value or cost shall be allocated to such immature timber, and when the timber becomes merchantable such value or cost shall be recoverable through depletion allowances.

(4) Each of the several land and timber accounts carried on the books of the taxpayer shall be definitely described as to their location on the ground either by maps or by legal descriptions.

(5) For good and substantial reasons satisfactory to the district director, or as required by the district director on audit, the timber or the land accounts may be readjusted by dividing individual accounts, by combining two or more accounts, or by dividing and recombining accounts.

(e) *Determination of quantity of timber.* Each taxpayer claiming or expecting to claim a deduction for depletion is required to estimate with respect to each separate timber account the total units (feet board measure, log scale, cords, or other units) of timber reasonably known, or on good evidence believed, to have existed on the ground on March 1, 1913, or on the date of acquisition of the property, whichever date is applicable in determining the basis for cost depletion. This estimate shall state as nearly as possible the number of units which would have been found present by careful estimate made on the specified date with the object of determining 100 percent of the quantity of timber which the area covered by the specific account would have produced on that date if all of the merchantable timber had been cut and utilized in accordance with the standards of utilization prevailing in that region at that time. If subsequently during the ownership of the taxpayer making the return, as the result of the growth of the timber, of changes in standards of utilization, of losses not otherwise accounted for, of abandonment of timber, or of operations or development work, it is ascertained either by the taxpayer or the district director

that there remain on the ground, available for utilization, more or less units of timber at the close of the taxable year (or at the close of the month if the taxpayer keeps his depletion accounts on a monthly basis) than remain in the timber account or accounts on the basis of the original estimate, then the original estimate (but not the basis for depletion) shall be revised. The depletion unit shall be changed when such revision has been made. The annual charge to the depletion account with respect to the property shall be computed by using such revised unit for the taxable year for which the revision is made and all subsequent taxable years until a change in facts requires another revision.

(f) *Determination of fair market value of timber property.* (1) If the fair market value of the property at a specified date is the basis for depletion deductions, such value shall be determined, subject to approval or revision by the district director upon audit, by the owner of the property in the light of the most reliable and accurate information available with reference to the condition of the property as it existed at that date, regardless of all subsequent changes, such as changes in surrounding circumstances, and methods of exploitation, in degree of utilization, etc. Such factors as the following will be given due consideration:

(i) Character and quality of the timber as determined by species, age, size, condition, etc.;

(ii) The quantity of timber per acre, the total quantity under consideration, and the location of the timber in question with reference to other timber;

(iii) Accessibility of the timber (location with reference to distance from a common carrier, the topography and other features of the ground upon which the timber stands and over which it must be transported in process of exploitation, the probable cost of exploitation and the climate and the state of industrial development of the locality); and

(iv) The freight rates by common carrier to important markets.

(2) The timber in each particular case will be valued on its own merits and not on the basis of general averages for regions; however, the value placed upon it, taking into consideration such factors as those mentioned above, will be consistent with that of other similar timber in the region. The district director will give weight and consideration to any and all facts and evidence having a bearing on the market value, such as cost, actual sales and transfers of similar properties, the margin between the cost of production and the price realized for timber products, market value of stock or shares, royalties and rentals, valuation for local or State taxation, partnership accountings, records of litigation in which the value of the property has been involved, the amount at which the property may have been inventoried or appraised in probate or similar proceedings, disinterested appraisals by approved methods, and other factors.

(g) *Revaluation of timber property not allowed.* No revaluation of a timber property whose value as of any specific

date has been determined and approved will be made or allowed during the continuance of the ownership under which the value was so determined and approved, except in the case of misrepresentation or fraud or gross error as to any facts known on the date as of which the valuation was made. Revaluation on account of misrepresentation or fraud or such gross error will be made only with the written approval of the Commissioner. The depletion unit shall be revised when such a revaluation of a timber property has been made and the annual charge to the depletion account with respect to the property shall be computed by using such revised unit for the taxable year for which such revision is made and for all subsequent taxable years.

(h) *Information to be furnished by taxpayer claiming depletion of timber.* A taxpayer claiming a deduction for depletion of timber and for depreciation of plant and other improvements shall attach to his income tax return a filled-out Form T-Timber for the taxable year covered by the income tax return, including the following information:

(1) A map where necessary, to show clearly timber and land acquired, timber cut, and timber and land sold;

(2) Description of, cost of, and terms of purchase of timberland or timber, or cutting rights, including timber or timber rights acquired under any type of contract;

(3) Profit or loss from sale of land, or timber, or both;

(4) Description of timber with respect to which claim for loss, if any, is made;

(5) Record of timber cut;

(6) Changes in each timber account as a result of purchase, sale, cutting, re-estimate, or loss;

(7) Changes in improvements accounts as the result of additions to or deductions from capital and depreciation, and computation of profit or loss on sale or other disposition of such improvements;

(8) Operation data with respect to raw and finished material handled and inventoried;

(9) Statement as to application of the election under section 631 (a) and pertinent information in support of the fair market value claimed thereunder;

(10) Information with respect to land ownership and capital investment in timberland; and

(11) Any other data which will be helpful in determining the reasonableness of the depletion or depreciation deductions claimed in the return.

§ 1.611-4 *Depletion as a factor in computing earnings and profits for dividend purposes.* For rules with respect to computation of earnings and profits where depletion is a factor in the case of corporations, see § 1.312-6 (c) (1).

§ 1.611-5 *Depreciation of improvements—(a) In general.* Section 611 provides in the case of mines, oil and gas wells, other natural deposits, and timber that there shall be allowed as a deduction a reasonable allowance for depreciation of improvements. Such allowance shall include exhaustion, wear

and tear, and obsolescence. The deduction allowed under section 611 shall be determined under the provisions of section 167 and the regulations thereunder. For purposes of section 167 the unit of production method is considered to be a reasonable method under section 167 (a), and therefore, not subject to the limitations prescribed by section 167 (b).

(b) *Special rules for mines, oil and gas wells, other natural deposits and timber.* (1) For principles governing the apportioning of depreciation allowances under sections 611 and 167 in the case of property held by one person for life with remainder to another or in the case of property held in trust or by an estate, see § 1.167 (g)-1.

(2) A reasonable allowance for depreciation on account of obsolescence or decay may be required in an appropriate case during periods when the improvement is not used in production or is used in producing at a rate below its normal capacity. This rule is applicable whether or not the taxpayer uses the unit of production method.

(3) See sections 615 and 616 and the regulations thereunder for special rules for treatment of allowances for depreciation of improvements with respect to the exploration and development of a mine or other natural deposit (other than oil or gas).

(4) In the case of operating oil or gas properties, the deduction for depreciation shall be allowed for those costs of improvements such as machinery, tools, equipment, pipes and similar items and the costs of installation which are not treated as a deductible expense under section 263 (c). See § 1.612-4.

(c) *Accounting and record keeping.* See § 1.167 (a)-7 for accounting and record keeping requirements for taxpayers claiming deductions under section 611 and this section.

#### § 1.612 Statutory provisions; basis for cost depletion.

Sec. 612. *Basis for cost depletion.* Except as otherwise provided in this subchapter, the basis on which depletion is to be allowed in respect of any property shall be the adjusted basis provided in section 1011 for the purpose of determining the gain upon the sale or other disposition of such property.

§ 1.612-1 *Basis for allowance of cost depletion—(a) In general.* The basis upon which the deduction for cost depletion under section 611 is to be allowed in respect of any mineral or timber property is the adjusted basis provided in section 1011 for the purpose of determining gain upon the sale or other disposition of such property except as provided in paragraph (b) of this section. The adjusted basis of such property is the cost or other basis determined under section 1012, relating to the basis of property, adjusted as provided in section 1016, relating to adjustments to basis, and the regulations under such sections. In the case of the sale of a part of such property, the unrecovered basis thereof shall be distributed between the part sold and the part retained.

(b) *Special rules.* (1) The basis for cost depletion of mineral or timber property does not include:

(i) Amounts recoverable through depreciation deductions, through deferred expenses, and through deductions other than depletion, and

(ii) The residual value of land and improvements at the end of operations.

In the case of any mineral property the basis for cost depletion does not include amounts representing the cost or value of land for purposes other than mineral productions. Furthermore, in the case of certain mineral properties, such basis does not include exploration or development expenditures which are treated under section 615 (b) or 616 (b) as deferred expenses to be taken into account as deductions on a ratable basis as the units of minerals benefited thereby are produced and sold. However, there shall be included in the basis for cost depletion of oil and gas property the amounts of capitalized drilling and development costs which, as provided in § 1.612-4, are recoverable through depletion deductions. In the case of timber property, the basis for cost depletion does not include amounts representing the cost or value of land.

(2) Where a taxpayer elects to treat the cutting of timber as a sale or exchange of such timber, the basis for cost depletion shall be the fair market value of such timber as of the first day of the taxable year in which such timber is cut and such value shall be considered for such taxable year and all subsequent taxable years as the cost of such timber for all purposes for which such cost is a necessary factor. See section 631 (a).

(c) *Cross references.* In cases where the valuation, revaluation, or mineral content of deposits is a factor, see § 1.611-2 (c), (d), (e), and (f). In cases where the valuation, revaluation, or quantity of timber is a factor, see § 1.611-3 (e), (f), and (g). For definitions of the terms "property", "fair market value", "mineral enterprise", "mineral deposit", and "minerals", see § 1.611-1 (d). For rules with respect to treatment of depletion accounts on taxpayers' books, see § 1.611-2 (b) in the case of mineral property, and § 1.611-3 (c) in the case of timber property.

§ 1.612-2 *Allowable capital additions in case of mines—(a) In general.* Expenditures for improvements and for replacements, not including expenditures for ordinary and necessary maintenance and repairs, shall, ordinarily, be charged to capital account recoverable through depreciation deductions. Expenditures for equipment (including its installation and housing) and for replacements thereof, which are necessary to maintain the normal output solely because of the recession of the working faces of the mine and which—

(i) Do not increase the value of the mine, or

(ii) Do not decrease the cost of production of mineral units, or

(iii) Do not represent an amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made shall be deducted as ordinary and necessary business expenses. In classifying expenditures as between those charge-

able to capital account and those deductible as ordinary and necessary business expenses, the test to be applied is whether, under sound accounting practice, such expenditures should be charged against mineral produced during the taxable year or capitalized as chargeable to future production.

(b) *Special rules.* For special provisions applicable to treatment of expenditures for certain exploration and development costs (other than for the acquisition, restoration or betterment of improvements) with respect to minerals other than oil or gas, see sections 615 and 616 and the regulations thereunder.

#### § 1.612-3 *Depletion; treatment of bonus and advanced royalty—(a) Bonus.*

(1) If a bonus in addition to royalties is received upon the grant of an economic interest in a mineral deposit, or standing timber, there shall be allowed to the payee as a cost depletion deduction in respect of the bonus an amount equal to that proportion of his basis for depletion as provided in section 612 and § 1.612-1 which the amount of the bonus bears to the sum of the bonus and the royalties expected to be received. Such allowance shall be deducted from the payee's basis for depletion and the remainder of the basis is recoverable through depletion deductions as the royalties are thereafter received. (But see paragraph (e) of this section.) For example, a taxpayer leases mineral property to another reserving a one-eighth royalty and in addition receives a bonus of \$10,000. Assuming that the taxpayer's basis with respect to the mineral property is \$21,000 and that the royalties expected to be received are estimated to total \$20,000, the depletion on the bonus would be \$7,000

$$\left( \frac{\$21,000 \text{ (basis)} \times \$10,000 \text{ (bonus)}}{\$30,000 \text{ (bonus plus estimated royalties)}} \right)$$

The remaining \$14,000 of basis will be recovered through depletion as the royalties are received.

(2) If the grant of an economic interest in a mineral deposit or standing timber with respect to which a bonus was received expires, terminates, or is abandoned before there has been any extraction of mineral or cutting of timber, the payee shall adjust his capital account by restoring thereto the depletion deduction taken on the bonus and a corresponding amount must be returned as income in the year of such expiration, termination or abandonment.

(3) In the case of the payor, payment of the bonus constitutes a capital investment made for the acquisition of an economic interest in a mineral deposit or standing timber recoverable through the depletion allowance. See § 1.613-2 (c) (5) (ii) in cases in which percentage depletion is used.

(b) *Advanced royalties.* (1) If the owner of an operating interest in a mineral deposit or standing timber is required to pay royalties on a specified number of units of such mineral or timber annually whether or not extracted or cut within the year, and may apply any amounts paid on account of units not extracted or cut within the year against the royalty on the mineral or

timber thereafter extracted or cut, the payee shall compute cost depletion on the number of units so paid for in advance of extraction or cutting and shall treat the amount so determined as an allowable deduction for depletion from the gross income of the year in which such payment or payments are made. No deduction for depletion by such payee shall be claimed or allowed in any subsequent year on account of the extraction or cutting in such year of any mineral or timber so paid for in advance and for which deduction has once been made. (But see paragraph (e) of this section.)

(2) If the right to extract minerals or to cut timber against which the advanced royalties may be applied expires, terminates or is abandoned before all such minerals or timber have been extracted or cut, the payee shall adjust his capital account by restoring thereto the depletion deductions made in prior years on account of any units of mineral or timber paid for in advance but not extracted or cut, and a corresponding amount must be returned as income for the year of such expiration, termination, or abandonment.

(3) The payor, at his option, may treat the advanced royalties so paid or accrued in connection with mineral property as follows:

(i) As deductions from gross income for the year the advanced royalties are paid or accrued; or

(ii) As deductions from gross income for the year the mineral product, in respect of which the advanced royalties were paid, is sold.

For an exception to this treatment when the payor is a sublessor of coal see § 1.631-3 (b) (3). Every taxpayer must make an election as to the treatment of all such advanced royalties in his return for the first taxable year in which such amounts are paid or accrued. A taxpayer will be considered to have made an election in accordance with the manner in which such items are treated in the return. A failure to deduct any such items for the year paid or accrued will constitute an election to have all such items treated in accordance with subdivision (ii) of this subparagraph. Any election made under this section is binding for the taxable year for which made and for all subsequent years, and the taxpayer must treat all advanced royalties paid or accrued in all subsequent years in the same manner. This paragraph does not grant a new election. Any taxpayer who made an election under § 39.23 (m)-10 (e) of Regulations 118 (26 CFR (1939) Part 39) or corresponding provisions of prior regulations is, by such election, bound with respect to treatment of such advanced royalties whether paid or accrued before or after December 31, 1953. See section 7807 (b) (2). For additional rules relating to elections in the case of partners and partnerships, see section 703 (b) and the regulations thereunder.

(4) The application of subparagraphs (2) and (3) of this paragraph may be illustrated by the following examples:

*Example (1).* B leased certain mineral lands from A under a lease in which A re-

served a royalty of 10 cents a ton on minerals mined and sold by B. The lease also provided that B had to pay an annual minimum royalty of \$10,000 representing the amount due on 100,000 tons of the particular mineral whether or not B mined and sold that amount. It was further provided that, if B did not mine and sell 100,000 tons in any year, he could mine and sell in any subsequent year the amount of mineral on which he had paid the royalty without the payment of any additional royalty. However, this right of recoupment was limited to minerals mined and sold in any later year in excess of the 100,000 tons represented by the \$10,000 minimum royalty required to be paid for that later year. Assume that in 1956 B paid A the minimum royalty of \$10,000, but mined and sold only 60,000 tons of the mineral and that in 1957 he abandoned the lease without any further production. Since the \$10,000 represents royalties on 100,000 tons of mineral and only 60,000 tons were mined and sold, A must restore in 1957 to his capital account the depletion deductions taken in 1956 on \$4,000 on account of the 40,000 tons paid for in advance but not mined and sold, and must also return the corresponding amount as income in 1957.

*Example (2).* Assume that B, under the lease in example (1), paid the \$10,000 minimum royalty and mined no minerals in 1956 but that in 1957 B mined and sold 200,000 tons of mineral. If this is B's first such expenditure, B has an option, for the purpose of computing taxable income under section 63, to deduct in 1956 the \$10,000 paid in that year although no mineral was mined, or to take the deduction in 1957 when the mineral, for which the \$10,000 was paid in 1956, was mined and sold. (For treatment under percentage depletion see example in § 1.613-2 (c) (5) (iii).)

(c) *Delay rental.* (1) A delay rental is an amount paid for the privilege of deferring development of the property and which could have been avoided by abandonment of the lease, or by commencement of development operations, or by obtaining production.

(2) Since a delay rental is in the nature of rent it is ordinary income to the payee and not subject to depletion. The payor may at his election deduct such amount as an expense, or under section 266 and the regulations thereunder, charge it to depletable capital account.

(d) *Exception to paragraphs (a) and (b) of this section.* In lieu of the treatment provided for in paragraphs (a) and (b) of this section, the payees referred to therein may take as a depletion deduction in respect of any bonus or advanced royalty for the taxable year an amount computed on the basis of the percentage of gross income from the property as provided in section 613 and the regulations thereunder.

(e) *Cross reference.* In the case of bonuses and advanced royalties received in connection with a contract of disposal of timber or coal covered by sections 631 (b) and (c), respectively, see those sections and the regulations thereunder.

§ 1.612-4 *Charges to capital and to expense in case of oil and gas wells—(a) Option with respect to intangible drilling and development costs.* (1) In accordance with section 263 (c), the owner of an operating mineral interest may, at his option, deduct as expenses the intangible drilling and development costs incurred in the development of oil and gas deposits

to the extent such costs are attributable to his share of the total of all operating mineral interests in the well. The phrase "operating mineral interest", as used in this section, means an operating mineral interest as defined in section 614 (b) (3) where such interest is in an oil or gas well. If any owner incurs a share of the total intangible drilling and development costs in excess of his share of the total of all operating mineral interests in the well, such excess must be capitalized and recovered through depletion.

(2) When more than one person owns an operating mineral interest in an oil or gas well, each owner's share of the total of such interests during the complete payout period shall be the share of the operating net income from the well that he is entitled to receive during the complete payout period. Therefore, each owner may, at his option, deduct a fraction of the total intangible drilling and development costs minus all such costs which are recoverable out of production payments, royalties, and net profits interests not in excess of the lesser of:

(i) Such intangible drilling and development costs incurred by him, or

(ii) His fractional share of the operating net income that he is entitled to receive during the complete payout period.

The "complete payout period" means the period ending when the operating net income from the well, after payment of all costs of operation, first equals all expenditures for drilling and development (tangible and intangible), minus all such expenditures which are recoverable out of production payments, royalties, and net profits interests. The "operating net income" is the total operating gross income from the well reduced by an amount equal to the costs of operating the well. Such operating costs shall not include tangible or intangible development costs, or any deduction based thereon. The "total operating gross income" is the gross income from the well excluding income attributable to royalty interests, production payments, and net profits interests.

(3) This option applies to all expenditures made by an operator for wages, fuel, repairs, hauling, supplies, etc., incident to and necessary for the drilling of wells and the preparation of wells for the production of oil or gas. Such expenditures have for convenience been termed intangible drilling and development costs. They include the cost to operators of any drilling or development work (excluding amounts payable only out of production or gross or net proceeds from production, which amounts are depletable income to the recipient, and amounts properly allocable to cost of depreciable improvements) done for them by contractors under any form of contract, including turnkey contracts. Examples of items to which this option applies are, all amounts paid for labor, fuel, repairs, hauling, and supplies, or any of them, which are used (i) in the drilling, shooting, and cleaning of wells; (ii) in such clearing of ground, draining, road making, surveying, and geological works as are necessary in preparation for the drilling of wells; and (iii) in the construction of such derricks, tanks,

pipelines, and other physical structures as are necessary for the drilling of wells and the preparation of wells for the production of oil or gas. In general, this option applies only to expenditures for those drilling and developing items which in themselves do not have a salvage value. For the purpose of this option, labor, fuel, repairs, hauling, supplies, etc., are not considered as having a salvage value, even though used in connection with the installation of improvements which have a salvage value. Included in this option are all costs of drilling and development undertaken (directly or through a contract) by an owner of an operating interest whether incurred by him prior or subsequent to the formal grant or assignment to him of the operating interest (a leasehold interest, or other form of operating or working interest).

(4) The principles of this paragraph may be illustrated by the following examples in each of which it is assumed that the parties have elected to be treated as individuals under section 761:

**Example (1).** L, a lessee, assigns an undivided one-half of his interest in an oil and gas lease to O who obligates himself to drill, equip, and operate a well thereon at his own cost and expense with the right to take all of the oil and gas (after royalties and production payments) until complete payout; thereafter each party to assume his proportionate burden and receive his share of the oil and gas or the proceeds thereof. O has the whole operating interest throughout the complete payout period, and therefore, may expense the entire amount of the intangible drilling and development costs, provided he has properly exercised his option to do so.

**Example (2).** L, a lessee, assigns an undivided one-fourth of his interest in an oil and gas lease to O who obligates himself to drill, equip, and operate a well thereon at his own cost and expense with the right to take all of the oil and gas (after royalties and production payments) until O has been reimbursed, after meeting his operating costs, for one-half of all costs of development. Thereafter, each party will assume his proportionate burden and receive his share of the oil and gas or the proceeds thereof, so that L will thereafter pay three-fourths of the expenses and receive three-fourths of the operating net income from oil and gas, and O will pay one-fourth of the expenses and receive one-fourth of the operating net income from oil and gas. During the complete payout period O will receive a total of five-eighths of the operating net income (one-half plus one-fourth of one-half). Thus, O may expense five-eighths of his intangible drilling and development costs, provided he has properly exercised his option to do so.

**Example (3).** L, a lessee, assigns an undivided one-half of his interest in an oil and gas lease to O who obligates himself to drill and equip one well thereon, free of cost to L. L and O bear the production costs equally and share equally in the oil and gas distributable to this well from the beginning of production. Since O has only one-half of the operating net income during the complete payout period, he may deduct only one-half of the intangible drilling and development costs, provided he has properly exercised his option to do so.

**Example (4).** L, a lessee, agrees that if O will drill and equip one well on L's lease, free of cost to L, O shall take the gross production from the lease or the proceeds thereof, free of all production costs, until O has received his costs of drilling and equipping the well, plus six percent interest thereon. O has

no part of the operating interest and therefore, cannot deduct any part of the intangible drilling and development costs. Such costs must be capitalized as O's cost of his production payment in exchange for which he agreed to drill and equip one well.

(b) *Recovery of optional items; if capitalized.* (1) Items recoverable through depletion: If the taxpayer charges to capital account such expenditures as fall within the option, the amounts so capitalized are recoverable through depletion insofar as they are not represented by improvements. For the purposes of this section the expenditures for clearing ground, draining, road making, surveying, geological work, excavation, grading and the drilling, shooting, and cleaning of wells, are considered not to be represented by improvements, and when charged to capital account are returnable through depletion.

(2) Items recoverable through depreciation: If the taxpayer charges such expenditures as fall within the option to capital account, the amounts so capitalized and not deducted as a loss are returnable through depreciation insofar as they are represented by improvements. Such expenditures are amounts paid for wages, fuel, repairs, hauling, supplies, etc., used in the installation of casing and equipment and in the construction of the premises of derricks and other physical structures.

(3) In the case of capitalized intangible drilling and development costs incurred under a contract, such costs shall be allocated between the foregoing classes of items specified in subparagraphs (1) and (2) of this paragraph for the purpose of determining the depletion and depreciation allowances.

(4) Election with respect to cost of nonproductive wells: If the operator has exercised the option under paragraph (a) of this section to capitalize intangible drilling and development costs, then an election is accorded with respect to intangible drilling and development costs incurred in drilling a nonproductive well. Such costs incurred in drilling a nonproductive well may be deducted by the taxpayer as an ordinary loss provided a proper election is made by a clear statement in the return for the first taxable year beginning after December 31, 1942, in which such a nonproductive well is completed. Such election with respect to intangible drilling and development costs of nonproductive wells when made, shall be binding for all subsequent years. The absence of a clear indication in such return of an election to deduct as ordinary losses intangible drilling and development costs of nonproductive wells shall be deemed to be an election to recover such costs through depletion to the extent that they are not represented by improvements, and through depreciation to the extent that they are represented by improvements.

(c) *Nonoptional items distinguished—*(1) *Capital items.* The option with respect to intangible drilling and development costs does not apply to expenditures by which the taxpayer acquires improvements ordinarily considered as having a salvage value. Examples of such items are the costs of the actual materials in those structures

which are constructed in the wells and on the premises, and the cost of drilling tools, pipe, casing, tubing, tanks, engines, boilers, machines, etc. The option does not apply to any expenditures for wages, fuel, repairs, hauling, supplies, etc., in connection with equipment, facilities, or structures, not incident to or necessary for the drilling of wells, such as structures for storing or treating oil or gas. These are capital items and are recoverable through depreciation except that when they are a part of the taxpayer's depletable basis the costs thereof are recoverable through depletion.

(2) *Expense items.* Expenditures which must be charged off as expense, regardless of the option provided by this section, are those for labor, fuel, repairs, hauling, supplies, etc., in connection with the operation of the wells and of other facilities on the premises for the production of oil or gas.

(d) *Effect of option and election.* This section does not grant a new option under paragraph (a) of this section or new election under paragraph (b) of this section. Any taxpayer who exercised an option or made an election under paragraph (b) of § 29.23 (m)-16 of Regulations 111 (26 CFR (1939) Part 29) or paragraph (a) or (b) of § 39.23 (m)-16 of Regulations 118 (26 CFR (1939) Part 39), is, by such option or election, bound with respect to all intangible drilling and development costs (whether made before January 1, 1954, or after December 31, 1953) in connection with oil and gas properties. See section 7807 (b) (2). Any taxpayer who has not made expenditures in any taxable year beginning after December 31, 1942, for the development of oil and gas deposits and prior to his first taxable year beginning after December 31, 1953, and ending after August 16, 1954, must exercise the option granted in paragraph (a) of this section with respect to intangible drilling and development costs in general in the return for the first taxable year in which the taxpayer pays or incurs such expenditures. In the case of a return filed for such first taxable year, the time for exercising the option under paragraph (a) of this section or the election under paragraph (b) of this section shall in no case expire before the close of the 90th day after the regulations adopted under section 612 are published in the FEDERAL REGISTER. For additional rules relating to elections in the case of partners and partnerships, see section 703 (b) and the regulations thereunder.

#### § 1.613 Statutory provisions; percentage depletion.

**Sec. 613. Percentage depletion—**(a) *General rule.* In the case of the mines, wells, and other natural deposits listed in subsection (b), the allowance for depletion under section 611 shall be the percentage, specified in subsection (b), of the gross income from the property excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 percent of the taxpayer's taxable income from the property (computed without allowance for depletion). In no case shall the allowance for depletion under section 611 be less than it would be if computed without reference to this section.

(b) *Percentage depletion rates.* The mines, wells, and other natural deposits, and the percentages, referred to in subsection (a) are as follows:

(1) 27½ percent—oil and gas wells.

(2) 23 percent—

(A) Sulfur and uranium; and

(B) If from deposits in the United States—*anorthosite* (to the extent that alumina and aluminum compounds are extracted therefrom), *asbestos*, *bauxite*, *beryl*, *celestite*, *chromite*, *corundum*, *fluorspar*, *graphite*, *ilmenite*, *kyanite*, *mica*, *olivine*, *quartz crystals (radio grade)*, *rutile*, *black steatite talc*, and *zircon*, and ores of the following metals: *antimony*, *bismuth*, *cadmium*, *cobalt*, *columbium*, *lead*, *lithium*, *manganese*, *mercury*, *nickel*, *platinum* and *platinum group metals*, *tantalum*, *thorium*, *tin*, *titanium*, *tungsten*, *vanadium*, and *zinc*.

(3) 15 percent—*ball clay*, *ben tonite*, *china clay*, *sagger clay*, *metal mines* (if paragraph (2) (B) does not apply), *rock asphalt*, and *vermiculite*.

(4) 10 percent—*asbestos* (if paragraph (2) (B) does not apply), *brucite*, *coal*, *lignite*, *perlite*, *sodium chloride*, and *wollastonite*.

(5) 5 percent—

(A) *Brick and tile clay*, *gravel*, *mollusk shells* (including clam shells and oyster shells), *peat*, *pumice*, *sand*, *scoria*, *shale*, and *stone*, except stone described in paragraph (6); and

(B) If from brine wells—*bromine*, *calcium chloride*, and *magnesium chloride*.

