



FEDERAL REGISTER

VOLUME 25

NUMBER 240

Washington, Saturday, December 10, 1960

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FEDERAL REGISTER

Telephone

WOrth 3-3261

prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

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The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

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Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations

Rules and Regulations

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7958 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Orsi, Inc., et al.

Subpart—Misbranding or mislabeling: § 13.1185 *Composition*: § 13.1185-90 *Wool Products Labeling Act*. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements*: § 13.1852-80 *Wool Products Labeling Act*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2-5, 54 Stat. 1128-1130; 15 U.S.C. 45, 68) [Cease and desist order, Orsi, Inc., et al., New York, N.Y., Docket 7958, October 18, 1960]

In the Matter of Orsi, Inc., a Corporation, and Domenico Orsi and Richard F. C. Bemporad, Individually and as Officers of Said Corporation

Consent order requiring a New York City distributor to cease violating the Wool Products Labeling Act by labeling as "100 percent Re-used wool", fabrics which contained substantially less than 100 percent woolen fibers, and by failing to label certain fabrics as required under the Act.

The order to cease and desist is as follows:

It is ordered, That respondents Orsi, Inc., a corporation, and its officers, and Domenico Orsi and Richard F. C. Bemporad, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act, of wool fabrics or other wool products, as "wool products" are defined in and subject to the Wool Products Labeling Act, do the following forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to affix labels to such products showing each element of information required to be disclosed by section 4 (a) (2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Orsi, Inc. a corporation, and its officers, and Domenico Orsi and Richard F. C. Bemporad, individually and as officers of

said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the constituent fibers of which their products are composed or the percentage or amount thereof in sales invoices, shipping memorandum or any other manner.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: October 18, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60-11500; Filed, Dec. 9, 1960; 8:47 a.m.]

[Docket 7983 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

S. Schneiderman & Sons et al.

Subpart—Advertising falsely or misleadingly: § 13.155 *Prices*: § 13.155-40 *Exaggerated as regular and customary*. Subpart—Furnishing means and instrumentalities of misrepresentation or deception: § 13.1055 *Furnishing means and instrumentalities of misrepresentation or deception*. Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely*: § 13.1108-45 *Fur Products Labeling Act*. Subpart—Misrepresenting oneself and goods—PRICES: § 13.1805 *Exaggerated as regular and customary*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Joseph Schneiderman et al. trading as S. Schneiderman & Sons, New York, N.Y., Docket 7983, October 13, 1960]

In the Matter of Joseph Schneiderman, Harry Schneiderman, and Louis Schneiderman Individually and as Co-partners Trading as S. Schneiderman & Sons

Consent order requiring manufacturing furriers in New York City to cease violating the Fur Products Labeling Act by listing fictitious prices on consignment invoices of fur products, intended to promote the sale of the products, and by failing to maintain adequate records as a basis for such pricing.

The order to cease and desist is as follows:

It is ordered, That Joseph Schneiderman, Harry Schneiderman and Louis Schneiderman, individually and as co-partners trading as S. Schneiderman & Sons, or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution, in commerce, of fur products; or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by representing, directly or by implication, on invoices that the former, regular or usual price of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such products in the recent regular course of business;

B. Falsely or deceptively advertising fur products through the use of any advertisement, representations, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale, or offering for sale of fur products, and which represents, directly or by implication that the former, regular or usual price of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such product in the recent regular course of business;

C. Misrepresenting in any manner the savings available to purchasers of respondents' fur products;

D. Making pricing claims or representations respecting prices or values of fur products unless respondents maintain full and adequate records disclosing the facts upon which such claims and representations are based.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the above-named respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: October 13, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60-11501; Filed, Dec. 9, 1960; 8:48 a.m.]

Title 7—AGRICULTURE

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

SUBCHAPTER E—DETERMINATION OF SUGAR COMMERCIALY RECOVERABLE

[Sugar Determination 833.7]

PART 833—MAINLAND CANE SUGAR AREA

1960 Crop

Pursuant to the provisions of section 302(a) of the Sugar Act of 1948, as amended (hereinafter referred to as "act"), the following determination is hereby issued:

§ 833.7 Sugar commercially recoverable from sugarcane in the mainland cane sugar area.

(a) *Definitions.* For the purpose of this section, the terms:

(1) "Trash" means green or dried leaves, sugarcane tops, dirt and all other extraneous material.

(2) "Gross weight" means the total weight (short tons) of sugarcane, including trash, as delivered by a producer for processing for sugar production.

(3) "Net weight" means:

(i) In Florida, 96.0 percent of gross weight, and

(ii) In Louisiana, the weight obtained by deducting the weight of trash from the gross weight of sugarcane as delivered by a producer.

(b) *Recoverable sugar.* For the 1960 crop of sugarcane, the amount of sugar, in hundredweight, raw value, commercially recoverable from sugarcane grown on a farm in the Mainland Cane Sugar Area and marketed (or processed by the producer) for the extraction of sugar or liquid sugar, from an acreage not in excess of the proportionate share for the farm, shall be obtained by multiplying the net weight of the sugarcane in tons by the rate of recoverability specified for the average percentage of sucrose in the normal juice of such sugarcane as follows:

(1) For Farms in Louisiana:	Rate of recoverable sugar (hundredweight) per ton of sugarcane
Percentage of sucrose in normal juice: ¹	
8.0	0.946
9.0	1.117
10.0	1.289
11.0	1.463
12.0	1.638
13.0	1.814
14.0	1.992
15.0	2.171
16.0	2.347
17.0	2.526
18.0	2.705

¹Rates for the intervening tenths of 1 percent shall be calculated by interpolation.

(2) For Farms in Florida:	Rate of recoverable sugar (hundredweight) per ton of sugarcane
Percentage of sucrose in normal juice: ¹	
8.0	0.946
9.0	1.145
10.0	1.331
11.0	1.508
12.0	1.684
13.0	1.859
14.0	2.034
15.0	2.207
16.0	2.383
17.0	2.558
18.0	2.734

¹Rates for the intervening tenths of 1 percent shall be calculated by interpolation.

STATEMENT OF BASES AND CONSIDERATIONS

Determinations of amounts of sugar commercially recoverable from sugar beets and sugarcane are required under section 302(a) of the act to establish the amounts of sugar upon which payments are to be made pursuant to the act.

The rates of sugar commercially recoverable at the various normal juice sucrose levels, as specified in this determination, were calculated from data reported to the Department by the processors of sugarcane for sugar in each of the States of Florida and Louisiana. The calculation made use of data representing averages in each State for the crop years 1955, 1956, 1957, 1958, and 1959 of each of the factors of normal juice extraction (the quantity of normal

juice extraction per ton of sugarcane), boiling house efficiency (the ratio of the amount of sugar produced to the amount that could theoretically be produced), the polarization of the sugar produced, and net sugarcane as a percent of gross sugarcane. The calculation also used the purity or retention factor which correlates purity of normal juice with sugar recovery based on the well-established Winter-Carp formula. That formula is expressed mathematically as follows: Purity or Retention Factor=(1.4-40/P) in which P is purity of normal juice. For the purposes of this determination, the computed purity at each of the various normal juice sucrose levels for the crop years 1955, 1956, 1957, 1958 and 1959 was used.

In calculating sugar, commercially recoverable, the data are used in the following manner: The product of normal juice extraction and boiling house efficiency is divided by the product of the polarization of sugar produced and net sugarcane as a percent of gross sugarcane. The result so obtained is multiplied by 2,000 to obtain a factor which when multiplied by normal juice sucrose and the purity or retention factor for that normal juice sucrose gives pounds of sugar per ton of net sugarcane. By use of the applicable raw value conversion factor, in accordance with section 101(h) of the Sugar Act, pounds of sugar per ton of net sugarcane are converted into sugar, commercially recoverable raw value. Expressed mathematically the formula reads:

$$CRS., RV. = \frac{N.J.E. \times B.H.E. \times 2,000 \times N.J.S. \times P.R. \times R.V.C.F.}{(Pol. of sugar) \times (net sugarcane, \% gross sugarcane)}$$

Except for appropriate changes in each of the two moving five-year averages, the aforesaid calculation is the same as that used for the 1959 crop. The use of data for the most recent five crops results in increases in rates of recoverable sugar of about one percent as an average for both Louisiana and Florida.

Accordingly, I hereby find and conclude that the aforesaid determination will effectuate the applicable provisions of the act.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interprets or applies secs. 302, 303, 304; 61 Stat. 930, as amended, 931; 7 U.S.C. 1132, 1133, 1134)

Issued this 7th day of December 1960.

CLARENCE L. MILLER,
Acting Secretary.

[F.R. Doc. 60-11541; Filed, Dec. 9, 1960; 8:52 a.m.]

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

[Navel Orange Reg. 196]

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

Limitation of Handling

§ 914.496 Navel Orange Regulation 196.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and

Order No. 14, as amended (7 CFR Part 914), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the 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 by tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under 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 hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) 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 committee held an open meeting during the current week, 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 hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 8, 1960.

(b) *Order.* (1) The respective quantities 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., December 11, 1960, and ending at 12:01 a.m., P.s.t., December 18, 1960, are hereby fixed as follows:

- (i) District 1: 700,000 cartons;
- (ii) District 2: 214,818 cartons;
- (iii) District 3: 80,009 cartons;
- (iv) District 4: Unlimited movement.

(2) 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.

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

Dated: December 9, 1960.

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

[F.R. Doc. 60-11582; Filed, Dec. 9, 1960; 11:26 a.m.]

[Lemon Reg. 876]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 953.983 Lemon Regulation 876.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and

Order No. 53, as amended (7 CFR Part 953; 23 F.R. 9053), regulating the handling of lemons grown in California and 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 handling of such lemons 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 hereof 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 becomes 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 committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons 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 lemons; 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 hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 6, 1960.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., December 11, 1960, and ending at 12:01 a.m., P.s.t., December 18, 1960, are hereby fixed as follows:

- (i) District 1: 32,550 cartons;
- (ii) District 2: 130,200 cartons;
- (iii) District 3: 23,250 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.

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

Dated: December 8, 1960.

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

[F.R. Doc. 60-11577; Filed, Dec. 9, 1960; 9:20 a.m.]

PART 1031—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

Processing Into Fresh Juice

Pursuant to the provisions of the marketing agreement and Order No. 131 (7 CFR Part 1031; 25 F.R. 9093) regulating the handling of oranges and grapefruit grown in the lower Rio Grande Valley in Texas, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), it is hereby found and determined, on the basis of the recommendations of the Texas Valley Citrus Committee, established under the aforesaid marketing agreement and order, and other available information, that the following amendment of the rules and regulations (Sec. 1031.120; 25 F.R. 9757; 10422) is in accordance with the provisions of the marketing agreement and order and will tend to effectuate the declared policy of the act; and the said rules and regulations are hereby amended as follows:

Section 1031.120 *Fruit exempt from regulations* (25 F.R. 9757; 10422) is amended by revising the provisions of paragraph (b) thereof to read as follows:

(b) *Processing into fresh juice.* Any handler may handle oranges and grapefruit for processing into fresh juice exempt from the provision of §§ 1031.34 and 1031.40: *Provided*, That, prior to such handling the handler notifies the committee of the proposed handling and furnishes the committee (1) with a statement, executed by the intended processor, that the fruit will be used only for processing into fresh juice, and (2) with an agreement by such processor to furnish the committee with a report as to the quantity of each shipment of fruit received and the carrier (including the truck license number or railroad car number, as the case may be) of each such shipment.

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 hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which the provisions hereof are based became available and the time when such provisions must become effective in order to effectuate the declared policy of the act is insufficient; and such provisions re-

lieve restrictions on the handling of oranges and grapefruit.

The provisions of this amendment shall become effective at 12:01 a.m., c.s.t., December 12, 1960.

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

Dated: December 7, 1960.

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

[F.R. Doc. 60-11538; Filed, Dec. 9, 1960;
8:52 a.m.]

[Orange Reg. 6]

PART 1031—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

Limitation of Shipments

§ 1031.312 Orange Regulation 6.

(a) *Findings.* (1) Pursuant to the marketing agreement, and Order No. 131 (7 CFR Part 1031; 25 F.R. 9093), regulating the handling of oranges and grapefruit grown in the lower Rio Grande Valley in Texas, effective September 22, 1960, under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendation of the Texas Valley Citrus Committee established under the aforesaid marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of 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 (5 U.S.C. 1001-1011) 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; 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 oranges, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the 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 Texas Valley Citrus Committee on December 5, 1960, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the com-

mittee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of oranges, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order; and terms relating to grade and diameter, when used herein, shall have the same meaning as is given to the respective term in the United States Standards for Oranges (Texas and States other than Florida, California, and Arizona) (§§ 51.680-51.712 of this title).

(2) During the period beginning at 12:01 a.m., c.s.t., December 12, 1960, and ending at 12:01 a.m., c.s.t., January 9, 1961, no handler shall handle:

(i) Any oranges of any variety, grown in the production area, unless such oranges grade at least U.S. No. 2;

(ii) Any Navel or Early and Midseason oranges, grown as aforesaid, which are of a size smaller than $2\frac{7}{16}$ inches in diameter, except that not more than ten (10) percent, by count, of such oranges in any lot of containers and not more than fifteen (15) percent, by count, of such oranges in any individual container in such lot may be of a size smaller than $2\frac{7}{16}$ inches in diameter;

(iii) Any Valencia and similar late type oranges, grown as aforesaid, which are of a size smaller than $3\frac{3}{16}$ inches in diameter, except that not more than ten (10) percent, by count, of such oranges in any lot of containers, and not more than fifteen (15) percent, by count, of such oranges in any individual container in such lot, may be of a size smaller than $3\frac{3}{16}$ inches in diameter; or

(iv) Any oranges of any variety, grown as aforesaid, which are place packed in containers, unless such oranges meet the requirements of standard pack or, if not so packed, such oranges meet all applicable requirements of standard sizing and fill; *Provided*, That the minimum and maximum diameters of the individual oranges in any container shall conform to the following applicable range of diameter measurements except that not to exceed ten (10) percent, by count, of the oranges in any such container may measure less than the minimum or more than the maximum applicable diameter limits specified for the particular size: *Provided, further*, That the provisions of this subdivision (iv) shall not apply to the oranges in any gift package of fruit.

Pack sizes in 1½ bushel box:	Diameter limits in inches	
	Minimum	Maximum
100-----	$3\frac{7}{16}$	$3\frac{13}{16}$
125-----	$3\frac{3}{16}$	$3\frac{5}{16}$
163-----	$2\frac{15}{16}$	$3\frac{5}{16}$
200-----	$2\frac{11}{16}$	$3\frac{1}{16}$
252-----	$2\frac{7}{16}$	$2\frac{13}{16}$

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

Dated: December 7, 1960.

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

[F.D. Doc. 60-11512; Filed, Dec. 9, 1960;
8:49 a.m.]

[Grapefruit Reg. 6]

PART 1031—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

Limitation of Shipments

§ 1031.313 Grapefruit Regulation 6.

(a) *Findings.* (1) Pursuant to the marketing agreement, and Order No. 131 (7 CFR Part 1031; 25 F.R. 9093), regulating the handling of oranges and grapefruit grown in the lower Rio Grande Valley in Texas, effective September 22, 1960, under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendation of the Texas Valley Citrus Committee established under the aforesaid marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, 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 (5 U.S.C. 1001-1011) 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; 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 all grapefruit, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the 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 Texas Valley Citrus Committee on December 5, 1960, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has

been disseminated among handlers of such grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order; and terms relating to grade and diameter when used herein, shall have the same meaning as is given to the respective term in the United States Standards for Grapefruit (Texas and States other than Florida, California, and Arizona) (§§ 51.620-51.658 of this title).

(2) During the period beginning at 12:01 a.m., c.s.t., December 12, 1960, and ending at 12:01 a.m., c.s.t., January 9, 1961, no handler shall handle:

(i) Any container of grapefruit of any variety, grown in the production area, unless such grapefruit grade U.S. Fancy, U.S. No. 1 Bright, U.S. No. 1, or U.S. No. 2;

(ii) Any seedless grapefruit, grown as aforesaid, which are of a size smaller than $3\frac{3}{16}$ inches in diameter, except that not more than ten (10) percent, by count, of such seedless grapefruit in any lot of containers, and not more than fifteen (15) percent, by count, of such seedless grapefruit in any individual container in such lot, may be of a size smaller than $3\frac{3}{16}$ inches in diameter: *Provided*, That none of such seedless grapefruit that is smaller than $3\frac{3}{16}$ inches in diameter may be smaller than $3\frac{3}{16}$ inches in diameter;

(iii) Any seeded grapefruit, grown as aforesaid, which are of a size smaller than $3\frac{3}{16}$ inches in diameter, except that not more than ten (10) percent, by count, of such seeded grapefruit in any lot of containers, and not more than fifteen (15) percent, by count, of such seeded grapefruit in any individual container in such lot, may be a size smaller than $3\frac{3}{16}$ inches in diameter; or

(iv) Any grapefruit of any variety, grown as aforesaid, which are place packed in boxes or cartons, unless such grapefruit meet the requirements of standard pack or, if not so packed, such grapefruit are fairly uniform in size and the containers are well filled: *Provided*, That the provisions of this subdivision (iv) shall not apply to the grapefruit in any gift package of fruit.

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

Dated: December 7, 1960.

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

[F.R. Doc. 60-11511; Filed, Dec. 9, 1960; 8:49 a.m.]

Title 18—CONSERVATION OF POWER

Chapter I—Federal Power Commission

SUBCHAPTER E—REGULATIONS UNDER NATURAL GAS ACT

[Docket No. R-193; Order No. 230]

PART 154—RATE SCHEDULES AND TARIFFS

Making Producer Rates Effective at End of Suspension Period

DECEMBER 5, 1960.

The Commission has before it for consideration the amendment of § 154.102, Part 154, Rate Schedules and Tariffs, of Subchapter E, regulations under the Natural Gas Act, Chapter I of Title 18, Code of Federal Regulations.

The section amended hereby was prescribed by Order No. 215 issued October 9, 1959 (24 F.R. 3373; 22 FPC 668), and was designed to establish a procedure whereby suspended filings of proposed changes in rates may be made effective at the expiration of the suspension period as provided in section 4(e) of the Natural Gas Act which reads, in pertinent part, as follows:

If the proceeding on the lawfulness of the proposed changes has not been concluded and an order made at the expiration of the suspension period, on motion of the natural gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect.

The purpose of the amendment herein adopted is to make it clear that the rate or charge which thus "shall go into effect" upon the filing of a motion is the only legally effective rate which the producer may charge until or unless otherwise ordered by the Commission. The regulation, as amended, directs that that rate shall be charged.

The Commission finds:

(1) Since the amendment herein prescribed (a) is an interpretation of the Natural Gas Act; (b) a clarification of the regulation which is amended; and (c) could be provided for by Commission order without notice in the case of each individual motion to make proposed changes effective at the expiration of the suspension period, prior notice under the provisions of section 4(a) of the Administrative Procedure Act is not required.

(2) The amendments herein adopted are necessary and appropriate to carry out the provisions of the Natural Gas Act.

The Commission, acting pursuant to the authority contained in the Natural Gas Act, particularly sections 4 and 16 thereof (52 Stat. 822, 830; 15 U.S.C. 717c, 717o), orders:

(A) Paragraphs (a) and (b) of § 154.102, Part 154 of Subchapter E, Chapter I of Title 18 of the Code of Fed-

eral Regulations are amended to read as follows:

(a) If a rate suspension proceeding initiated under section 4(e) of the Natural Gas Act has not been concluded and an order made at the expiration of the suspension period, the proposed change of rate, charge, classification, or service shall go into effect upon motion of the independent producer proposing the change as the legally effective rate and shall be charged, effective as of a date not earlier than the date of receipt of such motion by the Commission or the expiration of the suspension period, whichever is later. The Secretary, upon receipt of such a motion, shall, if the motion is legally adequate for the purpose, notify the movant that the proposed change shall be effective as provided in this section: *Provided*, That the Secretary shall refer to the Commission any motion requesting that a change in rate, charge, classification, or service be made effective, if in his judgment the motion should receive the specific attention of the Commission;

(b) Unless otherwise ordered by the Commission, increased rates or charges shall be charged and collected pursuant to paragraph (a) of this section and there shall be filed by the independent producer a surety bond, or other undertaking, to be approved by the Secretary, to comply with the provisions of paragraph (c) of this section.

(B) In paragraph (c) of § 154.102 delete the words "allowed to become effective" near the end of the paragraph and insert in lieu thereof "which become effective pursuant to the motion".

(C) In paragraph (d) of § 154.102, insert the words "the bond or undertaking" in lieu of "his bond or agreement and undertaking."

(D) Paragraph (e) of § 154.102 is amended to read as follows:

(e) The bond or undertaking required by paragraph (b) of this section may be filed concurrently with the motion to make the increased rates effective. If with his motion the producer has not filed a satisfactory bond or undertaking such bond or undertaking must be filed within 30 days after the issuance of the Secretary's notice provided for in paragraph (a) of this section. Unless notified to the contrary by the Secretary of the Commission within 30 days from the date of filing, such bond or undertaking shall be deemed to be satisfactory and to have been accepted for filing.

(E) These amendments shall be effective on the issuance of this order.

(F) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-11499; Filed Dec. 9, 1960; 8:47 a.m.]

Title 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

[T.D. 6513]

SUBCHAPTER A—INCOME TAX

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

Life Insurance Companies

On August 18, 1960, notice of proposed rule making regarding amendment of the Income Tax Regulations under sections 801, 802, 804, 805, and 806 of the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112), relating to life insurance companies, was published in the FEDERAL REGISTER (25 F.R. 7983). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published, subject to the changes set forth below, are hereby adopted. Section 1.806-3 of such regulations supercedes § 19.1-1 of Treasury Decision 6415 (26 CFR Part 19), approved September 10, 1959 (24 F.R. 7373).

PARAGRAPH 1. Paragraphs (c) and (d) of § 1.801-3 are revised.

PAR. 2. Paragraphs (a), (d), (e), and (f) of § 1.801-4 are revised.

PAR. 3. Paragraphs (b) and (c) of § 1.801-5 are revised.

PAR. 4. Paragraphs (b), (e), and (f) of § 1.804-2 are revised.

PAR. 5. Paragraph (a) of § 1.804-3 is revised.

PAR. 6. Paragraph (b) (1) (i), (ii), and (iii), (2), and (4) of § 1.804-4 is revised.

PAR. 7. Paragraph (a) (4) (iii) of § 1.805-5 is revised.

PAR. 8. Paragraph (a) of § 1.805-7 is revised.

PAR. 9. Paragraph (a) and paragraph (b) (1), (2), and (3) of § 1.805-8 are revised.

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: December 2, 1960.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) under sections 801, 802, 804, 805, and 806 of the Internal Revenue Code of 1954 to the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112), such regulations are amended as follows:

PARAGRAPH 1. Section 1.801 is amended to read as follows:

DEFINITION; TAX IMPOSED

§ 1.801 Statutory provisions; life insurance companies; definition of life insurance company.

SEC. 801. *Definition of life insurance company*—(a) *Life insurance company defined.* For purposes of this subtitle, the term "life insurance company" means an insurance company which is engaged in the business of issuing life insurance and annuity contracts

(either separately or combined with health and accident insurance), or noncancellable contracts of health and accident insurance, if—

(1) Its life insurance reserves (as defined in subsection (b)), plus

(2) Unearned premiums, and unpaid losses (whether or not ascertained), on noncancellable life, health, or accident policies not included in life insurance reserves,

comprise more than 50 percent of its total reserves (as defined in subsection (c)).

(b) *Life insurance reserves defined*—(1) *In general.* For purposes of this part, the term "life insurance reserves" means amounts—

(A) Which are computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest, and

(B) Which are set aside to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from life insurance, annuity, and noncancellable health and accident insurance contracts (including life insurance or annuity contracts combined with noncancellable health and accident insurance) involving, at the time with respect to which the reserve is computed, life, health, or accident contingencies.

(2) *Reserves must be required by law.* Except—

(A) In the case of policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation,

(B) In the case of policies issued by an organization which meets the requirements of section 501(c)(9) other than the requirement of subparagraph (B) thereof, and

(C) As provided in paragraph (3), in addition to the requirements set forth in paragraph (1), life insurance reserves must be required by law.

(3) *Assessment companies.* In the case of an assessment life insurance company or association, the term "life insurance reserves" includes—

(A) Sums actually deposited by such company or association with State or Territorial officers pursuant to law as guaranty or reserve funds, and

(B) Any funds maintained, under the charter or articles of incorporation or association (or bylaws approved by a State insurance commissioner) of such company or association, exclusively for the payment of claims arising under certificates of membership or policies issued on the assessment plan and not subject to any other use.

For purposes of this part, the rate of interest assumed in calculating the reserves described in subparagraphs (A) and (B) shall be 3 percent.

(4) *Deficiency reserves excluded.* The term "life insurance reserves" does not include deficiency reserves. For purposes of this subsection and subsection (c), the deficiency reserve for any contract is that portion of the reserve for such contract equal to the amount (if any) by which—

(A) The present value of the future net premiums required for such contract, exceeds

(B) The present value of the future actual premiums and consideration charged for such contract.

(5) *Amount of reserves.* For purposes of this subsection, subsection (a), and subsection (c), the amount of any reserve (or portion thereof) for any taxable year shall be the mean of such reserve (or portion thereof) at the beginning and end of the taxable year.

(c) *Total reserves defined.* For purposes of subsection (a), the term "total reserves" means—

(1) Life insurance reserves,
(2) Unearned premiums, and unpaid losses (whether or not ascertained), not included in life insurance reserves, and

(3) All other insurance reserves required by law.

The term "total reserves" does not include deficiency reserves (within the meaning of subsection (b) (4)).

(d) *Adjustments in reserves for policy loans.* For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, the life insurance reserves, and the total reserves, shall each be reduced by an amount equal to the mean of the aggregates, at the beginning and end of the taxable year, of the policy loans outstanding with respect to contracts for which life insurance reserves are maintained.

(e) *Guaranteed renewable contracts.* For purposes of this part, guaranteed renewable life, health, and accident insurance shall be treated in the same manner as noncancellable life, health, and accident insurance.

(f) *Burial and funeral benefit insurance companies.* A burial or funeral benefit insurance company engaged directly in the manufacture of funeral supplies or the performance of funeral services shall not be taxable under this part but shall be taxable under section 821 or section 831.

(g) *Variable annuities*—(1) *In general.* For purposes of this part, an annuity contract includes a contract which provides for the payment of a variable annuity computed on the basis of recognized mortality tables and the investment experience of the company issuing the contract.

(2) *Adjusted reserves rate; assumed rate.* For purposes of this part—

(A) The adjusted reserves rate for any taxable year with respect to annuity contracts described in paragraph (1), and

(B) The rate of interest assumed by the taxpayer for any taxable year in calculating the reserve on any such contract,

shall be a rate equal to the current earnings rate determined under paragraph (3).

(3) *Current earnings rate.* For purposes of this part, the current earnings rate for any taxable year with respect to annuity contracts described in paragraph (1) is the current earnings rate determined under section 805(b)(2) with respect to such contracts, reduced by the percentage obtained by dividing—

(A) The amount of the actuarial margin charge on all annuity contracts described in paragraph (1) issued by the taxpayer, by

(B) The mean of the reserves for such contracts.

(4) *Increases and decreases in reserves.* For purposes of subsections (a) and (b) of section 810, the sum of the items described in section 810(c) taken into account as of the close of the taxable year shall, under regulations prescribed by the Secretary or his delegate, be adjusted—

(A) By subtracting therefrom an amount equal to the sum of the amounts added from time to time (for the taxable year) to the reserves for annuity contracts described in paragraph (1) by reason of appreciation in value of assets (whether or not the assets have been disposed of), and

(B) By adding thereto an amount equal to the sum of the amounts subtracted from time to time (for the taxable year) from such reserves by reason of depreciation in value of assets (whether or not the assets have been disposed of).

(5) *Companies issuing variable annuities and other contracts.* In the case of a life insurance company which issues both annuity contracts described in paragraph (1) and other contracts, under regulations prescribed by the Secretary or his delegate—

(A) The policy and other contract liability requirements shall be considered to be the sum of—

(1) The policy and other contract liability requirements computed by reference to the items which relate to annuity contracts described in paragraph (1), and

(ii) The policy and other contract liability requirements computed by excluding the items taken into account under clause (1); and

(B) Such additional separate computations, with respect to such annuity contracts and such other contracts, shall be made as may be necessary to carry out the purposes of this subsection and this part.

(6) *Termination.* Paragraphs (1), (2), (3), (4), and (5) shall not apply with respect to any taxable year beginning after December 31, 1962.

[Sec. 801 as amended by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 36); sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 112)]

PAR. 2. There are inserted immediately after § 1.801-1 the following new sections:

§ 1.801-2 Taxable years affected.

Section 1.801-1 is applicable only to taxable years beginning after December 31, 1953, and before January 1, 1955, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, before amendments. Sections 1.801-3 through 1.801-7 are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.801-3 Definitions.