(6) 15 percent—all other minerals (including, but not limited to, *aplite*, *barite*, *borax*, *calcium carbonates*, *refractory and fire clay*, *diatomaceous earth*, *dolomite*, *feldspar*, *fullers earth*, *garnet*, *gilsonite*, *granite*, *limestone*, *magnesite*, *magnesium carbonates*, *marble*, *phosphate rock*, *potash*, *quartzite*, *slate*, *soapstone*, *stone* (used or sold for use by the mine owner or operator as dimension stone or ornamental stone), *thenardite*, *tripoli*, *trona*, and (if paragraph (2) (B) does not apply) *bauxite*, *beryl*, *flake graphite*, *fluorspar*, *lepidolite*, *mica*, *spodumene*, and *talc*, including *pyrophyllite*), except that, unless sold on bid in direct competition with a bona fide bid to sell a mineral listed in paragraph (3), the percentage shall be 5 percent for any such other mineral when used, or sold for use, by the mine owner or operator as rip rap, ballast, road material, rubble, concrete aggregates, or for similar purposes. For purposes of this paragraph, the term "all other minerals" does not include—

(A) *Soil*, *sod*, *dirt*, *turf*, *water*, or *mosses*; or

(B) *Minerals from sea water*, *the air*, or *similar inexhaustible sources*.

(c) *Definition of gross income from property.* For purposes of this section—

(1) *Gross income from the property.* The term "gross income from the property" means, in the case of a property other than an oil or gas well, the gross income from mining.

(2) *Mining.* The term "mining" includes not merely the extraction of the ores or minerals from the ground but also the ordinary treatment processes normally applied by mine owners or operators in order to obtain the commercially marketable mineral product or products, and so much of the transportation of ores or minerals (whether or not by common carrier) from the point of extraction from the ground to the plants or mills in which the ordinary treatment processes are applied thereto as is not in excess of 50 miles unless the Secretary or his delegate finds that the physical and other requirements are such that the ore or mineral must be transported a greater distance to such plants or mills.

(3) *Extraction of the ores or minerals from the ground.* The term "extraction of the ores or minerals from the ground" includes

the extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining. The preceding sentence shall not apply to any such extraction of the mineral or ore by a purchaser of such waste or residue or of the rights to extract ores or minerals therefrom.

(4) *Ordinary treatment processes.* The term "ordinary treatment processes" includes the following:

(A) In the case of coal—*cleaning*, *breaking*, *sizing*, *dust allaying*, *treating to prevent freezing*, and *loading for shipment*;

(B) In the case of sulfur recovered by the Frasch process—*pumping to vats*, *cooling*, *breaking*, and *loading for shipment*;

(C) In the case of iron ore, *bauxite*, *ball and sagger clay*, *rock asphalt*, and *minerals which are customarily sold in the form of a crude mineral product—sorting*, *concentrating*, and *sintering to bring to shipping grade and form*, and *loading for shipment*;

(D) In the case of *lead*, *zinc*, *copper*, *gold*, *silver*, or *fluorspar ores*, *potash* and *ores which are not customarily sold in the form of the crude mineral product—crushing*, *grinding*, and *beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic)*, *cyanidation*, *leaching*, *crystallization*, *precipitation* (but not including as an ordinary treatment process electrolytic deposition, *roasting*, *thermal or electric smelting*, or *refining*), or by substantially equivalent processes or combination of processes used in the separation or extraction of the product or products from the ore, including the *furnacing of quicksilver ores*; and

(E) The *pulverization of talc*, the *burning of magnesite*, and the *sintering and nodulizing of phosphate rock*.

§ 1.613-1 *Percentage depletion; general rule.* In the case of a taxpayer computing the deduction for depletion under section 611 with respect to minerals on the basis of a percentage of gross income from the property, as defined in section 613 (c) and § 1.613-3, such deduction shall be the percentage of such gross income as specified in section 613 (b) and § 1.613-2. The deduction shall not exceed 50 percent of the taxpayer's taxable income from the property (computed without allowance for depletion). Such taxable income shall be computed in accordance with § 1.613-4. In no case shall the deduction for depletion computed under this section be less than the deduction computed upon the cost or other basis of the property provided in section 612 and the regulations thereunder. The apportionment of the deduction between the several owners of economic interests in a mineral deposit will be made as provided in § 1.611-1 (c). For rules with respect to "gross income from the property", see § 1.613-3. For definitions of the terms "property", "mineral deposit", and "minerals", see § 1.611-1 (d). See § 1.613-3 (c) (7) for definition of the term "mining".

§ 1.613-2 *Percentage depletion rates—*

(a) *In general.* Subject to the provisions of paragraph (b) of this section and as provided in section 613 (b), in the case of mines, wells, or other natural deposits, a taxpayer may deduct as an allowance for depletion under section 611 the percentages of gross income from the property as set forth in the following subparagraphs (1), (2), and (3) of this paragraph:

(1) *Without regard to situs of deposits.* The following rates are appli-

cable to the minerals listed herein regardless of the situs of the deposits from which the minerals are produced:

(i) 27½ percent—*Gas wells*, *oil wells*.

(ii) 23 percent—*Sulphur*, *uranium*.

(iii) 15 percent—*Ball clay*, *ben tonite*, *china clay*, *metal mines*,<sup>1</sup> *sagger clay*, *rock asphalt*, *vermiculite*.

(iv) 10 percent—*Asbestos*,<sup>2</sup> *brucite*, *coal*, *lignite*, *perlite*, *sodium chloride*, *wollastonite*.

(v) 5 percent—*Brick and tile clay*, *gravel*, *mollusk shells* (including clam shells and oyster shells), *peat*, *pumice*, *sand*, *scoria*, *shale*, *stone* (except dimension or ornamental stone).

If from brine wells—*Bromine*, *calcium chloride*, *magnesium chloride*.

(2) *Production from United States deposits.* A rate of 23 percent is applicable to the minerals listed below if produced from deposits within the United States:

Anorthosite, <sup>3</sup>	Ilmenite.
Asbestos.	Kyanite.
Bauxite.	Mica.
Beryl.	Olivine.
Celestite.	Quartz crystals (radio grade).
Chromite.	Rutile.
Corundum.	Block steatite talc.
Fluorspar.	Zircon.
Graphite.	

ores of the following metals<sup>4</sup>—

Antimony.	Platinum.
Bismuth.	Platinum group metals.
Cadmium.	Tantalum.
Cobalt.	Thorium.
Columbium.	Tin.
Lead.	Titanium.
Lithium.	Tungsten.
Manganese.	Vanadium.
Mercury.	Zinc.
Nickel.	

<sup>1</sup> The rate prescribed in this subparagraph does not apply except for the production of alumina and aluminum compounds.

<sup>2</sup> Applicable only to the extent such metals are produced.

(3) *Other minerals.* A rate of 15 percent is applicable to the minerals listed below regardless of the situs of the deposits from which the minerals are produced, provided the minerals are not used or sold for use by the mine owner or operator as rip rap, ballast, road material, rubble, concrete aggregates, or for similar purposes. If, however, the minerals listed below are sold or used for the purposes described in the preceding sentence, a rate of 5 percent is applicable to any of such minerals unless sold on bid in direct competition with a bona fide bid to sell any of the minerals listed in subdivision (iii) of subparagraph (1) of this paragraph, in which case the rate is 15 percent. In addition, the provisions of this subparagraph are not applicable with respect to any of the minerals listed below if the rate prescribed in subparagraph (2) of this paragraph is applicable:

Aplite.	Calcium carbonates.
Barite.	Clay, refractory and fire.
Bauxite, <sup>5</sup>	Diatomaceous earth.
Beryl, <sup>3</sup>	Dolomite.
Borax.	

<sup>3</sup> The provisions of this subparagraph are not applicable if the rate prescribed in subparagraph (2) of this paragraph is applicable.

<sup>4</sup> Not applicable if the rate prescribed in subparagraph (2) of this paragraph is applicable.

Feldspar.	Phosphate rock.
Flake graphite. <sup>1</sup>	Potash.
Fluor spar. <sup>1</sup>	Quartzite.
Fullers earth.	Slate.
Garnet.	Soapstone.
Gilsonite.	Spodumene. <sup>2</sup>
Granite.	Stone (dimension or ornamental). <sup>2</sup>
Lepidolite. <sup>1</sup>	Talc <sup>1</sup> (including phrophyllite).
Limestone.	Therandite.
Magnesite.	Tripoli.
Magnesium carbonates.	Trona.
Marble.	All other minerals.
Mica. <sup>1</sup>	

<sup>1</sup> The provisions of this subparagraph are not applicable if the rate prescribed in subparagraph (2) of this paragraph is applicable.

<sup>2</sup> The 15 percent rate is applicable only to stone used or sold for use by the mine owner or operator as dimension stone or ornamental stone.

(b) *Definition of terms.* (1) For purposes of this section the minerals indicated below shall have the following meanings:

(i) Clay, brick and tile—Clay of a type ordinarily used or sold for use in the manufacture of common brick, drain and roofing tile, sewer pipe, flower pots and kindred products.

(ii) Pumice—All pumice including pumicite.

(iii) Scoria—Only scoria produced from natural deposits.

(2) For purposes of this section, the term "United States" means the States, the Territories of Alaska and Hawaii, and the District of Columbia. See section 7701 (a) (9).

(3) For purposes of this section, the term "dimension stone" means blocks and slabs of natural stone cut to definite shapes and sizes, and subsequently used or sold for such uses as building stone (excluding rubble), monumental stone, paving blocks, curbing and flagging. For purposes of this section, "ornamental stone" means blocks and slabs of natural stone cut to definite shapes and sizes and subsequently used or sold for use for making ornaments or statues.

(4) For purposes of this section, the term "all other minerals" does not include (i) soil, sod, dirt, turf, water, or mosses; or (ii) minerals from sea water, the air, or similar inexhaustible sources. However, the term "all other minerals" is not limited in meaning to the minerals listed in section 613 (b), but includes all other minerals (except those to which a specific percentage rate applies under subparagraphs (1), (2), (3), (4), and (5) of section 613 (b)); For example, gypsum, novaculite, natural mineral pigments, quartz sand and quartz pebbles when used or sold for purposes dependent upon their chemical or refractory properties, graphite, and kyanite (if section 613 (b) (2) (B) does not apply), and anorthosite to the extent that alumina and aluminum compounds are not extracted therefrom. The 15 percent rate applies to such "all other minerals" when used or sold for use by the mine owner or operator for purposes other than as rip rap, ballast, road material, rubble, concrete aggregates, or for similar purposes. When any such minerals are used or sold for use by the mine owner or operator as rip rap, ballast, road material, rubble, concrete aggregates, or for similar purposes, the

5 percent rate applies except that, when sold for such use by the mine owner or operator on a bid in direct competition with a bona fide bid to sell a mineral listed in section 613 (b) (3), the 15 percent rate applies. For example, limestone sold on a bid in direct competition with a bona fide bid to sell rock asphalt for road building purposes may be entitled to a 15 percent rate. In every case the taxpayer must establish to the satisfaction of the district director that there was a bona fide bid to sell a mineral listed under section 613 (b) (3) by a person other than the taxpayer, and that the mineral sold by the taxpayer was sold on a bid in direct competition with such bona fide bid to sell such other material.

(c) *Rules for application of paragraph (a) of this section.* (1) In no case may the allowance for depletion computed upon the basis of a percentage of gross income from the property exceed 50 percent of the taxpayer's taxable income from the property (computed without allowance for depletion). For rules relating to the computation of such taxable income, see § 1.613-4.

(2) In cases in which there are produced from a mineral property two or more minerals, each entitled to a different percentage depletion rate under section 613 (b) and this section, the percentage depletion allowance is the sum of the results obtained by applying the percentage applicable to each mineral to the "gross income from the property" attributable to such mineral. The sum so computed is subject to the limitation provided in section 613 (a) and § 1.613-1, that is, 50 percent of the taxpayer's taxable income from the property (computed without allowance for depletion). Such taxable income (computed in accordance with § 1.613-4) is the total taxable income resulting from the sale of all minerals produced from the mineral property. The provisions of this subparagraph may be illustrated by the following example:

*Example.* Pyrite, an iron sulfide, may be sold for either its sulphur content or its iron content, or both. Sulphur is entitled to a percentage depletion deduction based on 23 percent of gross income from the property whereas the percentage depletion deduction for iron is based on 15 percent of such gross income. Therefore, in the case of a taxpayer who sells pyrite for both its sulphur and iron content, 23 percent of his gross income from sulphur plus 15 percent of his gross income from iron would be his maximum allowable percentage depletion deduction. However, this maximum deduction would be subject to the limitation provided for in section 613 (a), i. e., 50 percent of "taxable income from the property (computed without allowance for depletion)", such taxable income being the overall taxable income resulting from the sale of both minerals contained in the deposit.

$$\left( \frac{100,000 \text{ bbbs. sold}}{1,000,000 \text{ bbbs. estimated to be available}} \times \$200,000 \text{ bonus} \right)$$

the portion of the bonus allocable to the oil produced and sold during the year. However, in computing B's taxable income under section 63, the \$20,000 attributable to the bonus payment shall not be either excluded or deducted from B's gross income computed under section 61. (See § 1.612-3 (a) (3).)

(3) The percentage rates set forth in this section are applicable only for taxable years beginning after December 31, 1953, and ending after August 16, 1954. See section 7851 (a) (1) (A). For percentage rates applicable to minerals for which percentage depletion is allowable for taxable years beginning before January 1, 1954, or ending before August 17, 1954, see § 39.23 (m)-5 of Regulations 118 (26 CFR (1939) Part 39).

(4) Percentage depletion is not allowable with respect to the income from a disposal of coal (including lignite) with a retained economic interest to the extent that such income is treated as from a sale of coal under section 631 (c) and the regulations thereunder. Rents or royalties paid or incurred by a taxpayer with respect to coal (including lignite) shall be excluded by such taxpayer in determining "gross income from the property" without regard to the treatment under section 631 (c) of such rents and royalties in the hands of the recipient.

(5) (i) In all cases there shall be excluded in determining the "gross income from the property" an amount equal to any rents or royalties (which are depletable income to the payee) which are paid or incurred by the taxpayer in respect of the property and are not otherwise excluded from "gross income from the property". The following example illustrates this rule:

*Example.* A leases coal bearing lands to B on condition that B will annually pay a royalty of 25 cents a ton on coal mined and sold by B. During the year 1956, B mines and sells f. o. b. mine 100,000 tons of coal for \$600,000. In computing "gross income from the property" for the year 1956, B will exclude \$25,000 (100,000 tons × \$0.25) in computing his allowable percentage depletion deduction. B's allowable percentage depletion deduction (without reference to the limitation based on taxable income) for the year 1956 will be \$57,500 (((\$600,000 - \$25,000) × 10 percent).

(ii) If bonus payments have been paid in respect of the property in any taxable year or any prior taxable years, there shall be excluded in determining the "gross income from the property", an amount equal to that part of such payments which is allocable to the product sold during the taxable year. The following example illustrates this rule:

*Example.* In 1956, A leases oil bearing lands to B, receiving \$200,000 as a bonus and reserving a royalty of one-eighth of the proceeds of all oil produced and sold. It is estimated at the time the lease is entered into that there are 1,000,000 barrels of oil recoverable. In 1956, B produces and sells 100,000 barrels for \$240,000. In computing his "gross income from the property" for the year 1956, B will exclude \$30,000 (1/8 of \$240,000), the royalty paid to A and \$20,000

(iii) If advanced royalties have been paid in respect of the property in any taxable year the amount excluded from "gross income from the property" for the current taxable year on account of such payment shall be an amount equal

to the deduction for such taxable year taken on account of such payment pursuant to § 1.612-3 (b) (3).

*Example.* If B in example (2) in § 1.612-3 (b) (4), elects to deduct in 1956 the \$10,000 paid to A in that year, he must exclude the same amount from "gross income from the property" in 1956; however, if B elects to defer the deduction until 1957 when he mined and sold the mineral, he must exclude the \$10,000 from "gross income from the property" in 1957.

§ 1.613-3 *Gross income from the property*—(a) *Oil and gas wells.* In the case of oil and gas wells, "gross income from the property", as used in section 613 (c) (1), means the amount for which the taxpayer sells the oil or gas in the immediate vicinity of the well. If the oil or gas is not sold on the premises but is manufactured or converted into a refined product prior to sale, or is transported from the premises prior to sale, the gross income from the property shall be assumed to be equivalent to the representative market or field price of the oil or gas before conversion or transportation.

(b) *Gross income from mining.* (1) The term "gross income from the property", as used in section 613 (c) (1), means, in the case of a property (other than an oil or gas property), gross income from mining. For the purposes of this paragraph, transportation which qualifies as "mining" will be referred to as "mining transportation" and transportation which does not qualify as "mining" will be referred to as "non-mining transportation". (See paragraph (c) (7) of this section for definition of the term "mining".)

(2) "Gross income from mining" is the portion of the taxpayer's gross income which is attributable to the extraction of the minerals from the mine, the application to the crude mineral product (see paragraph (c) (1) of this section) of ordinary treatment processes (see paragraph (d) of this section) and mining transportation.

(3) Examples of the application of the rule described in subparagraph (2) of this paragraph follow:

(i) If a taxpayer sells

(a) The crude mineral product without any transportation costs having been incurred, or

(b) The processed mineral product (see § 1.613-3 (c) (2)) without any transportation costs having been incurred, or

(c) The processed mineral product as to which only mining transportation costs have been incurred,

"gross income from mining" means the amount for which such mineral product was sold.

(ii) If a taxpayer sells—

(a) The crude mineral product as to which transportation costs have been incurred, or

(b) The manufactured product (see paragraph (c) (3) of this section) as to which no ordinary treatment processes were applied and no transportation costs were incurred, or

(c) The manufactured product as to which no ordinary treatment processes

were applied and transportation costs were incurred,

"gross income from mining" means the market price (as of the date of the sale of the mineral product referred to in (a) of this subdivision and the manufactured products in (b) and (c) of this subdivision) of the untransported crude mineral product referred to in (a) of this subdivision, or the untransported crude mineral product used to produce the manufactured products referred to in (b) and (c) of this subdivision.

(iii) If a taxpayer sells—

(a) The processed mineral product as to which only non-mining transportation costs have been incurred, or

(b) The processed mineral product as to which both mining and non-mining transportation costs have been incurred, or

(c) The manufactured product as to which ordinary treatment processes have been applied and no transportation costs have been incurred, or

(d) The manufactured product as to which ordinary treatment processes have been applied and only mining transportation costs have been incurred, or

(e) The manufactured product as to which ordinary treatment processes have been applied and only non-mining transportation costs have been incurred, or

(f) The manufactured product as to which ordinary treatment processes have been applied and both mining and non-mining transportation costs have been incurred.

"gross income from mining" means the market price (as of the date of sale of the products referred to in (a) through (f), of this subdivision) of a processed mineral product obtained by applying to the crude mineral product the ordinary treatment processes actually applied and mining transportation costs actually incurred by the taxpayer to produce the particular mineral product described in (a), (b), (c), (d), (e), and (f) of this subdivision.

(4) The mineral product to which the market price (referred to in subdivisions (ii) and (iii) of subparagraph (3) of this paragraph) is applied is designated, herein, as the "gross income product". For the purpose of this paragraph the term "market price" means the price (as of the date the taxpayer actually sells his crude mineral product or processed mineral product or manufactured product, as the case may be) at which the gross income product is sold commercially in the vicinity of the taxpayer's mine. However, in no case shall the market price of the gross income product exceed the amount actually realized from the gross income product. If there are no such commercial sales in such area, then the market price of the gross income product (as of the date the taxpayer sells his crude mineral product or processed mineral product or manufactured product as the case may be) must be determined by the use of other appropriate methods with the objective of determining as accurately as practicable the price at which such gross income product would be sold if such commercial sales existed.

Among such methods that may be appropriate, depending on the circumstances of each individual case, are the following:

(i) Comparison with the prices at which crude mineral products or processed mineral products similar to the taxpayer's gross income product are sold commercially in the vicinity of the taxpayer's mine with proper adjustment being made for material differences, if any, between the taxpayer's gross income product and the products sold commercially (such as differences in kind or grade or mineral content or ordinary treatment processes involved or transportation costs between mine and market or relative volume of sales).

(ii) Comparison with the prices at which crude mineral products or processed mineral products identical or similar to the taxpayer's gross income product are sold commercially in other areas, with proper adjustments being made for material differences, if any, between the taxpayer's gross income product and the products sold commercially (such as differences in kind or grade or mineral content or ordinary treatment processes involved or transportation costs between mine and market or relative volume of sales).

(iii) Computation based on the taxpayer's costs of producing the gross income product plus a rate of profit (determined to be appropriate) per unit of product, per dollar of cost, or per dollar of investment in mining. Such rate of profit may be ascertained:

(a) By comparison with the rate of profit currently realized on commercial sales of identical or similar crude mineral products or processed mineral product, or

(b) By comparison with the rate of profit currently realized by the taxpayer on sales of his products, or

(c) By comparison with a rate of profit ascertained by any other appropriate method.

In utilizing comparative prices for the determination of market prices, greater weight should be given to prices (1) of commercial sales made closest in time to the sale of the mineral product by the taxpayer, (2) of mineral products most nearly similar to the gross income product of the taxpayer, and (3) of mineral products sold commercially in areas closest to the mines of the taxpayer. In utilizing the taxpayer's costs of producing the gross income product in determining its market price, only costs actually incurred shall be taken into consideration. Such costs will usually be reflected on the books and records the taxpayer maintains for cost control and other ordinary business purposes. Certain deductions allowed for tax purposes in the nature of special incentives, such as that of accelerated amortization of emergency facilities under section 168, for exploration and development expenditures under sections 615 (a), and 616 (a), respectively, and similar deductions, would not ordinarily be taken into consideration in determining market prices as set out above.

(5) The rule with respect to manufactured products described in subpara-

graph (3) (ii) (b), and (c) and (iii) (c), (d), (e), and (f) and subparagraph (4) of this paragraph that the market price of the gross income product must be computed as of the date that such manufactured product is sold by the taxpayer shall not apply in cases where the taxpayer shows to the satisfaction of the Commissioner that it is impractical and unrealistic to require him to compute the market price of the gross income product as of the date he sells the end product. In such exceptional cases, the taxpayer may compute the market price as of the date he transports the gross income product from the premises of the mine to the manufacturing facilities. A taxpayer shall employ this method only so long as he can demonstrate his inability reasonably to compute the market price of his gross income product as of the date he sells the manufactured product and only to the extent that these results no distortion of the allowance for depletion. Any taxpayer employing this method must consistently compute cost depletion by using as the number of units of mineral sold, the same number of units used in the determination of the gross income product transported from the premises of the mine.

(6) To the return of a taxpayer computing gross income from mining under subparagraph (4) of this paragraph, there shall be attached a statement describing the gross income product involved and the method or methods employed by the taxpayer in determining the market price of the gross income product. Such statement shall include:

- (i) If comparative prices were used—
  - (a) The prices so used, and
  - (b) Any adjustments that were made because of differences between taxpayer's gross income product and the mineral product used for comparison.
- (ii) If costs were used—
  - (a) The costs so used,
  - (b) The rate of profit applied,
  - (c) The method used in determining the rate of profit, and
  - (d) Any comparative rates of profits used and the reasons for their use.
- (iii) If any other method or combination of methods were employed, complete details and computations involved in using these methods, and
- (iv) Any additional data necessary for a complete understanding of the method or methods employed and the computations involved in determining the market price.

(c) *Definitions of terms applicable to gross income from mining.* Where used in section 613 (c) and paragraphs (b) and (c) of this section, the term—

(1) "Crude mineral product" means the mineral in the form in which it emerges from the mine.

(2) "Processed mineral product" means the mineral product which is obtained by application to the crude mineral product of one or more of the ordinary treatment processes.

(3) "Manufactured product" means the product which is obtained by application to the crude mineral product or processed mineral product of processes which are not ordinary treatment processes.

(4) "Mineral product" means the crude mineral product or processed mineral product.

(5) "Commercially marketable mineral product or products" means the mineral product or products sold by the taxpayer or used by him in his trade or business whether in the form of crude, or processed mineral product.

(6) "Mine owners or operators" refers to taxpayers who are engaged in mining as defined in subparagraph (7) of this paragraph. Where a taxpayer both engages in mining and applies to the crude mineral product or processed mineral product processes other than ordinary treatment processes, he is a "mine owner or operator" with respect to the extraction of minerals from the mine and the application to such minerals of ordinary treatment processes, but with respect to the application of other than ordinary treatment processes he is a manufacturer. Thus, the term "mine owners or operators" in the term "ordinary treatment processes normally applied by mine owners or operators" refers to the taxpayer in his capacity as an operator of a mine and not in his capacity as a manufacturer.

(7) "Mining" includes not only the extraction of ores or minerals (other than oil and gas) from the ground but also the ordinary treatment processes which are normally applied by mine owners or operators to the crude mineral product after extraction to obtain the commercially marketable mineral product or products. The term "mining" also includes so much of the transportation of ores or minerals (whether or not by common carrier) from the point of extraction from the ground to the plants or mills in which ordinary treatment processes are applied thereto as is not in excess of 50 miles, and, if the Commissioner finds that both the physical and other requirements are such that the ore or mineral must be transported a greater distance to such plants or mills, the transportation over such greater distance. (See paragraph (e) of this section for filing of application to treat transportation in excess of 50 miles as mining.)

(8) "Extraction of ores or minerals from the ground" means not only the extraction of ores or minerals from a deposit, but also the extraction by mine owners or operators of ores or minerals from waste or residue of prior mining. The preceding sentence does not apply to any such extraction of ores or minerals by the purchaser of such waste or residue or the purchaser of the rights to extract ores or minerals from such waste or residue. The term "purchaser" does not apply to any person who acquires mineral property, including such waste or residue, in a tax-free exchange, such as a corporate reorganization, from a person who was entitled to a depletion allowance upon ores or minerals produced from such waste or residue. The term "purchaser" also does not apply to a lessee, upon the renewal of a mineral lease without an intervening lapse, if the lessee was entitled to a depletion allowance upon ores or minerals produced from such waste or residue before re-

newal of the lease. It is not necessary, for purposes of the preceding sentence, that the mineral lease contain an option for renewal. The term "purchaser" does include a person who acquires such waste or residue in a taxable transaction, even though such waste or residue is acquired merely as an incidental part of the entire mineral enterprise. It is immaterial whether the waste or residue result from the process of extraction from the ground or from application of the ordinary treatment processes provided for in paragraph (d) in this section. However, extraction of ores or minerals from waste or residue which results from processes which are not allowable as ordinary treatment processes is not treated as mining. For special rules with respect to certain corporate acquisitions referred to in section 381 (a), see section 381 (c) (18) and the regulations thereunder.

(d) *Ordinary treatment processes—*  
 (1) *In general.* Section 613 (c) (2) provides as a general rule that the term "mining" includes not merely the extraction of ores or minerals from the ground but also the ordinary treatment processes normally applied by mine owners or operators to obtain the commercially marketable mineral product or products and certain mining transportation described in paragraph (c) (7) of this section. In amplification of this general rule, section 613 (c) (4) lists a number of specific ores and minerals and certain designated processes which, when applied to such specific ores and minerals, may be treated as mining. In addition, that section also lists two general classes of ores or minerals and a number of processes which when applied thereto will also be treated as mining. These general classes are: (i) Minerals (including ores) customarily sold in the form of a crude mineral product and (ii) ores which are not customarily sold in the form of the crude mineral product. In the case of these two classes, the processes prescribed are generally descriptive of the types of processes normally applied by mine owners or operators in general as part of their mining operations for the purpose of separating the mineral or ore from waste or from other mineral or ore and to put the mineral or ore in condition suitable for shipment. Accordingly, in the case of any mineral or ore not specifically designated in section 613 (c) (4) the processes which may be treated as mining will depend on its classification and the form in which it is customarily sold. If the product sold is a mineral that is customarily sold in the form of a crude mineral product, the processes described in subparagraph (2) (iii) of this paragraph may be treated as mining, and if the product sold is an ore that is not customarily sold in the form of a crude mineral product, the processes described in subparagraph (2) (iv) of this paragraph may be treated as mining. In any case, where the product sold is a mineral that is not customarily sold in the form of a crude mineral product the term "ordinary treatment processes" which may be treated as mining refers only to processes of the type which mine owners or

operators, as a class, would normally or ordinarily apply as an incident of mining, as distinguished from manufacturing. In such case, the processes incident to mining are those processes applied for the purpose of separating a mineral or ore from waste or other minerals or ores and the conditioning thereof for shipment. For example, if the taxpayer is in an industry which customarily is engaged in mining, manufacturing, and the sale of only manufactured products, such as finished clay products, the only processes applied to the crude mineral product which may be treated as mining are those described in the preceding sentence since the products sold are classified as minerals not sold in the form of a crude mineral product.

(2) *Definition of ordinary treatment processes.* Where used in section 613 (c) and paragraphs (b) and (c) of this section, the term "ordinary treatment processes" means—

(i) In the case of coal—cleaning, breaking, sizing, dust allaying, treating to prevent freezing and loading for shipment;

(ii) In the case of sulfur recovered by the Frasch process—pumping to vats, cooling, breaking and loading for shipment;

(iii) In the case of iron ore, bauxite, ball and sagger clay, rock asphalt and minerals which are customarily sold in the form of the crude mineral product—sorting, concentrating (or substantially equivalent processes or combination of processes used in the separation or extraction of the mineral or minerals from the ore) and sintering to bring to shipping grade and form and loading for shipment;

(iv) In the case of lead, zinc, copper, gold, silver or fluorspar ores, potash and ores which are not customarily sold in the form of the crude mineral product—crushing, grinding and beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic), cyanidation, leaching, crystallization, precipitation, or by substantially equivalent processes or combination of processes used in the separation or extraction of the mineral or minerals from the ore;

(v) In the case of minerals to which subdivision (iv) of this subparagraph is not applicable—

(a) Any process applied for the purpose of separating the mineral or ore from waste or from other minerals or ores, and

(b) Any process necessary to put the ore or mineral in condition for shipment.

(vi) In addition to the processes described in subdivisions (iii), (iv), and (v) of this subparagraph, depending upon in which subdivision the particular mineral or ore named in this subdivision is included—

(a) The furnacing of quicksilver,

(b) The pulverization of talc,

(c) The burning of magnesite, and

(d) The sintering and nodulizing of phosphate rock.

(3) *Nonmining processes.* Unless a process is covered by the provisions of subparagraph (2) (i) through (vi) of this paragraph, such process shall not be treated as an ordinary treatment process. Such nonmining processes in-

clude electrolytic deposition, roasting, thermal or electric smelting, and refining. In addition, any process effecting a chemical change, the blending with other material, a thermal action including drying, and fine pulverization, pressing into shape or molding, is not included in the term "ordinary treatment processes" unless such process is:

(i) Otherwise provided for in subdivisions (i) through (vi) of subparagraph (2) of this paragraph; or

(ii) Necessary or incidental to the processes provided for in subdivisions (i) through (vi) of subparagraph (2) of this paragraph; or

(iii) Necessary to bring the ores or minerals into condition or form suitable for shipment (for example, the agglomeration of concentrates).

(4) *Definition of "concentration".* For the purpose of this paragraph, the terms "concentration" and "concentrating" mean the process of eliminating waste or of separating two or more minerals.

(5) *Definition of "loading for shipment".* The term "loading for shipment" shall not include the cost of containers, bags, or any similar items. The loading for shipment of a manufactured product is not an ordinary treatment process.

(6) *Application to treat, as mining, transportation in excess of 50 miles.* If a taxpayer desires to include in the computation of his gross income from mining transportation in excess of 50 miles from the point of extraction of the minerals from the ground, he shall file an original and one copy of an application for the inclusion of such greater distance with the Commissioner of Internal Revenue, Washington 25, D. C., attention of the Special Technical Services Division, Engineering and Valuation Branch. The application must include a statement setting forth in detail such facts concerning the physical and other requirements for the construction and operation of a plant, in which ordinary treatment processes are applied, at a place nearer to the point of extraction from the ground as are sufficient to apprise the Commissioner of the exact basis of the application. If the taxpayer's return is filed prior to receipt of notice of the Commissioner's action upon the application, a copy of such application shall be attached to the return. If, after an application is approved by the Commissioner, there is a material change in any of the facts relied upon in such application, a new application must be submitted by the taxpayer.

§ 1.613-4 *Taxable income from the property.* The term "taxable income from the property (computed without allowance for depletion)" as used in section 613 and this part, means "gross income from the property" as defined in section 613 (c) and § 1.613-3, less allowable deductions (excluding any deduction for depletion) which are attributable to the mineral property with respect to which depletion is claimed. These deductions include administrative and financial overhead, operating expenses, selling expenses, depreciation, taxes, losses sustained, etc. In the case of oil and gas properties, such deductions in-

clude intangible drilling and development costs deducted under section 263 (c) and § 1.612-4. In the case of a property other than an oil or gas property, such deductions include deductions which are attributable to processes and transportation treated as mining under section 613 (c) and § 1.613-3 (d) and amounts of exploration or development expenditures which are deducted for the taxable year under sections 615 and 616. Expenditures which may be attributable to both the mineral property upon which depletion is claimed and other activities shall be fairly apportioned. Furthermore, where a taxpayer has gross income from more than one mineral property, deductions not directly attributable to a specific mineral property shall be fairly apportioned among the several properties.

§ 1.613-5 *Statement to be attached to return when depletion is claimed on percentage basis.* (a) There shall be attached to the return of every taxpayer who claims percentage depletion under section 613 and the regulations thereunder, a statement containing the following information with respect to every property for which percentage depletion is allowable:

(1) All data necessary for the determination of the "gross income from the property", as defined in § 1.613-3, including—

(i) Amounts paid as rents or royalties including amounts which the recipient treats under section 631 (c),

(ii) Proportion and amount of bonus excluded, and

(iii) Amounts paid to holders of other interests in the mineral deposit.

(2) All additional data necessary for the determination of the "taxable income from the property (computed without the allowance for depletion)", as defined in § 1.613-4.

(b) All of the foregoing information shall be furnished in a single statement, should be summarized, and shall be deemed to be a part of the income tax return to which it relates.

§ 1.614 *Statutory provisions; definition of property.*

Sec. 614. *Definition of property—(a) General rule.* For the purpose of computing the depletion allowance in the case of mines, wells, and other natural deposits, the term "property" means each separate interest owned by the taxpayer in each mineral deposit in each separate tract or parcel of land.

(b) *Special rule as to operating mineral interests—(1) Election to aggregate separate interests.* If a taxpayer owns two or more separate operating mineral interests which constitute part or all of an operating unit, he may elect (for all purposes of this subtitle):

(A) To form one aggregation of, and to treat as one property, any two or more of such interests; and

(B) To treat as a separate property each such interest which he does not elect to include within the aggregation referred to in subparagraph (A).

For purposes of the preceding sentence, separate operating mineral interests which constitute part or all of an operating unit may be aggregated whether or not they are included in a single tract or parcel of land and whether or not they are included in

contiguous tracts or parcels. A taxpayer may not elect to form more than one aggregation of operating mineral interests within any one operating unit.

(2) *Manner and scope of election.* The election provided by paragraph (1) shall be made, for each operating mineral interest in accordance with regulations prescribed by the Secretary or his delegate, not later than the time prescribed by law for filing the return (including extensions thereof) for whichever of the following taxable years is the later: The first taxable year beginning after December 31, 1953, or the first taxable year in which any expenditure for exploration, development, or operation in respect of the separate operating mineral interest is made by the taxpayer after the acquisition of such interest. Such an election shall be binding upon the taxpayer for all subsequent taxable years, except that the Secretary or his delegate may consent to a different treatment of the interest with respect to which the election has been made.

(3) *Operating mineral interests defined.* For purposes of this subsection, the term "operating mineral interest" includes only an interest in respect of which the costs of production of the mineral are required to be taken into account by the taxpayer for purposes of computing the 50 percent limitation provided for in section 613, or would be so required if the mine, well, or other natural deposit were in the production stage.

(c) *Special rule as to nonoperating mineral interests.*—(1) *Aggregation of separate interests.* If a taxpayer owns two or more separate nonoperating mineral interests in a single tract or parcel of land, or in two or more contiguous tracts or parcels of land, the Secretary or his delegate may, on showing of undue hardship, permit the taxpayer to treat (for all purposes of this subtitle) all such mineral interests as one property. If such permission is granted for any taxable year, the taxpayer shall treat such interests as one property for all subsequent taxable years unless the Secretary or his delegate consents to a different treatment.

(2) *Nonoperating mineral interests defined.* For purposes of this subsection, the term "nonoperating mineral interests" includes only interests which are not operating mineral interests within the meaning of subsection (b) (3).

§ 1.614-1 *Definition of property.*—(a) *General rule.* (1) For purposes of subtitle A of the Internal Revenue Code of 1954, in the case of mines, wells, and other natural deposits, the term "property" means each separate interest owned by the taxpayer in each mineral deposit in each separate tract or parcel of land. For the purpose of this definition, tracts or parcels of land may be separated by conveyancing as well as geographically.

(2) The term "interest" means an economic interest in a mineral deposit. See § 1.611-1 (b). The term includes working or operating interests, royalties, overriding royalties, production payments and net profits interests.

(3) The term "separate tract or parcel of land" means an area (surface or subsurface) delineated by metes and bounds, lot and block description or otherwise. A separate tract or parcel of land does not include or encompass areas which are noncontiguous. Even though areas may be contiguous, they do not constitute a "separate tract or parcel of land" where they were assigned or leased to the taxpayer either by different persons or at different times. Contiguous areas received from a single owner or coowners at the same time form

one separate tract or parcel of land although such areas constituted more than one separate tract or parcel of land in the hands of the former owner or coowners.

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

*Example (1).* A taxpayer owns one tract of land under which lie three separate and distinct seams of coal. Therefore, the taxpayer owns three separate mineral interests each of which constitutes a separate property.

*Example (2).* Before January 1, 1954, a taxpayer conducted mining operations on eight tracts of land as a single unit. He acquired his interests in each of the eight tracts separately. Even if each tract of land contains part of the same mineral deposit, the taxpayer owns eight separate operating mineral interests, each of which constitutes a separate property.

*Example (3).* A taxpayer owns a tract of land under which lies one mineral deposit. The taxpayer operates a well on part of the tract and leases to another operator the mineral rights in the remainder retaining a royalty interest therein. The taxpayer thereafter owns two separate mineral interests, each of which constitutes a separate property.

*Example (4).* In 1954, a taxpayer acquires from a single owner, in a single deed, three noncontiguous tracts of mineral land for a single consideration. Even if each tract contains part of the same mineral deposit the taxpayer owns three separate mineral interests each of which constitutes a separate property.

*Example (5).* In 1954, taxpayer A simultaneously acquires two adjacent tracts of mineral land from two separate owners. The same mineral deposit underlies both tracts. Thereafter, taxpayer A owns two separate mineral interests each of which constitutes a separate property.

*Example (6).* In 1955, taxpayer A, in example (5), simultaneously sells all the mineral land he acquired in 1954 to taxpayer B. Thereafter, taxpayer B owns one mineral interest which constitutes a separate property.

(b) *Separation of interests treated as "single property" under prior regulations.* Each separate mineral interest which in accordance with paragraph (a) of this section is a separate property shall be so treated, notwithstanding the fact that the taxpayer under § 23 (m)-1 (i) of Regulations 118 (26 CFR (1939) Part 39) and corresponding provisions of prior regulations may have treated more than one of such interests as a "single property." The basis of each such separate property must be established by a reasonable method. See, however, sections 614 (b) and (c) and §§ 1.614-2 and 1.614-3 for special rules relating to the election to aggregate separate mineral interests.

(c) *Waste or residue not separate deposit.* Waste or residue of prior mining, the extraction of ores or minerals from which is treated as mining under section 613 (c) (3), is not considered to be a separate mineral deposit but is a part of the mineral deposit from which it was extracted.

§ 1.614-2 *Election to aggregate separate operating mineral interests.*—(a) *General rule.* A taxpayer who owns two or more separate operating mineral interests, which constitute part or all of an operating unit, may elect to form one ag-

gregation of any two or more of such operating mineral interests and to treat such aggregation as one property. Any operating mineral interest which the taxpayer does not elect to be included within the aggregation shall be treated as a separate property. The aggregation of separate properties which results from exercising the election shall be considered as one property for all purposes of subtitle A of the Internal Revenue Code of 1954. Operating interests in different minerals which comprise part or all of the same operating unit may be included in the aggregation. It is not necessary for purposes of the aggregation that the separate operating mineral interests be included in a single tract or parcel of land or in contiguous tracts or parcels of land so long as such interests are included within the same operating unit. A taxpayer may not elect to form more than one aggregation of separate operating mineral interests within one operating unit. For definitions of "operating mineral interests" and "operating unit" see respectively paragraphs (b) and (c) of this section.

(b) *Operating mineral interest defined.* The term "operating mineral interest" means a separate mineral interest as described in section 614 (a), in respect of which the costs of production are required to be taken into account by the taxpayer for purposes of computing the limitation of 50 percent of the taxable income from the property in determining the deduction for percentage depletion computed under section 613, or such costs which would be so required to be taken into account if the mine, well, or other natural deposit were in the production stage. The term does not include royalty interests or similar interests, such as production payments or net profits interests. "Costs of production" for this purpose do not include intangible drilling and development costs, exploration expenditures under section 615, or development expenditures under section 616. Production taxes payable by holders of nonoperating interests are not considered costs of production for this purpose. A taxpayer may not aggregate operating mineral interests and nonoperating mineral interests such as royalty interests.

(c) *Operating unit defined.* The term "operating unit" refers to operating mineral interests operated together for the purpose of producing minerals. The presence of the following factors indicate that mineral interests are operated as a unit:

- (1) Common field or operating personnel.
- (2) Common supply and maintenance facilities.
- (3) Common processing or treatment plants.
- (4) Common storage facilities.

Operating mineral interests which are geographically widespread may not be treated as parts of the same operating unit merely because a single set of accounting records, a single executive organization, or a single sales force, is maintained by the taxpayer with respect to such interests, or merely because such minerals are all shipped to the same

manufacturing plant. The term refers to a producing unit, and not to an administrative or sales organization. Operating units may not be uniform in the natural resources industry or in a specific segment of the industry, such as the coal industry, oil and gas industry, and the like, or even in the operations of a particular taxpayer, since business reasons may dictate the formation of operating units that vary in size and content. The "operating units" for a particular taxpayer, therefore, must be determined on the basis of the factors set forth in this paragraph. An undeveloped operating mineral interest should be aggregated only with those interests with which it will be operated as a unit when it reaches the production stage. While a taxpayer may operate an operating mineral interest through an agent, a coowner may only aggregate his operating mineral interests that are actually operated as a unit. For example, if A owned and actually operated the entire working interest in Lease X and also owned an undivided fraction of Lease Y in which B owned the remaining interest and which B actually operated as a unit with Lease Z, A may not aggregate his interest in Lease X with his undivided interest in Lease Y, since they are not actually operated as a unit.

(d) *Manner and scope of election*—  
 (1) *Election—when made.* The election to treat an operating mineral interest as part of an aggregation shall be made not later than the time prescribed by law for filing the taxpayer's income tax return (including extensions thereof), for whichever of the following taxable years is the later: (i) The first taxable year beginning after December 31, 1953 and ending after August 16, 1954, or (ii) the first taxable year in which any expenditure for exploration, development, or operation in respect of the separate operating mineral interest is made by the taxpayer after the acquisition of such interest. It is immaterial whether or not any proven deposit has been discovered with respect to such interest when such expenditures have been made. However, where expenditures for exploiting one mineral deposit result in the discovery of another mineral deposit, the election with respect to such other deposit shall be made for the taxable year in which it is discovered and not for the taxable year in which the expenditures were first made which resulted in the discovery of such other deposit. If a taxpayer fails to make the required election under this section with respect to a particular operating mineral interest on or before the time prescribed for the making of such election, such interest will be treated as a separate property and cannot be included in any aggregation within the operating unit of which it is a part unless the taxpayer obtains the consent of the Commissioner. However, where no aggregation has been made within the operating unit and another operating mineral interest is subsequently acquired, it may be aggregated with one of the existing separate properties within the operating unit but not more than one of them since they cannot be validly aggregated with each other.

For purposes of this paragraph, the acquisition of an option to acquire an economic interest in minerals in place does not constitute the acquisition of a mineral interest. Thus, a taxpayer who makes expenditures for the exploration of minerals on a particular tract under an option to acquire an economic interest in minerals in place is not required to make an election with respect to such interest at that time. Furthermore, the election need not be made in the taxable year in which payments are made for the acquisition of a lease, such as the payment of a bonus, unless exploratory, development, or operation expenditures are made thereafter with respect to the property in that year.

(2) *Election—how made.* The election under this section must be made by a statement attached to the income tax return of the taxpayer for the first taxable year for which the election is made. This statement shall indicate that the taxpayer is making an aggregation of separate operating mineral interests within an operating unit and shall describe the separate operating mineral interests forming the aggregation and the operating mineral interests within the operating unit which are to be treated as separate properties apart from the aggregation. A description of the operating unit shall be made in sufficient detail to show that the aggregated operating mineral interests are properly within a single operating unit. See paragraph (c) of this section. The taxpayer shall maintain adequate records and maps in support of the above information. In the event expenditures are first made on an operating mineral interest within an operating unit after an election with respect to the aggregation of interests in that operating unit has been made, the taxpayer shall furnish only information describing such operating mineral interest, its location in the operating unit, and whether it is to be included within the aggregation.

(3) *Election—when effective.* If a taxpayer has elected to aggregate an operating mineral interest, the date on which the aggregation becomes effective is the earliest date within the taxable year affected, on which the taxpayer incurred any expenditure for exploration, development or operation of such interest. The application of this rule may be illustrated by the following examples:

*Example (1).* In 1953, a taxpayer owned and operated mineral interests Nos. 1, 2, and 3. All three interests form one operating unit. The taxpayer, who reports his income on a calendar year basis, continued to own and operate these interests during the year 1954, and in his return for that year filed on April 15, 1955, elected to aggregate these three interests. As the result of this election, the aggregation was effective for all purposes of subtitle A of the Internal Revenue Code of 1954 as of January 1, 1954.

*Example (2).* Assume that the taxpayer described in example No. (1) on March 1, 1955, acquired operating mineral interest No. 4 which was also a part of the operating unit composed of operating mineral interests Nos. 1, 2, and 3, that he made his first expenditure for exploration with respect to operating mineral interest No. 4 on September 1, 1955, and that, in his return filed on April 15, 1956, he elected to aggregate oper-

ating mineral interest No. 4 with the aggregation consisting of Nos. 1, 2, and 3. As the result of that election, operating mineral interest No. 4 became a part of the aggregation for all purposes of subtitle A of the Internal Revenue Code of 1954 on September 1, 1955.

(4) *Election—binding effect.* A valid election made under this section shall be binding upon the taxpayer for the taxable year for which made and all subsequent taxable years unless consent to make a change is obtained from the Commissioner. Thus, in such a case a taxpayer can neither include within the aggregation a separate operating mineral interest which he had previously treated apart from such aggregation, nor exclude from the aggregation a separate operating mineral interest previously included therein unless consent to do so is obtained from the Commissioner. However, since an aggregation can only include those operating mineral interests which are a part of the same operating unit, in any case in which the taxpayer's operations have changed so that an operating mineral interest included in an aggregation is no longer a part of the operating unit, the taxpayer cannot continue the aggregation but must either (i) exercise the option under subdivision (iv) of subparagraph (5) of this paragraph, or (ii) obtain consent from the Commissioner to form a new aggregation or aggregations. However, consent to change the treatment of an operating mineral interest will not be granted where the reason for such change is due to tax consequences alone. Applications for consent shall be made in writing to the Commissioner of Internal Revenue, Attention: Special Technical Services Division, Engineering and Valuation Branch, Washington 25, D. C. The application must be accompanied by a statement furnishing the information required under subparagraph (2) of this paragraph, unless such information has been previously filed and is current.

(5) *Invalid aggregations*—(i) *In general.* In addition to aggregations which are invalid because of the failure to make timely elections, aggregations may be invalid in situations which may be divided into two general categories. The first category involves basic aggregations which were initially invalid or which become invalid because the facts and circumstances of the operations of the taxpayer have changed the operating unit or units. The second category involves invalid additions to aggregations which were made with respect to operating mineral interests which became subject to the election in years subsequent to the year in which the initial aggregation or aggregations were required to be made.

(ii) *Invalid basic aggregations.* The term "invalid basic aggregations" refers to those aggregations which were initially invalid or have become invalid because of changes in the operating unit or units of the taxpayer after the initial aggregations were made. Generally, such basic aggregations will be invalid because more than one aggregation has been formed in an operating unit or because operating mineral interests in two or more operating units have been aggregated. A basic aggregation may be

invalid because both of these situations exist. During any year in which an invalid basic aggregation exists, all the operating mineral interests included in such aggregation shall be treated for all purposes as separate properties unless the taxpayer exercises the option provided for in subdivision (iv) of this subparagraph. Such basic invalid aggregations may be formed: (a) When the taxpayer made his elections for the first year for which section 614 (b) was effective, (b) in any year during which more than one operating mineral interest which is not part of any existing operating unit of the taxpayer becomes subject to the election, and (c) in any year during which the taxpayer's operating unit or units have changed. The following are examples of these three types of invalid basic aggregations:

*Example (1).* In 1953, taxpayer T owned six operating mineral interests, designated No. 1 through No. 6, and continued to own and operate such interests during 1954. He acquired no other operating mineral interest during such year. All six of these operating mineral interests form one operating unit. Since the first year in which section 614 (b) is effective is 1954, T must make his initial election to aggregate these operating mineral interests in his income tax return for that year. Assume that T elected to aggregate operating mineral interests Nos. 1 through 3 into one aggregation and Nos. 4 through 6 into another aggregation. Since T has formed two aggregations in one operating unit, they are invalid basic aggregations.

*Example (2).* Assume the same facts as in example (1) except that taxpayer X acquired these six operating mineral interests by purchase from T and commenced operations in 1958. X's initial elections under section 614 (b) would have to be made in his return for that year. If X elected to aggregate operating mineral interests Nos. 1, 2, and 3 into one aggregation and Nos. 4, 5, and 6 into another aggregation, he would have made invalid basic aggregations.

*Example (3).* Assume the same facts as in example (1) and assume, also, that, in his return for 1954, T correctly elected to aggregate all six operating mineral interests into one aggregation. Assume further, that all these operating mineral interests continued to be in one operating unit for the years 1954, 1955, and 1956 but that, because of changes in the facts and circumstances of T's operations, in 1957 operating mineral interests Nos. 1, 2, and 3 became a part of one operating unit and Nos. 4, 5, and 6 became a part of another operating unit. Because of the change in operating units of T, the basic aggregation that T made for 1954 became an invalid basic aggregation in 1957.

(iii) *Invalid additions.* The term "additions" refers to the additions that a taxpayer makes by electing to aggregate an operating mineral interest with an aggregation formed in a previous year. Such additions will be invalid either because the taxpayer elected to aggregate an operating mineral interest with an invalid basic aggregation or because he elected to aggregate an operating mineral interest which is part of one operating unit with an aggregation of operating mineral interests which is a part of another operating unit. An operating mineral interest which is invalidly added to a basic aggregation shall be treated for all purposes as a separate property (except additions to invalid basic aggregations when the taxpayer exercises the

option provided for in subdivision (iv) of this subparagraph). The following are examples of invalid additions:

*Example (1).* In 1953, taxpayer T owned six operating mineral interests designated No. 1 through No. 6 and continued to own and operate such interests during 1954. He acquired no other operating mineral interests during that year. Nos. 1 through 3 formed one operating unit and Nos. 4 through 6 formed another operating unit. In his return for 1954, T incorrectly elected to aggregate all six operating mineral interests into one aggregation. In 1955, T acquires and commences development of operating mineral interest No. 7 which is correctly a part of the operating unit of which operating mineral interests Nos. 1, 2, and 3 are a part. T elects, for the year 1955 to aggregate operating mineral interest No. 7 with the invalid basic aggregation composed of Nos. 1 through 6. Since operating mineral interest No. 7 was aggregated with an invalid basic aggregation, T's election to aggregate No. 7 is an invalid addition.

*Example (2).* In 1953, taxpayer T owned nine operating mineral interests designated No. 1 through No. 9. During 1954, he continued to own and operate such interests and acquired no other operating mineral interest. Interests No. 1 through 3 form one operating unit, Nos. 4 through 6 form another operating unit, and Nos. 7 through 9 form a third operating unit. For the year 1954, T elected to aggregate operating mineral interests Nos. 1, 2, 3, and 4 into one aggregation, to treat Nos. 5 and 6 as separate properties, and to aggregate Nos. 7, 8, and 9 into another aggregation. Assume that in 1955 T acquired and commenced development of operating mineral interest No. 10 which was a part of the operating unit composed of Nos. 1, 2, and 3. Assume further that he elected to aggregate No. 10 with the aggregation composed of Nos. 7, 8, and 9. This would be an invalid addition since operating mineral interest No. 10 was not a part of the operating unit formed by Nos. 7, 8, and 9.

*Example (3).* Assume the same facts as in example (2) except that T elected in 1955 to aggregate No. 10 with the aggregation of Nos. 1 through 4. This would also be an invalid addition because the aggregation composed of Nos. 1 through 4 is an invalid basic aggregation since operating mineral interest No. 4 is not a part of the operating unit consisting of Nos. 1, 2, and 3.

(iv) *Optional treatment of invalid aggregations.* In lieu of having all his operating mineral interests which he included in invalid basic aggregations treated as separate properties under subdivision (ii) of this subparagraph, a taxpayer is hereby given an option to have his tax liability, for the years in which such invalid basic aggregations were in effect, recomputed on the basis of forming new aggregations, within the proper operating units, consisting of all the operating mineral interests included in such invalid basic aggregations. When a taxpayer exercises this option, he must add to the revised aggregations, within their proper operating units, all operating mineral interests which became subject to the election in a subsequent year and as to which the taxpayer has made an election to aggregate with an invalid basic aggregation. This option does not apply to operating mineral interests as to which the taxpayer has made no election to aggregate. Furthermore, where any operating mineral interest which has been invalidly aggregated is properly a part of an operating unit which contains other operating mineral interests as to

which no election to aggregate has been made, such operating mineral interest must be treated as a separate property. This option does not apply to each individual invalid basic aggregation but must be exercised as to all such aggregations formed in any one year. Such option may be exercised, as to the earliest open taxable year as to which the validity of an aggregation has been questioned, and all open taxable years thereafter, at any time within which a refund can be paid or a deficiency assessed (under Chapter 66 of the Internal Revenue Code of 1954) based upon a change in the taxpayer's aggregation. This option shall be exercised by filing a statement to that effect with the return for the first year subject to the option, or with the district director with whom the returns for the years subject to the option have been filed. The exercise of such option shall have the same binding effect as if the original elections had been correctly made.

(v) *Examples of exercise of the option.* The following are examples of the application of the option described in subdivision (iv) of this subparagraph.

*Example (1).* (a) In 1953, taxpayer T owned six operating mineral interests, designated No. 1 through No. 6, and continued to own and operate such interests in the years 1954 through 1956. He had no other active operating mineral interest during these years. All six interests formed one operating unit. For the year 1954, T incorrectly elected to aggregate interests Nos. 1, 2, and 3 into one aggregation and Nos. 4, 5, and 6 into another aggregation. He computed his depletion deductions for the years 1954, 1955, and 1956 on the basis of these two aggregations. Upon audit in 1957, T's invalid basic aggregations were discovered. Since T made invalid basic aggregations for the year 1954, the depletion deductions for the years 1954, 1955, 1956, and future years must be computed on the basis of treating all six operating mineral interests as separate properties unless T exercises his option, in which event he may have his depletion allowances for 1954 and subsequent years determined on the basis of having elected for the year 1954 to aggregate all six operating mineral interests into one aggregation.

(b) Assume that in 1955, T commenced development of operating mineral interest No. 7 which was also a part of the operating unit formed by Nos. 1 through 6 and that T elected to aggregate No. 7 with either Nos. 1, 2, and 3 or Nos. 4, 5, and 6. In either event, this election would result in an invalid addition and under the rule in subdivision (iii) of this subparagraph, No. 7 must be treated as a separate property unless T exercises the option in which case operating mineral interest No. 7 must be treated as having been correctly aggregated in 1955 with an aggregation consisting of Nos. 1 through 6.

*Example (2).* (a) Assume the same facts as in example (1) (a) except that T elected for the year 1954 to form one aggregation consisting of operating mineral interests Nos. 1 and 2 and another aggregation consisting of Nos. 4 and 5. Upon audit, T's depletion deductions must be recomputed on the basis of six separate properties unless T exercises his option, in which event T's depletion allowance will be recomputed as if he had initially elected to aggregate Nos. 1, 2, 4, and 5 into one aggregation. In any event, operating mineral interests Nos. 3 and 6 will be treated as separate properties.

(b) Assume that, in 1955, T commenced development of operating mineral interest

No. 7 which was also a part of the operating unit formed by Nos. 1 through 6 and that T made no election to aggregate No. 7. Even though T exercised the option with respect to operating mineral interests Nos. 1, 2, 4, and 5, he must treat No. 7 as a separate property since he did not elect to aggregate No. 7 with any other operating mineral interest.