For purposes of part I, subchapter L, chapter 1 of the Code, this section defines the following terms, which are to be used in determining if a taxpayer is a life insurance company (as defined in section 801(a) and paragraph (b) of this section):

(a) *Insurance company.* (1) The term "insurance company" means a company whose primary and predominant business activity during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies. Thus, though its name, charter powers, and subjection to State insurance laws are significant in determining the business which a company is authorized and intends to carry on, it is the character of the business actually done in the taxable year which determines whether a company is taxable as an insurance company under the Internal Revenue Code.

(2) Insurance companies include both stock and mutual companies, as well as mutual benefit insurance companies. A voluntary unincorporated association of employees (including an association fulfilling the requirements of section 801(b)(2)(B)) formed for the purpose of relieving sick and aged members and the dependents of deceased members is an insurance company, whether the fund for such purpose is created wholly by membership dues or partly by contributions from the employer. A corporation which merely sets aside a fund for the insurance of its employees is not an insurance company, and the income from such fund shall be included in the return of the corporation.

(b) *Life insurance company.* (1) The term "life insurance company", as used

in subtitle A of the Code, is defined in section 801(a). For the purpose of determining whether a company is a "life insurance company" within the meaning of that term as used in section 801(a), it must first be determined whether the company is taxable as an insurance company (as defined in paragraph (a) of this section). An insurance company shall be taxed as a life insurance company if it is engaged in the business of issuing life insurance and annuity contracts (either separately or combined with health and accident insurance), or noncancellable contracts of health and accident insurance, and its life insurance reserves (as defined in section 801(b) and § 1.801-4), plus unearned premiums, and unpaid losses (whether or not ascertained), on noncancellable life, health, or accident policies not included in life insurance reserves, comprise more than 50 percent of its total reserves (as defined in section 801(c) and § 1.801-5). For purposes of determining whether it satisfies the percentage requirements of the preceding sentence, a company shall first make any adjustments to life insurance reserves and total reserves required by section 806(a) (relating to adjustments for certain changes in reserves and assets) and then as required by section 801(d) (relating to adjustments in reserves for policy loans). For examples of the adjustments required under section 806(a), see paragraph (b)(4) of § 1.806-3. For an example of the adjustments required under section 801(d), see paragraph (c) of § 1.801-6. Furthermore, if an insurance company which computes its life insurance reserves on a preliminary term basis elects to revalue such reserves on a net level premium basis under section 818(c), such revalued basis shall be disregarded for purposes of section 801.

(2) An insurance company writing only noncancellable life, health, or accident policies and having no "life insurance reserves" may qualify as a life insurance company if its unearned premiums, and unpaid losses (whether or not ascertained), on such policies comprise more than 50 percent of its total reserves.

(3) Section 801(f) provides that a burial or funeral benefit insurance company engaged directly in the manufacture of funeral supplies or the performance of funeral services shall not be taxable under section 802 but shall be taxable under section 821 or section 831 as an insurance company other than life.

(c) *Noncancellable life, health, or accident insurance policy.* The term "noncancellable life, health, or accident insurance policy" means a health and accident contract, or a health and accident contract combined with a life insurance or annuity contract, which the insurance company is under an obligation to renew or continue at a specified premium and with respect to which a reserve in addition to the unearned premiums (as defined in paragraph (e) of this section) must be carried to cover that obligation. Such a health and accident contract shall be considered noncancellable even though it states a termination date at a stipulated age, if, with respect to the health and accident con-

tract, such age termination date is 60 or over. Such a contract, however, shall not be considered to be noncancellable after the age termination date stipulated in the contract has passed. However, if the age termination date stipulated in the contract occurs during the period covered by a premium received by the life insurance company prior to such date, and the company cannot cancel or modify the contract during such period, the age termination date shall be deemed to occur at the expiration of the period for which the premium has been received.

(d) *Guaranteed renewable life, health, and accident insurance policy.* The term "guaranteed renewable life, health, and accident insurance policy" means a health and accident contract, or a health and accident contract combined with a life insurance or annuity contract, which is not cancellable by the company but under which the company reserves the right to adjust premium rates by classes in accordance with its experience under the type of policy involved, and with respect to which a reserve in addition to the unearned premiums (as defined in paragraph (e) of this section) must be carried to cover that obligation. Section 801(e) provides that such policies shall be treated in the same manner as noncancellable life, health, and accident insurance policies. For example, the age termination date requirements applicable to noncancellable health and accident insurance policies shall also apply to guaranteed renewable life, health, and accident insurance policies. See paragraph (c) of this section.

(e) *Unearned premiums.* The term "unearned premiums" means those amounts which shall cover the cost of carrying the insurance risk for the period for which the premiums have been paid in advance. Such term includes all unearned premiums, whether or not required by law.

(f) *Life insurance reserves.* For the definition of the term "life insurance reserves", see section 801(b) and § 1.801-4.

(g) *Unpaid losses (whether or not ascertained).* The term "unpaid losses (whether or not ascertained)" means a reasonable estimate of the amount of the losses (based upon the facts in each case and the company's experience with similar cases) —

(1) Reported and ascertained by the end of the taxable year but where the amount of the loss has not been paid by the end of the taxable year,

(2) Reported by the end of the taxable year but where the amount thereof has not been either ascertained or paid by the end of the taxable year, or

(3) Which have occurred by the end of the taxable year but which have not been reported or paid by the end of the taxable year.

(h) *Total reserves.* For the definition of the term "total reserves", see section 801(c) and § 1.801-5.

(i) *Amount of reserves.* For purposes of subsections (a), (b), and (c) of section 801 and this section, section 801(b)(5) provides that the amount of any reserve (or portion thereof) for any taxable year shall be the mean of such reserve (or

portion thereof) at the beginning and end of the taxable year.

§ 1.801-4 Life insurance reserves.

(a) *Life insurance reserves defined.* For purposes of part I, subchapter L, chapter 1 of the Code, the term "life insurance reserves" (as defined in section 801(b)) means those amounts—

(1) Which are computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest;

(2) Which are set aside to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from life insurance, annuity, and noncancellable health and accident insurance contracts (including life insurance or annuity contracts combined with noncancellable health and accident insurance) involving, at the time with respect to which the reserve is computed, life, health, or accident contingencies; and

(3) Which, except as otherwise provided by section 801(b)(2) and paragraphs (b) and (c) of this section, are required by law. For the meaning of the term "reserves required by law", see paragraph (b) of § 1.801-5.

For purposes of determining life insurance reserves, only those amounts shall be taken into account which must be reserved either by express statutory provisions or by rules and regulations of the insurance department of a State, Territory, or the District of Columbia when promulgated in the exercise of a power conferred by statute. Moreover, such amounts must actually be held by the company during the taxable year for which the reserve is claimed. However, reserves held by the company with respect to the net value of risks reinsured in other solvent companies (whether or not authorized) shall be deducted from the company's life insurance reserves. For example, if an ordinary life policy with a reserve of \$100 is reinsured in another solvent company on a yearly renewable term basis, and the reserve on such yearly renewable term policy is \$10, the reinsured company shall include \$90 (\$100 minus \$10) in determining its life insurance reserves. Generally, life insurance reserves, as in the case of level premium life insurance, are held to supplement the future premium receipts when the latter, alone, are insufficient to cover the increased risk in the later years. For examples of reserves which qualify as life insurance reserves, see paragraph (d) of this section. For examples of reserves which do not qualify as life insurance reserves, see paragraph (e) of this section.

(b) *Certain reserves which need not be required by law.* Section 801(b)(2) sets forth certain reserves which, though not required by law, may still qualify as life insurance reserves, provided, however, that they first satisfy the requirements of section 801(b)(1)(A) and (B) and paragraph (a)(1) and (2) of this section. Thus, reserves need not be required by law—

(1) In the case of policies covering life, health, and accident insurance combined in one policy issued on the weekly

premium payment plan, continuing for life and not subject to cancellation, and

(2) In the case of policies issued by an organization which meets the requirements of section 501(c)(9) other than the requirement of subparagraph (B) thereof.

(c) *Assessment companies.* Section 801(b)(3) provides that in the case of an assessment life insurance company or association, the term "life insurance reserves" includes—

(1) Sums actually deposited by such company or association with officers of a State or Territory pursuant to law as guaranty or reserve funds, and

(2) Any funds maintained, under the charter or articles of incorporation or association of such company or association (or bylaws approved by the State insurance commissioner) of such company or association, exclusively for the payment of claims arising under certificates of membership or policies issued upon the assessment plan and not subject to any other use.

For purposes of part I, subchapter L, chapter 1 of the Code, the reserves described in this paragraph shall be included as life insurance reserves even though such reserves do not meet the requirements of section 801(b) and paragraph (a) of this section. However, for such reserves to be included as life insurance reserves, they must be deposited or maintained to liquidate future unaccrued claims arising from life insurance, annuity, or noncancellable health and accident insurance contracts (including life insurance or annuity contracts combined with noncancellable health and accident insurance) involving, at the time with respect to which the reserve is deposited or maintained, life, health, or accident contingencies. The rate of interest assumed in calculating the reserves described in this paragraph shall be 3 percent, regardless of the rate of interest (if any) specified in the contract in respect of such reserves.

(d) *Reserves which qualify as life insurance reserves.* The following reserves, provided they meet the requirements of section 801(b) and paragraph (a) of this section, are illustrative of reserves which shall be included as life insurance reserves:

(1) Reserves held under life insurance contracts.

(2) Reserves held under annuity contracts (including reserves held under variable annuity contracts as described in section 801(g)(1)).

(3) Reserves held under noncancellable health and accident insurance contracts (as defined in paragraph (c) of § 1.801-3) and reserves held under guaranteed renewable health and accident insurance contracts (as defined in paragraph (d) of § 1.801-3).

(4) Reserves held either separately or combined under contracts described in subparagraphs (1), (2), or (3) of this paragraph.

(5) Reserves held under deposit administration contracts. Generally, the reserves held by a life insurance company on both the active and retired lives under deposit administration contracts will

meet the requirements of section 801(b) and paragraph (a) of this section.

However, reserves held by the company with respect to the net value of risks reinsured in other solvent companies (whether or not authorized) shall be deducted from the company's life insurance reserves. See paragraph (a) of this section.

(e) *Reserves and liabilities which do not qualify as life insurance reserves.* The following are illustrative of reserves and liabilities which do not meet the requirements of section 801(b) and paragraph (a) of this section and, accordingly, shall not be included as life insurance reserves:

(1) Liability for supplementary contracts not involving at the time with respect to which the liability is computed, life, health, or accident contingencies.

(2) In the case of cancellable health and accident policies and similar cancellable contracts, the unearned premiums and unpaid losses (whether or not ascertained).

(3) The unearned premiums, and unpaid losses (whether or not ascertained), on noncancellable life, health, or accident policies (and guaranteed renewable life, health, and accident policies) not included in life insurance reserves. (However, such amounts shall be taken into account under section 801(a)(2) for purposes of determining whether an insurance company is a life insurance company.)

(4) The deficiency reserve (as defined in section 801(b)(4)) for each individual contract, that is, that portion of the reserve for such contract equal to the amount (if any) by which—

(i) The present value of the future net premiums required for such contract, exceeds

(ii) The present value of the future actual premiums and consideration charged for such contract.

(5) Reserves required to be maintained to provide for the ordinary operating expenses of a business which must be currently paid by every company from its income if its business is to continue, such as taxes, salaries, and unpaid brokerage.

(6) Liability for premiums received in advance.

(7) Liability for premium deposit funds.

(8) Liability for annual and deferred dividends declared or apportioned.

(9) Liability for dividends left on deposit at interest.

(10) Liability for accrued but unsettled policy claims whether known or unreported.

(11) A mandatory securities valuation reserve.

(f) *Adjustments to life insurance reserves.* In the event it is determined on the basis of the facts of a particular case that premiums deferred and uncollected and premiums due and unpaid are not properly accruable for the taxable year under section 809 and, accordingly, are not properly includible under assets (as defined in section 805(b)(4)) for the taxable year, appropriate reduction shall be made in the life insurance reserves. This reduction shall be made when the

insurance company has calculated life insurance reserves on the assumption that the premiums on all policies are paid annually or that all premiums due on or prior to the date of the annual statement have been paid.

§ 1.801-5 Total reserves.

(a) *Total reserves defined.* For purposes of section 801(a) and § 1.801-3, the term "total reserves" is defined in section 801(c) as the sum of—

(1) Life insurance reserves (as defined in section 801(b) and § 1.801-4),

(2) Unearned premiums (as defined in paragraph (e) of § 1.801-3), and unpaid losses (whether or not ascertained) (as defined in paragraph (g) of § 1.801-3), not included in life insurance reserves, and

(3) All other insurance reserves required by law.

The term "total reserves" does not, however, include deficiency reserves (within the meaning of section 801(b)(4) and paragraph (e)(4) of § 1.801-4), even though such deficiency reserves are required by State law. In determining total reserves, a company is permitted to make use of the highest aggregate reserve required by any State or Territory or the District of Columbia in which it transacts business, but the reserve must have been actually held during the taxable year for which the reserve is claimed. For example, during the taxable year 1958 a life insurance company sells life insurance and annuity contracts in States A and B. State A requires reserves of 10 against the life and 5 against the annuity business. State B requires reserves of 9 against the life and 7 against the annuity business. Assuming the company actually holds these reserves during the taxable year 1958, its highest aggregate reserve for such taxable year is the 16 required by State B. Thus, the company is not permitted to compute its highest aggregate reserve by taking State A's requirement of 10 against its life insurance business and adding it to State B's requirement of 7 against its annuity business.

(b) *Reserves required by law defined.* For purposes of part I, subchapter L, chapter 1 of the Code, the term "reserves required by law" means reserves which are required either by express statutory provisions or by rules and regulations of the insurance department of a State, Territory, or the District of Columbia when promulgated in the exercise of a power conferred by statute, and which are reported in the annual statement of the company and accepted by state regulatory authorities as held for the fulfillment of the claims of policyholders or beneficiaries.

(c) *Information to be filed.* In any case where reserves are claimed, sufficient information must be filed with the return to enable the district director to determine the validity of the claim. See section 6012 and paragraph (c) of § 1.6012-2. If the basis (for Federal income tax purposes) for determining the amount of any of the life insurance reserves as of the close of the taxable year differs from the basis for such determination as of the beginning of the taxable

year then the following information must be filed with respect to all such changes in basis:

(1) The nature of the life insurance reserve (i.e., life, annuity, etc.);

(2) The mortality or morbidity table, assumed rate of interest, method used in computing or estimating such reserve on the old basis, and the amount of such reserve at the beginning and close of the taxable year computed on the old basis;

(3) The mortality or morbidity table, assumed rate of interest, method used in computing or estimating such reserve on the new basis, and the amount of such reserve at the close of the taxable year computed on the new basis;

(4) The deviation, if any, from recognized mortality or morbidity tables, or recognized methods of computation;

(5) The reasons for the change in basis of such reserve; and

(6) Whether such change in the reserve has been approved or accepted by the regulatory authorities of the State of domicile, and if so, a copy of the letter, certificate, or other evidence of such approval or acceptance.

(d) *Illustration of principles.* The provisions of section 801 relating to the percentage requirements for qualification as a life insurance company may be illustrated by the following example:

Example. The books of Y, an insurance company, selling life insurance, noncancellable health and accident insurance, and cancellable accident and health insurance, reflect (after adjustment under sections 806(a) and 801(d)) the following facts for the taxable year 1958:

	Jan. 1	Dec. 31	Mean of year
1. Life insurance reserves.....	\$3,000	\$5,000	\$4,000
2. Unearned premiums, and unpaid losses (whether or not ascertained), on noncancellable accident and health insurance not included in life insurance reserves.....	400	600	500
3. Unearned premiums, and unpaid losses (whether or not ascertained), on cancellable accident and health insurance.....	1,800	2,200	2,000
4. All other insurance reserves required by law.....	900	1,100	1,000
5. Total reserves.....			7,500

The rules provided by section 801 require that the sum of the mean of the year figures in items 1 and 2 comprise more than 50 percent of the mean of the year figure in item 5 for an insurance company to qualify as a life insurance company. Thus, Y would qualify as a life insurance company for the taxable year 1958 as the sum of the mean of the year figures in items 1 and 2 (\$4,500) comprise 60 percent of the mean of the year figure in item 5 (\$7,500).

§ 1.801-6 Adjustments in reserves for policy loans.

(a) *In General.* Section 801(d) provides that for purposes only of determining whether or not an insurance company is a life insurance company (as defined in section 801(a) and paragraph (b) of § 1.801-3), the life insurance reserves (as defined in section 801(b) and § 1.801-4), and the total reserves (as defined in section 801(c) and paragraph (a) of § 1.801-5), shall each be reduced by an amount equal to the mean of the

aggregates, at the beginning and end of the taxable year, of the policy loans outstanding with respect to contracts for which life insurance reserves are maintained. Such reduction shall be made after any adjustments required under section 806(a) and § 1.806-3 have been made.

(b) *Policy loans defined.* The term "policy loans" includes loans made by the insurance company, by whatever name called, for which the reserve on a contract is the collateral.

(c) *Illustration of principles.* The provisions of section 801(d) and this section may be illustrated by the following example:

Example. The books of T, an insurance company, selling only life insurance and cancellable accident and health insurance, reflect (after adjustment under section 806(a)) the following facts for the taxable year 1958:

	Jan. 1	Dec. 31	Mean of year
1. Life insurance reserves.....	\$1,000	\$2,000	\$1,500
2. Policy loans.....	50	850	450
3. Life insurance reserves less policy loans.....			1,050
4. Unearned premiums, and unpaid losses (whether or not ascertained), on cancellable accident and health insurance.....	900	1,600	1,250
5. Total reserves adjusted for policy loans (item 3 plus item 4).....			2,300

As the rules provided by section 801 (a) and (d) require that the figure in item 3 (\$1,050) be more than 50 percent of the mean of the year figure in item 5 (\$2,300) for an insurance company to qualify as a life insurance company, T would not qualify as a life insurance company for the taxable year 1958.

§ 1.801-7 Variable annuities. [Reserved]

PAR. 3. Section 1.802(b) is amended to read as follows:

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

SEC. 802. *Tax imposed—(a) Tax imposed—(1) In general.* A tax is hereby imposed for each taxable year beginning after December 31, 1957, on the life insurance company taxable income of every life insurance company. Such tax shall consist of—

(A) A normal tax on such income computed at the rate provided by section 11(b), and

(B) A surtax, on so much of such income as exceeds \$25,000, computed at the rate provided by section 11(c).

(2) *Tax in case of capital gains.* If for any taxable year beginning after December 31, 1958, the net long-term capital gain of any life insurance company exceeds the net short-term capital loss, there is hereby imposed a tax equal to 25 percent of such excess.

(3) *Special rule for 1959 and 1960.* If any amount is subtracted from the policyholders surplus account under section 815(c)(3) for a taxable year beginning in 1959 or 1960 on account of a distribution in 1959 or 1960 (not including any distribution treated under section 815(d)(2)(B) as made in 1959 or 1960), the tax imposed for such taxable year on the life insurance company taxable income shall be the amount determined under paragraph (1) reduced by the following

percentage of the amount by which the tax imposed by paragraph (1) is (without regard to this paragraph) increased, on account of the amount so subtracted, by reason of section 802(b)(3)—

(A) In the case of a taxable year beginning in 1959, 66½ percent; and

(B) In the case of a taxable year beginning in 1960, 33⅓ percent.

The preceding sentence shall not apply with respect to any payment treated as a distribution under section 815(d)(3).

(b) *Life insurance company taxable income defined.* For purposes of this part, the term "life insurance company taxable income" means the sum of—

(1) The taxable investment income (as defined in section 804) or, if smaller, the gain from operations (as defined in section 809),

(2) If the gain from operations exceeds the taxable investment income, an amount equal to 50 percent of such excess, plus

(3) The amount subtracted from the policyholders surplus account for the taxable year, as determined under section 815.

[Sec. 802 as amended by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 38); sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 115)]

PAR. 4. There are inserted immediately after § 1.802(b)-1 the following new sections:

§ 1.802-2 Taxable years affected.

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

§ 1.802-3 Tax imposed on life insurance companies.

(a) *In general.* For taxable years beginning after December 31, 1957, section 802(a)(1) imposes a tax on the life insurance company taxable income (as defined in section 802(b) and paragraph (a) of § 1.802-4) of every life insurance company (including a foreign life insurance company carrying on a life insurance business within the United States if with respect to its United States business it would qualify as a life insurance company under section 801(a)). The tax imposed by section 802(a)(1) is payable upon the basis of returns rendered by the life insurance companies liable thereto. See subchapter A, chapter 61 (section 6001 and following) of the Code.

(b) *Tax imposed.* The tax imposed by section 802(a)(1) consists of a normal tax and a surtax, computed at the regular corporate normal tax and surtax rates provided by section 11(b) and (c), respectively. The normal tax and the surtax are both computed upon the life insurance company taxable income (as defined in section 802(b)) of the life insurance company for the taxable year.

(c) *Normal tax.* The normal tax is computed by applying to the life insurance company taxable income the regular corporate normal tax rate (as in

effect for the taxable year) provided by section 11(b).

(d) *Surtax.* The surtax is computed by applying to the life insurance company taxable income, in excess of \$25,000, the regular corporate surtax rate (as in effect for the taxable year) provided by section 11(c). However, in certain circumstances the \$25,000 exemption from surtax may be disallowed in whole or in part. See sections 269 and 1551, and the regulations thereunder.

(e) *Special rule for 1959 and 1960.* See section 802(a)(3) and paragraph (a) of § 1.802-5 for a transitional rule applicable in certain cases in determining tax liability for the taxable years 1959 and 1960 by reason of the operation of section 802(b)(3).

(f) *Tax imposed in case of certain capital gains.* For taxable years beginning after December 31, 1958, if the net long-term capital gain (as defined in section 1222(7)) of any life insurance company exceeds its net short-term capital loss (as defined in section 1222(6)), section 802(a)(2) imposes a separate tax equal to 25 percent of such excess. This separate 25 percent tax rate applies whether or not there is life insurance company taxable income, taxable investment income, or a gain or loss from operations for the taxable year. For taxable years beginning after December 31, 1958, only the excess (if any) of net short-term capital gain (as defined in section 1222(5)) over net long-term capital loss (as defined in section 1222(8)) shall be taken into account in computing taxable investment income and gain or loss from operations. See sections 804(b) and 809(b). Except as modified by section 817 (rules relating to certain gains and losses), the general rules of the Code relating to gains and losses (such as the rules for determining the amount, characterization, and treatment thereof) shall apply with respect to life insurance companies.

(g) *Foreign life insurance companies.* Foreign life insurance companies not carrying on an insurance business within the United States are not taxable under section 802, but are taxable as other foreign corporations. See section 881.

(h) *Assessment and collection of tax imposed.* All provisions of the Internal Revenue Code and of the regulations in this part not inconsistent with the specific provisions of sections 801 to 820, inclusive, are applicable to the assessment and collection of the tax imposed by section 802(a), and life insurance companies are subject to the same penalties as are provided in the case of returns and payment of income tax by other corporations. The return shall be on Form 1120L.

(i) *Illustration of principles.* The provisions of section 802(a), other than paragraph (3) thereof, and this section may be illustrated by the following example:

Example. For the taxable year 1959, T, a life insurance company, has life insurance company taxable income of \$300,000 (including \$25,000 of net short-term capital gain) and \$80,000 of net long-term capital gain. The tax of T under section 802(a) for 1959 is \$170,500 (\$90,000 normal tax, \$60,500 sur-

tax, and \$20,000 capital gains tax) computed as follows:

COMPUTATION OF NORMAL TAX	
Life insurance company taxable income	----- \$300,000
Normal tax (30% of \$300,000)	----- 90,000

COMPUTATION OF SURTAX	
Life insurance company taxable income	----- \$300,000
Less: Exemption from surtax	----- 25,000

Excess of life insurance company taxable income subject to surtax	----- 275,000
Surtax (22% of \$275,000)	----- 60,500

COMPUTATION OF CAPITAL GAINS TAX	
Excess of net long-term capital gain over net short-term capital loss	----- \$80,000
Capital gains tax (25% of \$80,000)	----- 20,000

§ 1.802-4 Life insurance company taxable income.

(a) *Life insurance company taxable income defined.* Section 802(b) defines the term "life insurance company taxable income", for purposes of part I, subchapter L, chapter 1 of the Code, as the sum of—

(1) The taxable investment income (as defined in section 804), or, if smaller, the gain from operations (as defined in section 809),

(2) If the gain from operations exceeds the taxable investment income, an amount equal to 50 percent of such excess, plus

(3) The amount subtracted from the policyholders surplus account for the taxable year, as determined under section 815.

If for any taxable year there is a loss from operations (as defined in section 809(b)(2)), the amount taken into account under paragraphs (1) and (2) of section 802(b) and subparagraphs (1) and (2) of this paragraph shall be zero. However, even in such a case, there may still be an amount includible in life insurance company taxable income (and hence an amount subject to tax) by reason of an amount includible under section 802(b)(3) and subparagraph (3) of this paragraph.

(b) *Illustration of principles.* The provisions of section 802(b) and this section may be illustrated by the following examples:

Example (1). For the taxable year 1959, Y, a life insurance company, has taxable investment income of \$250,000, and a gain from operations of \$175,000. Y made no subtractions from the policyholders surplus account during such taxable year. For the taxable year 1959, Y has life insurance company taxable income of \$175,000.

Example (2). The facts are the same as in example (1) except that for the taxable year 1959, Y has a gain from operations of \$400,000. For the taxable year 1959, Y has life insurance company taxable income of \$325,000, computed by adding taxable investment income (\$250,000) and 50 percent (\$75,000) of the amount (\$150,000) by which the gain from operations (\$400,000) exceeds the taxable investment income (\$250,000).

Example (3). For the taxable year 1959, W, a life insurance company, has taxable investment income of zero (0) and a gain from operations of \$90,000. W made no subtractions from the policyholders surplus account during such taxable year. For the

taxable year 1959, W has life insurance company taxable income of \$45,000, computed by adding taxable investment income (0) and 50 percent (\$45,000) of the amount (\$90,000) by which the gain from operations (\$90,000) exceeds the taxable investment income (0).

Example (4). For the taxable year 1961, Z, a life insurance company, has taxable investment income of \$100,000, a policyholders surplus account of \$50,000 as of the beginning of such taxable year, a loss from operations (as defined in section 809(b)(2)) of \$25,000, and subtractions from the policyholders surplus account in the amount of \$20,000. For the taxable year 1961, Z has life insurance company taxable income of \$20,000, as only the amount (\$20,000) subtracted from the policyholders surplus account is taken into account.

§ 1.802-5 Special rule for 1959 and 1960.

(a) *Transitional rule.* Section 802(a)(3) provides a transitional rule for the determination of the tax liability of a life insurance company for the taxable years 1959 and 1960 by reason of the operation of section 802(b)(3). Except as limited by section 802(a)(3) and paragraph (b) of this section, any increase in a life insurance company's tax that is attributable to the operation of section 802(b)(3) is taken into account only to the extent of one-third and two-thirds for the taxable years 1959 and 1960, respectively. To the extent there is an increase in a life insurance company's tax that is attributable to the operation of section 802(b)(3) which is not taken into account for the taxable years 1959 and 1960 because of the transitional rule provided by section 802(a)(3) and this paragraph, such amounts shall be included in "other accounts" under section 815(a)(3). For taxable years commencing after December 31, 1960, the full amount of any increase in tax due to the operation of section 802(b)(3) shall be imposed without any further transitional reduction.

(b) *Limitations.* The transitional rule provided by section 802(a)(3) is limited solely to an increase in tax under section 802(b)(3) that is occasioned by the operation of section 815(c)(3) (relating to subtractions from the policyholders surplus account by reason of distributions to shareholders). This rule is further limited to actual distributions that are made by life insurance companies in 1959 or 1960 and does not extend to other distributions that are treated under section 815(d)(2)(B) as made by life insurance companies in 1959 or 1960. Furthermore, section 802(a)(3) shall not apply to any increase in tax under section 802(b)(3) that is attributable to other subtractions from the policyholders surplus account by reason of the operation of the special rules contained in section 815(d). However, the transitional rule provided by section 802(a)(3) does apply in the case of a distribution to which section 815(e)(1)(B)(ii) applies.

(c) *Illustration of principles.* The provisions of section 802(a)(3) and this section may be illustrated by the following example:

Example. For the taxable year 1960, X, a life insurance company, had taxable invest-

ment income of \$9,000, gain from operations of \$27,000, and subtractions from the policyholders surplus account of \$22,000. Based upon these figures, X had life insurance company taxable income of \$40,000 for 1960, of which \$18,000 was includible under section 802(b)(1) and (2) and \$22,000 under section 802(b)(3). Applying the tax imposed by section 802(a)(1) (at rates as in effect for 1960), without regard to the transitional rule of section 802(a)(3), X would have a tax liability of \$15,300 (\$40,000 multiplied by 52 percent, less \$5,500). However, applying the transitional rule of section 802(a)(3), the actual tax liability of X, for 1960, would be \$12,000, computed as follows:

(1) Total tax liability (without regard to sec. 802(a)(3))	-----	\$15,300
(2) Life insurance company taxable income	-----	\$40,000
(3) Amount subtracted from policyholders surplus account	-----	22,000
(4) Item (2) less item (3)	-----	18,000
(5) Tax on amount includible under sec. 802(b)(1) and (2) (30% of \$18,000)	-----	5,400
(6) Tax attributable to sec. 802(b)(3) (item (1) less item (5))	-----	9,900
(7) Less: 33 1/3 percent of tax attributable to sec. 802(b)(3) (1/3 of \$9,900)	-----	3,300
(8) Tax liability for 1960 after application of sec. 802(a)(3) (item (1) less item (7))	-----	12,000

PAR. 5. Section 1.803 is amended to read as follows:

§ 1.803 Statutory provisions; life insurance companies; income and deductions.

SEC. 803. *Income and deductions—(a) Application of section.* The definitions and rules contained in this section shall apply only in the case of life insurance companies.

(b) *Gross investment income.* For purposes of this part, the term "gross investment income" means the sum of the following:

- (1) The gross amount of income received or accrued from—
 - (A) Interest, dividends, rents, and royalties,
 - (B) The entering into of any lease, mortgage, or other instrument or agreement from which the life insurance company derives interest, rents, or royalties, and
 - (C) The alteration or termination of any instrument or agreement described in subparagraph (B).
- (2) The gross income from any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner. In computing gross income under this paragraph, there shall be excluded any item described in paragraph (1).

In computing gross investment income under this subsection, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset.

(c) *Net investment income defined.* The term "net investment income" means the gross investment income less the following deductions:

- (1) *Tax-free interest.* The amount of interest received or accrued during the taxable year which under section 103 is excluded from gross income.
- (2) *Investment expenses.* (A) Investment expenses paid or accrued during the taxable year.
- (B) If any general expenses are in part assigned to or included in the investment expenses, the total deduction under this paragraph shall not exceed—

(1) One-fourth of 1 percent of the mean of the book value of the invested assets held at the beginning and end of the taxable year, plus

(ii) One-fourth of the amount by which the net investment income (computed without any deduction for investment expenses allowed by this paragraph, or for tax-free interest allowed by paragraph (1)) exceeds 3 3/4 percent of the book value of the mean of the invested assets held at the beginning and end of the taxable year.

(3) *Real estate expenses.* Taxes (as provided in section 164), and other expenses, paid or accrued during the taxable year exclusively on or with respect to the real estate owned by the company. No deduction shall be allowed under this paragraph for any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property.

(4) *Depreciation.* The depreciation deduction allowed by section 167.

(5) *Depletion.* The deduction allowed by section 611 (relating to depletion).

(6) *Trade or business deductions.* The deductions allowed by this subtitle (without regard to this part) which are attributable to any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner; except that for purposes of this paragraph—

- (A) There shall be excluded losses from—
 - (i) Sales or exchanges of capital assets,
 - (ii) Sales or exchanges of property used in the trade or business (as defined in section 1231(b)), and
 - (iii) The compulsory or involuntary conversion (as a result of destruction, in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business (as so defined).

(B) Any item, to the extent attributable to the carrying on of the insurance business, shall not be taken into account.

(C) The deduction for net operating losses provided in section 172, and the special deductions for corporations provided in part VIII of subchapter B, shall not be allowed.

(d) *Rental value of real estate.* The deduction under subsection (c)(3) and (4) on account of any real estate owned and occupied in whole or in part by a life insurance company shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this subsection) as the rental value of the space not so occupied bears to the rental value of the entire property.

(e) *Amortization of premium and accrual of discount.* The gross investment income, the deduction for wholly-exempt interest allowed by subsection (c)(1), and the deduction allowed by section 242 (relating to partially tax-exempt interest) shall each be decreased to reflect the appropriate amortization of premium and increased to reflect the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a life insurance company. Such amortization and accrual shall be determined—

- (1) In accordance with the method regularly employed by such company, if such method is reasonable, and
- (2) In all other cases in accordance with regulations prescribed by the Secretary or his delegate.

[Sec. 803 as amended by Sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 39)]

PAR. 6. There are inserted immediately after § 1.803-6 the following new sections:

§ 1.803-7 Taxable years affected.

Sections 1.803-1 through 1.803-6 are applicable only to taxable years beginning after December 31, 1953, and before January 1, 1955, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, before amendments.

INVESTMENT INCOME

§ 1.804 Statutory provisions; life insurance companies; taxable investment income.

SEC. 804. *taxable investment income—*
 (a) *In general—*(1) *Exclusion of policyholders' share of investment yield.* The policyholders' share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) of any life insurance company shall not be included in taxable investment income. For purposes of the preceding sentence, the policyholders' share of any item shall be that percentage obtained by dividing the policy and other contract liability requirements by the investment yield; except that if the policy and other contract liability requirements exceed the investment yield, then the policyholders' share of any item shall be 100 percent.

(2) *Taxable investment income defined.* For purposes of this part, the taxable investment income for any taxable year shall be an amount (not less than zero) equal to the sum of the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received), reduced by—

(A) The sum of—

(i) The life insurance company's share of interest which under section 103 is excluded from gross income,

(ii) The deduction for partially tax-exempt interest provided by section 242 (as modified by paragraph (3)) computed with respect to the life insurance company's share of such interest, and

(iii) The deductions for dividends received provided by sections 243, 244, and 245 (as modified by paragraph (5)) computed with respect to the life insurance company's share of the dividends received; and

(B) The small business deduction provided by paragraph (4).

For purposes of the preceding sentence, the life insurance company's share of any item shall be that percentage which, when added to the percentage obtained under the second sentence of paragraph (1), equals 100 percent.

(3) *Partially tax-exempt interest.* For purposes of this part, the deduction allowed by section 242 shall be an amount which bears the same ratio to the amount determined under such section without regard to this paragraph as (A) the normal tax rate for the taxable year prescribed by section 11, bears to (B) the sum of the normal tax rate and the surtax rate for the taxable year prescribed by section 11.

(4) *Small business deduction.* For purposes of this part, the small business deduction is an amount equal to 10 percent of the investment yield for the taxable year. The deduction under this paragraph shall not exceed \$25,000.

(5) *Application of section 246(b).* In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of this subsection, the limit on the aggregate amount of the deductions allowed by sections 243 (a), 244, and 245 shall be 85 percent of the taxable investment income computed without regard to the deductions allowed by such sections.

(6) *Exception.* If it is established in any case that the application of the definition of

taxable investment income contained in paragraph (2) results in the imposition of tax on—

(A) Any interest which under section 103 is excluded from gross income,

(B) Any amount of interest which under section 242 (as modified by paragraph (3)) is allowable as a deduction, or

(C) Any amount of dividends received which under sections 243, 244, and 245 (as modified by paragraph (5)) is allowable as a deduction.

Adjustment shall be made to the extent necessary to prevent such imposition.

(b) *Gross investment income.* For purposes of this part, the term "gross investment income" means the sum of the following:

(1) *Interest, etc.* The gross amount of income from—

(A) Interest, dividends, rents, and royalties,

(B) The entering into of any lease, mortgage, or other instrument or agreement from which the life insurance company derives interest, rents, or royalties, and

(C) The alteration or termination of any instrument or agreement described in subparagraph (B).

(2) *Short-term capital gain.* In the case of a taxable year beginning after December 31, 1958, the amount (if any) by which the net short-term capital gain exceeds the net long-term capital loss.

(3) *Trade or business income.* The gross income from any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner. In computing gross income under this paragraph, there shall be excluded any item described in paragraph (1).

Except as provided in paragraph (2), in computing gross investment income under this subsection, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset.

(c) *Investment yield defined.* For purposes of this part, the term "investment yield" means the gross investment income less the following deductions—

(1) *Investment expenses.* Investment expenses for the taxable year. If any general expenses are in part assigned to or included in the investment expenses, the total deduction under this paragraph shall not exceed the sum of—

(A) One-fourth of one percent of the mean of the assets (as defined in section 805(b)(4)) held at the beginning and end of the taxable year,

(B) The amount of the mortgage service fees for the taxable year, plus

(C) Whichever of the following is the greater:

(i) One-fourth of the amount by which the investment yield (computed without any deduction for investment expenses allowed by this paragraph) exceeds 3¼ percent of the mean of the assets (as defined in section 805(b)(4)) held at the beginning and end of the taxable year, reduced by the amount described in subparagraph (B), or

(ii) One-fourth of one percent of the mean of the value of mortgages held at the beginning and end of the taxable year for which there are no mortgage service fees for the taxable year.

(2) *Real estate expenses.* The amount of taxes (as provided in section 164), and other expenses, for the taxable year exclusively on or with respect to the real estate owned by the company. No deduction shall be allowed under this paragraph for any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property.

(3) *Depreciation.* The deduction allowed by section 167. The deduction under this paragraph and paragraph (2) on account of

any real estate owned and occupied for insurance purposes in whole or in part by a life insurance company shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this sentence) as the rental value of the space not so occupied bears to the rental value of the entire property.

(4) *Depletion.* The deduction allowed by section 611 (relating to depletion).

(5) *Trade or business deductions.* The deductions allowed by this subtitle (without regard to this part) which are attributable to any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner; except that in computing the deduction under this paragraph—

(A) There shall be excluded losses—

(i) From (or considered as from) sales or exchanges of capital assets,

(ii) From sales or exchanges of property used in the trade or business (as defined in section 1231(b)), and

(iii) From the compulsory or involuntary conversion (as a result of destruction, in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business (as so defined).

(B) Any item, to the extent attributable to the carrying on of the insurance business, shall not be taken into account.

(C) The deduction for net operating losses provided in section 172, and the special deductions for corporations provided in part VIII of subchapter B, shall not be allowed.

[Sec. 804 as added by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 41); amended by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 115)]

§ 1.804-1 Taxable years affected.

Sections 1.804-2 through 1.804-4 are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.804-2 Taxable investment income.

(a) *In general.* Section 804 provides the rules for determining the taxable investment income of a life insurance company, which amount is necessary to determine life insurance company taxable income. In order to determine taxable investment income, a life insurance company must first determine its gross investment income (as defined in section 804(b) and § 1.804-3). After making such determination, the next step is to determine its investment yield (as defined in section 804(c) and § 1.804-4). After determining its investment yield, a company shall then determine the policyholders' share of each and every item of its investment yield (as computed under section 804(a)(1) and paragraph (b) of this section), as this share is excluded from taxable investment income (as defined in section 804(a)(2) and paragraph (d) of this section). Thus, only the life insurance company's share of the items comprising investment yield (less certain reductions) shall be taken into account in computing taxable investment income.

(b) *Exclusion of policyholders' share of investment yield.* Section 804(a)(1) provides that the policyholders' share

of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) of any life insurance company shall not be included in taxable investment income. For this purpose, the percentage used in determining the policyholders' share of each of these items comprising the investment yield shall be determined by dividing the policy and other contract liability requirements (as defined in section 805(a) and paragraph (b) of § 1.805-4) by the investment yield. The percentage thus obtained is then applied to each and every item of investment yield shall be that the policyholders' share of each and every item of investment yield may be excluded from taxable investment income. However, if in any case the policy and other contract liability requirements exceed the investment yield, then the policyholders' share of any item shall be 100 percent.

(c) *Computation of life insurance company's share of investment yield.* Section 804(a) (2) provides that the percentage used in determining the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) shall be the percentage obtained by subtracting the percentage obtained under paragraph (b) of this section from 100 percent. Only the life insurance company's share of the items comprising investment yield (less certain reductions specified in section 804(a) (2) and paragraph (d) (1) of this section) shall be taken into account in computing taxable investment income. For example, if the policyholders' percentage (as determined under section 804(a) (1) and paragraph (b) of this section) is 80 percent, then the life insurance company's share is 20 percent (100 percent minus 80 percent). In such a case, if the amount of a particular item is \$1,000, then the life insurance company's share of such item included in determining taxable investment income is \$200 (\$1,000 multiplied by 20 percent) and the policyholders' share of such item (which is excluded from taxable investment income) is \$800 (\$1,000 multiplied by 80 percent).

(d) *Taxable investment income of a life insurance company—(1) Definition.* Section 804(a) (2) defines the term "taxable investment income" for any taxable year, for purposes of part I, subchapter L, chapter 1 of the Code, as an amount (not less than zero) equal to the sum of the life insurance company's share (as determined under paragraph (c) of this section) of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received), reduced by the sum of—

(i) The life insurance company's share of interest which under section 103 is excluded from gross income,

(ii) The deduction for partially tax-exempt interest provided by section 242 (as modified by section 804(a) (3) and subparagraph (2) (i) of this paragraph) computed with respect to the life insurance company's share of such interest,

(iii) The deductions for dividends received provided by sections 243, 244, and 245 (as modified by section 804(a) (5) and subparagraph (2) (ii) of this paragraph) computed with respect to the life insurance company's share of the dividends received, and

(iv) The small business deduction provided by section 804(a) (4). For purposes of part I, such small business deduction shall be an amount equal to 10 percent of the investment yield for the taxable year (but not to exceed \$25,000).

(2) *Modifications—(i) Partially tax-exempt interest.* For purposes of part I, the deduction allowed by section 242 (relating to partially tax-exempt interest) shall be determined by applying to the life insurance company's share of such interest the ratio which the normal tax rate (as prescribed by section 11) for the taxable year bears to the sum of the normal tax rate and the surtax rate (as prescribed by section 11) for the taxable year. For example, if for the taxable year 1959 the life insurance company's share of partially tax-exempt interest is \$104, the deduction provided by section 804(a) (2) (A) (ii) (as modified by this subdivision) is \$60 (thirty fifty-seconds of such partially tax-exempt interest).

(ii) *Application of section 246(b).* The sum of the deductions allowed by sections 243(a) (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock), and 245 (relating to dividends received from certain foreign corporations) shall be limited to 85 percent of the taxable investment income (as defined in subparagraph (1) of this paragraph) of the company. The taxable investment income of the company for this purpose shall be computed without regard to the deductions provided in sections 243(a), 244, and 245.

(e) *Illustration of principles.* The provisions of section 804(a) (1) through (5) and paragraphs (a) through (d) of this section may be illustrated by the following example:

Example. For the taxable year 1958, R, a life insurance company, had investment yield of \$1,000,000, including \$200,000 of dividends received from domestic corporations subject to taxation under chapter 1 of the Code, \$16,800 of wholly tax-exempt interest, and \$83,200 of partially tax-exempt interest. For such taxable year, the policyholders' share of each and every item of investment yield was 75 percent and the company's share of each and every item of investment yield was 25 percent. Based upon these figures, R had taxable investment income of \$166,300 for the taxable year 1958, computed as follows:

	Col. 1	Col. 2	Col. 3
Total		(75%× Col. 1) Policy- holders' share	(25%× Col. 1) Com- pany's share
Interest wholly tax-exempt.....	\$16,800	\$12,600	\$4,200
Interest partially tax-exempt.....	83,200	62,400	20,800
Dividends received.....	200,000	150,000	50,000
Other items of investment yield.....	700,000	525,000	175,000
Investment yield.....	1,000,000	750,000	250,000
Less:			
Company's share of interest wholly tax-exempt.....		\$4,200	-----
30/52 of company's share of interest partially tax-exempt (30/52×\$20,800).....		12,000	-----
85% of company's share of dividends received (but not to exceed 85% of taxable investment income computed without regard to this deduction) (85%×\$50,000).....		42,500	-----
Small business deduction (10% of investment yield, not to exceed \$25,000).....		25,000	83,700
Taxable investment income.....			166,300

(f) *Exception.* (1) In accordance with section 804(a) (6), if it is established in any case to the satisfaction of the Commissioner, or by a determination of The Tax Court of the United States, or of any other court of competent jurisdiction, which has become final, that the application of the definition of taxable investment income contained in section 804(a) (2) results in the imposition of tax on—

(i) Any interest which under section 103 is excluded from gross income,

(ii) Any amount of interest which under section 242 (as modified by section 804(a) (3)) is allowable as a deduction, or

(iii) Any amount of dividends received which under sections 243, 244, and 245 (as modified by section 804(a) (5)) is allowable as a deduction,

adjustment shall be made to the extent necessary to prevent such imposition.

(2) For the date upon which a decision by the Tax Court becomes final, see section 7481. For the date upon which a judgment of any other court becomes final, see paragraph (c) of § 1.1313 (a)-1.

§ 1.804-3 Gross investment income of a life insurance company.

(a) *Gross investment income defined.* For purposes of part I, subchapter L, chapter 1 of the Code, section 804(b) defines the term "gross investment income" of a life insurance company as the sum of the following:

(1) The gross amount of income from—

(i) Interest (including tax-exempt interest and partially tax-exempt inter-

est), as described in § 1.61-7. Interest shall be adjusted for amortization of premium and accrual of discount in accordance with the rules prescribed in section 818(b) and the regulations thereunder.

(ii) Dividends, as described in § 1.61-9.

(iii) Rents and royalties, as described in § 1.61-8.

(iv) The entering into of any lease, mortgage, or other instrument or agreement from which the life insurance company may derive interest, rents, or royalties.

(v) The alteration or termination of any instrument or agreement described in subdivision (iv) of this subparagraph.

For example, gross investment income includes amounts received as commitment fees, as a bonus for the entering into of a lease, or as a penalty for the early payment of a mortgage.

(2) In the case of a taxable year beginning after December 31, 1958, the amount (if any) by which the net short-term capital gain (as defined in section 1222(5)) exceeds the net long-term capital loss (as defined in section 1222(8)), and

(3) The gross income from any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner.

(b) *No double inclusion of income.* In computing the gross income from any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner, any item described in section 804(b)(1) and paragraph (a)(1) of this section shall not be considered as gross income arising from the conduct of such trade or business or partnership, but shall be taken into account under section 804(b)(1) and paragraph (a)(1) of this section.

(c) *Exclusion of net long-term capital gains.* Any net long-term capital gains from the sale or exchange of a capital asset (or any gain considered to be from the sale or exchange of a capital asset under applicable law) shall be excluded from the gross investment income of a life insurance company. However, section 804(b)(2) and paragraph (a)(2) of this section provide that the amount (if any) by which the net short-term capital gain exceeds the net long-term capital loss shall be included in the gross investment income of a life insurance company.

§ 1.804-4 Investment yield of a life insurance company.

(a) *Investment yield defined.* Section 804(c) defines the term "investment yield" of a life insurance company for purposes of part I, subchapter L, chapter 1 of the Code. Investment yield means gross investment income (as defined in section 804(b) and paragraph (a) of § 1.804-3), less the deductions provided in section 804(c) and paragraph (b) of this section for investment expenses, real estate expenses, depreciation, depletion, and trade or business (other than an insurance business) expenses. However, such expenses are deductible only to the

extent that they relate to investment income and the deduction of such expenses is not disallowed by any other provision of subtitle A of the Code. For example, investment expenses are not allowable unless they are ordinary and necessary expenses within the meaning of section 162, and under section 265, no deduction is allowable for interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from taxation under chapter 1 of the Code. A deduction shall not be permitted with respect to the same item more than once.

(b) *Deductions from gross investment income—(1) Investment expenses.* Section 804(c)(1) provides for the deduction of investment expenses by a life insurance company in determining investment yield. "Investment expenses" are those expenses of the taxable year which are fairly chargeable against gross investment income. For example, investment expenses include salaries and expenses paid exclusively for work in looking after investments, and amounts expended for printing, stationery, postage, and stenographic work incident to the collection of interest. An itemized schedule of such expenses shall be attached to the return.

(ii) Any assignment of general expenses to the investment department of a life insurance company for which a deduction is claimed under section 804(c)(1) subjects the entire deduction for investment expenses to the limitation provided in that section and subdivision (iii) of this subparagraph. As used in section 804(c)(1), the term "general expenses" means any expense paid or incurred for the benefit of more than one department of the company rather than for the benefit of a particular department thereof. For example, if real estate taxes, depreciation, or other expenses attributable to office space owned by the company and utilized by it in connection with its investment function are assigned to investment expenses, such items shall be deductible as general expenses assigned to or included in investment expenses and as such shall be subject to the limitation of section 804(c)(1) and subdivision (iii) of this subparagraph. Similarly, if an expense, such as a salary, is attributable to more than one department, including the investment department, such expense may be properly allocated among these departments. If such expenses are allocated, the amount properly allocable to the investment department shall be deductible as general expenses assigned to or included in investment expenses and as such shall be subject to the limitation of section 804(c)(1) and subdivision (iii) of this subparagraph. If general expenses are in part assigned to or included in investment expenses, the maximum allowance (as determined under section 804(c)(1)) shall not be granted unless it is shown to the satisfaction of the district director that such allowance is justified by a reasonable assignment of actual expenses. The accounting procedure employed is not conclusive as to whether any assignment has in fact been made. Investment ex-

penses do not include Federal income and excess profits taxes, if any. In cases where the investment expenses allowable as deductions under section 804(c)(1) exceed the limitation contained therein, see section 809(d)(9).

(iii) If any general expenses are in part assigned to or included in investment expenses, the total deduction under section 804(c)(1) shall not exceed the sum of—

(a) One-fourth of one percent of the mean of the assets (as defined in section 805(b)(4) and paragraph (a)(4) of § 1.805-5) held at the beginning and end of the taxable year,

(b) The amount of the mortgage service fees for the taxable year, plus

(c) Whichever of the following is the greater:

(1) One-fourth of the amount by which the investment yield (computed without any deduction for investment expenses allowed by section 804(c)(1)) exceeds 3¼ percent of the mean of the assets (as defined in section 805(b)(4)) held at the beginning and end of the taxable year, reduced by the amount of the mortgage service fees for the taxable year, or

(2) One-fourth of one percent of the mean of the value of mortgages held at the beginning and end of the taxable year for which there are no mortgage service fees for the taxable year. For purposes of the preceding sentence, the term "mortgages held" refers to mortgages, and other similar liens, on real property which are held by the company as security for "mortgage loans".

For purposes of section 804(c)(1)(B) and (C)(i) and (b) and (c)(1) of this subdivision, the term "mortgage service fees" includes mortgage origination fees. Such mortgage origination fees shall be amortized in accordance with the rules prescribed in section 818(b) and the regulations thereunder.

(iv) The operation of the limitation contained in section 804(c)(1) and subdivision (iii) of this subparagraph may be illustrated by the following example:

Example. The books of S, a life insurance company, reflect the following items for the taxable year 1958:

Investment expenses (including general expenses assigned to or included in investment expenses)	\$125,000
Mean of the assets held at the beginning and end of the taxable year	20,000,000
Mortgage service fees	25,000
Investment yield computed without regard to investment expenses	1,200,000
Mean of the value of mortgages held at the beginning and end of the taxable year for which there are no mortgage service fees	6,000,000

In order to determine the limitation on investment expenses, S would make up the following schedule:

1. Mean of the assets held at the beginning and end of the taxable year	\$20,000,000
2. One-fourth of 1 percent of item 1 (¼ of 1% of \$20,000,000)	50,000

3. Mortgage service fees-----	\$25,000
4. The greater of (a) or (b):	
(a) (i) Investment yield computed without regard to investment expenses -----	\$1,200,000
(ii) Three and three-fourths percent of item 1 (3¾% × \$20,000,000) -----	750,000
(iii) Excess of (i) over (ii) (\$1,200,000 minus \$750,000) -----	450,000
(iv) One-fourth of (iii) (¼ × \$450,000) -----	112,500
(v) Less: Mortgage service fees (item 3) -----	25,000
(vi) Excess of (iv) over (v) (\$112,500 minus \$25,000) -----	\$87,500
(b) One-fourth of 1 percent of the mean of the value of mortgages held at the beginning and end of the taxable year for which there are no mortgage service fees (¼ of 1% × \$6,000,000) -----	15,000
5. The greater of item 4 (a) or (b) -----	\$87,500
6. Limitation on investment expenses (items 2, 3, and 4(a)) -----	162,500

As the investment expenses (including general expenses assigned to or included in investment expenses) of S for the taxable year 1958 (\$125,000) do not exceed the limitation on such expenses (\$162,500), S would be entitled to deduct the entire \$125,000 under section 804(c) (1).

(2) *Real estate expenses and taxes.* The deduction for expenses and taxes under section 804(c) (2) includes taxes (as defined in section 164) and other expenses for the taxable year exclusively on or with respect to real estate owned by the company. For example, no deduction shall be allowed under section 804(c) (2) for amounts allowed as a deduction under section 164(e) (relating to taxes of shareholders paid by a corporation). No deduction shall be allowed under section 804(c) (2) for any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property. An itemized schedule of such taxes and expenses shall be attached to the return. See subparagraph (4) of this paragraph for limitation of such deduction.

(3) *Depreciation.* The deduction allowed for depreciation is, except as provided in section 804(c) (3) and subparagraph (4) of this paragraph, identical to that allowed other corporations by section 167. Such amount allowed as a deduction from gross investment income in determining investment yield is limited to depreciation sustained on the property used, and to the extent

used, for the purpose of producing the income specified in section 804(b). An election with respect to any of the methods of depreciation provided in section 167 shall not be affected in any way by the enactment of the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112). However, in appropriate cases, the method of depreciation may be changed with the consent of the Commissioner. See section 167(e) and § 1.167(e)-1. See subparagraph (4) of this paragraph for limitation of such deduction. See section 809(d) (12) and the regulations thereunder for the treatment of depreciable property used in the operation of a life insurance business.

(4) *Limitation on deductions allowable under section 804 (c) (2) and (c) (3).* Section 804(c) (3) provides that the amount allowable as a deduction for taxes, expenses, and depreciation on or with respect to any real estate owned and occupied for insurance purposes in whole or in part by a life insurance company shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this limitation) as the rental value of the space not so occupied bears to the rental value of the entire property. For example, T, a life insurance company, owns a twenty-story downtown home office building. The rental value of each floor of the building is identical. T rents nine floors to various tenants, one floor is utilized by it in operating its investment department, and the remaining ten floors are occupied by it in carrying on its insurance business. Since floor space equivalent to eleven-twentieths, or 55 percent, of the rental value of the entire property is owned and occupied for insurance purposes by the company, the deductions allowable under section 804(c) (2) and (3) for taxes, depreciation, and other real estate expenses shall be limited to nine-twentieths, or 45 percent, of the taxes, depreciation, and other real estate expenses on account of the entire property. However, the portion of such allowable deductions attributable to the operation of the investment department (one-twentieth, or 5 percent) may be deductible as general expenses assigned to or included in investment expenses and as such shall be subject to the limitations of section 804(c) (1). Where a deduction is claimed as provided in this section, the parts of the property occupied and the parts not occupied by the company in carrying on its insurance business, together with the respective rental values thereof, must be shown in a schedule accompanying the return.

(5) *Depletion.* The deduction for depletion (and depreciation) provided in section 804(c) (4) is identical to that allowed other corporations by section 611. The amount allowed by section 611 in the case of a life insurance company is limited to depletion (and depreciation) sustained on the property used, and to the extent used, for the purpose of producing the income specified in section 804(b). See section 611 and § 1.611-5 for special rules relating to the depreciation of improvements in the case of mines, oil and gas wells, other natural deposits, and timber.

(6) *Trade or business deductions.* (i) Under section 804(c) (5), the deductions allowed by subtitle A of the Code (without regard to this part) which are attributable to any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner are, subject to the limitations in subdivisions (ii), (iii), and (iv) of this subparagraph, allowable as deductions from the gross investment income of a life insurance company in determining its investment yield. Such deductions are allowable, however, only to the extent that they are attributable to the production of income which is included in the life insurance company's gross investment income by reason of section 804(b) (3). However, since any interest, dividends, rents, and royalties received by any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner, is included in the life insurance company's gross investment income by reason of section 804(b) (1) and paragraph (b) of § 1.804-3, any expenses fairly chargeable against the production of such income may be deductible under section 804(c) (1), (2), (3), or (4). The allowable deductions may exceed the gross income from such business.

(ii) In computing the deductions under section 804(c) (5), there shall be excluded losses—

(a) From (or considered as from) sales or exchanges of capital assets,

(b) From sales or exchanges of property used in the trade or business (as defined in section 1231(b)), and

(c) From the compulsory or involuntary conversion (as a result of destruction, in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business (as so defined).

(iii) Any item, to the extent attributable to the carrying on of the insurance business, shall not be taken into account. For example, if a life insurance company operates a radio station primarily to advertise its own insurance services, a portion of the expenses of the radio station shall not be allowed as a deduction. The portion disallowed shall be an amount which bears the same ratio to the total expenses of the station as the value of advertising furnished to the insurance company bears to the total value of services rendered by the station.

(iv) The deduction for net operating losses provided in section 172, and the special deductions for corporations provided in part VIII, subchapter B, chapter 1 of the Code, shall not be allowed.

PAR. 7. Section 1.805 is amended to read as follows:

§ 1.805 *Statutory provisions; life insurance companies; policy and other contract liability requirements.*

SEC. 805. *Policy and other contract liability requirements—(a) In general.* For purposes of this part, the term "policy and other contract liability requirements" means, for any taxable year, the sum of—

(1) The adjusted life insurance reserves, multiplied by the adjusted reserves rate.