*Example (3).* (a) In 1953, taxpayer T owned twelve operating mineral interests, designated No. 1 through No. 12, and continued to own and operate such interests in the years 1954 through 1956. He had no other active operating mineral interests during these years. Operating mineral interests Nos. 1 through 6 formed operating unit A, Nos. 7, 8, and 9 formed operating unit B, and Nos. 10, 11, and 12 formed operating unit C. For the year 1954, T elected to aggregate interests Nos. 1, 2, 3, and 7 into one aggregation, Nos. 4, 5, 6, and 10 into another aggregation, and Nos. 11 and 12 into a third aggregation. Nos. 8 and 9 were treated as separate properties. The first two of these aggregations were invalid. Upon audit in 1957, T's two invalid basic aggregations consisting of Nos. 1, 2, 3, and 7 and Nos. 4, 5, 6, and 10 were discovered. Since T made invalid basic aggregations for the year 1954, the depletion deductions for the years 1954, 1955, and 1956, and future years must be computed on the basis of treating operating mineral interests Nos. 1, 2, 3, 4, 5, 6, 7, and 10 as separate properties unless T exercises his option, in which event he may have his depletion allowances for the year 1954 and subsequent years determined on the basis of having elected for the year 1954 to aggregate into one aggregation operating mineral interests Nos. 1 through 6 and into another aggregation Nos. 10, 11, and 12. Under this option mineral interest No. 7 would be treated as a separate property since T did not elect to aggregate two or more of the mineral interests in the operating unit of which it was a part. In any event, operating mineral interests Nos. 8 and 9 will be treated as separate properties.

(b) Assume that in 1955, T commenced development of operating mineral interests Nos. 13, 14, and 15 and that No. 13 was part of operating unit A, No. 14 was part of operating unit B, and No. 15 was part of operating unit C. Also assume that T elected to aggregate No. 13 with the invalid basic aggregation consisting of operating mineral interests Nos. 1, 2, 3, and 7; that he elected to aggregate No. 14 with the valid basic aggregation consisting of Nos. 11 and 12; and that he elected to aggregate No. 15 with No. 8. These elections would all be invalid additions. The election to aggregate No. 13 is invalid because it was aggregated with an invalid basic aggregation; the election to aggregate No. 14 is invalid because it was not a part of the operating unit C, and the election to aggregate No. 15 is invalid because it was not a part of operating unit B. Therefore, unless T exercises the option, operating mineral interests Nos. 13, 14, and 15 must be treated as separate properties. However, if T exercises the option as of the year 1955, operating mineral interest No. 13 will be treated as part of the aggregation consisting of Nos. 1 through 6, and No. 15 will be treated as part of the aggregation consisting of Nos. 10, 11, 12, and 15. Operating mineral interests Nos. 7, 8, 9, and 14 will be treated as separate properties.

*Example (4).* (a) In 1953, taxpayer T owned six operating mineral interests designated No. 1 through No. 6 and continued to own and operate such interests in the years 1954 through 1956. He had no other active operating mineral interests during these years. Nos. 1, 2, and 3 form one operating unit and Nos. 4, 5, and 6 another operating unit. For the year 1954, T incorrectly elected to aggregate all six operating mineral interests into one aggregation. Upon audit in

1957, T's invalid basic aggregation is discovered. Since T made an invalid basic aggregation for the year 1954, the depletion deductions for the years 1954, 1955, 1956, and future years must be computed on the basis of treating all six operating mineral interests as separate properties unless T exercises his option, in which event he may have his depletion allowances for the year 1954 and subsequent years determined on the basis of having elected for the year 1954 to aggregate operating mineral interests Nos. 1, 2, and 3 into one aggregation and Nos. 4, 5, and 6 into another aggregation.

(b) Assume that, in 1955, T commenced development of operating mineral interest No. 7 which was a part of the operating unit consisting of Nos. 1, 2, and 3, and that he elected in that year to aggregate it with the invalid basic aggregation consisting of operating mineral interests Nos. 1 through 6. This election resulted in an invalid addition in 1955 because operating mineral interest No. 7 was aggregated with an invalid basic aggregation. Under the rule provided in subdivision (iii) of this subparagraph, No. 7 must be treated as a separate property. However, if T exercises the option for the years 1955, 1956, and future years operating mineral interest No. 7 will be treated as part of an aggregation consisting of Nos. 1, 2, 3, and 7.

*Example (5).* (a) Assume the same facts as in example (4) (a) except that T elected to aggregate operating mineral interest Nos. 1 through 4 and to treat Nos. 5 and 6 as separate properties. Upon audit, T's deductions for depletion for the years 1954, 1955, 1956, and future years must be computed on the basis of six separate properties unless he exercises his option, in which event he may have his depletion allowances for the year 1954 and subsequent years determined on the basis of having elected for the year 1954 to aggregate operating mineral interests Nos. 1, 2, and 3. Under this option, operating mineral interest No. 4 must be treated as a separate property since T did not elect to aggregate two or more mineral interests in the operating unit of which it was a part. In any event, operating mineral interests Nos. 5 and 6 will be treated as separate properties.

(b) Assume the same facts described in example (4) (b) but that operating mineral interest No. 7 formed a part of the operating unit consisting of Nos. 4, 5, and 6, and that T elected to aggregate No. 7 with No. 6. This is a valid aggregation since the aggregation of Nos. 6 and 7 creates only one aggregation in the operating unit comprised of Nos. 4, 5, 6, and 7. Under the rule provided in subdivision (ii) of this subparagraph, operating mineral interests Nos. 1, 2, 3, 4, and 5 must be treated as separate properties and Nos. 6 and 7 must be treated as an aggregation for the years 1955, 1956, and future years. If T exercises the option, Nos. 1, 2, and 3 will form one aggregation for the years 1954, 1955, 1956, and future years. Also, under the option, Nos. 6 and 7 will be treated as an aggregation for the years 1955 and 1956. Operating mineral interests Nos. 4 and 5 must be treated as separate properties for all years, because at the time the election to aggregate No. 4 was made invalidly, there was no other interest in the same operating unit as to which an election to aggregate was made.

*Example (6).* (a) Assume the same facts as in example (5) (a) except that T also elected to aggregate No. 5 with No. 6. Upon audit T's deductions for depletion for the years 1954 and following must be computed on the basis of four separate properties consisting of mineral interests Nos. 1, 2, 3, and 4 and an aggregation consisting of Nos. 5 and 6 unless T exercises the option, in which event he may have his depletion allowances for the year 1954 and subsequent years determined on the basis of an aggregation con-

sisting of operating mineral interests Nos. 1, 2, and 3 and another aggregation consisting of Nos. 4, 5, and 6.

(b) Assume that, in 1955, T commenced exploration of operating mineral interests Nos. 7 and 8 and that No. 7 was a part of the operating unit composed of Nos. 1, 2, and 3 and that No. 8 was not a part of either that operating unit or the one consisting of Nos. 4, 5, and 6. Assume further that T elected in 1955 to aggregate operating mineral interest No. 8 with the aggregation consisting of Nos. 1, 2, 3, and 4 and that he did not elect to aggregate operating mineral interest No. 7. The election to aggregate No. 8 with operating mineral interests Nos. 1, 2, 3, and 4 resulted in an invalid addition and, therefore, under the rule provided for in subdivision (iii) of this subparagraph it must be treated as a separate property. This treatment is not changed by T's exercise of the option since operating mineral interest No. 8 is not part of either the operating unit consisting of Nos. 1, 2, 3, and 7 or the one consisting of Nos. 4, 5, and 6. Operating mineral interest No. 7 must be treated as a separate property since T made no election to aggregate it.

*Example (7).* (a) Assume the same facts as in example (4) (a) except that T elected to aggregate operating mineral interests Nos. 3 and 4 and to treat operating mineral interests Nos. 1, 2, 5, and 6 as separate properties. Upon audit, T must compute his deductions for depletion for 1954 and subsequent years on the basis of six separate properties. The option does not afford T any different treatment since the initial elections did not include two or more properties in the same operating unit.

(b) Assume that T, in 1955 commenced exploration of mineral interest No. 7 which is part of the operating unit consisting of operating mineral interests Nos. 1, 2, and 3 and that he elects to aggregate No. 7 with Nos. 3 and 4. This is an invalid addition and, therefore, under the rule provided in subdivision (iii) of this subparagraph operating mineral interest No. 7 must be treated as a separate property. The option does not afford T any different treatment since no new basic aggregations may be formed by its exercise.

*Example (8).* (a) Assume the same facts as in example (4) (a) except that T, elected to aggregate operating mineral interest No. 1 with No. 2, No. 3 with No. 4, and No. 5 with No. 6. Upon audit, T's deductions for depletion must be computed for 1954 and subsequent years on the basis of an aggregation consisting of Nos. 1 and 2, another aggregation consisting of Nos. 5 and 6 and treating Nos. 3 and 4 as separate properties unless he exercises his option, in which event he may have his depletion allowances for the year 1954 and subsequent years determined on the basis of two aggregations, one consisting of operating mineral interests Nos. 1, 2, and 3 and another consisting of Nos. 4, 5, and 6.

(b) Assume that T in 1955 commenced development of operating mineral interest No. 7 which is part of the operating unit consisting of operating mineral interests Nos. 1, 2, and 3 and that he elects to aggregate No. 7 with Nos. 3 and 4. This is an invalid addition and, therefore, under the rule provided in subdivision (iii) of this paragraph it must be treated as a separate property. However, if T exercises the option, operating mineral interest No. 7 will be treated as part of an aggregation consisting of Nos. 1, 2, 3, and 7.

*Example (9).* In 1953 taxpayer T owned twelve operating mineral interests, designated No. 1 through No. 12 and continued to own and operate such interests in the years 1954 through 1956. He had no other active operating mineral interests during these years. Operating mineral interests Nos. 1 through 4 form operating unit A.

Nos. 5 through 8 form operating unit B, and Nos. 9 through 12 form operating unit C. For the year 1954, T elected to form the following aggregations: (a) Nos. 1 and 2, (b) Nos. 3, 9, and 10, (c) Nos. 4 and 11, (d) Nos. 5 and 6, and (e) Nos. 7 and 8. He treated operating mineral interest No. 12 as a separate property. All of these aggregations are invalid except aggregation (a) consisting of operating mineral interests Nos. 1 and 2. However, T computed his depletion deductions for the years 1954, 1955, and 1956 on the basis of these five aggregations. Upon audit in 1957 T's invalid aggregations were discovered. Since T made invalid basic aggregations for the year 1954, the depletion deductions for the years 1954, 1955, 1956, and subsequent years must be computed on the basis of treating operating mineral interests Nos. 3 through 12 as separate properties and Nos. 1 and 2 as a valid aggregation unless taxpayer T exercises his option, in which event he may have his depletion allowances for the year 1954 and subsequent years determined on the basis of having elected for the year 1954 to form the following aggregations: (a) Nos. 1 through 4, (b) Nos. 5 through 8, and (c) Nos. 9 through 11. Operating mineral interest No. 12 will be treated as a separate property in any event.

#### § 1.614-3 Special rules as to aggregating nonoperating mineral interests—

(a) *General rule.* A taxpayer who owns two or more separate nonoperating mineral interests, as that term is defined in paragraph (b) of this section, in a single tract or parcel of land, or in two or more contiguous tracts or parcels of land, may aggregate such interests and treat them as one property providing he obtains the consent of the Commissioner. Consent will be granted only if the taxpayer establishes that he will endure an undue hardship if such nonoperating mineral interests are not treated as one property. For example, such hardship may exist if it is impossible for the taxpayer to determine the boundaries, source, or costs of his acquisition of separate interests, or if a taxpayer who owns a single royalty, production payment, or net profits interest cannot determine the separate deposits from which his payments will be derived. In no event shall undue hardship be deemed to exist solely by reason of tax disadvantage. The treatment of such interests as one property shall be applicable for all purposes of subtitle A of the Internal Revenue Code of 1954. The taxpayer must include in the aggregation all such interests in such tracts or parcels of land. In no event may such interests in tracts or parcels of land which are not contiguous be treated as one property. The term "two or more contiguous tracts or parcels of land" means tracts or parcels of land which have common boundaries. Common boundaries include survey lines, public roads, or similar easements for the use of land without the existence of an intervening mineral right between the tracts or parcels of land. Tracts or parcels of land which touch only at a common corner are not contiguous.

(b) *Definition of nonoperating mineral interests.* For purposes of this section "nonoperating mineral interests" includes only those interests as described in section 614 (a), which are not operating mineral interests within the meaning of § 1.614-2 (a) (2).

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(c) *Manner and scope of election—*(1) *Time for filing application for consent as to returns filed prior to publication of regulations.* In the case of an income tax return for any taxable year beginning after December 31, 1953 and ending after August 16, 1954, which has been filed prior to the publication of these regulations in the FEDERAL REGISTER, the application to aggregate separate nonoperating mineral interests must be filed with the Commissioner on or before the 90th day after such publication. If prior to the publication of these regulations an application has been filed, the taxpayer need file only a supplemental application containing such additional information as is necessary to comply with the requirements of subparagraph (3) of this paragraph.

(2) *Time for filing application for consent as to returns to be filed after publication of regulations.* In the case of income tax returns other than those described in subparagraph (1) of this paragraph, the application to treat separate nonoperating mineral interests within a single tract or parcel of land or within contiguous tracts or parcels of land shall be filed with the Commissioner either within 90 days after the beginning of the taxable year for which this treatment is desired, or 90 days after the acquisition of one of such nonoperating mineral interests, whichever is later.

(3) *Contents of application and returns under consent.* The application for consent to aggregate nonoperating mineral interests described in subparagraphs (1) and (2) of this paragraph shall include a complete statement of the facts upon which the taxpayer relies to show the undue hardship which would result if such an aggregation were not permitted. Such application shall also include a description of the nonoperating mineral interests within the tract or tracts involved. If the Commissioner grants consent under this section, a copy of the letter granting such consent shall be attached to the return for the first taxable year for which such consent applies, except in the case where the taxpayer has, pursuant to this section, already filed his income tax return for that year. Upon electing to aggregate separate nonoperating mineral interests the taxpayer shall be bound by such election unless he obtains consent of the Commissioner to apply a different treatment. Such consent to a different treatment shall not be granted solely by reason of tax disadvantages resulting from the use of the method of aggregation.

§ 1.614-4 Rules applicable to basis, holding period and abandonment losses where mineral interests have been aggregated—(a) *Basis of property resulting from aggregation—*(1) *General rule.* When a taxpayer has aggregated as one property two or more interests under section 614 (b) or (c), the unadjusted basis of such aggregated property shall be the sum of the unadjusted bases of the various mineral interests aggregated. The adjusted basis of the aggregated property on the date of aggregation shall be the unadjusted basis of the aggregated

property, adjusted by the total of all adjustments to the bases of the several mineral interests aggregated as required by section 1016 to the date of aggregation. However, for determining gain or loss on the sale or exchange of any part of the aggregated property the adjusted basis of the aggregated property (from which the adjusted basis of the part is determined) shall not be reduced below zero.

(2) *Basis upon disposition of part of an aggregated property.* When a taxpayer has aggregated two or more separate mineral interests as one property, under section 614 (b) or (c), and thereafter sells, exchanges, or otherwise disposes of part of such property, the total adjusted basis of the property as of the date of sale, exchange, or other disposition must be apportioned to determine the adjusted basis of the part disposed of and the part retained for purposes of computing gain or loss, depletion, and for all other purposes of subtitle A of the Internal Revenue Code of 1954. Such adjusted basis shall be determined by apportioning the total adjusted basis of the property between the part of the property disposed of and the part retained in the same proportion as the fair market value of each part (as of the date of sale, exchange, or other disposition) bears to the total fair market value of the property as of such date. This rule also applies to cases in which a taxpayer after aggregating secures the consent of the Commissioner to treat such interests in a different manner.

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

*Example (1).* A taxpayer owning three operating mineral interests, A, B, and C, within a single operating unit, properly elects to aggregate such properties for the year 1954 in his income tax return filed on April 15, 1955. The unadjusted bases and adjustments under section 1016 for depletion through December 31, 1953, in respect of such properties are as follows:

	Unadjusted basis	Adjustments under 1016
A.....	25,000	27,000
B.....	18,000	10,000
C.....	15,000	4,000
Total.....	58,000	41,000

The taxpayer has created an aggregated property for income tax purposes by virtue of the aggregation. The adjusted basis of this aggregated property as of the beginning of the taxable year, January 1, 1954, is \$17,000 (\$58,000 less \$41,000).

*Example (2).* Assume the same facts in example (1), except that a portion of the aggregated property is sold on June 1, 1956, for \$15,000. In order to determine the gain or loss from this sale as well as the basis of the retained property an apportionment must be made. The aggregated property had a fair market value of \$25,900 on the date of sale. From January 1, 1954, through May 31, 1956, \$10,000 of depletion has been allowed with respect to the aggregated property. In order to determine the adjusted basis of the portion sold, taxpayer will make the following apportionment:

he sold a portion of the aggregated property for \$20,000, and that, as of January 1, 1956, the aggregated property at the time of sale had a fair market value of \$34,000. The basis of the portion sold would be computed as follows:

$$\frac{\$20,000 \text{ (FMV of portion sold)}}{\$24,000 \text{ (FMV of aggregated property)}} \times \$18,000 \text{ (basis for gain)}$$

$$= \$15,000 \text{ (basis of interest sold)}$$

Taxpayer's gain would then be computed as follows:

$$\begin{aligned} & \$20,000 \text{ amount received for portion sold,} \\ & \text{less: } \$15,000 \text{ basis of interest sold,} \\ & \hline & \$5,000 \text{ gain on portion sold.} \end{aligned}$$

**Example (3).** Assume the same facts as in example (2), except that a portion of the aggregated property was sold for \$5,000 and that the fair market value of the aggregated property at the time of sale was \$10,000. The basis of the portion sold would be computed as follows:

$$\frac{\$5,000 \text{ (FMV of portion sold)}}{\$10,000 \text{ (FMV of aggregated property)}} \times \$12,000 \text{ (basis for loss)} = \$6,000 \text{ (basis of interest sold)}$$

Taxpayer's loss then would be computed as follows:

$$\begin{aligned} & \$6,000 \text{ amount received for portion sold,} \\ & \text{less: } \$6,000 \text{ basis of portion sold,} \\ & \hline & (\$1,000) \text{ loss on portion sold.} \end{aligned}$$

**(5) Aggregated mineral interests with transferred basis.** (i) Where a transferee, donee or grantee acquires mineral interests which have been aggregated by the transferor, donor or grantor, and where the bases of such mineral interests in the hands of such transferee, donee or grantee are determined in whole or in part with reference to the basis of the aggregated property in the hands of the transferor, donor or grantor, such transferee, donee or grantee (except a trust where the grantor is treated as the owner under section 671) is not bound by any election made by his transferor, donor or grantor. Such transferee, donee or grantee has a separate election under section 614 (b) relating to operating mineral interests, or may make a separate application for consent to aggregate under section 614 (c) relating to non-operating mineral interests.

(ii) A transferee, donee or grantee described in subdivision (i) of this subparagraph (excluding a trust where the grantor is treated as the owner under section 671) shall apportion the trans-

feror's, donor's or grantor's basis among the mineral interests acquired in proportion to the relative fair market values at the date of such transfer.

**(b) Holding period of aggregated properties.** Where a taxpayer sells either a part or all of an aggregated property which includes part or all of an operating mineral interest which the taxpayer has held for six months or less the sales price and basis attributable to the interest sold must be apportioned in proportion to the relative fair market values as of the date of sale to determine the amount of income represented by the sale of property held for less than six months. The application of this rule may be illustrated by the following example:

**Example.** Taxpayer A owns operating mineral interests X, Y and Z. He acquired X and Y in 1953 but purchased and made development expenditures on Z on December 1, 1954. In his return for the year 1954, taxpayer A elects to aggregate X, Y and Z since they form one operating unit. On May 1, 1955, A sells the north half of the aggregated property which includes portions of X, Y and Z. The sales price of the north half was \$80,000; the adjusted basis of the aggregated property at the date of sale was \$20,000; and the fair market value of the aggregated property at the date of sale was \$100,000. The basis applicable to the north half is computed as follows:

$$\frac{\$15,000 \text{ (adjusted basis of aggregated property)} \times \$25,000}{\$4,200 \text{ (adjusted basis of portion sold)}}$$

Where mineral interests acquired before March 1, 1913, are included in an aggregation under section 614 (b) or (c), the aggregated property has two bases, one for the determination of gain and another for the determination of loss upon the disposition of the whole or a part of the aggregated property. The basis of the aggregated property for the determination of gain shall be the sum of (a) the cost or other basis at the date of aggregation of those mineral interests acquired on or after March 1, 1913, plus (b) the greater of the cost of the interests acquired before March 1, 1913 (adjusted for the period before March 1, 1913), and the fair market value of such interests as of March 1, 1913, and such sum shall be adjusted as provided in section 1016 to the date of aggregation. The basis of the aggregated property for the determination of loss shall be the sum of (a) the cost of the mineral interests acquired before March 1, 1913, adjusted to the date of aggregation plus the adjusted basis of the mineral interests acquired on or after March 1, 1913. This subparagraph may be illustrated by the following examples:

**Example (f).** At the close of 1953 a taxpayer owned two operating mineral interests in the same operating unit. Operating mineral interest A was acquired by the taxpayer before March 1, 1913, and, as of December 31, 1953, its basis with reference to its fair market value on March 1, 1913, was \$13,000 and its basis with reference to its cost was \$7,000. The basis of operating mineral interest B, acquired after March 1, 1913, was \$10,000 as of December 31, 1953. Assume that the taxpayer elected for the year 1954 to aggregate operating mineral interests A and B. The basis of the aggregated property as of January 1, 1954, for the purpose of determining gain would be \$23,000 and for determining loss would be \$17,000.

**Example (g).** Assume the same facts as in example (f) and further assume that during the years 1954 and 1955, taxpayer was allowed \$5,000 of depletion on the aggregated property, that on January 1, 1956,

Therefore, the gain on this sale (\$15,000-\$4,200) of the portion sold is \$10,800. The basis of the property retained is \$2,800 (\$7,000-\$4,200).

**Example (3).** Assume the same facts as in example (2), except that instead of selling, the taxpayer subleased a portion of the aggregated property retaining a one-eighth royalty and receiving a bonus of \$5,000. The basis of the royalty retained by the taxpayer will be computed as if the portion subleased had been sold. Thus, the basis of the royalty is \$4,200. This basis will be used for the purpose of computing cost depletion on the \$5,000 bonus in accordance with § 1.612-3.

**Example (4).** Taxpayer owned and operated during 1953, mineral interests Nos. 1, 2, and 3. He owned no other operating interests during that year. The adjusted bases of these properties on January 1, 1954, were respectively \$5,000, \$10,000, and \$15,000. The taxpayer operated these properties during the year 1954 and in addition, operated mineral interest No. 4 which he acquired on July 1, 1954, on which date he made the first exploration expenditure with respect thereto. He paid \$30,000 for No. 4. In his return for the calendar year 1954, filed on April 15, 1955, taxpayer elected to aggregate all of these mineral interests which formed an operating unit. Taxpayer must compute cost depletion for the calendar year 1954 on the basis of an aggregated property with an adjusted basis of \$30,000 for the period from January 1 to June 30, and with a basis of \$50,000 (less depletion for the first six months) for the period from July 1 to December 31. If applicable, the taxpayer must compute percentage depletion on the basis of gross income and taxable income from the aggregated property for the whole year, including the gross income from operating mineral interest No. 4 for the period from July 1 to December 31. If a portion of the aggregated property is sold during the first six months, its basis must be determined at the time of sale with an adjustment for depletion to the date of sale. If percentage depletion is applicable, it must be allocated on an equitable basis to determine the adjustment for depletion to the date of sale.

**(4) Basis for gain and loss where mineral interests acquired before March 1, 1913, are included in an aggregation.**

$$\frac{\$80,000 \text{ (FMV of portion sold)}}{\$100,000 \text{ (FMV of aggregated property)}} \times \$20,000 \text{ (basis of aggregated property)} = \$16,000 \text{ (basis of portion sold)}$$

The total gain on the sale is \$64,000 (\$80,000 less \$16,000). The gain attributable to the sale of the portion held for less than six months is computed as follows (assuming that the fair market value of the portion of Z included in the sale was \$30,000):

$$\frac{\$30,000 \text{ (FMV of portion of Z sold)}}{\$80,000 \text{ (FMV of north half)}} \times \$16,000 \text{ (basis of north half)} = \$6,000 \text{ basis of portion of Z sold}$$

The gain on portion of Z sold is \$24,000 (\$30,000 minus \$6,000).

(c) *Abandonment and casualty losses.* In the case of mineral interests which are aggregated as one property, no losses resulting from abandonment are allowable until the aggregated property is abandoned or disposed of in its entirety. Casualty losses are allowable in accordance with the rules applicable to casualty losses in general. For rules applicable to losses in general, see section 165 and the regulations thereunder.

#### § 1.615 Statutory provisions; exploration expenditures.

Sec. 615. *Exploration expenditures*—(a) *In general.* In the case of expenditures paid or incurred during the taxable year for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral, and paid or incurred before the beginning of the development stage of the mine or deposit, there shall be allowed as a deduction in computing taxable income so much of such expenditure as does not exceed \$100,000. This section shall apply only with respect to the amount of such expenditures which, but for this section, would not be allowable as a deduction for the taxable year. This section shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in section 167, but allowances for depreciation shall be considered, for purposes of this section, as expenditures paid or incurred. In no case shall this section apply with respect to amounts paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of oil or gas.

(b) *Election of taxpayer.* If the taxpayer elects, in accordance with regulations prescribed by the Secretary or his delegate, to treat as deferred expenses any portion of the amount deductible for the taxable year under subsection (a), such portion shall not be deductible in the manner provided in subsection (a) but shall be deductible on a ratable basis as the units of produced ores or minerals discovered or explored by reason of such expenditures are sold. An election made under this subsection for any taxable year shall be binding for such year.

(c) *Limitation.* This section shall not apply to any amount paid or incurred in any taxable year if in any 4 preceding years a deduction or election under this section, or the corresponding provision of prior laws, has been allowed to, or exercised by—

- (1) The taxpayer, or
- (2) The individual or corporation who has transferred to the taxpayer any mineral property.

Paragraph (2) shall apply only if (A) the taxpayer was required to take into account under section 23 (F) (3) of the Internal Revenue Code of 1939 the deduction allowed to or election exercised by such individual or corporation; (B) the taxpayer would be entitled under section 381 (c) (10) to deduct expenses deferred under this section had the distributor or transferor corporation elected to defer such expenses; or (C) the taxpayer acquired any mineral property under circumstances which make section

334 (b), 362 (a) and (b), 373 (a), 373 (b) (1), 723, 732, 1051, or 1082 apply to such transfer.

(d) *Adjusted basis of mine or deposit.* The amount of expenditures which are treated under subsection (b) as deferred expenses shall be taken into account in computing the adjusted basis of the mine or deposit, but such amounts, and the adjustments to basis provided in section 1016 (a) (10) shall be disregarded in determining the adjusted basis of the property for the purpose of computing a deduction for depletion under section 611.

§ 1.615-1 *Discovery or exploration expenditures*—(a) *General rule.* Section 615 prescribes rules for the treatment of expenditures for ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (other than oil or gas) paid or incurred by the taxpayer before the beginning of the development stage. Such expenditures hereafter in the regulations under section 615 will be referred to as exploration expenditures. Under section 615 (a), a taxpayer may, at his option, deduct exploration expenditures paid or incurred in an amount not to exceed \$100,000 for any taxable year. Under section 615 (b) and § 1.615-2 he may elect to defer any part of such amount and deduct such part on a ratable basis as the minerals benefited by such expenditures are sold. In any taxable year in which the taxpayer does not treat exploration expenditures under either of these methods, they will be charged to depletable capital account. The option to deduct under section 615 (a), and the election to defer under section 615 (b), may be exercised in only four taxable years as provided in § 1.615-4.

(b) *Expenditures to which section 615 is not applicable.* (1) Section 615 is not applicable to expenditures which would be allowed as a deduction without regard to such section.

(2) Section 615 is not applicable to expenditures which are reflected in improvements subject to allowances for depreciation under sections 167 and 611. However, allowances for depreciation of such improvements which are used in the exploration of ores or minerals are considered exploration expenditures under section 615. If such improvements are used only in part for exploration during a taxable year an allocable portion of the allowance for depreciation shall be treated as an exploration expenditure.

(3) Expenditures paid or incurred by a taxpayer in consideration for the grant of an interest in the minerals or ores are not exploration expenditures but are a part of the cost of such interest and shall be recovered through depletion

allowances. For example, taxpayer A owns mineral leases on unexplored mineral lands and agrees to convey an undivided one-fourth (1/4) interest in such leases to taxpayer B provided B will pay all of the exploration expenditures for ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral which will be incurred before the beginning of the development stage. B may not deduct such amount under section 615, but shall treat such amount as part of the cost of his interest, recoverable through depletion.

(4) The provisions of section 615 do not apply to costs of exploration which are reflected in the amount which the taxpayer paid or incurred to acquire the property. Such provisions apply only to costs paid or incurred by the taxpayer for exploration undertaken directly or through contract by the taxpayer. See, however, sections 381 (a) and 381 (c) (10) for special rules with respect to deferred exploration expenditures in certain corporate acquisitions.