(2) The mean of the pension plan reserves at the beginning and end of the taxable year, multiplied by the current earnings rate, and

(3) The interest paid.

(b) *Adjusted reserves rate and earnings rates*—(1) *Adjusted reserves rate*. For purposes of this part, the adjusted reserves rate for any taxable year is the average earnings rate or, if lower, the current earnings rate.

(2) *Current earnings rate*. For purposes of this part, the current earnings rate for any taxable year is the amount determined by dividing—

(A) The taxpayer's investment yield for such taxable year, by

(B) The mean of the taxpayer's assets at the beginning and end of the taxable year.

(3) *Average earnings rate*—(A) *In general*. For purposes of this part, the average earnings rate for any taxable year is the average of the current earnings rates for such taxable year and for each of the 4 taxable years immediately preceding such taxable year (excluding any of such 4 taxable years for which the taxpayer was not an insurance company).

(B) *Special rules*. For purposes of subparagraph (A)—

(i) The current earnings rate for any taxable year beginning before January 1, 1958, shall be determined as if this part (as in effect for 1958) and section 381(c)(22) applied to such taxable year, and

(ii) The current earnings rate for any taxable year of any company which, for such year, is an insurance company (but not a life insurance company) shall be determined as if this part applied to such company for such year.

(4) *Assets*. For purposes of this part, the term "assets" means all assets of the company (including nonadmitted assets), other than real and personal property (excluding money) used by it in carrying on an insurance trade or business. For purposes of this paragraph, the amount attributable to—

(A) Real property and stock shall be the fair market value thereof, and

(B) Any other asset shall be the adjusted basis (determined without regard to fair market value on December 31, 1958) of such asset for purposes of determining gain on sale or other disposition.

(c) *Adjusted life insurance reserves*—(1) *Adjusted life insurance reserves defined*. For purposes of this part, the term "adjusted life insurance reserves" means—

(A) The mean of the life insurance reserves (as defined in section 801(b)), other than pension plan reserves, at the beginning and end of the taxable year, multiplied by

(B) That percentage which equals 100 percent—

(i) Increased by that percentage which is 10 times the average rate of interest assumed by the taxpayer in calculating such reserves, and

(ii) Reduced by that percentage which is 10 times the adjusted reserves rate.

(2) *Average interest rate assumed*. For purposes of this part, the average rate of interest assumed in calculating reserves shall be computed—

(A) By multiplying each assumed rate of interest by the means of the amounts of such reserves computed at that rate at the beginning and end of the taxable year, and

(B) By dividing (i) the sum of the products ascertained under subparagraph (A), by (ii) the mean of the total of such reserves at the beginning and end of the taxable year.

(d) *Pension plan reserves*—(1) *Pension plan reserves defined*. For purposes of this part, the term "pension plan reserves" means that portion of the life insurance reserves which is allocable to contracts—

(A) Purchased under contracts entered into with trusts which (as of the time the contracts were entered into) were deemed

to be (i) trusts described in section 401(a) and exempt from tax under section 501(a), or (ii) trusts exempt from tax under section 165 of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws;

(B) Purchased under contracts entered into under plans which (as of the time the contracts were entered into) were deemed to be plans meeting the requirements of section 401(a) (3), (4), (5), and (6), or the requirements of section 165(a) (3), (4), (5), and (6) of the Internal Revenue Code of 1939;

(C) Provided for employees of the life insurance company under a plan which, for the taxable year, meets the requirements of section 401(a) (3), (4), (5), and (6); or

(D) Purchased to provide retirement annuities for its employees by an organization which (as of the time the contracts were purchased) was an organization described in section 501(c) (3) which was exempt from tax under section 501(a) or was an organization exempt from tax under section 101(6) of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws.

(2) *Special transitional rule*. For purposes of this part, the amount taken into account as pension plan reserves shall be—

(A) In the case of a taxable year beginning after December 31, 1957, and before January 1, 1959, zero;

(B) In the case of a taxable year beginning after December 31, 1958, and before January 1, 1960, 33½ percent of the amount thereof (determined without regard to this paragraph);

(C) In the case of a taxable year beginning after December 31, 1959, and before January 1, 1961, 66⅔ percent of the amount thereof (determined without regard to this paragraph); and

(D) In the case of a taxable year beginning after December 31, 1960, 100 percent of the amount thereof.

(e) *Interest paid*. For purposes of this part, the interest paid for any taxable year is the sum of—

(1) *Interest on indebtedness*. All interest for the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from taxation under this chapter.

(2) *Amounts in the nature of interest*. All amounts in the nature of interest, whether or not guaranteed, for the taxable year on insurance or annuity contracts (including contracts supplementary thereto) which do not involve, at the time of accrual, life, health, or accident contingencies.

(3) *Discount on prepaid premiums*. All amounts accrued for the taxable year for discounts in the nature of interest, whether or not guaranteed, on premiums or other consideration paid in advance on insurance or annuity contracts.

(4) *Interest on certain special contingency reserves*. Interest for the taxable year on special contingency reserves established pursuant to section 8(d) of the Federal Employees' Group Life Insurance Act of 1954 (5 U.S.C., 2097(d)).

[Sec. 805 as amended by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 43); sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 118)]

PAR. 8. There are inserted immediately after § 1.805-2 the following new sections:

§ 1.805-3 Taxable years affected.

Sections 1.805-1 and 1.805-2 are applicable only to taxable years beginning after December 31, 1953, and before January 1, 1955, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue

Code of 1954, before amendments. Sections 1.805-4 through 1.805-8, except as otherwise provided therein, are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.805-4 Policy and other contract liability requirements.

(a) *Introduction*. Section 805 relates to the determination of the policy and other contract liability requirements of a life insurance company. This determination furnishes the numerator of a fraction to be used in determining the policyholders' share of each and every item of the investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received). The denominator of this fraction is the investment yield (as determined under section 804(c) and § 1.804-4). The percentage obtained from this fraction is used in determining the policyholders' share of each and every item of the investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received), which shall not be included in taxable investment income (as determined under section 804(a)(2) and paragraph (d) of § 1.804-2).

(b) *Policy and other contract liability requirements defined*. Section 805(a) defines the term "policy and other contract liability requirements" of a life insurance company, for any taxable year, for purposes of part I, subchapter L, chapter 1 of the Code, as the sum of—

(1) The adjusted life insurance reserves (as defined in section 805(c)(1)), multiplied by the adjusted reserves rate (as defined in section 805(b)(1)),

(2) The mean of the pension plan reserves (as defined in section 805(d)(1)) at the beginning and end of the taxable year, multiplied by the current earnings rate (as defined in section 805(b)(2)), and

(3) The interest paid (as defined in section 805(e)).

§ 1.805-5 Adjusted reserves rate and earnings rates.

(a) *In general*. For purposes of part I, subchapter L, chapter 1 of the Code, section 805(b) defines the terms "adjusted reserves rate", "current earnings rate", "average earnings rate", and "assets". These terms, with such meaning ascribed to them, are to be used in computing the policy and other contract liability requirements (as determined under section 805(a)). For the meaning of the term "current earnings rate" in the case of variable annuity contracts, see section 801(g)(3). The terms "adjusted reserves rate", "current earnings rate", "average earnings rate", and "assets" are defined as follows:

(1) *Adjusted reserves rate*. For any taxable year, the term "adjusted reserves rate" means the average earnings rate (as defined in section 805(b)(3) and subparagraph (3) of this paragraph), or, if lower, the current earnings rate (as defined in section 805(b)(2) and subparagraph (2) of this paragraph).

(2) *Current earnings rate.* For any taxable year, the term "current earnings rate" means the amount determined by dividing—

(i) The taxpayer's investment yield (as determined under section 804(c)) for such taxable year, by

(ii) The mean of the taxpayer's assets (as defined in section 805(b)(4) and subparagraph (4) of this paragraph) at the beginning and end of such taxable year.

(3) *Average earnings rate*—(i) *Definition.* For any taxable year, the term "average earnings rate" means the average of the current earnings rate for such taxable year and the current earnings rate for each of the 4 taxable years immediately preceding such taxable year (excluding any of such 4 taxable years for which the taxpayer was not an insurance company).

(ii) *Special rules.* For purposes of computing the 5-year average earnings rate under section 805(b)(3)(A) and subdivision (i) of this subparagraph, the following special rules are to be applied—

(a) The current earnings rate for any taxable year beginning before January 1, 1958, shall be determined as if part I (as in effect for 1958) and section 381(c)(22) applied to such taxable year;

(b) The current earnings rate for any taxable year of any company which, for such year, is an insurance company (but not a life insurance company as defined in section 801(a)) shall be determined as if part I applied to such company for such year; and

(c) A fractional part of a year which is a taxable year under sections 441(b) and 7701(a)(23) shall be a preceding taxable year for the purpose of determining the first, second, third, or fourth preceding taxable year. For the determination of the current earnings rate for such short taxable year, see section 818(d) and the regulations thereunder.

(4) *Assets*—(i) *Definition.* Section 805(b)(4) defines the term "assets" as meaning all assets of the life insurance company (including nonadmitted assets), other than real and personal property (excluding money) used by the life insurance company in carrying on an insurance trade or business. For purposes of the preceding sentence, the term "money" includes cash, currency, bank deposits (including time deposits) whether or not interest bearing, share accounts in savings and loan associations, checks (whether or not certified), drafts, money orders, and any other item of similar nature. The following items are the only ones to be excluded from the term "assets" as being considered "used by the life insurance company in carrying on an insurance trade or business":

(a) The home office and branch office buildings (including land) owned and occupied by the life insurance company;

(b) Furniture and equipment owned by the life insurance company and used in the home office and branch office buildings occupied by the life insurance company;

(c) Supplies, stationery, and printed matter used in the operations conducted

in the home office and branch office buildings occupied by the life insurance company where for tax purposes such items are inventoried; and

(d) Automobiles and other depreciable personal property used in connection with the operations conducted in the home office and branch office buildings occupied by the life insurance company.

However, if any item, or portion thereof, of property falls within one of the above-listed groups and also is an "investment asset" (an asset from which gross investment income, as defined in section 804(b), is derived), such item, or portion thereof, shall not be excluded from the term "assets". Any item, or portion thereof, excluded from the definition of the term "assets" shall not be taken into account in computing the denominator used in determining the current earnings rate under section 805(b)(2) and subparagraph (2) of this paragraph. Conversely, any item or portion thereof, included in the term "assets" shall be taken into account in computing the denominator used in determining the current earnings rate.

(ii) *Illustration of principles.* The provisions of subdivision (i) of this subparagraph may be illustrated by the following examples:

Example (1). Included in the statement of assets of P, a life insurance company, are the following items: Bonds; stocks; mortgages; home office and branch office buildings owned and wholly occupied by the company; furniture and equipment owned by the company and used in the home office and branch office buildings occupied by the company; agents' debit balances; premiums deferred and uncollected and premiums due and unpaid; bank deposits (including time deposits); and share accounts in savings and loan associations. For purposes of section 805(b)(4) and this subparagraph, the home office and branch office buildings owned and wholly occupied by the company, and the furniture and equipment owned by the company and used by it in connection with the operations conducted in the home office and branch office buildings occupied by the company, shall be excluded from the term "assets" since such items are the only ones considered as being used by P in carrying on an insurance trade or business. Accordingly, since bonds, stocks, mortgages, agents' debit balances, premiums deferred and uncollected and premiums due and unpaid, bank deposits (including time deposits), and share accounts in savings and loan associations are not considered as being used by P in carrying on an insurance trade or business, they are included within the term "assets" and, therefore, shall be taken into account by P in determining its current earnings rate.

Example (2). M, a life insurance company, owns an eleven-story downtown home office building, the ground floor of which it rents to various tenants and the remaining ten floors of which are occupied by it in carrying on its insurance business and operating its investment department. Under the provisions of section 805(b)(4) and this subparagraph, the ten floors occupied by M in carrying on its insurance business and operating its investment department shall be excluded from the term "assets". However, the ground floor rented to various tenants is an "investment asset" and as such shall be included within the term "assets" and, therefore, shall be taken into account by M in determining its current earnings rate.

(iii) *Valuation of assets.* For purposes of section 805(b)(4)—

(a) The amount attributable to real property and to stock shall be the fair market value thereof, and

(b) The amount attributable to any other asset shall be the adjusted basis (determined without regard to fair market value on December 31, 1953) of such asset for purposes of determining gain on sale or other disposition.

In applying the provisions of section 805(b)(4) and this subdivision, the fair market value or the adjusted basis (as the case may be) shall not be reduced by the amount of any incumbrance, lien, mortgage, etc.

(iv) *Special rules.* (a) All items included within the term "assets" shall be valued at the beginning and end of the taxable year. If, during the taxable year, there is a change in life insurance reserves (either increases or decreases) attributable to the transfer between the taxpayer and another person of liabilities under contracts taken into account in computing such reserves, the mean of the assets shall be appropriately adjusted, on a daily basis, to reflect the amounts involved in such transfer. See section 806(a) and paragraph (b)(3) and (4) of § 1.806-3.

(b) In the case of real property, under appropriate circumstances the fair market value may be determined on the basis of a reasonable approximation of fair market value as shown to the satisfaction of the district director, rather than on the basis of an annual reappraisal.

(c) In determining the fair market value of stocks, any reasonable valuation method may be used. Such methods include the valuation methods described in § 20.2031-2 of this chapter (Estate Tax Regulations).

(b) *Illustration of principles.* The provisions of section 805(b) and paragraph (a) of this section may be illustrated by the following examples. For purposes of these examples, it is assumed that all computations have been carried out to a sufficient number of decimal places to insure substantial accuracy and to eliminate any significant error in the resulting tax liability.

Example (1). For the taxable year 1958, T, a life insurance company (as defined in section 801(a)) organized in 1951, had the following current earnings rate history:

Taxable year:	Current earnings rate
1951.....	3.1
1952.....	3.3
1953.....	3.2
1954.....	3.3
1955.....	3.5
1956.....	3.8
1957.....	3.6
1958.....	3.8

For the taxable year 1958, T would have an average earnings rate of 3.6 percent, computed by taking into account only the current earnings rates for the taxable year 1958 and each of the 4 taxable years immediately preceding such taxable year. The adjusted reserves rate for such taxable year would be 3.6 percent since the average earnings rate of 3.6 percent is lower than the 1958 current earnings rate of 3.8 percent.

Example (2). The facts are the same as in example (1) except that the taxable year in issue is 1959, and the current earnings rate for such taxable year was 2.8 percent. For the taxable year 1959, T would have an

average earnings rate of 3.5 percent, computed by taking into account only the current earnings rates for the taxable year 1959 and each of the 4 taxable years immediately preceding such taxable year. The adjusted reserves rate for such taxable year would be 2.8 percent since the current earnings rate of 2.8 percent for 1959 is lower than the average earnings rate of 3.5 percent.

Example (3). For the taxable year 1959, P, a life insurance company (as defined in section 801(a)) organized in 1957, had the following current earnings rate history:

Taxable year:	Current earnings rate
1957	3.1
1958	3.3
1959	3.8

For the taxable year 1959, P would have an average earnings rate of 3.4 percent. Since P has been in existence for only 3 years, the average earnings rate is computed on the basis of the current earnings rate for the taxable year 1959 and the 2 taxable years immediately preceding such taxable year. The adjusted reserves rate for such taxable year would be 3.4 percent.

Example (4). Y was organized as an insurance company (other than life) in 1954. In 1957, Y qualified as a life insurance company (as defined in section 801(a)) and has remained a life insurance company since that date. Since its formation, Y has had the following current earnings rate history:

Taxable year:	Current earnings rate
1954	3.1
1955	3.3
1956	3.5
1957	3.4
1958	3.6
1959	3.7

For the taxable year 1959, Y would have an average earnings rate of 3.5 percent, computed by taking into account the current earnings rate for the year 1959 and the 4 taxable years immediately preceding such taxable year. The taxable years 1956 and 1955 are included in this computation since Y was an insurance company (though not a life insurance company) during such taxable years. The adjusted reserves rate for such taxable year would be 3.5 percent.

Example (5). The facts are the same as in example (4) except that prior to becoming a life insurance company in 1957, Y was an ordinary corporation. For the taxable year 1959, Y would have an average earnings rate of 3.57 percent, computed by taking into account only the current earnings rates for those taxable years during which Y was a life insurance company (1957, 1958, 1959). The adjusted reserves rate for such taxable year would be 3.57 percent.

§ 1.805-6 Adjusted life insurance reserves.

(a) **Adjusted life insurance reserves defined.** For purposes of part I, subchapter L, chapter 1 of the Code, section 805(c) (1) defines the term "adjusted life insurance reserves" as—

(1) The mean of the life insurance reserves (as defined in section 801(b)), other than pension plan reserves (as defined in section 805(d)), at the beginning and end of the taxable year, multiplied by

(2) That percentage which equals 100 percent—

(i) Increased by that percentage which is 10 times the average rate of interest assumed by the taxpayer (as determined under section 805(c) (2) and paragraph (b) of this section) in calculating such reserves, and

(ii) Reduced by that percentage which is 10 times the adjusted reserves rate (as defined in section 805(b) (1) and paragraph (a) (1) of § 1.805-5).

(b) **Average rate of interest assumed defined.** For purposes of part I, section 805(c) (2) defines the term "average rate of interest assumed" by the company in calculating reserves, as the rate determined by—

(1) Multiplying each assumed rate of interest by the means of the amounts of such reserves computed at that rate at the beginning and end of the taxable year, and

(2) Dividing the sum of the products ascertained under subparagraph (1) of this paragraph by the mean of the total of such reserves at the beginning and end of the taxable year.

(c) **Special rule.** For purposes of section 805(c) and this section, the amount of life insurance reserves taken into account shall be adjusted first as required by section 818(c) (relating to an election with respect to life insurance reserves computed on a preliminary term basis), and then as required by section 806(a) (relating to adjustments for certain changes in reserves and assets). However, no adjustment shall be made under section 806(b) (relating to change in basis in computing reserves) for the year in which the change occurs, since such adjustment is not taken into account until the beginning of the next taxable year.

(d) **Illustration of principles.** The provisions of section 805(c) and this section may be illustrated by the following examples:

Example (1). The books of R, a life insurance company, reflect the following:

Mean of the life insurance reserves (other than pension plan reserves)	\$800,000
Company's current earnings rate	4%
Company's average earnings rate (for the current and 4 prior years)	3.5%
Company's average assumed rate (as defined in section 805(c) (2))	2.5%

In order to determine the amount of its adjusted life insurance reserves, R would first determine its adjusted reserves rate. This rate would be 3.5 percent since R's average earnings rate (3.5 percent) is lower than its current earnings rate (4 percent). R would then make up the following schedule:

1. Mean of the life insurance reserves (other than pension plan reserves)	\$800,000
2. Item 1 multiplied by:	
(a) That percentage which equals	100%
(b) Increased by 10 times the average rate of interest assumed (10 × 2.5%)	25%
(c) Total	125%
(d) Less: 10 times the adjusted reserves rate (10 × 3.5%)	35%
(e) Item 2(c) minus item 2(d) (125% minus 35%)	90%
3. Adjusted life insurance reserves (\$800,000 multiplied by 90%)	720,000

Example (2). The books of S, a life insurance company, reflect the following items:

Col. 1	Col. 2	Col. 3	Col. 4	Col. 5
Reserves at beginning of year	Reserves at end of year	Means of reserves	Assumed rate of interest	(Col. 3 × Col. 4) Product
\$850,000	\$1,150,000	\$1,000,000	2	20,000
750,000	1,250,000	1,000,000	2.5	25,000
300,000	500,000	400,000	2.25	9,000
Total		2,400,000		54,000

For purposes of section 805(c), the average rate of interest assumed for the taxable year would be 2.25 percent (54,000 ÷ 2,400,000).

§ 1.805-7 Pension plan reserves.

(a) **In general.** One of the elements to be taken into account in computing the amount of the policy and other contract liability requirements (as defined in section 805(a) and paragraph (b) of § 1.805-4) of a life insurance company is the investment income attributable to pension plan reserves (as defined in section 805(d) (1) and paragraph (b) of this section). The amount of this element to be included in the policy and other contract liability requirements shall be determined by multiplying the mean of such pension plan reserves at the beginning and end of the taxable year by the current earnings rate (as defined in section 805(b) (2)) of the company. However, the amount of such reserves taken into account must be adjusted first as required by section 818(c) (relating to an election with respect to life insurance reserves computed on a preliminary term basis) and then as required by section 806(a) (relating to adjustments for certain changes in reserves and assets) before applying the current earnings rate thereto. Reserves held by a life insurance company under deposit administration contracts shall be included in pension plan reserves if they qualify as life insurance reserves (as defined in section 801(b) and paragraph (a) of § 1.801-4) and otherwise meet the definition of pension plan reserves.

(b) **Pension plan reserves defined.** For purposes of part I, subchapter L, chapter 1 of the Code, section 805(d) (1) defines the term "pension plan reserves" as that portion of the life insurance reserves (as defined in section 801(b)) which is allocable to contracts—

(1) Purchased under contracts entered into with trusts which (as of the time the contracts were entered into) were deemed to be trusts described in section 401(a) and exempt from tax under section 501(a) of the Internal Revenue Code of 1954, or trusts exempt from tax under section 165 of the Internal Revenue Code of 1939 (prior to, or after, the 1942 amendments) or the corresponding provisions of prior revenue laws;

(2) Purchased under contracts entered into under plans which (as of the time the contracts were entered into) were deemed to be plans meeting the requirements of section 401(a) (3), (4), (5), and (6) of the Internal Revenue Code of 1954, or the requirements of section 165(a) (3), (4), (5), and (6) of the Internal Revenue Code of 1939;

(3) Provided for employees of the life insurance company under a plan which, for the taxable year, meets the requirements of section 401(a) (3), (4), (5), and (6). For this purpose, the term "employees" includes full-time life insurance salesmen treated as employees under section 7701(a) (20); or

(4) Purchased to provide retirement annuities for the employees of an organization which (as of the time the contracts were purchased) was an organization described in section 501(c) (3) which was exempt from tax under section 501(a) or was an organization exempt from tax under section 101(6) of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws. The definition of pension plan reserves described in section 805(d) (1) (D) and this subparagraph includes only life insurance reserves held under contracts purchased by those organizations described in section 501(c) (3) and exempt from tax under section 501(a), and does not include life insurance reserves held under contracts purchased by organizations described under any other provision of section 501(c). Accordingly, the reserves held under contracts purchased by such other exempt organizations, or by entities not subject to Federal income tax (such as a State, municipality, etc.), shall not be treated as pension plan reserves unless they qualify as such under section 805(d) (1) (A), (B), or (C).

(c) *Special transitional rule.* For purposes of part I, section 805(d) (2) provides a special transitional rule for the treatment of pension plan reserves. Such rule provides that—

(1) For a taxable year beginning after December 31, 1957, and before January 1, 1959, the pension plan reserves shall be included with life insurance reserves in determining the policy and other contract liability requirements under section 805(a) (1);

(2) For a taxable year beginning after December 31, 1958, and before January 1, 1960, two-thirds of the pension plan reserves shall be taken into account under section 805(a) (1) as life insurance reserves and one-third shall be taken into account under section 805(a) (2) as pension plan reserves;

(3) For a taxable year beginning after December 31, 1959, and before January 1, 1961, one-third of the pension plan reserves shall be taken into account under section 805(a) (1) as life insurance reserves and two-thirds shall be taken into account under section 805(a) (2) as pension plan reserves; and

(4) For a taxable year beginning after December 31, 1960, the entire amount of the pension plan reserves shall be taken into account under section 805(a) (2) as pension plan reserves.

(d) *Illustration of principles.* The provisions of section 805(d) (2) and paragraph (c) of this section may be illustrated by the following example:

Example. For each of the taxable years 1958, 1959, 1960, and 1961, the mean of the life insurance reserves of Y, a life insurance company, is \$100,000, including \$30,000 allocable to contracts described in section 805(d) (1). In determining its policy and other contract liability requirements for the tax-

able year 1958, Y shall treat the entire \$100,000 as life insurance reserves and no part of such amount shall be treated as pension plan reserves. For the taxable year 1959, Y shall treat \$90,000 as life insurance reserves and \$10,000 ($\frac{1}{10}$ of \$30,000) as pension plan reserves in determining its policy and other contract liability requirements for such taxable year. For the taxable year 1960, Y shall treat \$80,000 as life insurance reserves and \$20,000 ($\frac{2}{10}$ of \$30,000) as pension plan reserves in determining its policy and other contract liability requirements for such taxable year. For the taxable year 1961, Y shall treat \$70,000 as life insurance reserves and \$30,000 as pension plan reserves in determining its policy and other contract liability requirements for such taxable year.

§ 1.805-8 Interest paid.

(a) *In general.* Section 805(e) provides four categories of interest items the sum of which constitutes the "interest paid" for any taxable year. Interest paid is one of the elements of the policy and other contract liability requirements of a life insurance company. The amount of the policy and other contract liability requirements is used in determining the policyholders' share of each and every item of investment yield which is not included in taxable investment income. See section 804(a) and § 1.804-2. Interest paid includes interest on indebtedness, discounts on prepaid premiums, and interest on insurance or annuity contracts for which no provision is made in the life insurance reserves. Interest paid does not include dividends to policyholders (as defined in section 811(a) and paragraph (a) of § 1.811-2) or amounts derived from mortality savings or expense savings. In computing the interest paid for any taxable year the same item may not be included more than once.

(b) *Interest paid defined.* For purposes of part I, subchapter L, chapter 1 of the Code, the term "interest paid" as used in section 805(e) means the sum of—

(1) All interest for the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from tax under chapter 1 of the Code. Indebtedness does not include reserves such as life insurance reserves (as defined in section 801(b) and § 1.801-4) nor does it include deferred dividends. Interest on indebtedness includes interest on deferred policy and contract benefit funds as well as interest on a mortgage. See section 163 and the regulations thereunder.

(2) All amounts in the nature of interest, whether or not guaranteed, for the taxable year on insurance or annuity contracts (including contracts supplementary thereto) which do not involve, at the time of accrual, life, health, or accident contingencies. Amounts in the nature of interest do not include amounts derived from or representing mortality gains, expense savings, underwriting profits, or other items not in the nature of interest. Amounts in the nature of interest include so-called excess-interest dividends as well as guaranteed interest accrued within the taxable year on such contracts. A contract to pay insurance benefits in in-

stallments over a specified period, for example, a contract to pay the insurance benefit in 10 annual installments, is considered as a supplementary contract not involving life contingencies. It is immaterial whether the optional mode of settlement specified in the insurance or annuity contract arises from an option exercised by the insured during his or her lifetime or from an option exercised by either the insured or a beneficiary after the policy matured. Thus, no distinction is made based on the person choosing the method of payment, and the full amount of the interest accrued, and not merely the guaranteed interest, is considered as interest paid. Amounts in the nature of interest include interest on dividends left on deposit with the company and interest on premiums paid in advance.

(3) All amounts accrued for the taxable year for discounts in the nature of interest, whether or not guaranteed, on premiums or other consideration paid in advance on insurance or annuity contracts. Such accrual shall be determined in accordance with the rules prescribed in section 818(b) and the regulations thereunder. For example, if at the beginning of the taxable year 1958 a life insurance company granted a discount in the nature of interest of \$40 as the result of the prepayment of life insurance premiums for 5 years, the company may, under the straight line method, accrue \$8 in 1958 and each of the four succeeding taxable years ($\$40 \div 5 = \8) and include this \$8 as interest paid for each such taxable year.

(4) Interest for the taxable year on special contingency reserves established pursuant to section 8(d) of the Federal Employees' Group Life Insurance Act of 1954 (5 U.S.C. 2097 (d)).

PAR. 9. Section 1.806 is amended to read as follows:

§ 1.806 Statutory provisions; life insurance companies; certain changes in reserves and assets.

SEC. 806. *Certain changes in reserves and assets—*(a) *Adjustments to means for certain transfers of liabilities.* For purposes of this part, if, during the taxable year, there is a change in life insurance reserves attributable to the transfer between the taxpayer and another person of liabilities under contracts taken into account in computing such reserves, then, under regulations prescribed by the Secretary or his delegate, the means of such reserves, and the mean of the assets, shall be appropriately adjusted, on a daily basis, to reflect the amounts involved in such transfer. This subsection shall not apply to reinsurance ceded to the taxpayer or to another person.

(b) *Change of basis in computing reserves.* If the basis for determining the amount of any item referred to in section 810(c) as of the close of the taxable year differs from the basis for such determination as of the beginning of the taxable year, then for purposes of this subpart the amount of such item—

(1) As of the close of the taxable year shall be computed on the old basis, and

(2) As of the beginning of the next taxable year shall be computed on the new basis.

[Sec. 806 as amended by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 120)]

PAR. 10. There are inserted immediately after § 1.806-1 the following new sections:

§ 1.806-2 Taxable years affected.

Section 1.806-1 is applicable only to taxable years beginning after December 31, 1953, and before January 1, 1955, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, before amendments. Sections 1.806-3 and 1.806-4 are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.806-3 Certain changes in reserves and assets.

(a) *In general.* For purposes of part I, subchapter L, chapter 1 of the Code, section 806(a) provides that if there is a change in life insurance reserves (as defined in section 801(b)), during the taxable year, which is attributable to the transfer between the taxpayer and another person of liabilities under contracts taken into account in computing such life insurance reserves, then the means of such reserves, and the mean of the assets, shall be appropriately adjusted to reflect the amounts involved in such transfer. For example, the adjustments required under section 806(a) are applicable to transfers in which one life insurance company purchases or acquires a part or all of the business of another life insurance company under an arrangement whereby the purchaser or transferee becomes solely liable on the contracts transferred. This provision shall apply in the case of assumption reinsurance but not in the case of indemnity reinsurance or reinsurance ceded. Thus, no adjustments shall be required under section 806(a) when, in the ordinary course of business, an indemnity reinsurance contract is entered into with another company (on a yearly renewable term basis, on a coinsurance basis, or otherwise) whereby there is a sharing of risks under one or more individual contracts. It will be necessary for each life insurance company participating in a transfer described in section 806(a) to make the adjustments required by such section. Such adjustments shall be made without regard to whether or not the transferor of the liabilities was the original insurer.

(b) *Manner in which adjustments shall be made—(1) Daily basis.* The means of the life insurance reserves, and the mean of the assets, shall be appropriately adjusted, on a daily basis, to reflect the amounts involved in a transfer described in section 806(a) and paragraph (a) of this section. The transferor and the transferee shall be treated as having held such life insurance reserves and assets for a fraction of the year in which the transfer occurs.

(2) *Determination of period held.* In determining the fraction which represents the fractional year that such reserves and assets were held, the numerator shall be the number of days during the taxable year which such reserves and

assets were actually held, and the denominator shall be the number of days in the calendar year of the transfer. In computing the period held for purposes of the numerator, the day on which such reserves and assets are transferred is included by the transferor and excluded by the transferee.

(3) *Adjustments to the means of life insurance reserves and assets not transferred.* All life insurance reserves and assets transferred during the taxable year, within the meaning of section 806 (a), shall be excluded from the beginning and end of the taxable year balances of the transferor and transferee, respectively. The amount of assets to be excluded from the beginning of the taxable year balance of the transferor shall be an amount equal to the value of such reserves at the beginning of the taxable year. The amount of assets to be excluded from the end of the taxable year balance of the transferee shall be an amount equal to the value of such reserves at the end of the taxable year. The means of the life insurance reserves and assets not so transferred shall be determined in the ordinary manner, that is, the arithmetic means. There shall be added to these means an amount to appropriately adjust them, on a daily basis, for the life insurance reserves and assets that were transferred during the taxable year. This adjustment shall be determined by multiplying (i) the mean of the transferred life insurance reserves (or assets, as the case may be) at the beginning of the taxable year (or, if acquired later, at the beginning of the period held as defined in subparagraph (2) of this paragraph) and the end of the period held as defined in subparagraph (2) of this paragraph (or at the end of the taxable year, if held at such time) by (ii) the fraction determined under subparagraph (2) of this paragraph.

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

Example (1). On March 14, 1958, the M Company, a life insurance company, transferred to the N Company, a life insurance company, pursuant to an assumption reinsurance agreement, all of its life insurance reserves, and related assets, on one block of policies. The reserves (and assets) for this block were held by the M Company on January 1, 1958, and totaled \$60,000; on March 14, the reserves (and assets) totaled \$64,000. The M Company had life insurance reserves of \$1,000,000 at the beginning of 1958 (including those subsequently transferred) and \$1,040,000 at the end of 1958. The M Company had assets of \$1,300,000 at the beginning of 1958 (including those subsequently transferred) and \$1,380,000 at the end of 1958. The mean of M's life insurance reserves for the taxable year 1958 is computed as follows:

Reserves at 1-1-58	\$1,000,000
Exclude reserves (at beginning of year) on contracts transferred to N	60,000
Recomputed amount at 1-1-58	\$940,000
Reserves at 12-31-58	1,040,000
Sum	1,980,000
Mean	990,000

Adjustment for reserves transferred on 3-14-58:	
Reserves at 1-1-58 on contracts transferred to N	\$60,000
Reserves at 3-14-58 on such contracts	64,000
Sum	124,000
Mean	62,000
Fraction taken into account	$\frac{73}{365}$
Adjustment ($\frac{73}{365} \times \$62,000$)	\$12,400
Mean of M's life insurance reserves after section 806(a) adjustment	1,002,400

Example (2). Assuming the facts to be the same as in example (1), the mean of M's assets for the taxable year 1958 is computed as follows:

Assets at 1-1-58	\$1,300,000
Exclude assets (at beginning of year) on contracts transferred to N	60,000
Recomputed amount at 1-1-58	\$1,240,000
Assets at 12-31-58	1,380,000
Sum	2,620,000
Mean	1,310,000
Adjustments for assets transferred on 3-14-58:	
Assets at 1-1-58 on contracts transferred to N	\$60,000
Assets at 3-14-58 on such contracts	64,000
Sum	124,000
Mean	62,000
Fraction taken into account	$\frac{73}{365}$
Adjustment ($\frac{73}{365} \times \$62,000$)	12,400
Mean of M's assets after section 806(a) adjustment	1,322,400

Example (3). Assume the facts are the same as in example (1). At the end of 1958, N Company had life insurance reserves (and assets) of \$80,000 on the contracts transferred on March 14, 1958. The N Company had life insurance reserves of \$6,000,000 at the beginning of 1958 and \$6,400,000 at the end of 1958 (including those transferred). The N Company had assets of \$6,800,000 at the beginning of 1958 and \$7,300,000 at the end of 1958 (including those on the contracts transferred). The mean of N's life insurance reserves for the taxable year 1958 is computed as follows:

Reserves at 1-1-58	\$6,000,000
Reserves at 12-31-58	\$6,400,000
Exclude reserves (at end of year) on contracts transferred from M	80,000
Recomputed amount at 12-31-58	6,320,000
Sum	12,320,000
Mean	6,160,000

Adjustment for reserves transferred on 3-14-58:	
Reserves at 3-14-58 on contracts transferred from M.....	\$64,000
Reserves at 12-31-58 on such contracts.....	80,000
Sum.....	144,000
Mean.....	72,000
Fraction taken into account.....	$\frac{292}{365}$
Adjustment ($\frac{292}{365} \times \$72,000$).....	\$57,600

Mean of N's life insurance reserves after section 806(a) adjustment..... 6,217,600

Example (4). Assuming the facts to be the same as in example (3), the mean of N's assets for the taxable year 1958 is computed as follows:

Assets at 1-1-58.....	\$6,800,000
Assets at 12-31-58.....	\$7,300,000
Exclude assets (at end of year) on contracts transferred from M.....	80,000
Recomputed amount at 12-31-58.....	7,220,000
Sum.....	14,020,000
Mean.....	7,010,000

Adjustments for assets transferred on 3-14-58:	
Assets at 3-14-58 on contracts transferred from M.....	\$64,000
Assets at 12-31-58 on such contracts.....	80,000
Sum.....	144,000
Mean.....	72,000

Fraction taken into account.....	$\frac{292}{365}$
Adjustment ($\frac{292}{365} \times \$72,000$).....	\$57,600
Mean of N's assets after section 806(a) adjustment.....	7,067,600

Example (5). The facts are the same as in example (1), except that on October 19, 1958, company N transfers to company P, a life insurance company, all of the life insurance reserves, and related assets, on the block of policies it had received from company M on March 14, 1958. The reserves (and assets) for this block totaled \$76,000 on October 19, 1958. The means of company M's life insurance reserves and assets, as computed in examples (1) and (2), respectively, would be unchanged by the transfer of October 19, 1958. Since company N did not own this block of policies at either the beginning or end of the taxable year, it would not have to recompute its beginning or end of the taxable year reserves or assets. Company N will, however, have to adjust (or increase) the mean of its life insurance reserves and assets on account of the policies it received from company M. This adjustment will be \$42,000, which is determined by multiplying the means of the life insurance reserves (or assets) on these policies as of March 15, 1958, and October 19, 1958, \$70,000 ($\$64,000 + \$76,000 = \$140,000 \div 2$) by the fraction $\frac{219}{365}$ (the numerator of 219 is determined by excluding the day of the transfer to N, March 14, 1958, and including

the day of the transfer from N to P, October 19, 1958). Company P will have to recompute its end of the year life insurance reserves and assets (in the same manner as illustrated in examples (3) and (4)). Assuming the end of the year reserves (and assets) on this block of policies is \$80,000, company P will have an adjustment under section 806 (a) of \$15,600, which is determined by multiplying the means of the reserves on these policies as of October 20, 1958, and December 31, 1958, \$78,000 ($\$76,000 + \$80,000 = \$156,000 \div 2$) by the fraction $\frac{73}{365}$.

§ 1.806-4 Change of basis in computing reserves.

(a) In general. For purposes of subpart B, part I, subchapter L, chapter 1 of the Code, section 806(b) provides that if the basis for determining the amount of any item referred to in section 810(c) (relating to items taken into account) as of the close of the taxable year differs from the basis for such determination as of the beginning of the taxable year, then in determining taxable investment income the amount of the item as of the close of the taxable year shall be the amount computed on the old basis, and the amount of the item as of the beginning of the next taxable year shall be the amount computed on the new basis. For purposes of the preceding sentence, an election under section 818(c) shall not be treated as a change in basis for determining the amount of an item referred to in section 810(c). A change of basis in computing any of the items referred to in section 810(c) is not a change of accounting method requiring the consent of the Secretary or his delegate under section 446(e).

(b) Illustration of change of basis in computing reserves. The application of section 806(b) and paragraph (a) of this section may be illustrated by the following examples:

Example (1). Assume that the life insurance reserves of Y, a life insurance company, at the beginning of the taxable year 1959 are \$100 and that during such taxable year a portion of the reserves is strengthened (by reason of a change in mortality or interest assumptions, or otherwise), so that at the end of the taxable year 1959 the reserves (computed on the new basis) are \$130 but computed on the old basis would be \$120. Assume further that at the close of the next taxable year, 1960, the reserves (computed on the new basis) are \$142. Under the provisions of section 806(b) and paragraph (a) of this section, the mean of such reserves for the taxable year of the reserve strengthening, namely 1959, is \$110 (the mean of \$100, the balance at the beginning of the taxable year 1959, and \$120, the balance at the end of the taxable year 1959 computed on the old basis). The mean of such reserves for the next taxable year, 1960, is \$136 (the mean of \$130, the balance at the beginning of the taxable year 1960 computed on the new basis, and \$142, the balance at the end of the taxable year 1960 computed on the new basis).

Example (2). The life insurance reserves of S, a life insurance company, computed with respect to contracts for which such reserves are determined on a recognized preliminary term basis amount to \$50 on January 1, 1959, and \$80 on December 31, 1959. For the taxable year 1959, S elects to revalue such reserves on a net level premium basis under section 818(c). Such reserves computed under section 818(c) amount to \$60

on January 1, 1959, and \$96 on December 31, 1959. Under the provisions of paragraph (a) of this section, the mean of such reserves for the taxable year 1959 is \$78 (the mean of \$60, the balance at the beginning of the taxable year 1959 computed under section 818(c), and \$96, the balance at the end of the taxable year 1959 computed under section 818(c)).

(68A Stat. 917; 26 U.S.C. 7805)

[F.R. Doc. 60-11399; Filed, Dec. 9, 1960; 8:45 a.m.]

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 6514]

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Sale of Jewelry and Related Items, Furs, Toilet Preparations, and Luggage, Handbags, etc.

On July 22, 1960, notice of proposed rule making with respect to the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48) under subchapters A, B, C, and D of chapter 31 of the Internal Revenue Code of 1954, as amended, relating to retailers excise taxes on jewelry and related items, furs, toilet preparations, and luggage, handbags, etc., was published in the FEDERAL REGISTER (25 F.R. 6974). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted, subject to the changes set forth below. The regulations adopted by this Treasury decision do not include regulations under section 4021, relating to the retailers excise tax on toilet preparations, as set forth in § 48.4021-1 of the aforesaid notice of proposed rule making. Section 48.4021-1 will remain outstanding as a notice of proposed rule making and will be given further consideration before final action is taken thereon.

The regulations hereby prescribed are applicable to sales of the articles referred to therein made on or after January 1, 1959, except as otherwise provided.

PARAGRAPH 1. Section 48.4001-4 is amended by revising paragraph (a).

PAR. 2. Section 48.4003-1 is amended by revising paragraph (b) (2).

PAR. 3. Section 48.4021-1 is amended.

[SEAL] CHARLES I. FOX,
Acting Commissioner
of Internal Revenue.

Approved: December 6, 1960.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

Subpart B—Jewelry and Related Items

Sec.	
48.4001	Statutory provisions; imposition of tax.
48.4001-1	Imposition of tax.
48.4001-2	Jewelry.
48.4001-3	Certain real or synthetic stones.
48.4001-4	Articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof.
48.4001-5	Watches and clocks.

- Sec.
 48.4001-6 Gold, gold-plated, silver, or sterling flatware, or hollow ware, and silver-plated hollow ware.
 48.4001-7 Opera glasses, lorgnettes, marine glasses, etc.
 48.4001-8 Repairs.
 48.4002 Statutory provisions; definition of sale includes auctions.
 48.4002-1 Definition of sale includes auctions.
 48.4003 Statutory provisions; exemptions.
 48.4003-1 Exemptions; certain articles.
 48.4003-2 Exemptions; certain auction sales.
 48.4003-3 Exemptions; certain clocks.
 48.4003-4 Other tax-free sales.

Subpart C—Furs

- 48.4011 Statutory provisions; imposition of tax.
 48.4011-1 Imposition of tax.
 48.4011-2 Repairing, remodeling, and restyling.
 48.4012 Statutory provisions; definitions.
 48.4012-1 Manufacture from customer's material.
 48.4012-2 Definition of sale includes auctions.
 48.4013 Statutory provisions; exemption of certain auction sales.
 48.4013-1 Exemption of certain auction sales.
 48.4013-2 Other tax-free sales.

Subpart D—Toilet Preparations

- 48.4021 Statutory provisions; imposition of tax.
 48.4021-1 [Reserved]
 48.4022 Statutory provisions; exemptions.
 48.4022-1 Exemptions.
 48.4022-2 Other tax-free sales.

Subpart E—Luggage, Handbags, Etc.

- 48.4031 Statutory provisions; imposition of tax.
 48.4031-1 Imposition of tax.

AUTHORITY: §§ 48.4001 to 48.4003-4, incl., 48.4011 to 48.4013-2, incl., 48.4021 to 48.4022-2, incl., 48.4031, and 48.4031-1, issued under sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805.

Subpart B—Jewelry and Related Items

§ 48.4001 Statutory provisions; imposition of tax.

SEC. 4001. *Imposition of tax.* There is hereby imposed upon the following articles sold at retail a tax equivalent to 10 percent of the price for which so sold:

All articles commonly or commercially known as jewelry, whether real or imitation.

The following stones, by whatever name called, whether real or synthetic:

Amber.
 Beryl of the following types: Aquamarine, emerald, golden beryl, hellodor, morganite. Chrysoberyl of the following types: Alexandrite, cat's eye, chrysolite.
 Corundum of the following types: Ruby, sapphire.
 Diamond.
 Feldspar of the following type: Moonstone.
 Garnet.
 Jadeite (jade).
 Jet.
 Lapis lazuli.
 Nephrite (jade).
 Opal.
 Pearls (natural and cultured).
 Peridot.
 Quartz of the following types: Amethyst, bloodstone, citrine, moss agate, onyx, sardonyx, tiger-eye.
 Spinel.
 Topaz.
 Tourmaline.
 Turquoise.
 Zircon.

Articles made of, or ornamented, mounted or fitted with precious metals or imitations thereof.

Watches.
 Clocks.
 Cases and movements for watches and clocks.
 Gold, gold-plated, silver, or sterling flatware or hollow ware and silver-plated hollow ware.
 Opera glasses.
 Lorgnettes.
 Marine glasses.
 Field glasses.
 Binoculars.

[Sec. 4001 as amended and in effect Jan. 1, 1959, and as amended by sec. 1, Act of Sept. 21, 1959 (Pub. Law 86-344, 73 Stat. 617)]

§ 48.4001-1 Imposition of tax.

(a) *In general.* Section 4001 imposes a tax upon the following articles sold at retail:

(1) Articles commonly or commercially known as jewelry, whether real or imitation;

(2) Certain real or synthetic stones listed in § 48.4001-3 (a);

(3) Articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof; and

(4) Watches and clocks and cases and movements therefor; gold, gold-plated, silver, or sterling flatware or hollow ware; silver-plated hollow ware; opera glasses; lorgnettes; marine glasses; field glasses; and binoculars.

(b) *Cross references.* For provisions relating to the specific articles taxable under section 4001, see the following regulations in this subpart:

(1) Section 48.4001-2 for jewelry;
 (2) Section 48.4001-3 for certain real or synthetic stones;

(3) Section 48.4001-4 for articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof;

(4) Section 48.4001-5 for watches and clocks, etc.;

(5) Section 48.4001-6 for gold, gold-plated, silver, or sterling flatware or hollow ware, and silver-plated hollow ware; and

(6) Section 48.4001-7 for opera glasses, lorgnettes, marine glasses, field glasses, and binoculars.

(c) *Rate of tax.* The tax is imposed at the rate of 10 percent of the price for which the taxable article is sold at retail. For definition of the term "price", see section 4051 and the regulations thereunder contained in Subpart G.

(d) *Liability for tax.* The tax is payable by the person who sells at retail any article subject to tax under section 4001. For tax applicable to leases, see section 4052 and the regulations thereunder contained in Subpart G.

(e) *Sales by United States.* For provisions relating to sales at retail made by the United States, its agencies or instrumentalities, see section 4054 and the regulations thereunder contained in Subpart G.

§ 48.4001-2 Jewelry.

(a) *Generally.* Jewelry in general includes articles designed to be worn on the person or on apparel for the purpose of adornment and which in accordance with custom or ordinary usage are worn so as to be displayed, such as rings, chains, brooches, bracelets, cuff buttons, necklaces, earrings, beads, charms, pendants, etc. The tax is imposed on the

sale of any of such articles at retail, regardless of the substance of which made and without reference to their utilitarian value or purpose, unless for a purpose specifically exempted by law. It is immaterial whether the articles taxable under this paragraph are real or imitation jewelry. Thus, articles constituting costume jewelry are subject to tax regardless of the material of which they are made.

(b) *Articles made of, or ornamented with, certain stones.* Jewelry also includes articles to be carried in the hand, or hung on the arm, or carried or worn on the person, whether in pocket or bag or under the outer garments, such as cigarette cases, pocket mechanical lighters for cigarettes, cigars, and pipes, eyeglass cases, pencils, powder boxes, garter buckles, canes, purses or handbags, if made of, or ornamented, mounted or fitted with, any of the stones enumerated in section 4001 whether such stones are real or synthetic. Such articles are likewise subject to tax without regard to their utilitarian value or purpose. Mother-of-pearl is not a real or synthetic pearl; therefore, articles not otherwise subject to the tax are not made taxable by reason of their ornamentation with mother-of-pearl. See also § 48.4001-4 as to the taxability of the sale at retail of articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof, and section 4031, and the regulations thereunder contained in Subpart E, relating to the taxability of the sale at retail of purses, handbags, pocketbooks, etc.

(c) *Credit or refund of manufacturers excise tax.* See section 6416 (d) and the regulations thereunder contained in Subpart O for credit or refund of the manufacturers excise tax paid under section 4201 on mechanical pencils, fountain and ball point pens, and mechanical lighters for cigarettes, cigars, and pipes, in the case where because of further manufacture the tax imposed by section 4001 applies to the sale of such articles at retail.

§ 48.4001-3 Certain real or synthetic stones.

(a) *Real stones—(1) In general.* The tax imposed by section 4001 applies to sales at retail of the following stones, by whatever name called:

Amber.
 Beryl of the following types: Aquamarine, emerald, golden beryl, hellodor, morganite. Chrysoberyl of the following types: Alexandrite, cat's eye, chrysolite.
 Coral.
 Corundum of the following types: Ruby, sapphire.
 Diamond.
 Feldspar of the following type: Moonstone.
 Garnet.
 Jadeite (jade).
 Jet.
 Lapis lazuli.
 Nephrite (jade).
 Opal.
 Pearls (natural and cultured).
 Peridot.
 Quartz of the following types: Amethyst, bloodstone, citrine, moss agate, onyx, sardonyx, tiger-eye.
 Spinel.
 Topaz.
 Tourmaline.
 Turquoise.
 Zircon.

In the case of articles not otherwise taxable under chapter 31 which are ornamented, mounted or fitted with, any of the stones enumerated in section 4001, the tax shall apply to that portion of the retail selling price attributable to such stones.

(2) *Coral.* The tax on sales at retail of coral does not apply to sales after October 31, 1959.

(b) *Synthetic stones.* The tax imposed by section 4001 also applies to the sale at retail of any synthetic stone which has a molecular composition similar to a natural stone listed in paragraph (a) of this section.

(c) *Condition of stones.* The tax applies to sales at retail of the stones referred to in paragraphs (a) and (b) of this section whether they are in rough or natural state, whether cut or uncut, whether drilled, mounted or matched, whether or not strung, and if strung whether with or without clasps.

(d) *Stones used exclusively for industrial, scientific, or educational purposes, or as part of mechanical devices.* (1) For purposes of section 4001, the stones enumerated in such section do not include stones which are sold to be used exclusively as—

(i) A tool or material for industrial, scientific, research, or educational purposes (including mineral hardness testing, polishing, cutting, and grinding); or

(ii) A part of the mechanism of a mechanical device (for example, a bearing in a watch).

(2) The person making the sale at retail for a purpose indicated in subparagraph (1) of this paragraph shall keep adequate records in the nature of invoices or other documents identifying the stones, the person to whom sold, the date of sale, and the purpose for which the stones are to be used.

§ 48.4001-4 Articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof.

(a) *In general.* The tax imposed by section 4001 applies to the sale at retail of articles (as distinguished from those articles commonly or commercially known as jewelry as described in § 48.4001-2) which are made of, or ornamented, mounted or fitted with, precious metals or imitations thereof. Examples of articles which become subject to the tax when made of, or ornamented, mounted or fitted with, precious metals or imitations thereof are as follows: photograph frames, book ends, ash trays, vanity cases, mesh bags, cigarette cases and lighters, glassware, china, pottery, umbrellas, and walking sticks. Buttons, belts, belt buckles, and shoe buckles, made of, or ornamented, mounted or fitted with, imitations of precious metals are in the nature of dress or shoe findings and are not subject to the tax. For exemption from tax of sales at retail of certain pens, pencils, and smokers' pipes, see section 4003 and paragraph (a) of § 48.4003-1.

(b) *Definitions.* For purposes of section 4001—

(1) The term "precious metals" includes platinum, gold, silver, and other metals of similar or greater value.

(2) The term "imitations thereof" includes (i) alloys of precious metals, and (ii) platings of precious metals and platings of alloys of precious metals, provided such platings are one one-hundred-thousandth of an inch or more in thickness. Substances such as metal alloys which resemble but do not contain precious metals (for example, "nickel silver" (sometimes known as "German silver") or polished brass) are not included in the term.

(c) *Credit or refund of manufacturers excise tax.* See section 6416(d) and the regulations thereunder contained in Subpart O for credit or refund of the manufacturers excise tax paid under section 4201 on mechanical pencils, fountain and ball point pens, and mechanical lighters for cigarettes, cigars, and pipes, in the case where because of further manufacture the tax imposed by section 4001 applies to the sale of such articles at retail.

§ 48.4001-5 Watches and clocks.

(a) *In general.* Section 4001 imposes a tax on the sale at retail of watches and clocks and cases and movements therefor. The tax applies to such articles sold at retail regardless of whether they are new, secondhand, or antique, or whether they are in working condition. The term "watches and clocks" includes all time-measuring devices which when in operation indicate the time of day, whether activated by weights, springs, or electrical energy. Any instrument the sole function of which is to indicate elapsed time and which is incapable of being used to tell the time of day at all times, such as a stop watch, is not considered to be a watch or clock within the meaning of section 4001.

(b) *Combined with nontaxable articles—*(1) *Generally.* Except as provided in subparagraph (2) of this paragraph, if a watch or clock and one or more articles not subject to the tax imposed by section 4001 (for example, a barometer, lamp, or an advertising device) are combined in a single unit, the tax shall apply to that portion of the retail sales price charged for the combination which is attributable to such watch or clock. For the method of computing the tax in such cases, see section 4051 and the regulations thereunder contained in Subpart G.

(2) *Exemptions.* See section 4003(a) and paragraph (a) of § 48.4003-1 for exemption for watches designed especially for use by the blind. See also section 4003 (c) and (d) and § 48.4003-3 for the exemption provided for certain clocks, watches, and cases and movements therefor, which are taxed under chapter 32 (relating to manufacturers excise taxes), or which are part of a control or regulatory device not taxable under chapter 32.

§ 48.4001-6 Gold, gold-plated, silver, or sterling flatware or hollow ware, and silver-plated hollow ware.

(a) *In general.* Section 4001 imposes a tax on the sale at retail of any article which is commonly or commercially known and sold as gold, gold-plated, silver, or sterling flatware or hollow ware, or as silver-plated hollow ware. However, a gold, gold-plated, silver, silver-

plated, or sterling article which is neither commonly nor commercially known or sold in the trade as flatware or hollow ware, may be subject to the tax as an article made of, or ornamented, mounted or fitted with, precious metals or imitations thereof (see § 48.4001-4).

(b) *Silver-plated flatware.* No tax attaches to the sale at retail of any article commonly or commercially known or sold in the trade as "silver-plated flatware".

§ 48.4001-7 Opera glasses, lorgnettes, marine glasses, etc.

(a) *In general.* Section 4001 imposes a tax on the sale at retail of opera glasses, lorgnettes, marine glasses, field glasses, and binoculars.

(b) *Definitions.* The terms "opera glasses", "lorgnettes", "marine glasses", "field glasses", and "binoculars" generally include all instruments known as such. However, the terms do not include:

(1) Optical instruments which by reason of their size or weight are ordinarily mounted upon tripods or other bases; or

(2) Telescopes and sextants.

§ 48.4001-8 Repairs.

(a) *Taxable operations.* If an item is repaired and in connection therewith the person making the repair furnishes an article which would be taxable under section 4001 if sold separately at retail, the tax applies to the charge made for the article so furnished. In such case, the total charge made for the repair shall be deemed to be the price charged for the taxable article used in the repair, unless the portion of the total charge attributable to labor and to the use of any nontaxable materials is billed as a separate item. The following are examples of articles which are taxable under section 4001 when furnished in connection with the repair of other articles: (1) Articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof, such as a ring mounting or setting, a bracelet link or safety chain, a complete shank of a ring (extending from one side of the head of the ring to the other side), a spring ring or swivel, catch, earring back or screw; and (2) a stone enumerated in section 4001.

(b) *Nontaxable operations.* If an article referred to in section 4001 is repaired and the repair operation consists of labor only, the repair operation is not subject to the tax. Also, the tax does not apply to repair operations (1) in which the person making the repair furnishes only materials such as unfabricated metal, wire, solder, etc., or (2) where he furnishes only a portion of an article made of, or ornamented, mounted or fitted with, a precious metal or imitation thereof, such as a section of a shank of a ring.

(c) *Watches and clocks.* The tax imposed by section 4001 with respect to watches and clocks is limited to watches and clocks as such and cases and movements therefor. Accordingly, the tax imposed by section 4001 attaches to the repair of a watch or clock only if a case or movement is furnished in connection with the repair.

§ 48.4002 Statutory provisions; definition of sale includes auctions.

Sec. 4002. *Definition of sale includes auctions.* For the purposes of section 4001, the term "articles sold at retail" includes an article sold at retail by an auctioneer or other agent in the course of his business on behalf of (1) a person who is not engaged in the business of selling like articles, or (2) the legal representative of the estate of a decedent who was not engaged in the business of selling like articles. In the case of articles so sold, the auctioneer or other agent shall be considered the "person who sells at retail."

[Sec. 4002 as originally enacted and in effect Jan. 1, 1959]

§ 48.4002-1 Definition of sale includes auctions.

(a) *In general.* Section 4002 provides that for purposes of section 4001, the term "articles sold at retail" includes articles sold at retail by an auctioneer or other agent in the course of his business on behalf of (1) a person who is not engaged in the business of selling like articles, or his legal representative, or (2) the legal representative of the estate of a decedent who was not engaged in the business of selling like articles. Section 4002 also provides that in the case of articles so sold, the auctioneer or other agent shall be considered the "person who sells at retail". Thus, such auctioneer or agent shall be liable for payment of the tax imposed by section 4001 and the filing of returns.