(c) *Rules for determining exploration expenditures.* (1) Exploration expenditures referred to in paragraph (a) of this section are those which are made before the existence of ores or minerals in commercially marketable quantities has been disclosed and before the development stage has begun. The time at which the development stage begins is a question of fact to be determined by the taxpayer's activity.

(2) Whether an expenditure is an exploration expenditure or a development expenditure will be determined with reference to the particular deposit with respect to which it is made. For example, a taxpayer who has developed ores in commercially marketable quantities on deposit X and then makes expenditures for the purpose of disclosing the extent of the ore or mineral in that same deposit has incurred development expenditures. However, where the taxpayer has begun the development stage with respect to deposit X and from the same shaft drives a crosscut for the purpose of discovering another mineral deposit, the expenditures therefor are exploration expenditures.

#### § 1.615-2 Deduction of exploration expenditures in the year paid or incurred—

(a) *General.* (1) Subject to the total limitation of \$100,000, a taxpayer who has made exploration expenditures with respect to more than one deposit or mine, may deduct any portion of the expenditures attributable to each such mine or deposit. With respect to a particular deposit or mine the taxpayer may deduct a portion of the exploration expenditures under section 615 (a) and may defer and deduct the balance of such expenditures under section 615 (b). He must charge to capital account any amount in excess of \$100,000 in any taxable year and he must charge to capital account whatever amount has not been deducted currently or deferred. For example, taxpayer A has three mineral deposits, X, Y, and Z. In the taxable year 1957 A pays exploration expenditures of \$75,000 on each deposit. The total allowable deduction for exploration expenditures is \$100,000. A deducts \$50,-

000 and defers \$25,000 with respect to deposit X. He deducts \$25,000, and charges to capital account \$50,000 with respect to deposit Y, and charges to capital account the entire \$75,000 paid with respect to deposit Z. Thus, A has deducted or deferred \$100,000 and capitalized the excess.

(b) *Manner and effect of claiming deduction under section 615 (a).* (1) A taxpayer claiming a deduction under section 615 (a) shall indicate clearly on his income tax return the amount of the deduction claimed under such section with respect to each mine or deposit. Such mine or deposit shall be identified by an adequate description. The taxpayer cannot change his deduction under section 615 (a) after the due date (including extensions thereof) for filing his income tax return.

§ 1.615-3 *Election to defer exploration expenditures*—(a) *General rule.* A taxpayer may defer any portion of the exploration expenditures made with respect to each mine or deposit, subject to the limitations of time and amount described in section 615 (c) and § 1.615-4. The amounts so deferred shall be deducted ratably as the units of the ores or minerals discovered or explored by reason of such expenditures are sold. For purposes of this section, the time that such minerals or ores are sold shall be determined by the application of the rules used for determining "gross income from mining" for purposes of computing percentage depletion. See § 1.613-3 (b) for such rules.

(b) *Effect and manner of making election.* (1) The election to defer exploration expenditures shall apply only to expenditures for the taxable year for which made. However, once made, the election shall be binding with respect to the expenditures for that taxable year. Thus, a taxpayer cannot revoke his election for any reason whatsoever.

(2) The election shall be made for each mine or deposit by a clear indication on the return, or by a statement filed with the district director with whom the return was filed, not later than the time prescribed by law for filing such return (including extensions thereof) for the taxable year to which such election is applicable.

(c) *Expenditures made by the owner who retains a non-operating mineral interest.* (1) A taxpayer who elects to defer exploration expenditures and thereafter transfers his interest in the mine or deposit, retaining an economic interest therein, shall deduct an amount attributable to such interest on a pro rata basis as the interest pays out. For example, a taxpayer who defers exploration expenditures and then leases his deposit, retaining a royalty interest therein, shall deduct the deferred expenditures ratably as he receives royalties. If the taxpayer receives a bonus or advanced royalties in connection with the transfer of his interest, he shall deduct deferred expenditures allocable to such bonus or advanced royalties in an amount which is in the same proportion to the total of such costs as the bonus or advanced royalties bears to the bonus and total royalties expected to be re-

ceived. Also, in the case of a transfer of a mine or deposit by a taxpayer who retains a production payment therein, he shall deduct the exploration expenditures ratably over the payments expected to be received.

(2) Where a taxpayer receives an amount, in addition to retaining an economic interest, which amount is treated as from the sale or exchange of a capital asset or property treated under section 1231 (except coal to which section 631 (c) applies) the deferred exploration expenditures shall be allocated between the interest sold and the interest retained in proportion to the fair market values of each interest as of the date of sale. The amount allocated to the interest sold may not be deducted, but shall be a part of the basis of such interest.

(d) *Losses from abandonment.* In the case of an abandonment of the "property," as defined in section 614, upon which the deposit involved is located, the amount of deferred expenditures not yet deducted at such time may be allowed as a deduction under section 165, relating to losses.

(e) *Computation of amount of deduction.* The amount of the deduction allowable during the taxable year is an amount A, which bears the same ratio to B (the total deferred exploration expenditures for a particular mine or deposit reduced by the amount of such expenditures deducted in prior taxable years) as C (the number of units of the ore or mineral benefited by such expenditures sold during the taxable year) bears to D (the number of units of ore or mineral benefited by such expenditures remaining as of the taxable year). For the purposes of this proportion, the "number of units of ore or mineral benefited by such expenditure remaining as of the taxable year" is the number of units of ore or mineral benefited by the deferred exploration expenditures remaining at the end of the year to be recovered from the mine or deposit (including units benefited by such expenditures recovered but not sold) plus the number of units benefited by such expenditures sold within the taxable year. The principles outlined in § 1.611-2 are applicable in estimating the number of units remaining as of the taxable year and the number of units sold during the taxable year. The estimate is subject to revision in accordance with that section in the event it is ascertained as the result of operations or development that the remaining units are materially greater or less than the number of units remaining from a prior estimate.

§ 1.615-4 *Limitation of amount deductible*—(a) *General.* In any taxable year a taxpayer may deduct or defer exploration expenditures, to which section 615 is applicable, in an amount not in excess of \$100,000. The application of section 615 is limited to any four taxable years (including taxable years of less than 12 months). Such four taxable years need not be consecutive. In determining whether a taxpayer has made use of a taxable year, a year in which he makes an election to defer exploration expenditures shall count as one

year. Any subsequent taxable year in which such deferred expenditures are deducted shall not be considered as a year used.

(b) *Transferee of mineral property.*

(1) The taxpayer shall take into account for purposes of the 4-year limitation any year in which an individual or corporation, who has transferred any mineral property to him, has deducted or deferred exploration expenditures under section 615, or section 23 (ff) of the Internal Revenue Code of 1939, provided any of the following subdivisions of this subparagraph are applicable.

(i) The taxpayer under section 23 (ff) of the Internal Revenue Code of 1939 was required to take into account a taxable year in which his transferor was allowed the deduction or exercised the election to defer.

(ii) The taxpayer would be entitled under section 381 (c) (10) to deduct exploration expenditures if the transferor (or distributor) corporation had elected to defer such expenditures. For example, if the taxpayer acquired any mineral property in a transaction described in section 381 (a) (relating to the acquisition of assets through certain corporate liquidations and reorganizations) the years in which the transferor exercised the election to defer or deduct exploration expenditures shall count as a year towards computing the taxpayer's 4-year limitation. For a further limitation see section 381 (c) (10).

(iii) The taxpayer acquired any mineral property under circumstances which make applicable the following sections of the Internal Revenue Code:

(a) Section 334 (b), relating to the liquidation of a subsidiary where the basis of the property in the hands of the distributee is the same as it would be in the hands of the transferor.

(b) Sections 362 (a) and (b), relating to property acquired by a corporation as paid-in surplus or as a contribution to capital, or in connection with a transaction to which section 351 applies.

(c) Section 372 (a), relating to reorganization in certain receiverships and bankruptcy proceedings.

(d) Section 373 (b) (1), relating to property of a railroad corporation acquired in certain bankruptcy or receivership proceedings.

(e) Section 723, relating to property contributed to a partnership by a partner.

(f) Section 732, relating to the distribution of partnership property to a partner.

(g) Section 1051, relating to property acquired by a corporation that is a member of an affiliated group.

(h) Section 1082, relating to property acquired pursuant to a Securities Exchange Commission order.

(2) For purposes of subparagraph (1) of this paragraph it is immaterial whether or not a deduction has been allowed or an election has been made by the transferor with respect to the specific mineral property transferred.

(3) Where a mineral property is acquired under any circumstance except those described in subparagraph (1) of this paragraph, the taxpayer is not required to take into account the election

exercised by or deduction allowed to his transferor.

(4) The application of the provisions of paragraph (b) of this section may be illustrated by the following examples:

*Example (1).* Assume that a taxpayer who has never claimed the benefits of section 615 received in 1956 a mineral deposit from X corporation upon a distribution in complete liquidation of the latter under conditions which would make the provisions of section 334 (b) applicable in determining the basis of the property in the hands of the taxpayer, and that during the year 1955 X corporation expended \$60,000 for exploration expenditures which X corporation elected to treat as deferred expenses. On the basis of these facts the taxpayer may deduct or defer for any three (not necessarily consecutive) subsequent taxable years exploration expenditures made in those years not to exceed \$100,000 in any year.

*Example (2).* Assume the same facts stated in example (1) except that, prior to acquisition by the taxpayer of the deposit from corporation X in 1956, corporation X had acquired the deposit in 1954 in a similar distribution from Y Corporation which, in the years 1952 and 1953, deducted exploration costs paid in respect of an entirely different deposit in the amounts of \$30,000 and \$50,000 respectively. Under these circumstances, the taxpayer may deduct or defer exploration expenditures paid or incurred for only one taxable year in an amount not in excess of \$100,000.

*Example (3).* In 1957 A and B transfer assets to a corporation under circumstances making section 351 applicable to such a transfer. Among the assets transferred by A is a mineral lease with respect to certain coal lands. A has deducted exploration expenditures under section 615 for the years 1954 and 1956 made with respect to open deposits not included in the transfer to the corporation. The corporation shall be charged with the two years previously used by A and shall have only two years in which to treat exploration expenditures under section 615.

*Example (4).* In 1956, A, B, and C form a partnership for the purpose of exploring for, developing, and producing uranium. A contributes to the partnership a uranium lease. A has individually made exploration expenditures with respect to other mineral properties not contributed to the partnership and which he has deducted under section 615 (a) for the years 1954 and 1955. B contributes a uranium lease to the partnership on which he made exploration expenditures in 1955 which he elected to defer under section 615 (b). The partnership under these circumstances will be allowed only one year in which to treat exploration expenditures under section 615.

**§ 1.615-5 Time for making election with respect to returns due prior to ninety days after adoption of regulations.** In the case of any taxable year beginning after December 31, 1953 and ending after August 16, 1954, the income tax return for which is due before the ninetieth day after the regulations adopted under section 615 are published in the FEDERAL REGISTER, the time for exercising any option or making any election under section 615 shall expire on the ninetieth day after such publication.

**§ 1.616 Statutory provisions; development expenditures.**

**Sec. 616. Development expenditures—(a) In general.** Except as provided in subsection (b), there shall be allowed as a deduction in computing taxable income all expenditures paid or incurred during the taxable year for the development of a mine or other natural

deposit (other than an oil or gas well) if paid or incurred after the existence of ores or minerals in commercially marketable quantities has been disclosed. This section shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in section 167, but allowances for depreciation shall be considered, for purposes of this section, as expenditures.

**(b) Election of taxpayer.** At the election of the taxpayer, made in accordance with regulations prescribed by the Secretary or his delegate, expenditures described in subsection (a) paid or incurred during the taxable year shall be treated as deferred expenses and shall be deductible on a ratable basis as the units of produced ores or minerals benefited by such expenditures are sold. In the case of such expenditures paid or incurred during the development stage of the mine or deposit, the election shall apply only with respect to the excess of such expenditures during the taxable year over the net receipts during the taxable year from the ores or minerals produced from such mine or deposit. The election under this subsection, if made, must be for the total amount of such expenditures, or the total amount of such excess, as the case may be, with respect to the mine or deposit, and shall be binding for such taxable year.

**(c) Adjusted basis of mine or deposit.** The amount of expenditures which are treated under subsection (b) as deferred expenses shall be taken into account in computing the adjusted basis of the mine or deposit, except that such amount, and the adjustments to basis provided in section 1016 (e) (9), shall be disregarded in determining the adjusted basis of the property for the purpose of computing a deduction for depletion under section 611.

**§ 1.616-1 Development expenditures—**

**(a) General rule.** Section 616 prescribes rules for treating expenditures paid or incurred by the taxpayer for the development of a mine or other natural deposit (other than an oil or gas well). Such expenditures hereafter in this section and § 1.616-2 will be referred to as development expenditures. Development expenditures under section 616 are those which are made after the existence of ores in commercially marketable quantities has been disclosed and the development operations have begun. Under section 616 (a), a taxpayer is allowed a deduction for development expenditures whether or not such expenditures are made in the development or production stage of the mine or deposit. Under section 616 (b), the taxpayer may elect to defer development expenditures made in the development or producing stage and to deduct such expenditures ratably as the minerals or ores benefited are sold. While the mine or deposit is in the development stage the election applies only to that portion of the development expenditures which is in excess of net receipts from the mine or deposit. See § 1.616-2 for rules with respect to the election to defer. It is not necessary that the taxpayer incur the development costs directly. He may engage a contractor to make the expenditures on his behalf.

**(b) Expenditures to which section 616 is not applicable.** (1) Section 616 is not applicable to development expenditures which are deductible for the taxable year under any other provision of the internal revenue laws.

(2) Section 616 is not applicable to expenditures which are reflected in improvements subject to allowances for depreciation under sections 167 and 611. However, allowances for depreciation of such improvements which are used in the development of ores or minerals are considered development expenditures under section 616. If such improvements are used only in part for development during a taxable year an allocable portion of the allowance for depreciation shall be treated as a development expenditure.

(3) Expenditures paid or incurred by a taxpayer in consideration for a grant of an interest in the minerals or ores are not development expenditures but are a part of the cost of such interest and shall be recovered through depletion allowances. For example, taxpayer A owns mineral leases on undeveloped mineral lands. A agrees to convey an undivided one-fourth (1/4) interest in such leases to B, provided B will pay all of the development expenditures with respect to the deposits on these leases. B may not deduct such amount under section 616, but shall treat such amount as part of the cost of his interest, recoverable through depletion.

(4) The provisions of section 616 do not apply to costs of development which are reflected in the amount which the taxpayer paid or incurred to acquire the property. Such provisions apply only to costs paid or incurred by the taxpayer for development undertaken directly or through contract by the taxpayer. See, however, sections 381 (a) and 381 (c) (10) for special rules with respect to deferred development expenditures in certain corporate acquisitions.

**(c) Mine or deposit.** Section 616 has reference to expenditures made for the development of a mine or other natural deposit, whichever is the smaller unit. Within an aggregated property, as that term is defined in section 614 (b), or within a single tract or parcel of land, there may be more than one mine or deposit. Where a mine contains more than one natural deposit, the taxpayer may deduct the development expenditures under section 616 (a) made with respect to one of such deposits, and may defer under section 616 (b) the development expenditures made with respect to another of such deposits. Where there is more than one mine opening into a single deposit, the taxpayer may deduct the development expenditures under section 616 (a) made with respect to one of such mines, and may defer under section 616 (b) the development expenditures made with respect to another of such mines. The taxpayer must treat consistently all development expenditures with respect to each such mine or deposit in a taxable year. The taxpayer must make a separate determination of the units of minerals or ores benefited in a mine or deposit (regardless of the computation of the depletion allowance) in order that deferred expenditures with respect to such mine or deposit may be deducted on a ratable basis. See § 1.616-2 (h).

**§ 1.616-2 Election to defer—(a) General rule.** In lieu of taking a deduction under section 616 (a), in the taxable

year when the development expenditures are paid or incurred, a taxpayer may elect under section 616 (b) to treat such expenditures with respect to each mine or deposit as deferred expenses to be deducted ratably as the units of the produced ore or minerals benefited by such expenditures are sold. Section 616 (b) is applicable to expenditures paid or incurred both in the development and producing stage of the mine or deposit. However, in the case of expenditures made in the development stage, this election is applicable only to the excess of the amount of expenditures over the net receipts from the ore or minerals from such mine or deposit received or accrued during the development stage and in the same taxable year as the expenditures were paid or incurred. Such development expenditures not in excess of such net receipts shall be treated under section 616 (a).

(b) *Producing stage; definition of.* The mine or deposit will be considered to be in a producing stage when the major portion of the mineral production is obtained from workings other than those opened for the purpose of development, or when the principal activity of the mine is the production of developed ores or minerals rather than the development of additional ores or minerals for mining.

(c) *"Net receipts"; definition of.* The term "net receipts" means the amount of the sales price attributable to the crude ore or mineral, excluding from such sales price, the costs of transporting the ores or minerals from the mine and the costs of further processing, manufacturing, or marketing.

(d) *Determination of time of sale.* Section 616 (b) provides that the deferred expenditures shall be deducted on a pro rata basis as the ore or minerals benefited by such expenditures are sold. The time that minerals are sold shall be determined by the application of the rules used to determine "gross income from mining" from such ores or minerals for purposes of section 613. See § 1.613-3 (b).

(e) *Expenditures made by the owner who retains a nonoperating interest.* (1) A taxpayer who elects to defer development expenditures and thereafter transfers his interest in the mine or deposit, retaining an economic interest therein, shall deduct an amount attributable to such interest on a pro rata basis as the interest pays out. For example, a taxpayer who defers development expenditures and then leases his deposit, retaining a royalty interest therein, shall deduct the deferred expenditures ratably as he receives royalties. If the taxpayer receives a bonus or advanced royalties in connection with the transfer of his interest, he shall deduct deferred expenditures allocable to such bonus or advanced royalties in an amount which is in the same proportion to the total of such costs as the bonus or advanced royalties bears to the bonus and total royalties expected to be received. Also, in the case of a transfer of a mine or deposit by a taxpayer who retains a production payment therein, he may deduct the development expenditures ratably

over the payments expected to be received.

(2) Where a taxpayer receives an amount, in addition to retaining an economic interest, which amount is treated as from the sale or exchange of a capital asset or property treated under section 1231 (except coal to which section 631 (c) applies) the deferred development expenditures shall be allocated between the interest sold and the interest retained in proportion to the fair market value of each interest as of the date of sale. The amount allocated to the interest sold may not be deducted, but shall be a part of the basis of such interest.

(f) *Losses from abandonment.* In the case of an abandonment of the "property," as defined in section 614, upon which the deposit involved is located, the amount of deferred expenditures not yet deducted at such time may be allowed as a deduction under section 165, relating to losses.

(g) *Effect of election.* (1) The election to defer development expenditures shall apply only to expenditures for the taxable year for which made. However, once made, the election shall be binding with respect to the expenditures for that taxable year. Thus, a taxpayer cannot revoke his election for any reason whatsoever.

(2) The election shall be made for each mine or deposit by a clear indication on the return or by a statement filed with the district director with whom the return was filed, not later than the time prescribed by law for filing such return (including extensions thereof) for the taxable year to which such election is applicable.

(h) *Computation of amount of deductions.* The amount of the deduction allowable during the taxable year is an amount A, which bears the same ratio to B (the total deferred development expenditures for a particular mine or deposit reduced by the amount of such expenditures deducted in prior taxable years) as C (the number of units of the ore or mineral benefited by such expenditures sold during the taxable year) bears to D (the number of units of ore or mineral benefited by such expenditures remaining as of the taxable year). For the purposes of this proportion, the "number of units of ore or mineral benefited by such expenditure remaining as of the taxable year" is the number of units of ore or mineral benefited by the deferred development expenditures remaining at the end of the year to be recovered from the mine or deposit (including units benefited by such expenditures recovered but not sold) plus the number of units benefited by such expenditures sold within the taxable year. The principles outlined in § 1.611-2 are applicable in estimating the number of units remaining as of the taxable year and the number of units sold during the taxable year. The estimate is subject to revision in accordance with that section in the event it is ascertained as the result of operations or development that the remaining units are materially greater or less than the number of units remaining from a prior estimate.

§ 1.616-3 *Time for making election with respect to returns due prior to ninety days after adoption of regulations.* In the case of any taxable year beginning after December 31, 1953 and ending after August 16, 1954, the income tax return for which is due before the ninetieth day after the regulations adopted under section 616 are published in the FEDERAL REGISTER, the time for making any election under section 616 shall expire on the ninetieth day after such publication.

§ 1.621 *Statutory provisions: payments to encourage exploration, development, and mining for defense purposes.*

Sec. 621. *Payments to encourage exploration, development, and mining for defense purposes.* There shall not be included in gross income any amount paid to a taxpayer by the United States (or any agency or instrumentality thereof), whether by grant or loan, and whether or not repayable, for the encouragement of exploration, development, or mining of critical and strategic minerals or metals pursuant to or in connection with any undertaking approved by the United States (or any of its agencies or instrumentalities) and for which an accounting is made or required to be made to an appropriate governmental agency, or any forgiveness or discharge of any part of such amount. Any expenditures (other than expenditures made after the repayment of such grant or loan) attributable to such grant or loan shall not be deductible by the taxpayer as an expense nor increase the basis of the taxpayer's property either for determining gain or loss on sale, exchange, or other disposition or for computing depletion or depreciation, but on the repayment of any portion of any such grant or loan which has been expended in accordance with the terms thereof such deductions and such increase in basis shall to the extent of such repayment be allowed as if made at the time of such repayment.

§ 1.621-1 *Payments to encourage exploration, development, and mining for defense purposes—(a) General rule.*

(1) Under section 621, a taxpayer shall exclude from gross income amounts which are paid to him:

(i) By the United States or by an agency or instrumentality of the United States,

(ii) As a grant, gift, bounty, bonus, premium, incentive, subsidy, loan, or advance,

(iii) For the encouragement or exploration for, or development or mining of, a critical and strategic mineral or metal,

(iv) Pursuant to or in connection with an undertaking by the taxpayer to explore for, or develop or produce, such mineral or metal and to expend or use any amounts so received for the purpose and in accordance with the terms and conditions upon which such amounts are paid, which undertaking has been approved by the United States or by an agency or instrumentality of the United States, and

(v) For which the taxpayer has accounted, or is required to account, to an appropriate agency of the United States Government for the expenditure or use thereof for the purpose and in accordance with the terms and conditions upon which such amounts are paid.

In order for section 621 to apply, such amount must qualify under each of the foregoing subdivisions. Under section 621, there shall also be excluded from gross income any income attributable to the forgiveness or discharge of any indebtedness arising from amounts to which such section applies.

(2) Section 621 is applicable whether or not the payee is obligated to repay to the United States any portion or all of the amount so received. However, such section is not applicable to any loan or advance for the repayment of which the borrower's liability is unconditional and legally enforceable.

(3) Except as provided in paragraph (d) of this section any expenditure attributable to an amount received by a taxpayer to which section 621 applies shall not be deductible by the taxpayer as an expense under subtitle A of the Internal Revenue Code of 1954, nor shall any such expenditure increase the basis of the taxpayer's property either for determining gain or loss on sale, exchange, or other disposition, or for computing depletion or depreciation (including amortization under section 168).

(b) *Allowance as part of purchase price.* (1) Section 621 is not applicable to any part of the purchase price of a critical and strategic mineral or metal which amount is received, whether before, on, or after delivery from the United States or any agency or instrumentality thereof, and irrespective of whether such purchase price is below, at, or above the currently prevailing market price.

(2) However, a payment of a separate and specific amount for the encouragement of exploration for, or development or mining of, a critical and strategic mineral or metal shall not be considered to be a part of the purchase price of such mineral or metal merely because such payment is added to, or included with, the payment of such purchase price.

(c) *Payments for expenditures previously deducted or capitalized.* (1) Where amounts described in section 621 and this section are paid to a taxpayer in reimbursement for expenditures previously allowed as a deduction, the taxpayer shall include in gross income that portion of such amounts which is equivalent to the deduction for such expenditures allowed to the taxpayer and which deduction resulted in a reduction for any taxable year of the taxpayer's taxes under subtitle A of the Internal Revenue Code of 1954 (other than chapter 2, relating to tax on self-employment income), or prior income, war-profits, or excess-profits tax laws.

(2) Where amounts described in section 621 and this section are paid to the taxpayer in reimbursement for expenditures which have been deferred under sections 615 and 616 (relating to exploration and development expenditures) the taxpayer shall include in gross income that portion of such amounts which is equivalent to any deduction for such expenditures allowed to the taxpayer and which deduction resulted in a reduction for any taxable year of the taxpayer's taxes under subtitle A of the Internal Revenue Code of 1954 (other

than chapter 2, relating to tax on self-employment income), or prior income, war-profits, or excess-profits tax laws. The portion of such amounts, equivalent to expenditures which are reflected in the adjusted basis of the assets to which charged, shall be excluded from gross income, and such adjusted basis shall be decreased by the amount of such exclusion.

(3) Where amounts described in section 621 and this section are paid to the taxpayer in reimbursement for expenditures which have been charged to capital account (either to a depletable or depreciable account), there shall be included in the taxpayer's gross income that portion of such amounts which is equivalent to such capital expenditures that have been recovered through cost depletion or depreciation deductions and which deductions have resulted in a reduction of the taxpayer's taxes for any taxable year under subtitle A of the Internal Revenue Code of 1954 (other than chapter 2, relating to tax on self-employment income), or prior income, war-profits, or excess-profits tax laws. The portion of such amounts which is equivalent to the expenditures which are reflected in the adjusted basis of the asset to which charged shall be excluded from gross income. The adjusted basis of such assets shall be reduced by the amount of such exclusion from gross income.

(4) Where amounts described in section 621 and this section are paid to the taxpayer in reimbursement for expenditures which have been charged to a depletable capital account, such amounts shall be excluded to the extent such expenditures are recovered through depletion deductions computed under section 613 (relating to percentage depletion).

(5) The amount of reimbursed expenditures charged to an account (depletable or depreciable) and recovered through depletion or depreciation deductions for any taxable year shall be that proportion of the total deductions allowed with respect to such account that such reimbursed expenditures bear to the total amount in the account. For example, in 1956 A incurs exploration expenditures of \$12,000 which he charges to a depletable capital account. This brings the total amount in this account to \$36,000 which is the adjusted basis of the property on January 1, 1957. In 1957, A is allowed a deduction for cost depletion of \$9,000 which resulted in a reduction of A's income taxes. One-third of this deduction is attributable to the \$12,000 of exploration expenditures since they were a third of the total in the capital account on January 1, 1957. Therefore, on January 1, 1958, these exploration expenditures make up \$9,000 of the remaining \$27,000 in the account. If on January 1, 1958, A receives \$12,000, which qualifies under section 621, in reimbursement for these exploration expenditures, he must report \$3,000 as income and reduce the capital account by \$9,000.

(d) *Definition.* As used in section 621 and this section, the term "critical and strategic minerals or metals" means minerals and metals which are con-

sidered by those departments, agencies, and instrumentalities of the United States charged with the encouragement of exploration for, and development and mining of, critical and strategic minerals and metals, to constitute critical and strategic minerals and metals for defense purposes. See, for example, section 7 of Order-1 of the Defense Minerals Exploration Administration, as amended March 23, 1954, 19 F. R. 1563.

(e) *Repayments of amounts excluded under section 621.* Upon the repayment by the taxpayer of any portion of any amount to which section 621 applies and which portion has been expended for the purpose and in accordance with the terms and conditions upon which it was paid to the taxpayer, any expenditures attributable to such amount made by the taxpayer shall be treated as if such expenditures had been made at the time of such repayment. Such expenditures shall to the extent of the repayment be expensed or capitalized, as the case may be, in the order in which they were actually made or in such other manner as may be adopted by the taxpayer with the approval of the Commissioner.

[F. R. Doc. 56-8928; Filed, Nov. 2, 1956; 8:49 a. m.]

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[7 CFR Parts 908, 918]

[Docket No. AO-243-A3, AO-219-A7]

#### MILK IN CENTRAL ARKANSAS AND MEMPHIS, TENNESSEE, MARKETING AREAS

#### NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENTS AND TO ORDERS, AS AMENDED

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.) and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of the recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to proposals to amend the tentative marketing agreements and the orders, as amended, regulating the handling of milk in the Central Arkansas and Memphis, Tennessee, marketing areas. Interested persons may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D. C., not later than the close of business the tenth day after publication of this decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

*Preliminary statement.* The hearing, on the record of which the proposed amendments to the tentative marketing agreements and to the orders, as amended, were formulated, was conducted at Memphis, Tennessee, on September 5, 1956 (21 F. R. 6489). The material issues of record related to:

1. Whether the proponent should be granted an out-of-area Class I price on all milk disposed of in the Memphis, Tennessee, marketing area (Federal Order No. 18) when the proponent's milk plant is regulated pursuant to Order No. 8 (Central Arkansas).