(b) *Sales not at auction.* The provisions of section 4002 and paragraph (a) of this section are not limited to auction sales but are applicable to all sales at retail of articles enumerated in section 4001 by an auctioneer or other agent in the course of his business.

(c) *Exemption.* See section 4003(b) and § 48.4003-2 for the limited exemption which applies to certain auction sales.

§ 48.4003 Statutory provisions; exemptions.

Sec. 4003. *Exemptions*—(a) *Specific articles.* The tax imposed by section 4001 shall not apply to any article used for religious purposes, to surgical instruments, to watches designed especially for use by the blind, to frames or mountings for spectacles or eyeglasses, to a fountain pen, mechanical pencil, or smokers' pipe if the only parts of the pen, the pencil, or the pipe which consist of precious metals are essential parts not used for ornamental purposes, or to buttons, insignia, cap devices, chin straps, and other devices prescribed for use in connection with the uniforms of the armed forces of the United States.

(b) *Certain auction sales.* (1) In the case of an auction sale held at the home of a person whose articles are being sold, any taxable article (as defined in paragraph (2)) of such person sold by the auctioneer shall be exempt from the tax imposed by section 4001 except to the extent that the price for which such article is sold, when added to the sum of the sale prices of all other taxable articles of such person previously sold at the same auction, exceeds \$100.

(2) For the purposes of this subsection—

(A) The term "taxable article" means an article which, by reason of section 4002 and without regard to the exemption provided in paragraph (1), is taxable under section 4001 when sold at auction; and

(B) In the case of articles of a decedent sold on behalf of the legal representative of

his estate, an auction sale held at the home of such decedent shall be considered as "held at the home of a person whose articles are being sold".

(c) *Clocks subject to manufacturers tax.* The tax imposed by section 4001 shall not apply to a clock or watch, or to a case or movement for a clock or watch, if a tax in respect of such clock, watch, case, or movement was imposed under chapter 32 by reason of its sale (1) as a part or accessory, or (2) on or in connection with or with the sale of any article.

(d) *Certain parts of control or regulatory devices.* The tax imposed by section 4001 shall not apply to a clock or watch, or to a case or movement for a clock or watch, if such clock, watch, case, or movement is (1) a part of a control or regulatory device which is an article (or part thereof) not taxable under chapter 32, or (2) sold as a repair or replacement part for such a device.

[Sec. 4003 as amended and in effect Jan. 1, 1959]

§ 48.4003-1 Exemptions; certain articles.

(a) *In general.* Section 4003 specifically provides that the tax imposed by section 4001 shall not apply to: Any article used for religious purposes; surgical instruments; watches designed especially for use by the blind; frames or mountings for spectacles or eye-glasses; fountain pens, mechanical pencils, or smokers' pipes, if the only parts thereof which consist of precious metals are essential parts not used for ornamental purposes; and buttons, insignia, cap devices, chin straps, and other devices prescribed for use in connection with the uniforms of the armed forces of the United States. See section 7701(a) (15) and the regulations thereunder contained in part 301, for meaning of the term "Armed Forces of the United States".

(b) *Articles used for religious purposes.* (1) The tax imposed by section 4001 does not apply to articles of such nature as to be intended for use only for religious purposes (for example, a crucifix, rosary, chalice, etc.). Such articles may be sold tax free without a statement from the purchaser as to the purpose for which the article is to be used.

(2) The tax imposed by section 4001 also does not apply to articles of such nature as to be usable for nonreligious purposes as well as for religious purposes if such articles are purchased by a church or other religious organization and if—

(i) The articles (such as pins, medals, or buttons, which have the Cross and Crown symbol) are to be used by a religious organization as an award in connection with a religious program, or

(ii) The articles (such as crosses, candlesticks, vases, etc.) are used in connection with religious services by a religious organization.

With respect to these articles, the retailer must have in his possession a statement from a representative of the religious organization certifying that the articles were purchased solely for religious purposes in order to establish the right to exemption from the tax on the sale.

(c) *Fountain pens, mechanical pencils, smokers' pipes*—(1) *Essential parts defined.* For purposes of the exemption from tax provided by section 4003 ap-

plicable to fountain pens, mechanical pencils, and smokers' pipes, the term "essential parts" shall include:

(i) *Fountain pen.* In the case of a fountain pen—the pen point, lever, clip, and the plain narrow band or bands placed on the cap for the purpose of preventing the cap from splitting or expanding.

(ii) *Mechanical pencil.* In the case of a mechanical pencil—the tapered point holding the lead for writing, the clip, and the plain narrow band or bands placed on the barrel or cap, or both, for the purpose of preventing such part or parts from splitting or expanding.

(iii) *Smoker's pipe.* In the case of a smoker's pipe—the plain narrow band or bands placed on the shank of the pipe to prevent the shank from splitting.

All other parts of such pens, pencils, or pipes consisting of precious metals or imitations thereof shall be deemed to be ornamental unless it is established that a particular part is an essential part not used for ornamental purposes. Furthermore, the tax imposed by section 4001 shall attach if the aforementioned essential band or bands on a fountain pen, mechanical pencil, or smoker's pipe consist of precious metals or imitations thereof and have a combined width of more than $\frac{3}{8}$ of an inch.

(2) *Credit or refund of manufacturers excise tax.* See section 6416(d) and the regulations thereunder contained in Subpart O of this part for credit or refund of the manufacturers excise tax paid under section 4201 on mechanical pencils, fountain and ball point pens, and mechanical lighters for cigarettes, cigars, and pipes, in the case where because of further manufacture the tax imposed by section 4001 applies to the sale of such articles at retail.

§ 48.4003-2 Exemptions; certain auction sales.

A limited exemption in the amount of \$100 of the sale price is provided by section 4003(b) in the case of an auction sale held at the home of the owner of an article or articles taxable under section 4001. Thus, for example, if a pearl necklace was first sold by an auctioneer at the owner's home for \$40 and a diamond pin was next sold at the same sale for \$150, the sale of the necklace would be tax free and the remaining \$60 of the \$100 exemption would be applied against the sale price of the pin, \$90 of such sale price being subject to tax. Sales of articles not taxable under section 4001 shall not be considered in applying the \$100 exemption. Only one exemption shall be allowed regardless of the period of time during which the auction sale takes place. This exemption also applies to an auction sale of articles of a decedent held at the home of such decedent. See section 4013 and § 48.4013-1 for \$100 exemption in the case of furs sold at certain auction sales.

§ 48.4003-3 Exemptions; certain clocks.

(a) *Clocks subject to manufacturers excise tax.* Section 4003(c) provides that a clock or watch (or a case or movement for a clock or watch) shall be exempt from the tax imposed by section

4001 if a tax was imposed in respect of such clock, watch, case, or movement under chapter 32 (relating to manufacturers excise taxes) by reason of its sale as a part or accessory (for example, an automobile clock) or by reason of its sale on or in connection with or with the sale of any article (for example, a stove). The exemption is limited to clocks, watches, and cases and movements in respect of which tax under chapter 32 was imposed. Thus, for example, the exemption does not apply where a clock or watch (or a case or movement therefor) in respect of which tax was not imposed under chapter 32 is (1) sold at retail in conjunction with the sale of another article which is subject to a manufacturers excise tax imposed by chapter 32, or (2) sold separately at retail to replace a clock, watch, case, or movement in an article subject to a manufacturers excise tax imposed by chapter 32.

(b) *Clocks in control or regulatory devices*—(1) *In general.* Section 4003(d) provides that sales at retail of a clock or watch (or a case or movement for a clock or watch) shall be exempt from the tax imposed by section 4001 if such clock, watch, case, or movement is—

(i) A part of a control or regulatory device (for example, a thermostat) which is an article, or part thereof, not taxable under chapter 32 (relating to manufacturers excise taxes), or

(ii) Sold as a repair or replacement part for such a device.

(2) *Control or regulatory device defined.* For purposes of this paragraph, the term "control or regulatory device" does not include clocks which in themselves have control or regulatory features, such as electric clocks that can be used to turn on radios, coffeemakers, etc., or defrost refrigerators. To qualify for the exemption, the control or regulatory device must be the major item of the combination and the clock a subsidiary item.

§ 48.4003-4 Other tax-free sales.

For provisions relating to other tax-free sales of articles referred to in section 4001, see—

(a) Section 4055, relating to the exemption of sales for the exclusive use of any State or political subdivision thereof, or the District of Columbia,

(b) Section 4056, relating to the exemption of sales for export, and

(c) Section 4057, relating to the exemption of sales to nonprofit educational organizations, and the regulations thereunder contained in Subpart G.

Subpart C—Furs

§ 48.4011 Statutory provisions; imposition of tax.

Sec. 4011. *Imposition of tax.* There is hereby imposed upon the following articles sold at retail a tax equivalent to 10 percent of the price for which so sold: Articles made of fur on the hide or pelt, and articles of which such fur is the component material of chief value, but only if such value is more than three times the value of the next most valuable component material.

[Sec. 4011 as originally enacted and in effect Jan. 1, 1959]

§ 48.4011-1 Imposition of tax.

(a) *In general.* (1) Section 4011 imposes a tax upon the following articles sold at retail:

(i) Articles made of fur on the hide or pelt; and

(ii) Articles of which fur on the hide or pelt is the component material of chief value, but only if such value is more than three times the value of the next most valuable component material.

(2) The tax imposed by section 4011 is not limited to wearing apparel, but applies to sales of an article suitable for any use, such as a rug, robe, toy, novelty, etc.

(3) The tax does not apply to the sale of raw fur.

(4) For tax applicable in respect of fur articles manufactured from a customer's materials, see section 4012(a) and § 48.4012-1.

(5) For provisions relating to sales by an auctioneer or other agent, see section 4012(b) and § 48.4012-2.

(b) *Fur on hide or pelt.* For purposes of section 4011 and the regulations in this subpart, the term "fur on the hide or pelt" means animal hides or pelts with hair wholly or partially intact. However, the term does not include hides or pelts with hair which does not have the appearance of fur and is not used as fur. For example, certain sheep have hair so fine that its natural tendency is to become matted or felted, and, therefore, in its natural condition it neither resembles fur nor is used as fur. But if such hides or pelts are processed so that the hair loses its matted or felted appearance and takes on the appearance of fur, they will be deemed to be "fur on the hide or pelt".

(c) *Articles made of fur.* The term "articles made of fur on the hide or pelt", as used in section 4011 and this section, includes all articles made of such fur as distinguished from fur-trimmed or fur-lined articles. For example, fur coats, capes, stoles, hats, etc., shall be subject to the tax referred to in paragraph (a) (1) (i) of this section without regard to the relative values of the component parts. Fur-trimmed or fur-lined articles shall be subject to the tax referred to in paragraph (a) (1) (ii) of this section if the value of the fur is more than three times the value of the next most valuable component material.

(d) *Articles of which fur is a component material*—(1) *Valuation.* In determining, for the purposes of paragraph (a) (1) (ii) of this section, whether the sale of an article of which fur is a component material is subject to tax, the value of such fur at the time of assemblage of the article must be compared to the value of each other single component at such time. In comparing the value of the fur to the other components, all costs (including labor) of making or preparing a complete component shall be considered. However, the cost of assembling the components into the finished article shall not be considered.

(2) *Records.* Where fur is a component material of an article and exemp-

tion with respect to the sale of such article is claimed on the ground that the value of the fur as compared with that of the most valuable of the other component materials is not such as to render the sale taxable under paragraph (a) (1) (ii) of this section, the retailer must maintain adequate records or have in his possession proper documentary evidence to establish that fact to the satisfaction of the Commissioner. An example of documentary evidence which will be acceptable is a written statement from the manufacturer or producer of the article stating that the value of the fur at the time of assemblage of the article was not more than three times the value at such time of the next most valuable component material. In the absence of such records or documentary evidence, the tax must be paid with respect to the sale of such article at retail.

(e) *Rate of tax.* The tax is imposed at the rate of 10 percent of the price for which the taxable article is sold at retail. For definition of the term "price", see section 4051 and the regulations thereunder contained in Subpart G.

(f) *Liability for tax.* The tax is payable by the person who sells at retail any article subject to tax under section 4011. For tax applicable to leases, see section 4052 and the regulations thereunder contained in Subpart G.

(g) *Sales by United States.* For provisions relating to sales at retail made by the United States, its agencies or instrumentalities, see section 4054 and the regulations thereunder contained in Subpart G of this part.

§ 48.4011-2 Repairing, remodeling, and restyling.

(a) *Fur furnished by furrier.* If a furrier uses fur on the hide or pelt which he furnishes to repair, remodel, or restyle a fur article owned by a customer, the tax imposed by section 4011 shall apply if a garment or an article such as a collar, cuff, sleeve, lapel, button, border, etc., is produced from the fur furnished by the furrier. The tax shall not apply if, for example, the fur furnished by the furrier is used merely to replace a worn section of a sleeve or cuff. If a taxable garment or article is produced, the tax shall attach to that portion of the price charged for the entire repairing, remodeling, or restyling operation which is attributable to the garment or article so produced, and the person repairing, remodeling, or restyling shall be deemed to be the person selling such garment or article at retail for the purposes of the tax imposed by section 4011. For purposes of this paragraph, the term "furrier" includes a person in the business of repairing, remodeling, or restyling fur articles.

(b) *Fur furnished by customer.* The tax shall not apply in the case where the fur furnished by the customer is used merely to replace a section of a garment or other article, such as a worn section of a sleeve or cuff. For tax applicable in respect of repairing, remodeling, or restyling of fur articles where an article is produced from fur furnished by the customer, see § 48.4012-1.

§ 48.4012 Statutory provisions; definitions.

Sec. 4012. *Definitions*—(a) *Manufacture from customers material.* Where a person, who is engaged in the business of dressing or dyeing fur skins or of manufacturing, selling, or repairing fur articles, produces an article of the kind described in section 4011 from fur on the hide or pelt furnished, directly or indirectly, by a customer and the article is for the use of, and not for resale by, such customer, the transaction shall be deemed to be a sale at retail and the person producing the article shall be deemed to be the person selling such article at retail for the purposes of such section. The tax on such a transaction shall be computed and paid by such person upon the fair retail market value, as determined by the Secretary or his delegate, of the finished article.

(b) *Sale includes auctions.* For the purposes of section 4011, the term "articles sold at retail" includes an article sold at retail by an auctioneer or other agent in the course of his business on behalf of—

(1) A person who is not engaged in the business of selling like articles, or

(2) The legal representative of the estate of a decedent who was not engaged in the business of selling like articles. In the case of articles so sold, the auctioneer or other agent shall be considered the "person who sells at retail."

[Sec. 4012 as originally enacted and in effect Jan. 1, 1959]

§ 48.4012-1 Manufacture from customer's fur.

The tax imposed by section 4011 applies where a person, who is engaged in the business of dressing or dyeing fur skins or of manufacturing, selling, or repairing fur articles, produces a garment, or article such as a muff, collar, cuff, sleeve, lapel, button, border, or other article of the kind described in section 4011 and paragraph (a)(1) of § 48.4011-1, from unused fur on the hide or pelt furnished directly or indirectly by a customer and the article is for the use of, and not for resale by, such customer. The transaction shall be deemed to be a sale at retail and the person producing the article shall be deemed to be the person selling such article for purposes of section 4011. The tax applicable to such transaction shall be computed upon the fair retail market value of the finished article as determined by the district director of internal revenue for the district in which the principal place of business of the taxpayer is located, and shall be determined without regard to the fact that the fur was furnished by the customer. In general, the fair retail market value may be considered as the retail sale price for which the same or a similar finished article is sold by retailers generally in the ordinary course of the retail trade.

§ 48.4012-2 Definition of sale includes auctions.

(a) *In general.* Section 4012(b) provides that for purposes of section 4011, the term "articles sold at retail" includes an article sold at retail by an auctioneer or other agent in the course of his business on behalf of (1) a person who is not engaged in the business of selling like articles or his legal representative, or (2) the legal representative of the estate of a decedent who was not engaged in the business of selling like articles. Sec-

tion 4012(b) also provides that in the case of articles so sold, the auctioneer or other agent shall be considered the "person who sells at retail". Thus, such auctioneer or agent shall be liable for payment of the tax imposed by section 4011 and the filing of returns.

(b) *Sales not at auction.* The provisions of section 4012(b) and paragraph (a) of this section are not limited to auction sales but are applicable to all sales at retail of articles enumerated in section 4011 by an auctioneer or other agent in the course of his business.

(c) *Exemption.* See section 4013 and § 48.4013-1 for the limited exemption which applies to certain auction sales.

§ 48.4013 Statutory provisions; exemption of certain auction sales.

Sec. 4013. *Exemption of certain auction sales.* (a) In the case of an auction sale held at the home of a person whose articles are being sold, any taxable article (as defined in subsection (b)) of such person sold by the auctioneer shall be exempt from the tax imposed by section 4011 except to the extent that the price for which such article is sold, when added to the sum of the sale prices of all other taxable articles of such person previously sold at the same auction, exceeds \$100.

(b) For the purposes of this section—

(1) The term "taxable article" means an article which, by reason of section 4012(b) and without regard to the exemption provided in subsection (a), is taxable under section 4011 when sold at auction; and

(2) In the case of articles of a decedent sold on behalf of the legal representative of his estate, an auction sale held at the home of such decedent shall be considered as "held at the home of a person whose articles are being sold".

[Sec. 4013 as originally enacted and in effect Jan. 1, 1959]

§ 48.4013-1 Exemption of certain auction sales.

Section 4013 provides a limited exemption in the amount of \$100 of the sale price in the case of an auction sale held at the home of the owner of an article or articles taxable under section 4011. Thus, for example, if a fur neck piece was first sold by an auctioneer at the owner's home for \$80 and a fur coat was next sold at the same sale for \$200, the sale of the fur neck piece would be tax free and the remaining \$20 of the \$100 exemption would be applied against the sale price of the fur coat, \$180 of such sale price being subject to tax. Sales of articles not taxable under section 4011 shall not be considered in applying the \$100 exemption. Only one exemption shall be allowed regardless of the period of time during which the auction sale takes place. This exemption also applies to an auction sale of articles of a decedent held at the home of such decedent. See section 4003(b) and § 48.4003-2 for \$100 exemption in the case of certain auction sales of jewelry and other articles taxable under section 4001.

§ 48.4013-2 Other tax-free sales.

For provisions relating to other tax-free sales of articles referred to in section 4011, see—

(a) Section 4055, relating to the exemption of sales for the exclusive use

of any State or political subdivision thereof, or the District of Columbia,

(b) Section 4056, relating to the exemption of sales for export, and

(c) Section 4057, relating to the exemption of sales to nonprofit educational organizations,

and the regulations thereunder contained in Subpart G.

Subpart D—Toilet Preparations

§ 48.4021 Statutory provisions; imposition of tax.

Sec. 4021. *Imposition of tax.* There is hereby imposed upon the following articles sold at retail a tax equivalent to 10 percent of the price for which so sold—

Perfume.	Hair oils.
Essences.	Pomades.
Extracts.	Hair dressings.
Toilet waters.	Hair restoratives.
Cosmetics.	Hair dyes.
Petroleum jellies.	Toilet powders.

Any other similar substance, article, or preparation, by whatsoever name known or distinguished; any of the above which are used or applied or intended to be used or applied for toilet purposes.

[Sec. 4021 as originally enacted and in effect Jan. 1, 1959, and as amended by sec. 1, Act of April 8, 1960 (Pub. Law 86-413, 74 Stat. 31)]

§ 48.4021-1 [Reserved]

§ 48.4022 Statutory provisions; exemptions.

Sec. 4022. *Exemptions*—(a) *Items for babies.* The tax imposed by section 4021 shall not apply to lotion, oil, powder, or other article intended to be used or applied only in the care of babies.

(b) *Barber shops and beauty parlors.* For the purposes of section 4021, the sale of any article described in such section to any person operating a barber shop, beauty parlor, or similar establishment for use in the operation thereof, or for resale, shall not be considered as a sale at retail. The resale of such article at retail by such person shall be subject to the provisions of section 4021.

(c) *Miniature samples.* For the purposes of section 4021, the sale of miniature samples of any article described in such section for demonstration use only to a house-to-house salesman by the manufacturer or distributor, shall not be considered as a sale at retail. The resale of such sample at retail by such house-to-house salesman shall be subject to the provisions of section 4021.

[Sec. 4022 as originally enacted and in effect Jan. 1, 1959]

§ 48.4022-1 Exemptions.

(a) *Items for babies.* Section 4022 provides that the tax imposed by section 4021 does not apply to the sale of lotions, oils, powders, or other articles intended to be used or applied only in the care of babies. The determination of whether toilet articles are intended to be used or applied only in the care of babies will be made only by reference to the advertising with respect to, and the labeling contained on, the article. If an article is advertised and labeled as being for use in the care of babies and is not advertised or labeled as usable by persons other than babies, the sale of the article is exempt from tax even though the particular purchaser buys it for adult use. On the other hand, the sale of an article which is represented by advertising or labeling as fit for adult use, in addition

to use in the care of babies, shall not be exempt from tax even though sold to a purchaser who intends to use the article only in the care of babies.

(b) *Barber shops and beauty parlors.*
 (1) The sale of any article taxable under section 4021 to a person operating a barber shop, beauty parlor, or similar establishment, whether for use in the operation thereof or for resale purposes, shall not be considered as a sale at retail and the tax imposed by section 4021 shall not be applicable to such sale.

(2) In any case where the operator of a barber shop, beauty parlor, or similar establishment sells at retail an article taxable under section 4021, he is liable for the tax imposed by such section.

(c) *Miniature samples.* The sale by the manufacturer or distributor of miniature samples of any article taxable under section 4021 to a house-to-house salesman for demonstration use only shall not be considered as a sale at retail and the tax imposed by section 4021 shall not be applicable to such sale. In any case where the house-to-house salesman sells at retail any of the miniature samples purchased from the manufacturer or distributor for demonstration use, he is liable for the tax imposed by section 4021.

§ 48.4022-2 Other tax-free sales.

For provisions relating to other tax-free sales of articles referred to in section 4021, see—

(a) Section 4055, relating to the exemption of sales for the exclusive use of any State or political subdivision thereof, or the District of Columbia,

(b) Section 4056, relating to the exemption of sales for export, and

(c) Section 4057, relating to the exemption of sales to nonprofit educational organizations,

and the regulations thereunder contained in Subpart G.

Subpart E—Luggage, Handbags, Etc.

§ 48.4031 Statutory provisions; imposition of tax.

Sec. 4031. *Imposition of tax.* There is hereby imposed upon the following articles, by whatever name called, sold at retail (including in each case fittings or accessories therefor sold on or in connection with the sale thereof) a tax equivalent to 10 percent of the price for which so sold—

- Bathing suit bags.
- Beach bags or kits.
- Billfolds.
- Briefcases.
- Brief bags.
- Camping bags.
- Card and pass cases.
- Collar cases.
- Cosmetic bags and kits.
- Dressing cases.
- Dufflebags.
- Furlough bags.
- Garment bags designed for use by travelers.
- Hatboxes designed for use by travelers.
- Haversacks.
- Key cases or containers.
- Knapsacks.
- Knitting or shopping bags (suitable for use as purses or handbags).
- Makeup boxes.
- Manicure set cases.

- Memorandum pad cases (suitable for use as card or pass cases, billfolds, purses, or wallets).
- Musette bags.
- Overnight bags.
- Pocketbooks.
- Purses and handbags.
- Ring binders, capable of closure on all sides.
- Salesmen's sample or display cases, bags, or trunks.
- Satchels.
- Shoe and slipper bags.
- Suitcases.
- Tie cases.
- Toilet kits and cases.
- Traveling bags.
- Trunks.
- Valises.
- Vanity bags or cases.
- Wallets.
- Wardrobe cases.

[Sec. 4031 as amended and in effect Jan. 1, 1959]

§ 48.4031-1 Imposition of tax.

(a) *In general.* Section 4031 imposes a tax on:

(1) The following articles, by whatever name called, sold at retail—

- Bathing suit bags.
- Beach bags or kits.
- Billfolds.
- Briefcases.
- Brief bags.
- Camping bags.
- Card and pass cases.
- Collar cases.
- Cosmetic bags and kits.
- Dressing cases.
- Dufflebags.
- Furlough bags.
- Garment bags designed for use by travelers.
- Hatboxes designed for use by travelers.
- Haversacks.
- Key cases or containers.
- Knapsacks.
- Knitting or shopping bags (suitable for use as purses or handbags).
- Makeup boxes.
- Manicure set cases.
- Memorandum pad cases (suitable for use as card or pass cases, billfolds, purses, or wallets).
- Musette bags.
- Overnight bags.
- Pocketbooks.
- Purses and handbags.
- Ring binders, capable of closure on all sides.
- Salesmen's sample or display cases, bags, or trunks.
- Satchels.
- Shoe and slipper bags.
- Suitcases.
- Tie cases.
- Toilet kits and cases.
- Traveling bags.
- Trunks.
- Vanity bags or cases.
- Valises.
- Wallets.
- Wardrobe cases.

(2) *Fittings or accessories for any article enumerated in subparagraph (1) of this paragraph sold on or in connection with the sale at retail of such article.*

(b) *Meaning of terms—*(1) *In general.* For purposes of the tax imposed by section 4031, the articles listed in such section include all receptacles commonly or commercially known and sold as such regardless of design, size, or materials from which made or the purpose for which they are to be used. If there is doubt as to whether an article is taxable, the manner in which the article is advertised or otherwise held out for sale

shall be considered. The articles listed in section 4031 include any such articles regardless of the name attached to, or associated with, the articles for merchandising or other reasons. For example, an article marketed as a "money holder" is taxable if in fact it is a "billfold" or "wallet".

(2) *Briefcases.* The term "briefcases" includes, for purposes of the tax imposed by section 4031, articles commonly or commercially known and sold as such regardless of materials from which made or the purpose for which they are to be used. The term also includes so-called "portfolios", "envelopes", etc., capable of being closed on all four sides which are designed and constructed for carrying or conveying unfolded legal-size or letter-size papers, documents, etc. The term does not include "portfolios", "envelopes", etc., designed and constructed primarily for storage purposes.

(3) *Knitting or shopping bags.* A knitting or shopping bag shall be considered suitable for use as a purse or handbag, for purposes of the tax imposed by section 4031, if it is capable of being carried in the hand, or hung on the arm or across the shoulder, and if—

- (i) The bag has a secure closure, or
- (ii) The bag has a built-in purse, side pocket, or compartment closed by a zipper, snap fastener, or other secure closure,

provided the bag, or the built-in purse, side pocket, or compartment, is capable, when open, of holding the normal contents of a purse or handbag.

(c) *Children's luggage and toy luggage.* The tax applies to the sale at retail of articles listed in section 4031 which are designed and constructed for use as such by a child (for example, a child's purse, handbag, or suitcase). However, the tax does not attach to the sale at retail of articles which simulate articles of the type referred to in section 4031 but which are toys, that is, articles designed, constructed, and advertised or otherwise held out for sale for the amusement of a child or for use in a child's play. For example, the tax shall not apply to the sale at retail of a trunk designed, constructed, and held out for sale solely to hold clothing for a doll.

(d) *Rate of tax.* The tax is imposed at the rate of 10 percent of the price for which the taxable article is sold at retail. For definition of the term "price", see section 4051 and the regulations thereunder contained in Subpart G.

(e) *Liability for tax.* The tax is payable by the person who sells at retail any article subject to tax under section 4031. For tax applicable to leases, see section 4052 and the regulations thereunder contained in Subpart G.

(f) *Sales by United States.* For provisions relating to sales at retail made by the United States, its agencies or instrumentalities, see section 4054 and the regulations thereunder contained in Subpart G.

(g) *Tax-free sales.* For provisions relating to tax-free sales of articles referred to in section 4031, see—

(1) Section 4055, relating to the exemption of sales for the exclusive use of

any State or political subdivision thereof, or the District of Columbia,

(2) Section 4056, relating to the exemption of sales for export, and

(3) Section 4057, relating to the exemption of sales to nonprofit educational organizations,

and the regulations thereunder contained in Subpart G of this part.

[F.R. Doc. 60-11514; Filed, Dec. 9, 1960; 8:49 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 60-LA-52]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, POSITIVE CONTROL AREAS

Revocation of Federal Airway, Associated Control Areas and Reporting Points

On September 29, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9294) stating that the Federal Aviation Agency proposed to revoke Red Federal airway No. 15, in its entirety, its associated control areas and reporting points.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, Parts 600 and 601 (14 CFR 600, 601) are amended as follows:

1. Section 600.215 *Red Federal airway No. 15 (Prescott, Ariz., to Phoenix, Ariz.)* is revoked.

2. Section 601.215 *Red Federal airway No. 15 control areas (Prescott, Ariz., to Phoenix, Ariz.)* is revoked.

3. Section 601.4215 *Red Federal airway No. 15 (Prescott, Ariz., to Phoenix, Ariz.)* is revoked.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-11488; Filed, Dec. 9, 1960; 8:46 a.m.]

[Airspace Docket No. 60-NY-49]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation and Modification of Segments of Federal Airway, Associated Control Areas and Reporting Points

On July 8, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 6438) stating that the Federal Aviation Agency proposed to revoke two segments of Red Federal airway No. 20 and to modify its eastern terminus. In addition, two designated reporting points associated with this airway are being revoked.