2. Whether, as an alternative to Issue No. 1, a provision should be adopted to regulate the proponent's milk plant under Order No. 18 (Memphis) so long as at least 40 percent of the total Class I sales distributed from such plant in both the Memphis and Central Arkansas marketing areas, are distributed in the Memphis marketing area.

**Findings and conclusions.** The following findings and conclusions on the material issues, are based on the evidence introduced at the hearing, and the record thereof:

1. An out-of-area price on all Class I milk disposed of in the Memphis, Tennessee, marketing area should not be adopted.

In this connection, it should be noted that the proposal discussed under this issue is in support of proposal No. 3 in the notice of hearing. Proposals 1 and 2 in the notice of hearing were not supported with testimony at the hearing.

A handler regulated under Order No. 8 (Central Arkansas) since June 1956, requested a special price on Class I milk disposed of in the Memphis, Tennessee, marketing area. The purpose of the special price would be to permit the proponent's plant to receive milk for distribution for fluid purposes at prices which it considers to be competitive with prices paid for milk by handlers regulated under Order No. 18 (Memphis) in the distribution of Class I milk in the Memphis area.

The proponent's plant was regulated under Order No. 18 (Memphis) from June 1954 to June 1956. During this time, the order entitled the plant to a location differential of 28 cents per hundredweight on all producer milk. The effect of certain other order provisions limited the application of this location differential to that portion of the proponent's milk distributed in the Memphis marketing area, and in certain areas outside the Memphis and Central Arkansas marketing areas. The plant is located approximately 150 miles from the Memphis area. The location differential is designed to afford all plants regulated under the Memphis order the opportunity to reduce the costs of moving milk to the Memphis market by an amount equivalent to existing transportation costs, thereby making uniform the prices to be paid at plants primarily associated with and regulated under the Memphis order. A decrease of approximately three percent in this handler's Class I sales in the Memphis area resulted in his becoming subject to Order No. 8 (Central Arkansas). This was in accordance with a provision in each order that determines which order regulates producer prices at this plant. The determination is based on the relative volume of Class I sales over the most recent six-month period. As a result of this provision, the Memphis Class I location differential has been no longer available to proponent's plant.

The purpose of this proposal is to restore his opportunity to deduct location differentials for Memphis delivered milk, despite the change in relative volumes of sales between the Memphis and Central Arkansas marketing areas.

The proponent testified that although Federal orders must be uniformly applied to all who are regulated by them, his situation is unique, and entitles him to special provision. But, in the Central Arkansas market his position is essentially the same as that of other handlers. There are other handlers regulated under Order No. 8 (Central Arkansas) who distribute as much as 45 percent of their Class I sales outside the marketing area, and who compete with the proponent for Class I sales as far as, and including a portion of, the Memphis marketing area.

The Central Arkansas area has had to import substantial quantities of other source milk in order to meet the demand for Class I milk in the Central Arkansas area. The proponent competes for producer milk with other Central Arkansas handlers. Any special price for a portion of his out-of-area sales would be a serious infraction of uniform pricing, which is the basic principle of Federal milk orders.

Under existing deficit production conditions the entire Central Arkansas market would be affected by a special price for Class I sales outside the marketing area, whether by the proponent or by any handler regulated under Order No. 8. Producer returns would tend to be forced downward by the amount of the special price. The minimum price level presently established by regulation would be reduced, possibly requiring subsequent action to restore or increase the former price level. This would result in a Class I price in the Central Arkansas area higher than necessary to provide for an adequate, dependable supply of producer milk.

Even if production conditions were such that supplies of producer milk were more than ample for fluid requirements, plus a necessary reserve, a special out-of-area price for Class I sales would not be justified. Instead, there would be grounds for lower prices, but lower prices on all Class I milk whether inside or outside the marketing area.

2. An alternative proposal by the proponent, i. e., that the order should be amended to provide that a handler selling Class I milk under both Orders No. 8 (Central Arkansas) and No. 18 (Memphis) shall be regulated under Order No. 18 so long as at least 40 percent of his Class I sales in the two marketing areas are within the Memphis, Tennessee, marketing area, should not be adopted.

The proponent maintains that since he was in a competitive position in both markets when he was under the Memphis order, he should continue under that order so long as a substantial portion of his Class I business is in that area. He argues that a slight change in his relative sales in the two areas should not be allowed to change this competitive position, because it disturbs not only his business, but also the price stability of both markets.

In justifying the proposal, the proponent testified that in developing Class I sales in the Memphis and Central Arkansas marketing areas, his firm relied on its ability to purchase milk on a competitive basis with handlers in both areas.

This proposal, if adopted, would allow the proponent to qualify as a regulated handler under the Memphis order, even though a larger volume of Class I sales may be distributed under another Federal order. As a handler regulated by the Memphis order, he would be entitled to the location differential provided for in that order on all Class I sales. On such sales inside the Central Arkansas marketing area, the proponent would pay into that pool the difference between the Memphis Class I price at the location of his plant, and the prevailing Central Arkansas Class I price. On the remainder of his Class I sales sold in competition with handlers regulated under the Central Arkansas order, the proponent would enjoy a lower producer price than they.

Obviously, it would be more advantageous to this handler to operate under the Memphis order than under the Central Arkansas order. However, there is no justification for determining the applicability of a Federal order to a handler who qualifies under more than one on any basis other than that of determining the market in which the largest volume of his Class I sales is distributed.

It is concluded that the method now provided for in both orders is the most equitable manner of determining the applicability of a Federal order for all handlers. The order should not be amended in this respect at this time.

**Rulings on proposed findings and conclusions.** A number of briefs were filed which contained statement of fact, proposed findings and conclusions and arguments with respect to the provisions of the proposed amendments. Every point covered in the briefs was carefully considered along with the evidence in the record in making the findings and reaching the conclusions hereinbefore set forth. To the extent that the findings and conclusions proposed in the briefs are inconsistent with the findings and conclusions contained herein, the request to make such findings or to reach such conclusions is denied on the basis of the facts found and stated in connection with the conclusions in the recommended decision.

Issued at Washington, D. C., this 31st day of October 1956.

[SEAL] ROY W. LENNARTSON,  
Deputy Administrator.

[F. R. Doc. 56-8943; Filed, Nov. 2, 1956; 8:52 a. m.]

## ATOMIC ENERGY COMMISSION

[ 10 CFR Part 9 ]

PUBLIC RECORDS

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that adoption of the following rules is contemplated. All interested persons who desire to sub-

mit written comments and suggestions for consideration in connection with the proposed rules should send them to the United States Atomic Energy Commission, 1901 Constitution Avenue NW., Washington 25, D. C., Attention: Director, Division of Civilian Application, within 15 days after publication of this in the FEDERAL REGISTER.

## Sec.

- 9.1 Scope.  
9.2 Definitions.  
9.3 Inclusion.  
9.4 Exceptions.  
9.5 Location.  
9.6 Copies.  
9.7 Production or disclosure.

**AUTHORITY:** §§ 9.1 to 9.7 issued under sec. 161, 68 Stat. 948; 42 U. S. C. 2201.

**§ 9.1 Scope.** This part prescribes the rules governing the Atomic Energy Commission's public records which relate to any proceeding subject to Part 2 and Part 25 of this chapter.

**§ 9.2 Definitions.** As used in this part:

(a) "Public records" means those documents in the custody of the AEC which are available for public inspection.

(b) "Filings" means:

(1) Applications or other documents seeking Commission action, notices, orders, motions, answers, replies, objections, stipulations, exceptions, proofs of service, briefs, transcripts of hearings, exhibits received in evidence, decisions, licenses, permits, rules, and regulations.

(2) Exhibits, attachments and appendices to, amendments and corrections of, supplements to, and transmittals and withdrawals of any of the foregoing.

(c) "Government agency" means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration or other establishment in the executive branch of the Government.

(d) "Commission" means the commission of five members or a quorum thereof sitting as a body, as provided by section 21 of the Atomic Energy Act of 1954.

(e) "AEC" means the agency established by the Atomic Energy Act of 1954, comprising the members of the Com-

mission and all officers, employees, and representatives authorized to act in the case or matter whether clothed with final authority or not.

(f) "AEC personnel" means employee, consultants, and members of advisory boards of the AEC.

**§ 9.3 Inclusions.** Except as excluded by § 2.403 of this chapter, the following matters are included in the public records:

(a) All filings in proceedings.

(b) All correspondence or portions of correspondence to and from AEC regarding the issuance, amendment, transfer, renewal, modification, suspension, or revocation of a license or permit or regarding a rule-making proceeding subject to Part 2 of this Title.

(c) All correspondence or portions of correspondence to and from AEC as to the interpretation or applicability of any statute, rule, regulation, order, license, or permit; and letters of opinion as to such matters signed by the General Counsel.

(d) All filings in court proceedings to which the AEC is a party and all correspondence with the courts or clerks of court.

**§ 9.4 Exceptions.** The following are not included in the public records:

(a) Documents withheld in accordance with the provisions of § 2.790 (b) and (c) of this chapter.

(b) Documents relating to personnel matters and medical and other personal information, which, under general governmental personnel practices, are not normally made public.

(c) Intra-agency and inter-agency communications, including memoranda, reports, correspondence, and staff papers prepared by members of the Commission, AEC personnel, or by any other Government agency for use within the AEC or within the executive branch of the Government.

(d) Transcript or other records of Commission meetings except those Commission meetings which constitute public hearings.

(e) Correspondence between the AEC and any foreign government.

(f) Records and reports of investigations.

(g) Documents classified as Restricted Data under the Atomic Energy Act of 1954 or classified under Executive Order No. 10501, except that documents classi-

fied as Restricted Data which would otherwise be public records defined in § 9.3 and not excepted by this subpart will be made available in accordance with Part 25 of this chapter or will be made available to members of Congress upon authorization by the Commission.

(h) Correspondence received in confidence by the AEC relating to an alleged or possible violation of any statute, rule, regulation, order, license or permit.

(i) Correspondence with members of Congress or congressional committees, unless and until such correspondence is released by the member of Congress or congressional committee concerned.

(j) Any other document involving matters of internal agency management.

**§ 9.5 Location.** Public records normally will be made available for inspection in the Public Document Room located at 1717 H Street NW., Washington, D. C.

**§ 9.6 Copies.** Copies of public records, not available elsewhere, will be made available upon request and payment of any charges for reproduction.

**§ 9.7 Production or disclosure.** (a) AEC personnel shall not produce or disclose the contents of any material that falls within the scope of § 9.4 except as provided in paragraph (b) of this section.

(b) AEC personnel served with the subpoena requiring the production or disclosure of any material that falls within the scope of § 9.4 shall appear in response thereto and shall respectfully decline to produce or disclose the material called for, basing refusal upon this rule: *Provided, however,* That the Commission or the General Manager may authorize the production or disclosure of any material that falls within the scope of § 9.4 if it is deemed that such disclosure is not contrary to the public interest. Any person who is served with such a subpoena shall promptly advise the AEC thereof and of any relevant facts and the Commission or the General Manager will give such instructions as it is deemed advisable.

Dated at Washington, D. C., this 31st day of October 1956.

For the Atomic Energy Commission.

R. W. Cook,  
Acting General Manager.

[F. R. Doc. 56-8948; Filed, Nov. 1, 1956; 12:34 p. m.]

## NOTICES

### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

MARTIN LIVESTOCK SALES, MARTIN, SOUTH DAKOTA, ET AL.

#### POSTING OF STOCKYARDS

The Secretary of Agriculture has information that the livestock markets

No. 215—7

named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U. S. C. 202), and should be made subject to the provisions of the act.

Martin Livestock Sales, Martin, S. Dak.  
Sig-Faircloth and Son Livestock Commission Company, Breckenridge, Tex.

Sig Faircloth Livestock Commission, Eastland, Tex.

Mineral Wells Livestock Auction, Mineral Wells, Tex.

Therefore, notice is hereby given that the Secretary of Agriculture proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U. S. C. 181 et seq.), as is provided in section 302 of that act. Any interested

person who desires to do so may submit within 15 days of the publication of this notice, any data, views or arguments, in writing, on the proposed rule to the Director, Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D. C.

Done at Washington, D. C., this 31st day of October 1956.

[SEAL] H. E. REED,  
Director, Livestock Division,  
Agricultural Marketing Service.

[P. R. Doc. 56-8907; Filed, Nov. 2, 1956;  
8:45 a. m.]

### Commodity Stabilization Service

#### UPLAND COTTON MARKETING QUOTA

##### NOTICE OF REFERENDUM FOR 1957 CROP

The Secretary of Agriculture has duly proclaimed, pursuant to the provisions of the Agricultural Adjustment Act of 1938, as amended, a national marketing quota for the crop of upland cotton produced in 1957.

A referendum of the farmers who were engaged in the production of upland cotton in the calendar year 1956 will be held on December 11, 1956, pursuant to the provisions of the act and the Regulations Governing the Holding of Referenda on Marketing Quotas (21 F. R. 3960), as amended, to determine whether such farmers are in favor of or opposed to the 1957 quota. If two-thirds or more of the cotton farmers voting in the upland cotton referendum favor the quota, such quota will be in effect for the 1957 upland cotton crop. If more than one-third of the cotton farmers voting in such referendum oppose the quota, the quota will not be in effect for the 1957 upland cotton crop; however, farm acreage allotments established for such crop pursuant to the Agricultural Adjustment Act of 1938, as amended, will remain in effect and compliance with such acreage allotments will be a condition of eligibility of producers for price support under the Agricultural Act of 1949, as amended.

Notice of the proposed holding of a referendum for the 1957 crop of upland cotton was published in the FEDERAL REGISTER of July 7, 1956 (21 F. R. 5063) pursuant to section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U. S. C. 1003) and the data, views and recommendations which were submitted in response to such notice have been duly considered. In order that arrangements for holding the referendum may be made in an orderly manner and as much advance notice as possible be given of the date of the referendum it is essential that this notice be made effective as soon as possible. Accordingly, it is hereby determined and found that compliance with the 30-day effective date requirement of section 4 of the Administrative Procedure Act is impracticable and contrary to the public interest and this notice shall be effective upon filing of this document with the Director, Division of the Federal Register.

Issued at Washington, D. C., this 30th day of October 1956.

[SEAL] E. L. PETERSON,  
Acting Secretary of Agriculture.

[P. R. Doc. 56-8948; Filed, Nov. 2, 1956;  
8:53 a. m.]

#### EXTRA LONG STAPLE COTTON MARKETING QUOTA

##### NOTICE OF REFERENDUM FOR 1957 CROP

The Secretary of Agriculture has duly proclaimed, pursuant to the provisions of the Agricultural Adjustment Act of 1938, as amended, a national marketing quota for the crop of extra long staple cotton produced in 1957.

A referendum of the farmers who were engaged in the production of extra long staple cotton in the calendar year 1956 will be held on December 11, 1956, pursuant to the provisions of the act and the Regulations Governing the Holding of Referenda on Marketing Quotas (21 F. R. 3960), as amended, to determine whether such farmers are in favor of or opposed to the 1957 quota. If two-thirds or more of the cotton farmers voting in the extra long staple cotton referendum favor the quota, such quota will be in effect for the 1957 extra long staple cotton crop. If more than one-third of the cotton farmers voting in such referendum oppose the quota, the quota will not be in effect for the 1957 extra long staple cotton crop; however, farm acreage allotments established for such crop pursuant to the Agricultural Adjustment Act of 1938, as amended, will remain in effect and compliance with such acreage allotments will be a condition of eligibility of producers for price support under the Agricultural Act of 1949, as amended.

Notice of the proposed holding of a referendum for the 1957 crop of extra long staple cotton was published in the FEDERAL REGISTER of September 6, 1956 (21 F. R. 6716) pursuant to section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U. S. C. 1003) and the data, views and recommendations which were submitted in response to such notice have been duly considered. In order that arrangements for holding the referendum may be made in an orderly manner and as much advance notice as possible be given of the date of the referendum it is essential that this notice be made effective as soon as possible. Accordingly, it is hereby determined and found that compliance with the 30-day effective date requirement of section 4 of the Administrative Procedure Act is impracticable and contrary to the public interest and this notice shall be effective upon filing of this document with the Director, Division of the Federal Register.

Issued at Washington, D. C., this 30th day of October 1956.

[SEAL] E. L. PETERSON,  
Acting Secretary of Agriculture.

[P. R. Doc. 56-8947; Filed, Nov. 2, 1956;  
8:53 a. m.]

## DEPARTMENT OF COMMERCE

### Bureau of Foreign Commerce

#### HANS WOLFF EXPORT-IMPORT

##### ORDER MODIFYING DENIAL ORDER BY VACATING SO MUCH THEREOF AS APPLIES TO HANS WOLFF

In the matter of: Hans Wolff, doing business as Hans Wolff Export-Import, Nussbaumallee 33 W., Berlin-Charlottenburg 9, Federal Republic of Germany; respondent.

An order having heretofore been made on June 25, 1956, (21 F. R. 4936), temporarily revoking export licenses and denying export privileges of Richard Fleschner and Hans Wolff, both of the Federal Republic of Germany; and

Hans Wolff having applied for a modification of said order to the effect that the same shall be vacated as to him; and

Said application having been referred to the Compliance Commissioner, who has considered the same, together with additional supporting evidence and arguments submitted by respondent Wolff, and has filed his recommendation herein; it is now, after consideration of the entire record of said application and the recommendation of the Compliance Commissioner,

*It is ordered*, That the application of Hans Wolff be, and the same hereby is, granted, but without prejudice to such action as may be taken following consideration of the charges of violation presently pending against him; and

*It is further ordered*, That said order of June 25, 1956, be, and the same hereby is, amended by deleting therefrom the name Hans Wolff and all references therein to him except to the extent that paragraphs (2), (3) and (5) of the said order shall continue to apply to respondent Wolff insofar as he may be a person brought within the scope of said order as a person related to respondent Fleschner by the provisions of said paragraphs and, except as so modified, said order shall be and continue to remain in full force and effect against respondent Richard Fleschner.

Dated: October 31, 1956.

JOHN C. BORTON,  
Director,  
Office of Export Supply.

[P. R. Doc. 56-8931; Filed, Nov. 2, 1956;  
8:50 a. m.]

### Federal Maritime Board

#### MITSUBISHI SHIPPING CO., LTD., ET AL.

##### NOTICE OF AGREEMENTS FILED WITH THE BOARD FOR APPROVAL

Notice is hereby given that the following described agreements have been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916, 39 Stat. 733, 46 U. S. C. 814:

(1) Agreement No. 8149, between Mitsubishi Shipping Co., Ltd., and Waterman Steamship Corporation, covers the transportation of cargo under through

bills of lading from the Far East to Puerto Rico, with transshipment at specified U. S. Pacific Coast ports. This agreement upon approval will supersede and cancel in part Agreement No. 8024, between Kokusai Line (Iino Kaiun Kaisha, Ltd., and Mitsubishi Kaiun Kaisha, Ltd.) and Waterman in the same trade.

(2) Agreement No. 8152, between Mitsubishi Shipping Co., Ltd., and Alcoa Steamship Company, Inc., covers the transportation of general cargo under through bills of lading from the Far East to Puerto Rico, with transshipment at New York, N. Y. This agreement, upon approval, will supersede and cancel in part Agreement No. 8027, between Kokusai Line (Iino Kaiun Kaisha, Ltd., and Mitsubishi Kaiun Kaisha, Ltd.) and Alcoa in the same trade.

(3) Agreement No. 8154, between Mitsubishi Shipping Co., Ltd. and Pope & Talbot, Inc., and Pacific Argentine Brazil Line, Inc., covers the transportation of cargo under through bills of lading from the Far East to Puerto Rico, with transshipment at specified U. S. Pacific Coast ports. This agreement upon approval, will supersede and cancel in part Agreement No. 8026, between Kokusai Line (Iino Kaiun Kaisha, Ltd., and Mitsubishi Kaiun Kaisha, Ltd.) and Pope & Talbot, Inc., and Pacific Argentine Brazil Line, Inc., in the same trade.

(4) Agreement No. 8157, between Mitsubishi Shipping Co., Ltd., and Alcoa Steamship Company, Inc., covers the transportation of general cargo under through bills of lading from the Far East to the Virgin Islands, with transshipment at New York, N. Y. This agreement, upon approval, will supersede and cancel in part Agreement No. 8028, between Kokusai Line (Iino Kaiun Kaisha, Ltd., and Mitsubishi Kaiun Kaisha, Ltd.) and Alcoa in the same trade.

Interested parties may inspect these agreements and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D. C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: October 31, 1956.

By order of the Federal Maritime Board.

[SEAL] A. J. WILLIAMS,  
Secretary.

[F. R. Doc. 56-8954; Filed, Nov. 2, 1956;  
8:54 a. m.]

LUSK SHIPPING CO. AND CALDWELL  
SHIPPING CO.

NOTICE OF AGREEMENT FILED WITH THE  
BOARD FOR APPROVAL

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916, 39 Stat. 733, 46 U. S. C. 814.

Agreement No. 8167 between Lusk Shipping Company, New Orleans, and

Caldwell Shipping Company, Jacksonville, is a cooperative working arrangement between the parties under which they perform freight forwarding services for each other.

Interested parties may inspect this agreement and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D. C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement, and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: October 31, 1956.

By order of the Federal Maritime Board.

[SEAL] A. J. WILLIAMS,  
Secretary.

[F. R. Doc. 56-8955; Filed, Nov. 2, 1956;  
8:54 a. m.]

IINO KAIUN KAISHA, LTD., ET AL.

NOTICE OF AGREEMENTS FILED WITH THE  
BOARD FOR APPROVAL

Notice is hereby given that the following described agreements have been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916, 39 Stat. 733, 46 U. S. C. 814:

(1) Agreement No. 8151, between Iino Kaiun Kaisha, Ltd., and Waterman Steamship Corporation, covers the transportation of cargo under through bills of lading from the Far East to Puerto Rico, with transshipment at specified U. S. Pacific Coast ports. This agreement, upon approval, will supersede and cancel in part Agreement No. 8024, between Kokusai Line (Iino Kaiun Kaisha, Ltd., and Mitsubishi Kaiun Kaisha, Ltd.) and Waterman in the same trade.

(2) Agreement No. 8153, between Iino Kaiun Kaisha, Ltd., and Alcoa Steamship Company, Inc., covers the transportation of general cargo under through bills of lading from the Far East to Puerto Rico, with transshipment at New York, N. Y. This agreement, upon approval, will supersede and cancel in part Agreement No. 8027, between Kokusai Line (Iino Kaiun Kaisha, Ltd., and Mitsubishi Kaiun Kaisha, Ltd.) and Alcoa in the same trade.

(3) Agreement No. 8156, between Iino Kaiun Kaisha, Ltd., and Pope & Talbot, Inc., and Pacific Argentine Brazil Line, Inc., covers the transportation of cargo under through bills of lading from the Far East to Puerto Rico, with transshipment at specified U. S. Pacific Coast ports. This agreement, upon approval, will supersede and cancel in part Agreement No. 8026, between Kokusai Line (Iino Kaiun Kaisha, Ltd., and Mitsubishi Kaiun Kaisha, Ltd.) and Pope & Talbot, Inc., and Pacific Argentine Brazil Line, Inc., in the same trade.

(4) Agreement No. 8158, between Iino Kaiun Kaisha, Ltd., and Alcoa Steamship Company, Inc., covers the transportation of general cargo under through bills of lading from the Far East to the Virgin Islands, with transshipment at

New York, N. Y. This agreement, upon approval, will supersede and cancel in part Agreement No. 8028, between Kokusai Line (Iino Kaiun Kaisha, Ltd., and Mitsubishi Kaiun Kaisha, Ltd.) and Alcoa in the same trade.

Interested parties may inspect these agreements and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D. C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: October 31, 1956.

By order of the Federal Maritime Board.

[SEAL] A. J. WILLIAMS,  
Secretary.

[F. R. Doc. 56-8956; Filed, Nov. 2, 1956;  
8:54 a. m.]

MEMBER LINES OF ATLANTIC (PASSENGER)  
CONFERENCE

NOTICE OF AGREEMENT FILED WITH THE  
BOARD FOR APPROVAL

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916, 39 Stat. 733, 46 U. S. C. 814.

Agreement No. 7840-28, between the member lines of the Atlantic (Passenger) Conference, modifies the basic conference agreement (No. 7840) by changing the days for general meetings of the conference members from the first to the second Thursday of March and October of each year.

Interested parties may inspect this agreement and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D. C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: October 31, 1956.

By order of the Federal Maritime Board.

[SEAL] A. J. WILLIAMS,  
Secretary.

[F. R. Doc. 56-8957; Filed, Nov. 2, 1956;  
8:54 a. m.]

THREE BAYS LINE AND PACIFIC STEAM  
NAVIGATION CO.

NOTICE OF AGREEMENT FILED WITH THE  
BOARD FOR APPROVAL

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916, 39 Stat. 733, 46 U. S. C. 814.

Agreement No. 8148, between Three Bays Line and The Pacific Steam Navigation Company, covers the transportation of cargo under through bills of lading from Atlantic and Gulf ports of the United States to ports on the West Coast of South America, with transshipment at Cristobal or Balboa, Canal Zone.

Interested parties may inspect this agreement and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D. C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: October 31, 1956.

By order of the Federal Maritime Board.

[SEAL] A. J. WILLIAMS,  
Secretary.

[F. R. Doc. 56-8958; Filed, Nov. 2, 1956;  
8:55 a. m.]

## CIVIL AERONAUTICS BOARD

[Docket No. 8165]

### ALASKA COASTAL AIRLINES

#### NOTICE OF HEARING ON APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

In the matter of the application of Alaska Coastal Airlines under section 401 (e) (4) of the Civil Aeronautics Act of 1938, as amended, for a certificate of public convenience and necessity of unlimited duration.

Notice is hereby given pursuant to the Civil Aeronautics Act of 1938, as amended, that hearing in the above-entitled proceeding is assigned to be held on November 13, 1956, at 10:30 a. m., e. s. t., in Room 1512, Temporary Building No. 4, 17th Street and Constitution Avenue NW., Washington, D. C., before Examiner Barron Fredricks.

Dated at Washington, D. C., October 30, 1956.

[SEAL] FRANCIS W. BROWN,  
Chief Examiner.

[F. R. Doc. 56-8951; Filed, Nov. 2, 1956;  
8:53 a. m.]

[Docket No. 8164]

### CORDOVA AIRLINES, INC.

#### NOTICE OF HEARING ON APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

In the matter of an application of Cordova Airlines, Inc. under section 401 (e) (4) of the Civil Aeronautics Act of 1938, as amended, for a certificate of public convenience and necessity of unlimited duration.

Notice is hereby given pursuant to the Civil Aeronautics Act of 1938, as amended, that hearing in the above-

entitled proceeding is assigned to be held on November 13, 1956, at 11:00 a. m., e. s. t., in Room 1512, Temporary Building No. 4, 17th Street and Constitution Avenue NW., Washington, D. C., before Examiner F. Merritt Ruhlen.

Dated at Washington, D. C., October 30, 1956.

[SEAL] FRANCIS W. BROWN,  
Chief Examiner.

[F. R. Doc. 56-8952; Filed, Nov. 2, 1956;  
8:53 a. m.]

[Docket No. 8167]

### WIEN ALASKA AIRLINES, INC.

#### NOTICE OF HEARING ON APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

In the matter of the application of Wien Alaska Airlines, Inc. under section 401 (e) (4) of the Civil Aeronautics Act of 1938, as amended, for a certificate of public convenience and necessity of unlimited duration.

Notice is hereby given pursuant to the Civil Aeronautics Act of 1938, as amended, that hearing in the above-entitled proceeding is assigned to be held on November 13, 1956, at 10:00 a. m., e. s. t., in Room 1512, Temporary Building No. 4, 17th Street and Constitution Avenue NW., Washington, D. C., before Examiner Joseph L. Fitzmaurice.

Dated at Washington, D. C., October 30, 1956.

[SEAL] FRANCIS W. BROWN,  
Chief Examiner.

[F. R. Doc. 56-8953; Filed, Nov. 2, 1956;  
8:53 a. m.]

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

#### MISSOURI RIVER BASIN PROJECT, WYOMING

##### FIRST FORM RECLAMATION WITHDRAWAL

OCTOBER 19, 1956.