Although not mentioned in the Notice, the segment of Red 20 between Lansing, Mich., and Windsor, Ontario, Canada is being redesignated to eliminate the Selfridge AFB, Mich., radio range station from the description of the airway, as the Department of the Air Force plans to decommission this facility. The Federal Aviation Agency has determined, by flight check, that the Flint, Mich., ILS outer compass locator can be used in describing this segment of Red 20 in lieu of the Selfridge radio range.

The modification of the eastern terminus of Red 20, as mentioned in the notice is being accomplished in Airspace Docket No. 60-NY-24 (25 F.R. 10798) which is effective January 12, 1961.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated herein and in the notice, the following actions are taken:

1. Section 600.220 (14 CFR 600.220) is amended to read:

§ 600.220 *Red Federal airway No. 20 (Lansing, Mich., to Cleveland, Ohio; Pittsburgh, Pa., to Martinsburg, W. Va.; and Washington, D.C., to Meekins Neck, Md.)*.

That airspace over the United States from the Lansing, Mich., RR via the Flint, Mich., ILS outer compass locator; INT of the 106° True bearing from the Flint ILS outer compass locator and the NW course of the Windsor, Ont., Canada, RR; Windsor RR; to the Cleveland, Ohio, RR. From the Pittsburgh, Pa., RR to the INT of the SE course of the Pittsburgh RR and the NW course of the Washington, D.C., RR. From the Washington RR to the INT of the SE course of the Washington RR and the NE course of the Tappahannock, Va., RR, excluding the portion below 6,000 feet MSL which

would coincide with the Patuxent Restricted Area (R-71).

2. Section 601.220 (14 CFR 601.220) is amended to read:

§ 601.220 *Red Federal airway No. 20 control areas (Lansing, Mich., to Cleveland, Ohio; Pittsburgh, Pa., to Martinsburg, W. Va.; and Washington, D.C., to Meekins Neck, Md.)*.

All of Red Federal airway No. 20.

3. Section 601.4220 (14 CFR 601.4220) is amended to read:

§ 601.4220 *Red Federal airway No. 20 (Lansing, Mich., to Cleveland, Ohio; Pittsburgh, Pa., to Martinsburg, W. Va.; and Washington, D.C., to Meekins Neck, Md.)*.

The INT of the SE course of the Pittsburgh, Pa., RR and the NE course of the Morgantown, W. Va., RR.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-11487; Filed, Dec. 9, 1960; 8:46 a.m.]

[Airspace Docket No. 60-KC-68]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation of Federal Airway, Associated Control Areas and Reporting Points

On September 15, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8887) stating that the Federal Aviation Agency proposed to revoke Red Federal airway No. 100 in its entirety, its associated control areas and reporting points.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, Parts 600 and 601 (14 CFR 600, 601) are amended as follows:

1. Section 600.300 *Red Federal airway No. 100 (South Bend, Ind., to Battle Creek, Mich.)* is revoked.

2. Section 601.300 *Red Federal airway No. 100 control areas (South Bend, Ind., to Battle Creek, Mich.)* is revoked.

3. Section 601.4300 *Red Federal airway No. 100 (South Bend, Ind., to Battle Creek, Mich.)* is revoked.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-11489; Filed, Dec. 9, 1960; 8:46 a.m.]

[Airspace Docket No. 60-KC-64]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On October 1, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9416) stating that the Federal Aviation Agency proposed to modify the Garden City, Kans., control zone.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, § 601.2050 (14 CFR 601.2050) is amended to read:

§ 601.2050 Garden City, Kans., control zone.

Within a 5-mile radius of the New Garden City Airport (latitude 37°56'08'' N., longitude 100°43'46'' W.), within 2 miles either side of the 144° True bearing from the RR extending from the 5-mile radius zone to the RR and within 2 miles either side of the 004° and 171° True radials of the VOR extending from the 5-mile radius zone to 12 miles N and S of the VOR.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-11484; Filed, Dec. 9, 1960; 8:45 a.m.]

[Airspace Docket No. 60-FW-76]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On October 13, 1960, a notice of proposed rule making was published in the

FEDERAL REGISTER (25 F.R. 9815) stating that the Federal Aviation Agency proposed to modify the Tallahassee, Fla., control zone.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, § 601.2167 (14 CFR 601.2167) is amended to read:

§ 601.2167 Tallahassee, Fla., control zone.

Within a 5-mile radius of the Tallahassee Municipal Airport (Latitude 30°23'33'' N., Longitude 84°21'06'' W.), and within 2 miles either side of the NW course of the Tallahassee RR extending from the 5-mile radius zone to 12 miles NW of the RR.

This amendment shall be effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-11485; Filed, Dec. 9, 1960; 8:45 a.m.]

[Airspace Docket No. 60-FW-64]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On September 21, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9062) stating that the Federal Aviation Agency proposed to modify the Brunswick, Ga., (McKinnon Airport) control zone.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, § 601.2230 (14 CFR 601.2230) is amended to read:

§ 601.2230 Brunswick, Ga., (McKinnon Airport) control zone.

Within a 5-mile radius of McKinnon Airport, Brunswick, Ga. (latitude 31°09'05'' N., longitude 81°23'20'' W.), within 2 miles either side of the 226° True bearing from the Brunswick RBN extending from the 5-mile radius zone to 12 miles SW of the RBN, and within 2

miles either side of the 023° True radial of the Brunswick VOR extending from the 5-mile radius zone to the VOR.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-11483; Filed, Dec. 9, 1960; 8:45 a.m.]

[Airspace Docket No. 60-WA-234]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On October 8, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9687) stating that the Federal Aviation Agency proposed to modify the Beaumont, Tex., control zone.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, the following action is taken: In the text of § 601.2332 (25 F.R. 5377) "LOM, and within 2 miles either side of the Beaumont ILS localizer SE course extending from the 5-mile radius zone to a point 10 miles SE of the airport." is deleted and "LOM." is substituted therefor.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 6, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-11486; Filed, Dec. 9, 1960; 8:45 a.m.]

[Airspace Docket No. 60-FW-63]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On October 1, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9417) stating that the Federal Aviation Agency pro-

posed to modify the Brunswick, Ga., control zone (NAAS Glynco).

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, § 601.2357 (14 CFR 601.2357) is amended to read:

§ 601.2357 Brunswick, Ga., (NAAS Glynco) control zone.

Within a 5-mile radius of NAAS Glynco (latitude 31°15'31" N., longitude 81°28'01" W.), within 2 miles either side of the 055° True radial of the Glynco TACAN extending from the 5-mile radius zone to 7 miles NE of the TACAN, within 2 miles either side of the 250° True radial of the Glynco TACAN extending from the 5-mile radius zone to 9 miles SW of the TACAN and excluding that portion which coincides with the McKinnon Airport control zone, Brunswick, Georgia.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-11482; Filed, Dec. 9, 1960;
8:45 a.m.]

[Airspace Docket No. 60-WA-232]

PART 602—ESTABLISHMENT OF CODED JET ROUTES AND NAVIGATIONAL AIDS IN THE CONTINENTAL CONTROL AREA

Modification of Coded Jet Route

On October 1, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9419) stating that the Federal Aviation Agency (FAA) proposed to modify the segment of VOR/VORTAC jet route No. 15 between Roswell, N. Mex., and Albuquerque, N. Mex.

As stated in the notice, the FAA proposed to realign J-15-V from the Roswell VOR to the Albuquerque VORTAC via the intersection of the Roswell VOR 319° True and the Albuquerque VORTAC 128° True radials.

The Department of the Air Force offered no objections to the proposed modification. However, the Department of the Navy submitted the following comment, which is quoted in its entirety:

Except for those segments which will not have radar advisory service, the Navy has no objections to the proposed realignment of VOR/VORTAC Jet Route No. 15 from Roswell, New Mexico to Albuquerque, New Mexico. The establishment of any segment of a jet route, for turbo-jet civil air carriers, in which radar advisory service cannot be provided restricts military operations by

creating additional areas of positive controlled airways which are objected to by the Navy.

This route is not approved for use by civil aircarrier turbojet aircraft. This realignment is to permit the application of non-radar lateral separation between aircraft operating on this segment of J-15-V and aircraft operating in the White Sands, N. Mex., Restricted Area (R-522). Therefore, the FAA is modifying J-15-V herein as proposed.

No other adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated herein and in the Notice, the following action is taken:

In the text of § 602.515 (14 CFR 602.515) "Albuquerque, N. Mex., VOR;" is deleted and "INT of the Roswell VOR 319° True and the Albuquerque, N. Mex., VORTAC 128° True radials; Albuquerque VORTAC;" is substituted therefor.

This amendment shall become effective 0001 e.s.t. January 12, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-11480; Filed, Dec. 9, 1960;
8:45 a.m.]

[Airspace Docket No. 60-WA-219]

PART 602—ESTABLISHMENT OF CODED JET ROUTES AND NAVIGATIONAL AIDS IN THE CONTINENTAL CONTROL AREA

Modification of Coded Jet Route

On September 29, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9295) stating that the Federal Aviation Agency proposed to extend VOR/VORTAC jet route No. 38 from Duluth, Minn., to the United States/Canadian border via the direct radial between the Duluth VOR and the Kenora, Ontario, VOR, and revoke the segment of J-38-V between Philipsburg, Pa., and New York, N.Y.

No adverse comments were received regarding the proposed amendment. The Department of the Air Force, in advising that they did not object to the airspace action proposed, did state that they would object if radar surveillance was not available for the proposed extension. Radar coverage does exist for this route segment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore,

pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, § 602.538 (25 F.R. 2886) is amended to read:

§ 602.538 VOR/VORTAC jet route No. 38 (United States/Canadian Border to Peck, Mich.).

From the INT of the United States-Canadian Border and the direct radial between the Duluth, Minn., VOR and the Kenora, Ont., VOR via the Duluth VOR; Green Bay, Wis., VORTAC; to the Peck, Mich., VOR.

This amendment shall become effective 0001 e.s.t. January 12, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-11481; Filed, Dec. 9, 1960;
8:45 a.m.]

[Airspace Docket No. 60-NY-40]

PART 608—RESTRICTED AREAS

Modification of Restricted Area

On September 20, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9024) stating that the Federal Aviation Agency proposed to modify the De Blois, Maine, Restricted Area (R-397) (Lewiston Chart).

No adverse comments were received regarding the proposed amendment.

Subsequent to publication of the notice, the Department of the Air Force advised that the controlling agency should be the 4038th Strategic Wing, Dow AFB, Maine, in lieu of the 4060th Air Refueling Wing, Dow AFB, Maine. Such action is taken herein to reflect this change.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 8005) and for the reasons stated herein and in the notice, in § 608.27 Maine, the De Blois, Maine, Restricted Area (R-397) (Lewiston Chart) (23 F.R. 8581) is amended to read:

De Blois, Maine, Restricted Area (R-397) (Lewiston Chart).

Description by geographical coordinates.

North boundary: latitude 44°50'00" N.; south boundary: latitude 44°40'00" N.; east boundary: longitude 67°42'00" W.; west boundary longitude 67°56'00" W.

Designated altitudes. Surface to 39,000 feet MSL.

Time of designation. 1000 hours to 2400 hours local standard time, Monday through Friday.

Controlling agency. 4038th Strategic Wing, Dow AFB, Maine.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-11490; Filed, Dec. 9, 1960; 8:46 a.m.]

[Airspace Docket No. 59-KC-79]

PART 608—RESTRICTED AREAS

Modification

The purpose of this amendment to § 608.31 of the regulations of the Administrator is to modify the Upper Red Lake, Minn., Restricted Area (R-186) (Lake of the Woods Chart).

The presently designated altitudes of R-186 are from the surface to 50,000 feet MSL and its time of designation is unlimited. The activities conducted within this restricted area are strafing and bombing. A review of these activities by the Federal Aviation Agency (FAA) and the Department of the Navy indicates that the designated altitudes can be reduced to surface to 10,000 feet MSL and the time of designation reduced to sunrise to sunset from May 16 through October 14, and sunrise Saturday to sunset Sunday, October 15 through May 15. In addition, the size of the area can be reduced from 667 square miles to approximately 180 square miles.

The FAA is planning an additional detailed study of R-186 in the near future with a view toward further modification of the area. Pending the results of that study, action is being taken herein to reduce the size of R-186 as described above.

Since this amendment reduces a burden on the public, notice and public procedure hereon are unnecessary, and it may be made effective as indicated.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 8005), the following action is taken:

In § 608.31 *Minnesota*, the Upper Red Lake, Minn., Restricted Area (R-186) (Lake of the Woods Chart) (23 F.R. 8583) is amended to read:

Upper Red Lake, Minn., Restricted Area (R-186) (Lake of the Woods Chart)

Description by geographical coordinates. North boundary, latitude 48°23'00" N; east boundary, longitude 94°40'00" W.; south boundary, latitude 48°13'00" N; west boundary, longitude 95°00'00" W.

Designated altitudes. Surface to 10,000 feet MSL.

Time of designation. Sunrise to sunset, May 16 through October 14, and sunrise Saturday to sunset Sunday, October 15 through May 15, annually.

Controlling agency. Naval Air Station (Minneapolis-St. Paul International Airport), Minneapolis, Minn.

This amendment shall become effective upon the date of publication in the FEDERAL REGISTER.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-11491; Filed, Dec. 9, 1960; 8:46 a.m.]

**Title 43—PUBLIC LANDS:
INTERIOR**

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 2054]

SUBCHAPTER K—MILITARY AND NAVAL SERVICE

PART 181—VETERANS', SOLDIERS' AND SAILORS' RIGHTS

SUBCHAPTER T—SALE, LEASE, OR USE, AND ACQUISITIONS

PART 257—SALE OR LEASE OF SMALL TRACTS

In order to eliminate from the regulations the provisions of section 4 of the act of September 27, 1944 (58 Stat. 748; 43 U.S.C. 282), as amended, which expired September 26, 1959, the regulations are revised as set forth below.

This amendment relates to matters which are exempt from the rule making requirements of the Administrative Procedure Act (5 U.S.C. 1003), and although the Department of the Interior customarily observes the rule making requirements voluntarily, that procedure was not followed in this case since this change in the regulations is merely a reflection of the fact that the provisions of section 4 of the law terminated on September 26, 1959.

§ 181.7 [Revocation]

§ 181.8 [Redesignation]

In order to eliminate from the regulations provisions which were authorized or required by said section, the following revisions are necessary: (1) § 181.7 is revoked in its entirety, § 181.8 is renumbered as § 181.7, and (2) § 257.5, paragraph (b) of § 257.7, § 257.8, paragraphs (c) and (e) of § 257.14, and paragraph (c) of § 257.18 are revised to read as follows:

§ 257.5 Preference rights of applicants.

Where public land is classified pursuant to an application on Form 4-776, which application was filed prior to the receipt by the land office of notice that the area was under consideration for small tract classification, the applicant is entitled to a preference right of lease or purchase, as the case may be, if (a) the land is thereafter classified for the type of site applied for; (b) the applicant agrees to conform his application to the area, classification, and dimensions of the tract as specified in the classification order; and (c) where the land is classified for direct sale, the applicant tenders the fair market value of the land when required.

§ 257.7 Drawing procedure.

(b) The classification or other order may require the filing of "Special Drawing Cards," Form 4-775b, in lieu of Application Form 4-776. Any person who has the necessary qualifications may obtain an official drawing entry card upon request to the land office manager. The request should designate the classification order by number. It should be accompanied by a stamped, self-addressed return envelope. Each successful entrant in a drawing will be furnished in duplicate Form 4-776, bearing the description of the tract allocated to him. The forms must be completely filled out, signed and returned, accompanied by the proper rental and fees within the time allowed by the authorized officer of the Bureau of Land Management. Where an entrant for any reason fails to comply with the requirements within the time allowed, the tract will become available to the alternate next in line in the drawing.

§ 257.8 Filing fee.

Every application on Form 4-776 must be accompanied by a filing fee of \$10. No fee is required for the filing of a "Special Drawing Entry Card," Form 4-775b, but the fee is required of entrants who are successful in the drawing. No fee is required in connection with a bid in a sale at public auction. A fee of \$10 is required with each application to purchase, based upon an outstanding lease and with each application for renewal or assignment of an outstanding lease. All filing fees will be retained by the Government.

§ 257.14 Public auctions.

(c) A bid sent by mail must be received at the place and within the time specified in the classification order. Each such bid must clearly state (1) the name and address of the bidder and (2) the specific tract, as described in the classification order, for which the bid is made. The envelope must be noted as required by the classification order.

(e) The person who submits the highest bid for each tract at the close of bidding, but not less than the minimum price, will be declared high bidder. If the high bidder meets the general requirements of a small tract applicant, he will be declared purchaser. Any person who is declared high bidder will automatically be disqualified from consideration for other tracts for which he may have submitted bids.

§ 257.18 Application following lease terminations and unsuccessful public auctions.

(c) The order will specify which one of the following methods will be used for disposing of the land: (1) Sale at public auction to the highest bidder in accordance with § 257.14; (2) a special drawing procedure indicated in paragraph (d) of this section.

(52 Stat. 609, as amended; interprets or applies R.S. 2478 and 58 Stat. 748, as amended; 43 U.S.C. 682a-e; 43 U.S.C. 282-284; 43 U.S.C. 1201)

The provisions eliminated from the regulations by this amendment became ineffective September 27, 1959, except with respect to unexpired preferences granted by orders issued prior to that date, and became completely ineffective when rights and privileges under such orders were exhausted.

FRED A. SEATON,
Secretary of the Interior.

DECEMBER 5, 1960.

[F.R. Doc. 60-11502; Filed, Dec. 9, 1960;
8:48 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 4—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST SERVICES

Channels 5 and 6 Are Not Available for TV Translator Use in Alaska and Hawaii

On July 27, 1960, the Commission adopted a Report and Order in Docket No. 12116 amending Part 4 of the rules to provide for the licensing of television broadcast translator stations on VHF television channels. Section 4.702 failed to note that the frequency bands 76-82 Mc and 82-88 Mc (television channels 5 and 6) are allocated for nonbroadcast use in Alaska and Hawaii and, consequently, are not available for use by VHF translators in those states.¹

¹ See Section 2.104, footnote US 33 of the Commission's rules and regulations.

The amendment adopted herein is corrective only and therefore may be accomplished and made effective without compliance with the public notice, procedural, and effective date requirements of section 4 of the Administrative Procedure Act.

Authority for the amendment herein is contained in sections 4(i) and 303(c), (d) and (f) of the Communications Act of 1934, as amended, and section 0.341(a) of the Commission's Statement of Organization, Delegations of Authority, and Other Information.

Accordingly, it is ordered, That, effective December 15, 1960, § 4.702(b) of the Commission's rules and regulations is amended; the paragraph reading as follows:

§ 4.702 Frequency assignment.

* * * * *

(b) Any one of the 12 standard VFH channels (2-13 inclusive) may be assigned to a VHF translator on condition that no interference is caused to the direct reception of any television broadcast station operating on the same or an adjacent channel: *Provided, however,* That channels 5 and 6 are allocated for nonbroadcast use in Alaska and Hawaii and will not be assigned to VHF translators in those states.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082 as amended; 47 U.S.C. 303)

Adopted: December 6, 1960.

Released: December 6, 1960.

FEDERAL COMMUNICATIONS

COMMISSION,

[SEAL] BEN F. WAPLE,

Acting Secretary.

[F.R. Doc. 60-11525; Filed, Dec. 9, 1960;
8:50 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Part 8]

LIABILITY FOR DUTIES; ENTRY FOR IMPORTED MERCHANDISE

Notice of Proposed Amendment of the Customs Regulations Relating to Free Entry of Shipments Valued at Not in Excess of One Dollar

Notice is hereby given that, under the authority of section 321(b), Tariff Act of 1930, as amended, the Treasury Department is considering an amendment to § 8.3 of the Customs Regulations relating to free entry of shipments valued at not in excess of \$1.

Under section 321(a)(2)(C), Tariff Act of 1930, as amended, and § 8.3 of the Customs Regulations, articles may be admitted free of duty, without the preparation of an entry, if among other requirements the value of such articles imported by one person on one day does not exceed \$1.

The admission of articles free of duty and without the preparation of an entry under section 321(a)(2)(C) of the tariff act in the case of articles of a class or kind prescribed for in quotas is inconsistent with the purpose of such quotas.

Accordingly, to insure that quota merchandise will not enter the country under section 321(a)(2)(C) and pursuant to section 321(b) of the tariff act, it is proposed to amend § 8.3 of the Customs Regulations by adding paragraph (d)(7) which will read as follows:

(7) The exemption referred to in section 321(a)(2)(C) is not to be allowed in the case of any merchandise of a class or kind provided for in any absolute or tariff-rate quota, whether the quota is open or closed. In the case of merchandise of a class or kind provided for in a tariff-rate quota, the merchandise is subject to the rate of duty in effect on the date of entry.

Prior to the final adoption of the amendment to the regulations herein proposed, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing to the Commissioner of Customs, Washington 25, D.C., within 30 days from the date of publication of this notice in the FEDERAL REGISTER. No hearing will be held.

[SEAL] LAWTON M. KING,
Acting Commissioner of Customs.

Approved: December 5, 1960.

A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 60-11542; Filed, Dec. 9, 1960;
8:52 a.m.]

Internal Revenue Service

[26 CFR (Part 1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Life Insurance Companies

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

In order to provide regulations under sections 809, 810, 811, 812, and 815 of the Internal Revenue Code of 1954, as added by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 121), the Income Tax Regulations (26 CFR Part 1) are amended as follows:

There are inserted immediately after § 1.807-1 the following new sections:

§ 1.807-2 Taxable years affected.

Section 1.807-1 is applicable only to taxable years beginning after December 31, 1953, and before January 1, 1955, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, before amendments.

GAIN AND LOSS FROM OPERATIONS

§ 1.809 Statutory provisions; life insurance companies; in general.

SEC. 809. *In general*—(a) *Exclusion of share of investment yield set aside for policyholders*—(1) *Amount*. The share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) of any life insurance company set aside for policyholders

shall not be included in gain or loss from operations. For purposes of the preceding sentence, the share of any item set aside for policyholders shall be that percentage obtained by dividing the required interest by the investment yield; except that if the required interest exceeds the investment yield, then the share of any item set aside for policyholders shall be 100 percent.

(2) *Required interest*. For purposes of this part, the required interest for any taxable year is the sum of the products obtained by multiplying—

(A) Each rate of interest required, or assumed by the taxpayer, in calculating the reserves described in section 810(c), by

(B) The means of the amount of such reserves computed at that rate at the beginning and end of the taxable year.

(b) *Gain and loss from operations*—(1) *Gain from operations defined*. For purposes of this part, the term "gain from operations" means the amount by which the sum of the following exceeds the deductions provided by subsection (d):

(A) The life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received); and

(B) The sum of the items referred to in subsection (c).

(2) *Loss from operations defined*. For purposes of this part, the term "loss from operations" means the amount by which the sum of the deductions provided by subsection (d) exceeds the sum of—

(A) The life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received); and

(B) The sum of the items referred to in subsection (c).

(3) *Life insurance company's share*. For purposes of this subpart, the life insurance company's share of any item shall be that percentage which, when added to the percentage obtained under the second sentence of subsection (a) (1), equals 100 percent.

(4) *Exception*. If it is established in any case that the application of the definition of gain from operations contained in paragraph (1) results in the imposition of tax on—

(A) Any interest which under section 103 is excluded from gross income,

(B) Any amount of interest which under section 242 (as modified by section 804(a)(3)) is allowable as a deduction, or

(C) Any amount of dividends received which under sections 243, 244, and 245 (as modified by subsection (d)(8)(B)) is allowable as a deduction.

adjustment shall be made to the extent necessary to prevent such imposition.

(c) *Gross amount*. For purposes of subsections (b) (1) and (2), the following items shall be taken into account:

(1) *Premiums*. The gross amount of premiums and other consideration (including advance premiums, deposits, fees, assessments, and consideration in respect of assuming liabilities under contracts not issued by the taxpayer) on insurance and annuity contracts (including contracts supplementary thereto) less return premiums, and premiums and other consideration arising out of reinsurance ceded. Except in the case of amounts of premiums or other consideration returned to another

life insurance company in respect of reinsurance ceded, amounts returned where the amount is not fixed in the contract but depends on the experience of the company or the discretion of the management shall not be included in return premiums.

(2) *Decreases in certain reserves.* Each net decrease in reserves which is required by section 810 or 811(b)(2) to be taken into account for purposes of this paragraph.

(3) *Other amounts.* All amounts, not included in computing investment yield and not includible under paragraph (1) or (2), which under this subtitle are includible in gross income.

Except as included in computing investment yield, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset.

(d) *Deductions.* For purposes of subsections (b) (1) and (2), there shall be allowed the following deductions:

(1) *Death benefits, etc.* All claims and benefits accrued, and all losses incurred (whether or not ascertained), during the taxable year on insurance and annuity contracts (including contracts supplementary thereto).

(2) *Increases in certain reserves.* The net increase in reserves which is required by section 810 to be taken into account for purposes of this paragraph.

(3) *Dividends to policyholders.* The deduction for dividends to policyholders (determined under section 811(b)).

(4) *Operations loss deduction.* The operations loss deduction (determined under section 812).

(5) *Certain nonparticipating contracts.* An amount equal to 10 percent of the increase for the taxable year in the reserves for nonparticipating contracts or (if greater) an amount equal to 3 percent of the premiums for the taxable year (excluding that portion of the premiums which is allocable to annuity features) attributable to nonparticipating contracts (other than group contracts) which are issued or renewed for periods of 5 years or more. For purposes of this paragraph, the term "reserves for nonparticipating contracts" means such part of the life insurance reserves (excluding that portion of the reserves which is allocable to annuity features) as relates to nonparticipating contracts (other than group contracts). For purposes of this paragraph and paragraph (6), the term "premiums" means the net amount of the premiums and other consideration taken into account under subsection (c) (1).

(6) *Group life, accident, and health insurance.* An amount equal to 2 percent of the premiums for the taxable year attributable to group life insurance contracts and group accident and health insurance contracts. The deduction under this paragraph for the taxable year and all preceding taxable years shall not exceed an amount equal to 50 percent of the premiums for the taxable year attributable to such contracts.

(7) *Assumption by another person of liabilities under insurance, etc., contracts.* The consideration (other than consideration arising out of reinsurance ceded) in respect of the assumption by another person of liabilities under insurance and annuity contracts (including contracts supplementary thereto).

(8) *Tax-exempt interest, dividends, etc.—*
(A) *Life insurance company's share.* Each of the following items:

(i) The life insurance company's share of interest which under section 103 is excluded from gross income,

(ii) The deduction for partially tax-exempt interest provided by section 242 (as modified by section 804(a)(3)) computed with respect to the life insurance company's share of such interest, and

(iii) The deductions for dividends received provided by sections 243, 244, and 245 (as modified by subparagraph (B)) computed with respect to the life insurance company's share of the dividends received.

(B) *Application of section 246(b).* In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of subparagraph (A)(iii), the limit on the aggregate amount of the deductions allowed by sections 243(a), 244, and 245 shall be 85 percent of the gain from operations computed without regard to—

(i) The deductions provided by paragraphs (3), (5), and (6) of this subsection,

(ii) The operations loss deduction provided by section 812, and

(iii) The deductions allowed by sections 243(a), 244, and 245,

but such limit shall not apply for any taxable year for which there is a loss from operations.

(9) *Investment expenses, etc.* Investment expenses to the extent not allowed as a deduction under section 804(c)(1) in computing investment yield, and the amount (if any) by which the sum of the deductions allowable under section 804(c) exceeds the gross investment income.

(10) *Small business deduction.* A small business deduction in an amount equal to the amount determined under section 804(a)(4).

(11) *Certain mutualization distributions.* The amount of distributions to shareholders made in 1958 and 1959 in acquisition of stock pursuant to a plan of mutualization adopted before January 1, 1958.

(12) *Other deductions.* Subject to the modifications provided by subsection (e), all other deductions allowed under this subtitle for purposes of computing taxable income to the extent not allowed as deductions in computing investment yield.

Except as provided in paragraph (3), no amount shall be allowed as a deduction under this subsection in respect of dividends to policyholders.

(e) *Modifications.* The modifications referred to in subsection (d)(12) are as follows:

(1) *Interest.* In applying section 163 (relating to deduction for interest), no deduction shall be allowed for interest in respect of items described in section 810(c).

(2) *Bad debts.* Section 166(c) (relating to reserve for bad debts) shall not apply.

(3) *Charitable, etc., contributions and gifts.* In applying section 170—

(A) The limit on the total deductions under such section provided by the first sentence of section 170(b)(2) shall be 5 percent of the gain from operations computed without regard to—

(i) The deduction provided by section 170,

(ii) The deductions provided by paragraphs (3), (5), (6), and (8) of subsection (d), and

(iii) Any operations loss carryback to the taxable year under section 812; and

(B) Under regulations prescribed by the Secretary or his delegate, a rule similar to the rule contained in section 170(b)(3) shall be applied.