The order of the Assistant Commissioner of Reclamation of April 13, 1955, concurred in by the Director, Bureau of Land Management on October 20, 1955, withdrawing 6,132.49 acres in Townships 46 and 47 N., R. 92 W., T. 46 N., R. 93 W., T. 45 N., R. 94 W., and T. 46 N., R. 94 W., Sixth Principal Meridian, Wyoming, and which appeared at pages 8053-4 of the FEDERAL REGISTER for October 26, 1955, as Federal Register Document 55-8621 is hereby amended to the extent necessary to provide that, as to Farm Units A, B, and C, comprising land in secs. 32, 33, and 34, T. 47 N., R. 92 W., and secs. 3 and 4, T. 46 N., R. 92 W., 6th Principal Meridian, Wyoming lying in the Slick Creek oil and gas field, north of the Main Canal No. 2 for the Hanover-Bluff Unit, Missouri River Basin Project, Wyoming, no irrigation development shall be permitted during the eco-

nomie life of the said Slick Creek oil and gas field.

FLOYD E. DOMINY,  
Acting Assistant Commissioner,  
[68710]

OCTOBER 31, 1956.

I concur. The records of the Bureau of Land Management will be noted accordingly.

EDWARD WOOLEY,  
Director,  
Bureau of Land Management.

[F. R. Doc. 56-8894; Filed, Nov. 2, 1956;  
8:45 a. m.]

## National Park Service

[Region 2 Order 3, Amdt. 3]

### SUPERINTENDENTS, REGION 2

#### DELEGATION OF AUTHORITY WITH RESPECT TO REGULARLY SCHEDULED OVERTIME

OCTOBER 16, 1956.

A new subsection (g) is hereby added to section 1; a new subsection (h) is hereby added to section 2; and a new subsection (n) is hereby added to section 3 of Order No. 3, issued February 17, 1956 (21 F. R. 1494), reading as follows:

Sec. 1 (g); Sec. 2 (h); Sec. 3 (n). Approval of regularly scheduled overtime in excess of 30 days.

(National Park Service Order No. 14; 30 Stat. 535; 16 U. S. C., 1952 ed., Sec. 2)

[SEAL] M. H. HARVEY,  
Acting Regional Director, Region Two.

[F. R. Doc. 56-8910; Filed, Nov. 2, 1956;  
8:45 a. m.]

## FEDERAL POWER COMMISSION

[Docket No. G-11303]

### EDWIN M. JONES OIL CO.

#### ORDER SUSPENDING PROPOSED CHANGE IN RATES

In the matter of Henrietta Yerger Jones d/b/a Edwin M. Jones Oil Company, Docket No. G-11303, Henrietta Yerger Jones, d/b/a Edwin M. Jones Oil Company (Jones), on September 27, 1956, tendered for filing a proposed change in the presently effective rate schedules for sales subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate, is contained in the following designated filing, which is proposed to become effective on the date shown:

Description; Purchaser; Rate Schedule Designation; and Effective Date<sup>1</sup>

Notice of Change, dated September 5, 1956; Texas Eastern Transmission Corporation; Supplement No. 8 to Jones' FPC Gas Rate Schedule No. 1; November 1, 1956.

<sup>1</sup> The stated effective date is the first day after expiration of the required thirty days notice, or the effective date proposed by Jones, if later.

The increased rates and charges proposed in the aforesaid filing have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act and the Commission's general rules and regulations (18 CFR Chapter I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of said proposed change in rates and charges; and, pending such hearing and decision thereon, the above-designated supplement be and the same hereby is suspended and the use thereof deferred until April 1, 1957, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(B) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

Issued: October 29, 1956.

By the Commission.<sup>1</sup>

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 56-8911; Filed, Nov. 2, 1956;  
8:45 a. m.]

[Docket No. G-11305]

ROBERT MOSBACHER, ET AL.

ORDER SUSPENDING PROPOSED CHANGE IN RATES

Robert Mosbacher (Operator) et al. (Mosbacher), on September 27, 1956, tendered for filing a proposed change in the presently effective rate schedules for sales subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate, is contained in the following designated filing, which is proposed to become effective on the date shown:

Description; Purchaser; Rate Schedule Designation; and Effective Date<sup>2</sup>

Notice of Change, dated September 24, 1956; Texas Eastern Transmission Corporation; Supplement No. 2 to Mosbacher's FPC Gas Rate Schedule No. 2; November 1, 1956.

<sup>1</sup> Commissioner Digby dissenting.

<sup>2</sup> The stated effective date is the first day after the expiration of the required thirty days notice, or the effective date proposed by Mosbacher, if later.

The increased rates and charges proposed in the aforesaid filing have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act and the Commission's general rules and regulations (18 CFR Chapter I) a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of said proposed change in rates and charges; and, pending such hearing and decision thereon, the above-designated supplement be and the same hereby is suspended insofar as it pertains to a proposed rate increase and the use thereof deferred until April 1, 1957, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(B) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

Issued: October 29, 1956.

By the Commission.<sup>1</sup>

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 56-8912; Filed, Nov. 2, 1956;  
8:46 a. m.]

[Docket No. G-11307]

SHELL OIL CO.

ORDER SUSPENDING PROPOSED CHANGE IN RATES

Shell Oil Company (Shell), on September 27, 1956, tendered for filing a proposed change in the presently effective rate schedules for sales subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate, is contained in the following designated filing, which is proposed to become effective on the date shown:

Description; Purchaser; Rate Schedule Designation; and Effective Date<sup>2</sup>

Notice of Change, dated September 21, 1956; Texas Eastern Transmission Corpora-

<sup>2</sup> The stated effective date is the first day after expiration of the required thirty days notice, or the effective date proposed by Shell, if later.

tion; Supplement No. 16 to Shell's FPC Gas Rate Schedule No. 10; November 1, 1956.

The increased rates and charges proposed in the aforesaid filing have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act and the Commission's general rules and regulations (18 CFR Chapter I) a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of said proposed change in rates and charges; and, pending such hearing and decision thereon, the above-designated supplement be and the same hereby is suspended and the use thereof deferred until April 1, 1957, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(B) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of, or until the period of suspension has expired, unless otherwise ordered by the Commission.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

Issued: October 29, 1956.

By the Commission.<sup>1</sup>

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 56-8913; Filed, Nov. 2, 1956;  
8:46 a. m.]

[Docket No. G-11308]

SALT DOME PRODUCTION CO.

ORDER SUSPENDING PROPOSED CHANGE IN RATES

Salt Dome Production Company (Salt Dome), on September 27, 1956, tendered for filing a proposed change in the presently effective rate schedules for sales subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate, is contained in the following designated filing, which is proposed to become effective on the date shown:

Description; Purchaser; Rate Schedule Designation; and Effective Date<sup>2</sup>

Notice of Change, dated September 27, 1956; Texas Eastern Transmission Corporation; Supplement No. 10 to Salt Dome's FPC Gas Rate Schedule No. 3; November 1, 1956.

<sup>2</sup> The stated effective date is the first day after expiration of the required thirty days notice, or the effective date proposed by Salt Dome, if later.

The increased rates and charges proposed in the aforesaid filing have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act and the Commission's general rules and regulations (18 CFR Chapter I) a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of said proposed change in rates and charges; and, pending such hearing and decision thereon, the above-designated supplement be and the same hereby is suspended insofar as it pertains to a proposed rate increase and the use thereof deferred until April 1, 1957, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(B) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of, or until the period of suspension has expired, unless otherwise ordered by the Commission.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

Issued: October 29, 1956.

By the Commission.<sup>1</sup>

LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 56-8914; Filed, Nov. 2, 1956;  
8:46 a. m.]

[Docket No. E-6711]

EMPIRE DISTRICT ELECTRIC CO.

ORDER INSTITUTING AN INVESTIGATION

The Table Rock project, under construction by the United States, is located on the White River at river mile 528.8 and it is our understanding that closure of the dam is scheduled for December 1956. The Ozark Beach hydroelectric project, owned and operated by Empire District Electric Company, is located on the White River at river mile 506.1.

Pursuant to the provisions of section 10 (f) of the Federal Power Act we are required to determine and assess headwater improvement benefit charges against the owner of any project directly benefited by upstream improvements constructed by the United States. Preliminary studies indicate that the Ozark Beach project may be directly benefited by reason of the construction

and operation by the United States of its upstream Table Rock project.

The Commission finds: It is appropriate and in the public interest that an investigation be instituted by the Commission as hereinafter provided.

The Commission orders: An investigation is hereby instituted pursuant to the provisions of the Federal Power Act, particularly section 10 (f) thereof, for the purpose of enabling the Commission to determine whether the Ozark Beach project located downstream from the above designated headwater improvement constructed by the United States is directly benefited by the construction and operation of such upstream improvement of the United States, and if it so finds, to determine the equitable proportion of the annual charges to be paid by the owner of the project so benefited for interest, maintenance and depreciation on such upstream improvement constructed by the United States.

Issued: October 29, 1956.

By the Commission.

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 56-8915; Filed, Nov. 2, 1956;  
8:46 a. m.]

[Docket No. G-10383]

CARTER OIL CO.

NOTICE OF APPLICATION AND DATE OF HEARING

OCTOBER 29, 1956.

Take notice that The Carter Oil Company (Applicant), a West Virginia corporation whose address is Tulsa, Oklahoma, filed on May 10, 1956, an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing Applicant to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant produces gas from the Mokane Field, Beaver County, Oklahoma, which it proposes to sell to Colorado Interstate Gas Company for transportation in interstate commerce for resale.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on November 26, 1956, at 9:30 a. m., e. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however*, That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's

rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before November 12, 1956. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 56-8916; Filed, Nov. 2, 1956;  
8:46 a. m.]

[Docket No. G-11294]

ARKANSAS LOUISIANA GAS CO.

ORDER SUSPENDING PROPOSED CHANGES IN RATES

On September 20, 1956, and September 24, 1956, Arkansas Louisiana Gas Company (Arkansas) submitted for filing proposed changes in its presently effective Rate Schedules XFS-6 and XFS-2 providing for the sale of natural gas to Texas Eastern Transmission Corporation. The proposed changes, which constitute increased rates and charges, are contained in Second Revised Sheet No. 108 to Arkansas' FPC Gas Tariff, Original Volume No. 2 (Rate Schedule XFS-6) and in Supplement No. 5 to Arkansas' FPC Gas Rate Schedule No. XFS-2, and are proposed to become effective on November 1, 1956.

Each of the said filings propose to effectuate periodic rate increases for sales of natural gas to the purchaser.

The increased rates and charges proposed in each of said filings have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed increased rates and charges, and that Second Revised Sheet No. 108 to Arkansas' FPC Gas Tariff, Original Volume No. 2, and Supplement No. 5 to Arkansas' FPC Gas Rate Schedule No. XFS-2, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4, 5, 15 and 16 of the Natural Gas Act and the Commission's general rules and regulations, a public hearing be held, upon a date to be fixed by notice from the Secretary, concerning the lawfulness of the proposed increased rates and charges; and, pending such hearing and decision thereon, the above designated Second Revised Sheet No. 108 to Arkansas' FPC Gas Tariff, Original

<sup>1</sup> Commissioner Digby dissenting.

Volume No. 2, and Supplement No. 5 to Arkansas' FPC Gas Rate Schedule No. XFS-2 be and the same hereby are suspended and the use thereof deferred until April 1, 1957, and until such further time as they may be made effective in the manner prescribed by the Natural Gas Act.

(B) Neither the Revised Sheet nor the Supplement hereby suspended nor the rate schedules sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the Commission's rules of practice and procedure.

Issued: October 29, 1956.

By the Commission.<sup>1</sup>

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 56-8917; Filed, Nov. 2, 1956; 8:46 a. m.]

posed change in rates and charges; and, pending such hearing and decision thereon, the above-designated supplement be and the same hereby is suspended and the use thereof deferred until April 1, 1957, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(B) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

Issued: October 29, 1956.

By the Commission.<sup>1</sup>

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 56-8918; Filed, Nov. 2, 1956; 8:47 a. m.]

[Docket No. G-11302]

VAN M. LEWIS

ORDER SUSPENDING PROPOSED CHANGE IN RATES

Van M. Lewis (Lewis), on September 27, 1956, tendered for filing a proposed change in the presently effective rate schedule for sales subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate, is contained in the following designated filing, which is proposed to become effective on the date shown:

Description; Purchaser; Rate Schedule Designation; and Effective Date<sup>2</sup>

Notice of Change, dated September 5, 1956; Texas Eastern Transmission Corporation; Supplement No. 8 to Lewis' FPC Gas Rate Schedule No. 1; November 1, 1956.

The increased rates and charges proposed in the aforesaid filing have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act and the Commission's general rules and regulations (18 CFR Chapter I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of said pro-

<sup>1</sup> Commissioner Digby dissenting.

<sup>2</sup> The stated effective date is the first day after expiration of the required thirty days' notice, or the effective date proposed by Lewis, if later.

[Docket No. G-9278]

ALFRED C. GLASSSELL, JR., ET AL.

ORDER AMENDING ORDER INSTITUTING INVESTIGATION

In the matter of Alfred C. Glassell, Jr., individually, and as Co-Trustee for Alfred Glassell Comegys Trust, William McLloyd Comegys III Trust, Anne Bernard Crichton Trust, Kate Curry Crichton Trust, Janie Curry Lee Trust, Joanna Lee Trust, Alfred McIntyre Stringfellow Trust and Charles Stringfellow III Trust; H. B. Langford; City National Bank of Houston, Texas, as Trustee for the Alfred Glassell Comegys Trust, William McLloyd Comegys III Trust, Anne Bernard Crichton Trust, Kate Curry Crichton Trust, Janie Curry Lee Trust, Joanna Lee Trust, Alfred McIntyre Stringfellow Trust and Charles Stringfellow III Trust; Docket No. G-9278.

On January 27, 1956, the Commission issued in this proceeding its order instituting an investigation of Respondent, Alfred C. Glassell, Jr., under the provisions of the Natural Gas Act for the purpose of enabling the Commission to determine whether, with respect to any transportation or sale of natural gas, subject to the jurisdiction of the Commission, made or proposed to be made by the said Respondent, any of the rates, charges or classifications demanded, observed, charged, or collected, or any rules, regulations, practices or contracts affecting such rates, charges or classifications are unjust, unreasonable, unduly discriminatory or preferential.

From the records of the Commission it appears that Alfred C. Glassell, Jr. et al., filed with the Commission a contract, dated May 1, 1954, for the sale of natural gas in interstate commerce to Tennessee Gas Transmission Company, which contract has heretofore been designated by the Commission as FPC Gas Rate Schedule No. 1 of Alfred C. Glassell, Jr., et al. The other signatory party sellers to the contract are Alfred C. Glassell, Jr., as

Co-Trustee for Alfred Glassell Comegys Trust, William McLloyd Comegys III Trust, Anne Bernard Crichton Trust, Kate Curry Crichton Trust, Janie Curry Lee Trust, Joanna Lee Trust, Alfred McIntyre Stringfellow Trust and Charles Stringfellow III Trust; H. B. Langford; City National Bank of Houston, Texas, as Trustee for the Alfred Glassell Comegys Trust, William McLloyd Comegys III Trust, Anne Bernard Crichton Trust, Kate Curry Crichton Trust, Janie Curry Lee Trust, Joanna Lee Trust, Alfred McIntyre Stringfellow Trust and Charles Stringfellow III Trust.

It appears appropriate in the premises, in order to effectuate the purposes of the Natural Gas Act, that all signatory party sellers to the aforesaid contract be made respondents in the proceeding heretofore instituted in Docket No. G-9278.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the order instituting investigation of Respondent, Alfred C. Glassell, Jr., issued in this proceeding on January 27, 1956, be amended as hereinafter ordered.

The Commission orders:

(A) Paragraphs (A) and (B) as set forth at page 3 of the Order Instituting Investigation issued in this proceeding on January 27, 1956 be and the same are hereby amended to read as follows:

"(A) An investigation of respondents, Alfred C. Glassell, Jr., individually and as Co-Trustee for Alfred Glassell Comegys Trust, William McLloyd Comegys III Trust, Anne Bernard Crichton Trust, Kate Curry Crichton Trust, Janie Curry Lee Trust, Joanna Lee Trust, Alfred McIntyre Stringfellow Trust and Charles Stringfellow III Trust; H. B. Langford; City National Bank of Houston, Texas, as Trustee for the Alfred Glassell Comegys Trust, William McLloyd Comegys III Trust, Anne Bernard Crichton Trust, Kate Curry Crichton Trust, Janie Curry Lee Trust, Joanna Lee Trust, Alfred McIntyre Stringfellow Trust and Charles Stringfellow III Trust, be and it hereby is instituted under the provisions of the Natural Gas Act for the purpose of enabling the Commission to determine whether, with respect to any transportation or sale of natural gas, subject to the jurisdiction of the Commission, made or proposed to be made by the said respondents, any of the rates, charges or classifications demanded, observed, charged, or collected, or any rules, regulations, practices or contracts affecting such rates, charges or classifications are unjust, unreasonable, unduly discriminatory or preferential.

"(B) If the Commission, after a hearing has been had, shall find that any of the said respondents' rates, charges, classifications, rules, regulations, practices, or contracts subject to the jurisdiction of the Commission are unjust, unreasonable, unduly discriminatory, or preferential, the Commission will thereupon determine and fix by order or orders just and reasonable rates, charges, classifications, rules, regulations, practices or contracts to be thereafter observed and in force."

(B) Except as hereinabove specifically amended, the order issued herein on January 27, 1956, shall remain in full force and effect.

Issued: October 29, 1956.

By the Commission.<sup>1</sup>

[SEAL] LEON M. FUGUAY,  
Secretary.

[F. R. Doc. 56-8919; Filed, Nov. 2, 1956;  
8:47 a. m.]

## SECURITIES AND EXCHANGE COMMISSION

[File No. 1-2733]

SUNSET INTERNATIONAL PETROLEUM CORP.

NOTICE OF APPLICATION TO STRIKE FROM  
LISTING AND REGISTRATION, AND OF  
OPPORTUNITY FOR HEARING

OCTOBER 30, 1956.

In the matter of International Mining Corporation, Common Stock (Name changed to "Sunset International Petroleum Corporation"); File No. 1-2733.

New York Stock Exchange has made application, pursuant to section 12 (d) of the Securities Exchange Act of 1934 and Rule X-12D2-1 (b) promulgated thereunder, to strike the above named security from listing and registration thereon.

The reasons alleged in the application for striking this security from listing and registration include the following:

Effective August 31, 1956, International Mining Corporation merged Sunset Oil Company and changed its name to Sunset International Petroleum Corporation. The applicant Exchange determined on July 19, 1956, that the Company as survivor to the merger would not meet its standards for original listing. Dealings in the subject stock were accordingly suspended before the opening of the trading session on September 4, 1956.

The Commission's records show that registration of the subject issue became effective on the American Stock Exchange on August 21, 1956, and that the issue became admitted to trading on said Exchange on September 4, 1956, as Sunset International Petroleum Corporation common stock.

Upon receipt of a request, on or before November 16, 1956, from any interested person for a hearing in regard to terms to be imposed upon the delisting of this security, the Commission will determine whether to set the matter down for hearing. Such request should state briefly the nature of the interest of the person requesting the hearing and the position he proposes to take at the hearing with respect to imposition of terms. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington 25, D. C. If no one requests a hearing on this matter, this application will be determined by order of the Com-

mission on the basis of the facts stated in the application and other information contained in the official file of the Commission pertaining to the matter.

By the Commission.

[SEAL] NELLYE A. THORSEN,  
Assistant Secretary.

[F. R. Doc. 56-8920; Filed, Nov. 2, 1956;  
8:47 a. m.]

[File No. 1-499]

CONSOLIDATED LIQUIDATING CORP.

NOTICE OF APPLICATION TO WITHDRAW FROM  
LISTING AND REGISTRATION, AND OF OP-  
PORTUNITY FOR HEARING

OCTOBER 30, 1956.

In the matter of Consolidated Liquidating Corporation, Common Stock; File No. 1-499.

The above named issuer, pursuant to section 12 (d) of the Securities Exchange Act of 1934 and Rule X-12D2-1 (b) promulgated thereunder, has made application to withdraw the specified security from listing and registration on the Los Angeles Stock Exchange.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Consolidated Liquidating Corporation has substantially completed the process of liquidation. Over 98 percent of the liquidating distributions to stock holders have been completed. The Corporation has filed a Petition for Judicial Supervision of Winding Up Proceedings in the Superior Court of the State of California in and for the County of Los Angeles, case No. 653902. The Corporation believes it is no longer in the public interest to maintain a public market in its stock. The Los Angeles Stock Exchange has no objection to withdrawal from listing.

Upon receipt of a request, on or before November 20, 1956, from any interested person for a hearing in regard to terms to be imposed upon the delisting of this security, the Commission will determine whether to set the matter down for hearing. Such request should state briefly the nature of the interest of the person requesting the hearing and the position he proposes to take at the hearing with respect to imposition of terms. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington 25, D. C. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application and other information contained in the official file of the Commission pertaining to the matter.

By the Commission.

[SEAL] NELLYE A. THORSEN,  
Assistant Secretary.

[F. R. Doc. 56-8921; Filed, Nov. 2, 1956;  
8:47 a. m.]

[File No. 70-3525]

STANDARD SHARES, INC.

NOTICE OF FILING OF DECLARATION REGARD-  
ING PROPOSED CASH DISTRIBUTION OUT OF  
CAPITAL SURPLUS

OCTOBER 30, 1956.

Notice is hereby given that Standard Shares, Inc. ("Standard Shares"), a registered holding company, has filed a declaration pursuant to the Public Utility Holding Company Act of 1935 ("act"). Declarant has stated that section 12 of the act and Rule U-46 promulgated thereunder are applicable to the proposed transaction. All persons are referred to the declaration for a statement of the transaction therein proposed which may be summarized as follows.

Standard Shares proposes to make a cash distribution of \$0.40 per share, payable December 28, 1956, to stockholders of record December 7, 1956, in part out of earned surplus to the full extent thereof which at September 30, 1956, amounted to \$359,786 and the balance out of capital surplus as of December 31, 1956, and which as of September 30, 1956, was \$21,751,384, to each holder of its outstanding 1,430,000 shares of common stock. The only outstanding obligation of Standard Shares senior to the common stock is a promissory note in the amount of \$1,250,000 which matures on July 30, 1957. The Hanover Bank, the holder of the note, has consented to the proposed distribution. Standard Shares states it has sufficient marketable securities to enable it to raise any balance of cash required to pay the note when it becomes due.

The declaration further states that no State commission or Federal commission, other than this Commission, has jurisdiction over the proposed cash distribution. The fees and expenses to be incurred in connection with said distribution are estimated not to exceed \$1,500, including counsel fees, not in excess of \$500.

Notice is further given that any interested person may, not later than November 15, 1956, at 5:30 p. m., request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert, or may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date, said declaration, as filed or as amended, may be permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under the act or the Commission may take such action as it may deem appropriate under the circumstances.

By the Commission.

[SEAL] NELLYE A. THORSEN,  
Assistant Secretary.

[F. R. Doc. 56-8922; Filed, Nov. 2, 1956;  
8:47 a. m.]

<sup>1</sup> Commissioner Digby dissenting.

[File No. 70-3500]

## BLACKSTONE VALLEY GAS AND ELECTRIC CO.

## NOTICE OF FILING OF AMENDED APPLICATION-DECLARATION AND ORDER MAKING PROXY MATERIAL EFFECTIVE

OCTOBER 30, 1956.

Notice is hereby given that Blackstone Valley Gas and Electric Company ("Blackstone"), a public utility subsidiary of Eastern Utilities Associates, a registered holding company, has filed an amended application-declaration pursuant to sections 6 (b) and 12 (e) of the Public Utility Holding Company Act of 1935 ("act") and Rules U-50 (a) (5), U-62 and U-100 promulgated under the act in respect of an exemption from the competitive bidding requirements of Rule U-50 of the proposed issue and sale of 25,000 shares of new preferred stock.

All interested persons are referred to the application-declaration for a statement of the transactions therein proposed, which, together with certain related matters, are summarized as follows:

By order issued September 5, 1956, the Commission approved a proposal by Blackstone to authorize, issue, and sell, pursuant to the competitive requirements of Rule U-50, 25,000 shares of a new series of \$100 par value, cumulative preferred stock. Pursuant to said order, Blackstone publicly invited bids to be submitted on September 11, 1956. Three groups qualified, but no bids were received. The date for receiving bids was postponed to October 11, 1956; and, upon further consideration, the invitation for bids was withdrawn.

Subsequently, the Commission, upon the request of Blackstone, informally authorized the company to negotiate with underwriters either for a public offering or a private placement of its new preferred stock, subject to the condition that any proposal resulting from such negotiations be submitted to the Commission for approval. Pursuant to that authorization, negotiations were undertaken with the following underwriting groups for the purchase of the 25,000 shares of new preferred stock:

Kidder, Peabody & Co., Salomon Bros. & Hutzler, Wood Struthers & Co., Eastman Dillon, Union Securities & Co., Estebrook & Co., The First Boston Corporation, G. M. Walker & Co.

Two of the groups advised that they were not interested. After consideration of the terms indicated by the other groups, the company has determined that the one submitted by the Salomon Bros. & Hutzler group provided the best basis for negotiation, i. e., a price to yield 5.10 percent to 5.15 percent to the public at not less than par to the company, with a dividend expressed in multiples of 0.04 percent, and an underwriting compensation of \$1.75 per share.

Blackstone proposes to negotiate a definitive agreement with the Salomon Bros. & Hutzler group for the sale of the new preferred stock.

Blackstone proposes, at a meeting of its stockholders to be held November 13, 1956, to procure authorization to create,

issue and sell the new preferred stock upon the new terms and conditions, and has submitted, as a part of the amended application-declaration herein, the proposed proxy solicitation material, and requests acceleration of the effectiveness of the declaration under Rule U-62 so that the proxy material may be promptly mailed to stockholders.

Notice is further given that any interested person may not later than November 14, 1956 request in writing that a hearing be held in respect of such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law which he desires to controvert, or he may request that he be notified if the Commission orders a hearing in respect thereof. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date the Commission may grant and permit to become effective the amended application-declaration, as filed or as it may be amended, pursuant to the provisions of Rule U-23 promulgated under the act, or the Commission may grant exemption from its rules pursuant to Rules U-20 (a) and U-100 thereof, or take such action as it may deem appropriate.

It appearing to the Commission that Blackstone's proxy solicitation material is in appropriate form and that the declaration with respect thereto pursuant to section 12 (e) of the act and Rule U-62 promulgated thereunder should become effective forthwith:

It is ordered, That Blackstone's declaration regarding the proxy solicitation material, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule U-24 promulgated under the act.

By the Commission.

[SEAL] NELYE A. THORSEN,  
Assistant Secretary.

[F. R. Doc. 56-8923; Filed, Nov. 2, 1956; 8:48 a. m.]

## UNITED STATES TARIFF COMMISSION

[List No. 19-7]

## CERTAIN EXPANSION BRACELETS AND PARTS THEREOF

## COMPLAINTS RECEIVED

OCTOBER 30, 1956.

The United States Tariff Commission hereby gives notice of the receipt, on October 23, 1956, of two complaints under section 337 of the Tariff Act of 1930 (19 U. S. C. 1337) filed by Speidel Corporation, 70 Ship Street, Providence, Rhode Island, alleging unfair methods of competition and unfair acts in the importation and sale of certain foreign expansion bracelets and parts thereof.

In accordance with the provisions of § 203.3 of the rules of practice and procedure of the Commission (19 CFR 203.3) the Commission has initiated a preliminary inquiry into the allegations of these complaints to determine (a) whether the institution of an investigation under sec-

tion 337, above, is warranted, and (b) whether the issuance of a temporary order of exclusion from entry under section 337 (f) of the Tariff Act of 1930 (19 U. S. C. 1337 (f)) is warranted.

A copy of the complaints (not including confidential information is available for public inspection at the offices of the United States Tariff Commission located at Eighth and E Streets, NW., Washington, D. C., and also in the New York Office of the Tariff Commission, located in Room 437 of the Custom House.

Persons desiring to submit information either in favor of or opposed to the institution of an investigation may do so by submitting their views in writing to the Secretary, United States Tariff Commission, Washington 25, D. C. Fifteen copies of any such submission are required.

By order of the Commission.

[SEAL] DON N. BENT,  
Secretary.

[F. R. Doc. 56-8929; Filed, Nov. 2, 1956; 8:50 a. m.]

## DEPARTMENT OF JUSTICE

## Office of Alien Property

STATE OF NETHERLANDS FOR THE BENEFIT OF JACQUES AND SALOMON GROOTKERK - ET AL.

## NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

The State of the Netherlands for the benefit of (all right, title and interest of the Attorney General acquired pursuant to Vesting Order No. 18521 (16 F. R. 10097, October 3, 1951) in and to):

Jacques and Salomon Grootkerk, L. S. Claim No. 857, Cities Service Company 5/58 Debenture No. 14812, in the principal amount of \$1,000.

Gerrit van Gelderen, L. S. Claim No. 859, Union Pacific Railroad Company 4/47 Bond No. 87370, in the principal amount of \$1,000.

Eduard Goldsmit; Heyman Musaph; R. van Pimontal; D. Israels; L. H. van Kleef, L. S. Claim No. 862, Southern Pacific Company 4½/81 Bond No. 12286, in the principal amount of \$1,000; Southern Pacific Company 4½/69 Bond Nos. 43691 and 55559, in the principal amount of \$1,000 each.

Ina Grandia; Elisabeth Philips; Fanny Speyer; Sophia Jacobs, L. S. Claim No. 864, Kansas City Southern Railway Company 3/50 Bond No. 5772, in the principal amount of \$1,000; Southern Pacific Company 4/49 Bond No. 15488, in the principal amount of \$1,000; Southern Pacific Railroad Company 4/55 Bond No. 4693, in the principal amount of \$500.

Netherlands Embassy, Office of the Financial Counselor, 25 Broadway, New York 4, New York.

Executed at Washington, D. C., on October 29, 1956.

For the Attorney General.

[SEAL] PAUL V. MYRON,  
Deputy Director,  
Office of Alien Property.

[F. R. Doc. 56-8933; Filed, Nov. 2, 1956;  
8:50 a. m.]

STATE OF NETHERLANDS FOR THE BENEFIT  
OF JULIE GOLDSMIT ET AL.

NOTICE OF INTENTION TO RETURN VESTED  
PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

The State of the Netherlands for the benefit of (all right, title and interest of the Attorney General acquired pursuant to Vesting Order No. 18521 (16 F. R. 10097, October 3, 1951) in and to):

Julie Goldsmit, Judith Boss, Antonia and Henri Goldsmit, Elenora Oesterman, Jansje Erwteman, Rebecca and Meijer de Haas, L. S. Claim No. 412, Southern Pacific Company 4/49 Bond No. 12090, in the principal amount of \$1,000.

Mrs. G. Leeser, L. S. Claim No. 560, Southern Pacific Company 4 1/2/69 Bond No. 29890, in the principal amount of \$1,000.

Adrianus, Jan and Frederik van Loghum Slaterus, L. S. Claim No. 594, Southern Pacific Company 4 1/2/81 Bond No. 28506 in the principal amount of \$1,000.

Louisa Stichting, L. S. Claim No. 588, Central Pacific Railway Company 4/49 Bond No. 77471, in the principal amount of \$1,000; Atchison, Topeka & Santa Fe Railway 4/95 Bond No. 7445, in the principal amount of \$1,000; Union Pacific Railroad Company 4/47 Bond No. 39912, in the principal amount of \$1,000.

Henriette Mathieu, L. S. Claim No. 595, Kansas City Southern Railway 3/50 Bond No. 5652, in the principal amount of \$1,000.

Netherlands Embassy, Office of the Financial Counselor, 25 Broadway, New York 4, New York.

Executed at Washington, D. C., on October 29, 1956.

For the Attorney General.

[SEAL] PAUL V. MYRON,  
Deputy Director,  
Office of Alien Property.

[F. R. Doc. 56-8934; Filed, Nov. 2, 1956;  
8:51 a. m.]

STATE OF NETHERLANDS FOR THE BENEFIT  
OF CLARA AND HENRI DE VRIES ET AL.

NOTICE OF INTENTION TO RETURN VESTED  
PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of in-

tention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property and Location

The State of the Netherlands for the benefit of:

Mrs. Clara and Henri de Vries and Mrs. Henny van Messel, L. S. Claim No. 190, \$1,117.43 in the Treasury of the United States. Anna Strauss, Hertha Frankenhuis, Martha and Leo de Vries and Eduard van Dantzig, L. S. Claim No. 196, \$1,117.43 in the Treasury of the United States.

Mrs. R. Cohen, L. S. Claim No. 331, \$1,681.07 in the Treasury of the United States.

Mrs. Hilda Sternberg, L. S. Claim No. 751, \$7,230.05 in the Treasury of the United States.

Betsy and Marry Stoppelman, L. S. Claim No. 756, \$2,728.94 in the Treasury of the United States.

Netherlands Embassy, Office of the Financial Counselor, 25 Broadway, New York 4, New York.

Executed at Washington, D. C., on October 29, 1956.

For the Attorney General.

[SEAL] PAUL V. MYRON,  
Deputy Director,  
Office of Alien Property.

[F. R. Doc. 56-8935; Filed, Nov. 2, 1956;  
8:51 a. m.]

STATE OF NETHERLANDS FOR THE BENEFIT  
OF CORNELIS JANSSEN ET AL.

NOTICE OF INTENTION TO RETURN VESTED  
PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

The State of the Netherlands for the benefit of (all right, title and interest of the Attorney General acquired pursuant to Vesting Order No. 18521 (16 F. R. 10097, October 3, 1951) in and to):

Cornelis and Adriana Janssen, Louis van Latensteyn and Jan Weygerse, L. S. Claim No. 505, Atchison Topeka and Santa Fe Railway Company 4/95 Bond No. 74733, in the principal amount of \$1,000; Cities Service Company 5/66 Debenture No. 17921, in the principal amount of \$1,000; Kansas City Southern Railway Company 3/50 Bond Nos. 2423 and 22973, in the principal amount of \$1,000 each; Missouri-Kansas-Texas Railway Company 5/67 Bond Nos. 3854 and 3855, in the principal amount of \$500 each.

P. J. A. Just de la Palseres, L. S. Claim No. 516, Cities Service Company 5/58 Debenture No. 21470, in the principal amount of \$1,000; Cities Service Company 5/69 Debenture No. 16495, in the principal amount of \$1,000.

Dirk van Keulen, L. S. Claim No. 532, Atchison Topeka & Santa Fe Railway Company 4/95 Bond No. 5257, in the principal amount of \$500.

Aagje van der Lande, L. S. Claim No. 555, Cities Service Company 5/66 Bond No. 1662, in the principal amount of \$500.

Nicolaas Lebrer and Cornelia Goedhart, L. S. Claim No. 557, Central Pacific Railway Company 4/49 Bond No. 10808, in the principal amount of \$1,000.

Netherlands Embassy, Office of the Financial Counselor, 25 Broadway, New York 4, New York.

Executed at Washington, D. C., on October 29, 1956.

For the Attorney General.

[SEAL] PAUL V. MYRON,  
Deputy Director,  
Office of Alien Property.

[F. R. Doc. 56-8936; Filed, Nov. 2, 1956;  
8:51 a. m.]

STATE OF NETHERLANDS FOR THE BENEFIT  
OF GEERTRUIDA FELIX ET AL.

NOTICE OF INTENTION TO RETURN VESTED  
PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

The State of the Netherlands for the benefit of (all right, title and interest of the Attorney General acquired pursuant to Vesting Order No. 18521 (16 F. R. 10097, October 3, 1951) in and to):

Geertruida Felix, Gerarda van Schermbeck and Margaretha van Eupen, L. S. Claim No. 348, Cities Service Company 5/66 Debenture Nos. 7228, 7229 and 11074, in the principal amount of \$1,000 each; Cities Service Company 5/66 Debenture No. 2362, in the principal amount of \$500; Cities Service Company 5/69 Debenture No. 29969, in the principal amount of \$1,000.

Elisabeth, Jacob and Thomas Doyer, Hermance van der Velde, and Geertruida Klaas, L. S. Claim No. 367, Union Pacific Railroad Company 4/2008 Bond No. 53300, in the principal amount of \$1,000; Cities Service Company 5/66 Debenture No. 4906, in the principal amount of \$1,000.

Gerard van der Flier, L. S. Claim No. 399, Southern Pacific Company 5/49 Bond No. 3920, in the principal amount of \$500.

Cornelia Ephraim, L. S. Claim No. 899, Atchison, Topeka and Santa Fe Railway Company 4/95 Bond No. 8272, in the principal amount of \$500.

Wilhelm Franck, L. S. Claim No. 401, Cities Service Company 5/66 Bond No. 1724, in the principal amount of \$1,000.

Netherlands Embassy, Office of the Financial Counselor, 25 Broadway, New York 4, New York.

Executed at Washington, D. C., on October 29, 1956.

For the Attorney General.

[SEAL] PAUL V. MYRON,  
Deputy Director,  
Office of Alien Property.

[F. R. Doc. 56-8937; Filed, Nov. 2, 1956;  
8:51 a. m.]

## STATE OF NETHERLANDS FOR THE BENEFIT OF H. JURGENS ET AL.

## NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

## Claimant, Claim No., Property, and Location

The State of the Netherlands for the benefit of:

(Cash in the Treasury of the United States):

Mrs. H. Jurgens; L. F., B. and Miss L. M. Cohen, L. S. Claim No. 30, \$1,176.24.

Mathilda Visser and Elisabeth Erdmann, L. S. Claim No. 35, \$1,176.24.

Charlotte, Evert, Emmanuel, Samuel, Nico and Henri Vles; Rozet Jaray; Henriette, Sara and Johanna Polak; Sara Jourden; Henriette Hirsch; Hesther Luchsinger; Isidora Reuder; Marianne Hendrix; Willy and Johanna Spijer; Henriette Vos; Flora Ekker, L. S. Claim No. 60, \$8,392.60.

Elisabeth, Pauline, Robert and Eduard Jacobson, L. S. Claim No. 105, \$3,802.24.

Sara Zoest; Cornelis, Anton and Gerard van Egmond; Sara van der Laan, L. S. Claim No. 821, \$5,270.50.

(All right, title and interest of the Attorney General acquired pursuant to Vesting Order No. 18521 (16 F. R. 10097, October 3, 1951) in and to):

Mrs. H. Jurgens; L. F., B. and Miss L. M. Cohen, L. S. Claim No. 30, Southern Pacific Company-San Francisco Terminal 4/50 Bond No. 3437, in the principal amount of \$500.

Mathilda Visser and Elisabeth Erdmann, L. S. Claim No. 35, International Hydro-Electric System 6/44 Debenture No. 23897, in the principal amount of \$1,000.

Charlotte, Evert, Emmanuel, Samuel, Nico and Henri Vles; Rozet Jaray; Henriette, Sara and Johanna Polak; Sara Jourden; Henriette Hirsch; Hesther Luchsinger; Isidora Reuder; Marianne Hendrix; Willy and Johanna Spijer; Henriette Vos; Flora Ekker, L. S. Claim No. 60, Cities Service Company 5/58 Bond No. 37515, in the principal amount of \$1,000; International Hydro-Electric System 6/44 Debenture Nos. 17853 and 17789, in the principal amount of \$1,000 each; International Power Securities Corporation 6½/55 Bond No. 1947, in the principal amount of \$1,000; Missouri-Kansas-Texas Railway Company 4/90 Bond No. 12595, in the principal amount of \$1,000.

Elizabeth, Pauline, Robert and Eduard Jacobson, L. S. Claim No. 105, The Cuba Company 6/55 Bond No. 2592, in the principal amount of \$1,000; International Hydro-Electric System 6/44 Debenture No. 20861, in the principal amount of \$1,000; Southern Pacific Company 4½/69 Bond No. 31676, in the principal amount of \$1,000.

Sara Zoest; Cornelis, Anton and Gerard van Egmond; Sara van der Laan, L. S. Claim No. 821, Panhandle Eastern Pipeline Company 4/52 Bond Nos. A. A. M. 6704, A. A. M. 6705, A. A. M. 6706 and A. A. M. 6707, in the principal amount of \$1,000 each; Southern Pacific Company-San Francisco Terminal 4/50 Bond Nos. 14295 and 14296, in the principal amount of \$500 each; Southern Railway Company 4/56 Bond No. 30793, in the principal amount of \$1,000.

Netherlands Embassy, Office of the Financial Counselor, 25 Broadway, New York 4, New York.

Executed at Washington, D. C., on October 29, 1956.

For the Attorney General.

[SEAL]

PAUL V. MYRON,  
Deputy Director,  
Office of Alien Property.

[F. R. Doc. 56-8939; Filed, Nov. 2, 1956; 8:52 a. m.]

## STATE OF NETHERLANDS FOR THE BENEFIT OF SUZE PIEREN ET AL.

## NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

## Claimant, Claim No., Property, and Location

The State of the Netherlands for the benefit of:

(Cash in the Treasury of the United States):

Suze, Johanna, Adriana and Dirk Pieren, L. S. Claim No. 36, \$1,117.43.

Mrs. E. D. Fuchs, L. S. Claim No. 44, \$2,367.50.

I. van Blankenstein, L. S. Claim No. 52, \$1,117.43.

John Smalhout, L. S. Claim No. 57, \$3,729.86.

Lion Cohen, L. S. Claim No. 61, \$1,490.00.

(All right, title and interest of the Attorney General acquired pursuant to Vesting Order No. 18521 (16 F. R. 10097, October 3, 1951) in and to):

Suze, Johanna, Adriana and Dirk Pieren, L. S. Claim No. 36, Cities Service Company 5/69 Debenture No. 37378, in the principal amount of \$1,000; Havana Electric Railway Company 5/52 Bond Nos. 9151 and 9152, in the principal amount of \$1,000 each; Cities Service Company 5/50 Debenture No. 70010, in the principal amount of \$1,000.

Mrs. E. D. Fuchs, L. S. Claim No. 44, Cities Service Company 5/58 Debenture No. 7501, in the principal amount of \$1,000; Northern Pacific Railway Company 4/97 Bond No. 41693, in the principal amount of \$1,000; Southern Pacific Company 4½/69 Bond No. 37397, in the principal amount of \$1,000.

I. van Blankenstein, L. S. Claim No. 52, Cities Service Company 5/58 Debenture No. 15526, in the principal amount of \$1,000; Cities Service Power & Light Company 5½/52 Debenture No. 26348, in the principal amount of \$1,000.

John Smalhout, L. S. Claim No. 57, Cities Service Company 5/66 Debenture No. 6250, in the principal amount of \$1,000; The Cuba Company 6/55 Debenture No. 3884, in the principal amount of \$1,000; Havana Electric Railway Company 5/52 Bond No. 8669, in the principal amount of \$1,000; Louisville & Nashville Railroad Company; Southeast & St. Louis Division 3/60 Bond No. 787, in the principal amount of \$1,000.

Lion Cohen, L. S. Claim No. 61, Cities Service Company 5/58 Debenture No. 37936, in the principal amount of \$1,000.

Netherlands Embassy, Office of the Financial Counselor, 25 Broadway, New York 4, New York.

Executed at Washington, D. C., on October 29, 1956.

For the Attorney General.

[SEAL]

PAUL V. MYRON,  
Deputy Director,  
Office of Alien Property.

[F. R. Doc. 56-8938; Filed, Nov. 2, 1956; 8:51 a. m.]

## STATE OF NETHERLANDS FOR THE BENEFIT OF HELENA VAN LEER-DE JONGH ET AL.

## NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

## Claimant, Claim No., Property, and Location

The State of the Netherlands for the benefit of:

(Cash in the Treasury of the United States):

Helena van Leer-de Jongh, L. S. Claim No. 515, \$392.08.

Salomon Kats, L. S. Claim No. 527, \$1,568.32.

Adrienne van Nierop, L. S. Claim No. 622, \$3,920.80.

Margaretha, Louise, Elsa, Anthonia, and Anton van Raalte; Elsa Mendes; Jenny de Jong; Bente Kyhn; Antoninette Wiener; Eduard and Franz van Leer; Eduard Alfred van Leer, L. S. Claim No. 673, \$2,626.94.

(All right, title and interest of the Attorney General acquired pursuant to Vesting Order No. 18521 (16 F. R. 10097, October 3, 1951) in and to):

Helena van Leer-de Jongh, L. S. Claim No. 515, International Hydro-Electric System 6/44 Debenture No. 24778, in the principal amount of \$1,000; International Power Securities Corporation 6½/55 Bond No. 1879, in the principal amount of \$1,000; Missouri-Kansas-Texas Railway Company 4/90 Bond No. 24598, in the principal amount of \$1,000.

Salomon Kats, L. S. Claim No. 527, Cities Service Company 5/58 Debenture No. 12442, in the principal amount of \$1,000.

Adrienne van Nierop, L. S. Claim No. 622, Louisville & Jeffersonville Bridge & Railroad Company 4/45 Bond Nos. 970, 1814 and 2429, in the principal amount of \$1,000 each; Southern Pacific Company-San Francisco Terminal 4/50 Bond No. 15285, in the principal amount of \$1,000.

Margaretha, Louise, Elsa, Anthonia, and Anton van Raalte; Elsa Mendes; Jenny de Jong; Bente Kyhn; Antoninette Wiener; Eduard and Franz van Leer; Eduard Alfred van Leer, L. S. Claim No. 673, International Power Securities Corporation 6½/55 Bond No. 9176, in the principal amount of \$1,000.

Netherlands Embassy, Office of the Financial Counselor, 25 Broadway, New York 4, New York.

Executed at Washington, D. C., on October 29, 1956.

For the Attorney General.

[SEAL]

PAUL V. MYRON,  
Deputy Director,  
Office of Alien Property.

[F. R. Doc. 56-8940; Filed, Nov. 2, 1956; 8:52 a. m.]

[Vesting Order 11207, Amdt.]

LEO AND OSCAR WIESNER

In re: Interests in real property, property insurance policies, and claims owned by Leo Wiesner and Oscar Wiesner, also known as Oskar Wiesner.

Vesting Order 11207 is hereby amended as follows and not otherwise:

By deleting from Exhibit A, attached to said Vesting Order and by reference made a part thereof, the description of Parcel 1 and substituting therefor the following description:

All that tract or parcel of land, situate in the City of Rochester, County of Monroe and State of New York, being Lot No. 96 on the Franklin Tract, as allotted and laid down by Stebbins and Cuyler on the map of the Franklin Tract, which map is deposited in the County Clerk's Office, bounded as follows: South on Andrews Street; east on an alley; west on Lot 97 on which formerly stood the school house, District No. 10; thence northerly by said Lot 97, 100 feet to Lot 98; thence easterly by said Lot 98, 39 feet to the alley; thence southerly on said alley, 100 feet to Andrews Street; thence westerly on the north line of Andrews Street about 39 feet to the place of beginning.

All other provisions of Vesting Order 11207, and all actions taken by or on behalf of the Attorney General of the United States in reliance thereon, pursuant thereto and under the authority thereof are hereby ratified and confirmed.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193 as amended.

Executed at Washington, D. C., on October 30, 1956.

For the Attorney General.

[SEAL] PAUL V. MYRON,  
Deputy Director, Office of Alien  
Property, Department of  
Justice.

[F. R. Doc. 56-8041; Filed, Nov. 2, 1956;  
8:52 a. m.]

## INTERSTATE COMMERCE COMMISSION

### FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 31, 1956.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

#### LONG-AND-SHORT HAUL

FSA No. 32825: *Paper from Pacific Coast to Southern Points*. Filed by W. J. Prueter, Agent, for interested rail carriers. Rates on paper and paper articles, carloads, from Pacific coast points to Jackson, Miss., Memphis, Tenn., and New Orleans, La.

Grounds for relief: Rail carrier competition and circuitry.

Tariff: Supplement 41 to Agent Prueter's ICC 1574.

FSA No. 32826: *Perlite rock from Grants, N. Mex., to Official Territory*. Filed by W. J. Prueter, Agent, for interested rail carriers. Rates on rock, perlite, broken, crushed or ground, dried or not dried, not expanded, carloads, from Grants, New Mexico, to points in official territory.

Grounds for relief: Rail carrier and market competition, and circuitry.

Tariff: Supplement 41 to Agent Prueter's ICC 1574.

FSA No. 32827: *Benzol from Marshall, Ill., to Wichita, Kans.* Filed by W. J. Prueter, Agent, for interested rail carriers. Rates on benzol (benzene), tank-car loads, from Marshall, Ill., to Wichita, Kans.

Grounds for relief: Short-line distance formula and circuitry.

Tariff: Supplement 21 to Agent Prueter's ICC A-3902.

FSA No. 32828: *Petroleum products from Mandan, N. Dak., to Minnesota*. Filed by the Northern Pacific Railway Company, for itself and one other rail carrier. Rates on petroleum residual fuel oil, distillate fuel oil, and liquefied petroleum gas, tank-car loads, from Mandan, N. Dak., to points in Minnesota on the Minnesota Western Railway.

Grounds for relief: Market competition.

Tariff: Supplement 21 to Northern Pacific Railway ICC 9908.

FSA No. 32829: *Lumber from Memphis, Tenn., to New Orleans, La.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on lauan lumber and related articles, carloads, from Memphis, Tenn., to New Orleans, La.

Grounds for relief: Rail carrier competition and circuitry.

FSA No. 32830: *Scrap Paper from St. Louis, Mo., to New Orleans, La.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on paper, scrap or waste, carloads, from St. Louis, Mo., to New Orleans, La.

Grounds for relief: Rail carrier competition and circuitry.

FSA No. 32831: *Trailer-on-flat-car service—New York, New Haven and Hartford R. R.* Filed by The New York, New Haven and Hartford Railroad Company, for itself and other rail carriers. Rates on freight loaded in highway truck-trailers and transported on railroad flat cars, between points in Indiana, New York, and Pennsylvania, on the one hand, and points on the New York, New Haven and Hartford Railroad, on the other.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 5 to N. Y. N. H. & H. R. R. ICC 4394.

FSA No. 32832: *Fresh meats and packing-house products to the South*. Filed by W. J. Prueter, Agent, for interested rail carriers. Rates on fresh meats and packinghouse products, carloads, from points in Illinois and western trunk-line territories, to points in southern territory.

Grounds for relief: Motor-truck competition.

Tariffs: Agent Prueter's ICC A-3911 and one other tariff.

FSA No. 32833: *Peanuts from the South to Official and Illinois Territories*. Filed by O. W. South, Jr., for interested rail carriers. Rates on peanuts, shelled, carloads, from points in Alabama, Florida, Georgia, and Tennessee, to points in Illinois and official territories.

Grounds for relief: Short-line distance formula, circuitry, and motor-truck competition.

Tariff: Supplement 203 to Agent C. A. Spaninger's ICC 887.

FSA No. 32834: *Lime from White Stone, Texas, to the Southwest*. Filed by P. C. Kratzmeir, Agent, for interested rail carriers. Rates on lime, carloads, from White Stone, Texas, to points in Arkansas, Louisiana, New Mexico, and Oklahoma.

Grounds for relief: Short-line distance formula and circuitry.

Tariff: Supplement 37 to Agent Kratzmeir's ICC 4021.

FSA No. 32835: *Salt Cake from Hopewell, Va., to Florida*. Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on salt cake (crude sulphate of soda), carloads, from Hopewell, Va., to Jacksonville, South Jacksonville, East Port, and Eastport Jet., Fla.

Grounds for relief: Rail carrier and market competition, and circuitry.

Tariff: Supplement 12 to Agent C. A. Spaninger's ICC 1538.

FSA No. 32836: *Wallboard from Central Territory to Kansas and Missouri*. Filed by H. R. Hinsch, Agent, for interested rail carriers. Rates on building, wall or insulating boards, viz: fibreboard, pulpboard, or strawboard, carloads, from points in central territory to points in Kansas and Missouri.

Grounds for relief: Circuitous routes.

Tariff: Supplement 144 to Agent Hinsch's ICC 4238.

FSA No. 32837: *Iron and steel articles From St. Louis, Mo., and related points to Twin Cities*. Filed by J. G. Hartman, Agent, for the Federal Barge Lines and interested rail carrier. Rates on iron and steel articles, viz: plate, sheets, tin plate, terne plate, and tin mill black plate, from Granite City, Ill., East St. Louis, Ill., and St. Louis, Mo., to Minneapolis, Minnesota Transfer, and St. Paul, Minn.

Grounds for relief: Market competition.

Tariff: Supplement 10 to Agent Hartman's ICC A-99.

FSA No. 32838: *Scrap iron and steel from Michigan and Ohio to Official Territory*. Filed by the Detroit, Toledo and Ironton Railroad Company, for itself and other interested rail carriers. Rates on billets, scrap iron and steel, and articles taking the same rates, carloads, from points in Michigan and Ohio on the Detroit, Toledo and Ironton Railroad, to points in official territory.

Grounds for relief: Circuitous routes.

Tariff: Detroit, Toledo and Ironton Railroad ICC 775.

FSA No. 32839: *Merchandise from Cincinnati, Ohio, to Florida*. Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on merchandise, mixed carloads, from Cincinnati, Ohio, to points in Florida.

Grounds for relief: Circuitous routes.

Tariff: Supplement 55 to Agent C. A. Spaninger's ICC 1458.

FSA No. 32840: *Cement from Lone Star, Va., to Charlotte, N. C.* Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on cement, carloads, from Lone Star, Va., to Charlotte, N. C.

Grounds for relief: Circuitous routes. Tariff: Supplement 66 to Agent C. A. Spaninger's ICC 1447.

FSA No. 32841: *Petroleum oil from Petrolia, Pa., to Houston, Texas.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on petroleum oil, noibn, tank-car loads, from Petrolia, Pa., to Houston, Texas.

Grounds for relief: Truck-barge competition.

Tariff: Supplement 10 to Agent Kratzmeir's ICC 4188.

FSA No. 32842: *Crude rubber from Louisiana to Lake Zurich, Ill.* Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on rubber, artificial, synthetic or neoprene, crude, carloads, from Baton Rouge and North Baton Rouge, La., to Lake Zurich, Ill.

Grounds for relief: Short-line distance formula and circuitry.

Tariff: Supplement 203 to Agent J. H. Marque's ICC 417.

FSA No. 32843: *Bottle caps from Lancaster, Pa., to Jacksonville, Fla.* Filed by O. E. Schultz, Agent, for interested rail carriers. Rates on caps, for bottles, cans, or jars, metal, with or without cork or paper lining, carloads, from Lancaster, Pa., to Jacksonville and South Jacksonville, Fla.

Grounds for relief: Circuitous routes.

Tariff: Supplement 26 to Agent C. W. Boin's ICC A-1079.

FSA No. 32844: *Fertilizer between points in Illinois Territory.* Filed by R. G. Raasch, Agent, for interested rail

carriers. Rates on fertilizer and fertilizer materials, dry, carloads, between points in Illinois Freight Association territory.

Grounds for relief: Short-line distance formula and circuitry.

Tariff: Supplement 11 to Agent Raasch's ICC 857.

By the Commission.

[SEAL] HAROLD D. MCCOY,  
Secretary.

[F. R. Doc. 56-8925; Filed, Nov. 2, 1956; 8:48 a. m.]

GARMENT HANGERS; BALTIMORE TO NORTH CAROLINA

RATES AND CHARGES

At a session of the Interstate Commerce Commission, Board of Suspension, held at its office in Washington, D. C., on the 29th day of October A. D. 1956.

There being under consideration the matter of rates and charges, and the rules, regulations and practices affecting such rates and charges, applicable on interstate or foreign commerce of wire garment hangers, minimum 25,000 pounds, from Baltimore, Md. to certain points in North Carolina, as set forth in:

Motor Carriers Traffic Association, Inc., Agent: In Supplement No. 56 to MF-I. C. C. No. 444; on page 12 thereof, Index 17830;

Southern Motor Carriers Rate Conference, Agent: In Supplement No. 75 to MF-I. C. C. No. 804; on pages 47 and 48 thereof, Indices 24192, 24192.1, 24192.2, 24192.3, 24192.5, 24192.6, 24192.7, 24192.8, 24192.9, 24193.1, 24193.4, 24193.5, 24193.7 and 24193.8;

or as the same may be amended or reissued.

It appearing that upon consideration of the tariff schedules and protest

thereto, there is reason to institute an investigation to determine whether they result in rates and charges, rules or regulations and practices that are unjust and unreasonable in violation of the Interstate Commerce Act; and good cause appearing therefor:

*It is ordered,* That an investigation be, and it is hereby, instituted, into and concerning the lawfulness of the rates, charges, rules, regulations and practices contained in said schedules, with a view to making such findings and orders in the premises as the facts and circumstances shall warrant.

*It is further ordered,* That the investigation in this proceeding shall not be confined to the matters and issues hereinbefore stated as the reason for instituting this investigation, but shall include all matters and issues with respect to the lawfulness of the said rates, charges, rules, regulations and practices under the Interstate Commerce Act.

*It is further ordered,* That a copy of this order be served on the respondents' attorneys in fact who filed the schedules containing the rates under investigation herein; and that further notice of this proceeding be given to the respondents, and that notice be given to the general public by posting a copy of this order in the office of the Secretary of the Commission at Washington, D. C., and by filing a copy with the Director, Division of the Federal Register.

*And it is further ordered,* That this matter be assigned for hearing at a time and place to be hereafter fixed.

By the Commission, Board of Suspension.

[SEAL] HAROLD D. MCCOY,  
Secretary.

[F. R. Doc. 56-8924; Filed, Nov. 2, 1956; 8:48 a. m.]