(4) *Amortizable bond premium.* Section 171 shall not apply.

(5) *Net operating loss deduction.* The deduction for net operating losses provided in section 172 shall not be allowed.

(6) *Partially tax-exempt interest.* The deduction for partially tax-exempt interest provided by section 242 shall not be allowed.

(7) *Dividends received.* The deductions for dividends received provided by sections 243, 244, and 245 shall not be allowed.

(f) *Limitation on certain deductions—*
(1) *In general.* The amount of the deductions under paragraphs (3), (5), and (6) of

subsection (d) shall not exceed \$250,000 plus the amount (if any) by which—

(A) The gain from operations for the taxable year, computed without regard to such deductions, exceeds

(B) The taxable investment income for the taxable year.

(2) *Application of limitation.* The limitation provided by paragraph (1) shall apply first to the amount of the deduction under subsection (d)(6), then to the amount of the deduction under subsection (d)(5), and finally to the amount of the deduction under subsection (d)(3).

(g) *Limitations on deduction for certain mutualization distributions—*(1) *Deduction not to reduce taxable investment income.* The amount of the deduction under subsection (d)(11) shall not exceed the amount (if any) by which—

(A) The gain from operations for the taxable year, computed without regard to such deduction (but after the application of subsection (f)), exceeds

(B) The taxable investment income for the taxable year.

(2) *Deduction not to reduce tax below 1957 law.* The deduction under subsection (d)(11) for the taxable year shall be allowed only to the extent that such deduction (after the application of all other deductions provided by subsection (d)) does not reduce the amount of the tax imposed by section 802(a)(1) for such taxable year below the amount of tax which would have been imposed by section 802(a) as in effect for 1957, if this part, as in effect for 1957, applied for such taxable year

(3) *Application of section 815.* That portion of any distribution with respect to which a deduction is allowed under subsection (d)(11) shall not be treated as a distribution to shareholders for purposes of section 815; except that in the case of any distribution made in 1959, such portion shall be treated as a distribution with respect to which a reduction is required under section 815(e)(2)(B).

[Sec. 809 as added by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 121)]

§ 1.809-1 Taxable years affected.

Sections 1.809-2 through 1.809-8 are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.809-2 Exclusion of share of investment yield set aside for policyholders.

(a) *In general.* Section 809 provides the rules for determining the gain or loss from operations of a life insurance company, which amount is necessary to determine life insurance company taxable income. In order to determine gain or loss from operations, a life insurance company must first determine the share of each and every item of its investment yield (as defined in section 804(c) and paragraph (a) of § 1.804-4) set aside for policyholders (as computed under section 809(a)(1) and paragraph (b) of this section), as this share is excluded from gain or loss from operations (as defined in section 809(b)(1) and (2) and paragraphs (a) and (b) of § 1.809-3, respectively). The life insurance company shall then add its share of each and every item of its investment yield to the sum of the items comprising gross amount (as described in section 809(c)

and paragraph (a) of § 1.809-4). From this sum there shall then be subtracted the deductions provided in section 809(d) and paragraph (a) of § 1.809-5. The amount thus obtained is the gain or loss from operations for the taxable year.

(b) *Computation of share of investment yield set aside for policyholders.* Section 809(a)(1) provides that the share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) of any life insurance company set aside for policyholders shall not be included in gain or loss from operations. For this purpose, the percentage used in determining the share of each of these items comprising the investment yield set aside for policyholders shall be determined by dividing the required interest (as defined in section 809(a)(2) and paragraph (d) of this section) by the investment yield (as defined in section 804(c) and paragraph (a) of § 1.804-4). The percentage thus obtained is then applied to each and every item of the investment yield so that the share of each and every item of investment yield set aside for policyholders shall be excluded from gain or loss from operations. However, if in any case the required interest exceeds the investment yield, then the share of any item set aside for policyholders shall be 100 percent.

(c) *Computation of life insurance company's share of investment yield.* For purposes of subpart C, part I, subchapter L, chapter 1 of the Code, section 809(b)(3) provides that the percentage used in determining the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) shall be obtained by subtracting the percentage obtained under paragraph (b) of this section from 100 percent. For example, if the policyholders' percentage (as determined under section 809(a)(1) and paragraph (b) of this section) is 72.38 percent, then the life insurance company's share is 27.62 percent (100 percent minus 72.38 percent). In such a case, if the amount of a particular item is \$200, then the life insurance company's share of such item included in determining gain or loss from operations is \$55.24 (\$200 multiplied by 27.62 percent) and the share of such item set aside for policyholders (which is excluded from gain or loss from operations) is \$144.76 (\$200 multiplied by 72.38 percent). For purposes of determining gain or loss from operations, the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) shall be added to the sum of the items comprising gross amount (as described in section 809(c) and paragraph (a) of § 1.809-4).

(d) *Required interest defined.* (1) For purposes of part I, section 809(a)(2) defines the term "required interest" for any taxable year as the sum of the products obtained by multiplying (i) each rate of interest required, or assumed by the taxpayer, in calculating the reserves described in section 810(c), by (ii) the means of the amount of such reserves

computed at that rate at the beginning and end of the taxable year. In the case of the reserves described in section 810(c)(1), such rate of interest shall be the same as that used by the taxpayer for purposes of paragraph (b) of § 1.801-5 (relating to the definition of reserves required by law) with respect to such reserves. In the case of the reserves described in section 810(c)(2) through (5), such rate of interest shall be the same as that actually paid, credited, or accrued by the taxpayer with respect to such reserves. Thus, the required interest for any taxable year includes the elements of interest paid (as defined in section 805(e)) with respect to the reserves described in section 810(c).

(2) For purposes of computing required interest under section 809(a)(2) and subparagraph (1) of this paragraph, the amount of life insurance reserves taken into account shall be adjusted first as required by section 818(c) (relating to an election with respect to life insurance reserves computed on a preliminary term basis) and then as required by section 806(a) (relating to adjustments for certain changes in reserves and assets) before applying the rate of interest required, or assumed by the taxpayer, thereto. However, in the case of the adjustments required by section 810(d) as a result of a change in the basis of computing reserves, the adjustments to any of the reserves described in section 810(c) shall be taken into account in accordance with the rules prescribed in section 810(d) and § 1.810-3.

§ 1.809-3 Gain and loss from operations defined.

(a) *Gain from operations.* For purposes of part I, subchapter L, chapter 1 of the Code, section 809(b)(1) defines the term "gain from operations" as the excess of the sum of (1) the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received), and (2) the items of gross amount taken into account under section 809(c) and paragraph (a) of § 1.809-4, over the sum of the deductions provided by section 809(d) and § 1.809-5.

(b) *Loss from operations.* For purposes of part I, section 809(b)(2) defines the term "loss from operations" as the excess of the sum of the deductions provided by section 809(d) and § 1.809-5 over the sum of (1) the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received), and (2) the items of gross amount taken into account under section 809(c) and paragraph (a) of § 1.809-4.

(c) *Illustration of principles.* The provisions of section 809(b)(1) through (3) and paragraphs (a) and (b) of this section may be illustrated by the following example:

Example. For the taxable year 1958, T, a life insurance company, had investment yield of \$900,000, including \$150,000 of dividends received from domestic corporations subject to taxation under chapter 1 of the Code,

\$10,000 of wholly tax-exempt interest, and \$78,000 of partially tax-exempt interest. T also had items of gross amount under section 809(c) in the amount of \$12,000,000 and deductions under section 809(d) of \$6,963,500 (exclusive of any deductions for wholly tax-exempt interest, partially tax-exempt interest, and dividends received). For such taxable year, the share of each and every item of investment yield set aside for policyholders was 80 percent and the company's share of each and every item of investment yield was 20 percent. Based upon these figures, T had a gain from operations of \$5,180,000 for the taxable year 1958, computed as follows:

	Col. 1	Col. 2 (80% x Col. 1) exclusion of policy- holder's share	Col. 3 (20% x Col. 1) com- pany's share
Interest wholly tax-exempt.....	\$10,000	\$8,000	\$2,000
Interest partially tax-exempt.....	78,000	62,400	15,600
Dividends received.....	150,000	120,000	30,000
Other items of investment yield.....	662,000	529,600	132,400
Investment yield.....	900,000	720,000	180,000

Gross amount (sum of items under sec. 809(c)).....	\$12,000,000
Total.....	12,180,000

Less:	
Deductions under sec. 809(d) (8):	
Company's share of interest wholly tax-exempt.....	\$2,000
30 1/2 % of company's share of interest partially tax-exempt 30 1/2 % x \$15,600.....	9,000
85 % of company's share of dividends received (but not to exceed 85 % of gain from operations as computed under sec. 809(d) (8) (B)) (85 % x \$30,000).....	25,500
All other deductions under sec. 809(d).....	6,963,500
Gain from operations.....	7,000,000
	5,180,000

(d) *Exception.* (1) In accordance with section 809(b)(4), if it is established in any case to the satisfaction of the Commissioner, or by a determination of The Tax Court of the United States, or of any other court of competent jurisdiction, which has become final, that the application of the definition of gain from operations contained in section 809(b)(1) results in the imposition of tax on—

- (i) Any interest which under section 103 is excluded from gross income,
- (ii) Any amount of interest which under section 242 (as modified by section 804(a)(3)) is allowable as a deduction, or
- (iii) Any amount of dividends received which under sections 243, 244, and 245 (as modified by section 809(d)(8)(B)) is allowable as a deduction,

adjustment shall be made to the extent necessary to prevent such imposition.

(2) For the date upon which a decision by the Tax Court becomes final, see section 7481. For the date upon which a judgment of any other court becomes final, see paragraph (c) of § 1.1313(a)-1.

§ 1.809-4 Gross amount.

(a) *Items taken into account.* For purposes of determining gain or loss from operations under section 809(b) (1) and (2), respectively, section 809(c) specifies three categories of items which shall be taken into account. Such items are in addition to the life insurance company's share of the investment yield (as determined under section 809(a) (1) and paragraph (c) of § 1.809-2). The three categories of items taken into account are:

(1) *Premiums.* (i) The gross amount of all premiums and other consideration on insurance and annuity contracts (including contracts supplementary thereto); less return premiums, and premiums and other consideration arising out of reinsurance ceded. The term "gross amount of all premiums" means the premiums and other consideration provided in the insurance or annuity contract. Thus, the amount to be taken into account shall be the total of the premiums and other consideration without any deduction for commissions, return premiums, reinsurance, dividends to policyholders, dividends left on deposit with the company, interest applied in reduction of premiums, or any other item of similar nature. Such term includes advance premiums, premiums deferred and uncollected and premiums due and unpaid, deposits, fees, assessments, and consideration in respect of assuming liabilities under contracts not issued by the taxpayer (such as a payment or transfer of property in an assumption reinsurance transaction as defined in paragraph (a) (7) (ii) of § 1.809-5). Amounts representing premiums charged itself by the company with respect to liability for insurance and annuity benefits for employees and agents shall not be included under section 809(c) (1).

(ii) The term "return premiums" means amounts returned which are fixed by contract and do not depend on the experience of the company or the discretion of the management. Thus, such term includes amounts rebated or refunded due to policy cancellations or erroneously computed premiums. Furthermore, amounts of premiums or other consideration returned to another life insurance company in respect of reinsurance ceded shall be included in return premiums. For the treatment of amounts which do not meet the requirements of return premiums, see section 811 (relating to dividends to policyholders).

(iii) For purposes of section 809(c) (1) and this subparagraph, the term "reinsurance ceded" means an arrangement whereby the taxpayer (the reinsured) remains solely liable to the policyholder, whether all or only a portion of the risk has been transferred to the reinsurer. Such term includes indemnity reinsurance transactions but does not include

assumption reinsurance transactions. See paragraph (a) (7) (ii) of § 1.809-5 for the definition of assumption reinsurance.

(2) *Decreases in certain reserves.* Each net decrease in reserves which is required by section 810 (a) and (d) (1) or 811(b) (2) to be taken into account for the taxable year as a net decrease for purposes of section 809 (c) (2).

(3) *Other amounts.* All amounts, not included in computing investment yield and not otherwise taken into account under section 809 (c) (1) or (2), shall be taken into account under section 809 (c) (3) to the extent that such amounts are includible in gross income under subtitle A of the Code. See section 61 (relating to gross income defined) and the regulations thereunder.

(b) *Exclusion of net long-term capital gains.* Any net long-term capital gains (as defined in section 1222(7)) from the sale or exchange of a capital asset (or any gain considered to be from the sale or exchange of a capital asset under applicable law) shall be excluded from the determination of gain or loss from operations of a life insurance company. However, section 809 (c) provides that any excess of net short-term capital gain (as defined in section 1222 (5)) over a net long-term capital loss (as defined in section 1222(8)) included in computing investment yield (as defined in section 804(c)) shall be taken into account in determining gain or loss from operations under section 809.

§ 1.809-5 Deductions.

(a) *Deductions allowed.* Section 809(d) provides the following deductions for purposes of determining gain or loss from operations under section 809 (b) (1) and (2), respectively:

(1) *Death benefits, etc.* All claims and benefits accrued (less reinsurance recoverable), and all losses incurred (whether or not ascertained), during the taxable year on insurance and annuity contracts (including contracts supplementary thereto). The term "all claims and benefits accrued" includes, for example, matured endowments and amounts allowed on surrender. The term "losses incurred (whether or not ascertained)" means a reasonable estimate of the amount of the losses (based upon the facts in each case and the company's experience with similar cases) incurred but not reported by the end of the taxable year as well as losses reported but where the amount thereof cannot be ascertained by the end of the taxable year.

(2) *Increases in certain reserves.* The net increase in reserves which is required by section 810 (b) and (d) (1) to be taken into account for the taxable year as a net increase for purposes of section 809 (c) (2).

(3) *Dividends to policyholders.* The deduction for dividends to policyholders as determined under section 811 (b) and § 1.811-2. Except as provided in section 809 (d) (3) and this subparagraph, no amount shall be allowed as a deduction in respect of dividends to policyholders under section 809 (d). See section 809 (f) and § 1.809-7 for limitation of such deduction.

(4) *Operations loss deduction.* The operations loss deduction as determined under section 812.

(5) *Certain nonparticipating contracts.* (i) An amount equal to the greater of:

(a) 10 percent of the increase for the taxable year in certain life insurance reserves for nonparticipating contracts (other than group contracts); or

(b) 3 percent of the premiums for the taxable year attributable to nonparticipating contracts (other than group contracts) which are issued or renewed for periods of 5 years or more.

(ii) For purposes of section 809 (d) (5) and this subparagraph, the term "nonparticipating contracts" means those contracts having a guaranteed premium rate throughout the premium-paying period but no rights to dividends or similar distributions. If at any time during the taxable year for which the deduction allowed under section 809 (d) (5) and this subparagraph is claimed such contracts have rights to dividends or similar distributions, such contracts shall no longer be deemed nonparticipating contracts and, therefore, no deduction shall be allowed. For example, if a class of contracts with a guaranteed premium rate and having no rights to dividends is in force for nine years and on March 10, 1958, it is announced that such contracts shall be accorded dividend rights as of August 1, 1958, no deduction shall be allowed under section 809 (d) (5) and this subparagraph for the taxable year 1958 or any succeeding taxable year, whether or not dividends are actually paid on such contracts. However, if the announcement of March 10, 1958, states that such contracts shall be accorded dividend rights as of January 1, 1959, a deduction under section 809 (d) (5) and this subparagraph shall be allowed for the taxable year 1958 but not for any succeeding taxable year.

(iii) For purposes of section 809 (d) (5) and this subparagraph, the term "reserves for nonparticipating contracts" means such part of the life insurance reserves (as defined in section 801 (b) and § 1.801-4), other than that portion of such reserves which is allocable to annuity features, as relates to nonparticipating contracts (as defined in subdivision (ii) of this subparagraph). The amount of life insurance reserves taken into account shall be adjusted first as required by section 818 (c) (relating to an election with respect to life insurance reserves computed on a preliminary term basis) and then as required by section 806 (a) (relating to adjustments for certain changes in reserves and assets). In the case of the adjustments required by section 810 (d) (relating to adjustment for change in computing reserves), the increase in life insurance reserves attributable to reserve strengthening shall be taken into account in accordance with the rules prescribed in section 810 (d) and § 1.810-3.

(iv) For purposes of section 809 (d) (5) and this subparagraph, the term "premiums" means the net amount of the premiums and other consideration attributable to nonparticipating contracts (as defined in subdivision (ii) of this subparagraph) which are taken into ac-

count under section 809(c) (1). For this purpose, premiums include only such amounts attributable to such contracts which are issued or renewed for periods of 5 years or more, but does not include that portion of the premiums which is allocable to annuity features. No portion of a premium shall be deemed allocable to annuity features solely because a contract, such as an endowment contract, provides that at maturity the insured shall have an option to take an annuity. The determination of whether a contract meets the 5-year requirement shall be made as of the date the contract is issued, or as of the date it is renewed, whichever is applicable. Thus, a 20-year nonparticipating endowment policy shall qualify for the deduction under section 809(d) (5), even though the insured subsequently dies at the end of the second year, since the policy is issued for a period of 5 years or more. However, a 1-year renewable term contract shall not qualify, since as of the date it is issued (or of any renewal date) it is not issued (or renewed) for a period of 5 years or more. In like manner, a policy originally issued for a 3-year period and subsequently renewed for an additional 3-year period shall not qualify. However, if this policy is renewed for a period of 5 years or more, the policy shall qualify for the deduction under section 809(d) (5) from the date it is renewed.

(v) The provisions of section 809(d) (5) and this subparagraph may be illustrated by the following example:

Example. Assume the following facts with respect to X, a life insurance company, for the taxable year 1958:

Life insurance reserves on nonparticipating contracts without annuity features (other than group contracts) at 1-1-58.....	\$150,000
Life insurance reserves on nonparticipating contracts without annuity features (other than group contracts) at 12-31-58.....	225,000
Annuity reserves on nonparticipating contracts (other than group contracts) at 1-1-58.....	48,000
Annuity reserves on nonparticipating contracts (other than group contracts) at 12-31-58.....	57,000
Premiums on nonparticipating contracts without annuity features (other than group contracts) issued or renewed for 5 years or more.....	85,000
Premiums on nonparticipating contracts allocable to annuity features (other than group contracts) issued or renewed for 5 years or more.....	14,000
Return premiums on nonparticipating contracts without annuity features (other than group contracts).....	5,000

In order to determine the deduction under section 809(d) (5) (without regard to the limitation of section 809(f)), X would make up the following schedule:

(1) Life insurance reserves on nonparticipating contracts without annuity features (other than group contracts) at 12-31-58.....	\$225,000
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(2) Life insurance reserves on nonparticipating contracts without annuity features (other than group contracts) at 1-1-58.....	\$150,000
(3) Excess of item (1) over item (2) (\$225,000 minus \$150,000).....	75,000
(4) 10 percent of item (3) (10% × \$75,000).....	\$7,500
(5) Net premiums on nonparticipating contracts without annuity features issued or renewed for 5 years or more (other than group contracts) (gross premiums on such contracts (\$85,000) minus return premiums (\$5,000) on such contracts).....	80,000
(6) 3 percent of item (5) (3% × \$80,000).....	2,400
(7) The greater of item (4) or item (6).....	7,500
(8) Tentative deduction under sec. 809(d) (5) (computed without regard to the limitation of sec. 809(f)).....	7,500

(vi) See section 809(f) and § 1.809-7 for limitation of the deduction provided by this subparagraph.

(6) *Group life, accident, and health insurance.* (i) An amount equal to two percent of the premiums for the taxable year attributable to group life insurance contracts, group accident and health insurance contracts, or group accident and health insurance contracts with a life feature. For purposes of section 809(d) (6) and this subparagraph, the term "premiums" means the net amount of the premiums and other consideration attributable to such contracts taken into account under section 809(c) (1). The deduction allowed by section 809(d) (6) and this subparagraph for the taxable year and all preceding taxable years shall not exceed 50 percent of the net amount of the premiums attributable to such contracts for the taxable year. For example, assume that premiums attributable to group life insurance and group accident and health insurance contracts are \$103,000 for the taxable year. Assume further that there are \$3,000 of return premiums attributable to such contracts for the taxable year. Under the provisions of section 809(d) (6) and this subparagraph, a deduction (determined without regard to section 809(f)) of \$2,000 (2 percent of \$100,000 (\$103,000 minus \$3,000)) is allowed. Assuming that the company continues to receive net premiums of \$100,000 attributable to such contracts for 15 years, the cumulative amount of these deductions is \$30,000 (\$2,000 for 15 years). If, in the sixteenth year, net premiums attributable to such contracts amount to \$60,000, no deduction shall be allowed under section 809(d) (6) and this subparagraph since the cumulative amount of these deductions (\$30,000) equals 50 percent of the current year's premiums (\$60,000) from such contracts.

(ii) In computing the deduction under section 809(d) (6), the determination as to when the 50 percent limitation on such deduction has been reached shall be based upon the amount allowed as a deduction for the taxable year and all preceding taxable years after the application of the limitation provided in section 809(f) and § 1.809-7. Thus, if in the example set forth in subdivision (i) of this subparagraph the application of the limitation provided in section 809(f) and § 1.809-7 limited the deduction allowed in the fifteenth year to \$500, then for purposes of determining the 50 percent limitation on such deduction, the cumulative amount of these deductions equals \$28,500 (\$2,000 for 14 years plus \$500 for 1 year). Accordingly, in the sixteenth year, a deduction of \$1,200 (2 percent of \$60,000) shall be allowed since the cumulative amount of the deductions for the taxable year and all preceding taxable years (\$29,700 or \$1,200 plus \$28,500) is less than 50 percent (\$30,000) of the net premiums (\$60,000) attributable to such contracts for the taxable year.

(iii) For purposes of determining whether the 50 percent limitation applies to any taxable year, the deduction provided by section 809(d) (6) for all preceding taxable years shall be taken into account, irrespective of whether or not the life insurance company claimed a deduction for these amounts for such preceding taxable years.

(iv) See section 809(f) and § 1.809-7 for limitation of the deduction provided by this subparagraph.

(7) *Assumption by another person of liabilities under insurance, etc., contracts.* (i) The consideration (other than consideration arising out of reinsurance ceded as defined in paragraph (a) (1) (iii) of § 1.809-4) in respect of the assumption by another person of liabilities under insurance and annuity contracts (including contracts supplementary thereto) of the taxpayer.

(ii) For purposes of section 809(d) (7) and this subparagraph, the term "assumption reinsurance" means an arrangement whereby another person (the reinsurer) becomes solely liable to the policyholders on the contracts transferred by the taxpayer. Such term does not include indemnity reinsurance or reinsurance ceded (as defined in paragraph (a) (1) (iii) of § 1.809-4).

(iii) The provisions of section 809(d) (7) and this subparagraph may be illustrated by the following example:

Example. During the taxable year 1958, T, a life insurance company, transferred a block of insurance policies and made a payment of \$50,000 to R, a life insurance company, under an arrangement whereby R became solely liable to the policyholders on the policies transferred by T. Under the provisions of section 809(d) (7) and this subparagraph, T is allowed a deduction of \$50,000 for the taxable year 1958. For the treatment by R of this \$50,000 payment, see section 809(c) (1) and paragraph (a) (1) (1) of § 1.809-4. See section 806 (a) and § 1.806-3 for the adjustments in reserves and assets to be made by T and R as a result of this transaction.

(8) *Tax-exempt interest, dividends, etc.* (i) Each of the following items:

(a) The life insurance company's share of interest which under section 103 is excluded from gross income;

(b) The deduction for partially tax-exempt interest provided by section 242 (as modified by section 804(a)(3) and paragraph (d)(2)(i) of § 1.804-2) computed with respect to the life insurance company's share of such interest; and

(c) The deductions for dividends received provided by sections 243, 244, and 245 (as modified by section 809(d)(8)(B) and subdivision (ii) of this subparagraph) computed with respect to the life insurance company's share of the dividends received.

(ii) The modification contained in section 809(d)(8)(B) provides the method for applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of section 809(d)(8)(A)(iii) and subdivision (i)(c) of this subparagraph. Under this method, the sum of the deductions allowed by sections 243(a) (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock), and 245 (relating to dividends received from certain foreign corporations) shall be limited to 85 percent of the gain from operations computed without regard to:

(a) The deductions provided by section 809(d)(3), (5), and (6);

(b) The operations loss deduction provided by section 812; and

(c) The deductions allowed by sections 243(a), 244, and 245.

If a life insurance company has a loss from operations (as determined under section 812) for the taxable year, the limitation provided in section 809(d)(8)(B) and this subdivision shall not be applicable for such taxable year. In that event, the deductions provided by sections 243(a), 244, and 245 shall be allowable for all tax purposes to the life insurance company for such taxable year without regard to such limitation. If the life insurance company does not have a loss from operations for the taxable year, however, the limitation shall be applicable for all tax purposes for such taxable year. In determining whether a life insurance company has a loss from operations for the taxable year under section 812, the deductions allowed by sections 243(a), 244, and 245 shall be computed without regard to the limitation provided in section 809(d)(8)(B) and this subdivision. For an example of the operation of this rule, see paragraph (b) of § 1.812-3.

(9) *Investment expenses, etc.* (i) The amount of investment expenses to the extent not allowed as a deduction under section 804(c)(1) in computing investment yield. For example, if a deduction in the amount of \$100,000 is claimed for investment expenses, which amount includes general expenses assigned to or included in investment expenses, and due to the operation of the limitation provided by section 804(c)(1) only \$85,000 is allowed, then the excess (\$15,000) shall be allowed as a deduction under section 809(d)(9) and this subparagraph.

(ii) The amount (if any) by which the sum of the deductions allowable under section 804(c) exceeds the gross investment income. For example, if gross investment income under section 804(b) equals \$400,000, and the sum of the deductions allowable under section 804(c) equals \$425,000, then the excess (\$25,000) shall be allowed as a deduction under section 809(d)(9) and this subparagraph.

(iii) In determining the amount of the deductions allowed under subdivisions (i) and (ii) of this subparagraph, a life insurance company shall first take such deductions to the full extent allowable under section 804(c)(1), and any amount which is allowed as a deduction under section 804(c) shall not again be allowed as a deduction under section 809(d)(9).

(10) *Small business deduction.* The small business deduction as determined under section 804(a)(4).

(11) *Certain mutualization distributions.* The amount of distributions to shareholders actually made by the life insurance company in 1958 and 1959 in acquisition of stock pursuant to a plan of mutualization adopted by the company before January 1, 1958. If such deduction is claimed, there must be attached to the return of the company claiming such deduction a certified copy of the plan of mutualization and proof that such plan was adopted prior to January 1, 1958. See section 809(g) and § 1.809-8 for limitation of such deduction.

(12) *Other deductions.* Except as modified by section 809(e) and § 1.809-6, all other deductions allowed under subtitle A of the Code for purposes of computing taxable income to the extent not allowed as deductions in computing investment yield. However, a life insurance company shall not be allowed a deduction under section 162 or 404 for amounts representing premiums charged itself by the company with respect to liability for insurance and annuity benefits for employees and agents.

(b) *Denial of double deduction.* Nothing in section 809(d) shall permit the same item to be deducted more than once in determining gain or loss from operations. For example, if an item is claimed as a deduction for the taxable year by reason of its being a loss incurred within such taxable year (whether or not ascertained) under section 809(d)(1), such item, or any portion thereof, shall not also be claimed as a deduction for such taxable year under section 809(d)(2).

§ 1.809-6 Modifications.

Under section 809(e), the deductions allowed under section 809(d)(12) and paragraph (a)(12) of § 1.809-5 (relating to other deductions) are subject to the following modifications—

(a) *Interest.* No deduction shall be allowed under section 163 for interest in respect of items described in section 810(c) since such interest is taken into account in the determination of required interest under section 809.

(b) *Bad debts.* No deduction shall be allowed for an addition to reserves for bad debts under section 166(c). However, a deduction for specific bad debts

shall be allowed to the extent that such deduction is allowed under section 166 and the regulations thereunder. In the case of a loss incurred on the sale of mortgaged or pledged property, see § 1.166-6.

(c) *Charitable, etc., contributions and gifts.* (1) The deduction by a life insurance company in any taxable year for a charitable contribution (as defined in section 170(c)) shall be limited to 5 percent of the gain from operations (as determined under section 809(b)(1)), computed without regard to any deductions for:

(i) Charitable contributions under section 170;

(ii) Dividends to policyholders under section 811(b);

(iii) Certain nonparticipating contracts under section 809(d)(5);

(iv) Group life insurance contracts and group accident and health insurance contracts under section 809(d)(6);

(v) Tax-exempt interest, dividends, etc., under section 809(d)(8); and

(vi) Any operations loss carryback to the taxable year under section 812.

(2) In applying the second sentence of section 170(b)(2) (relating to charitable contributions carryovers) as required by section 809(e)(3)(B), any excess of the charitable contributions made by a life insurance company in a taxable year over the amount deductible in such year under the limitation contained in subparagraph (1) of this paragraph, shall be reduced to the extent that such excess:

(i) Reduces life insurance company taxable income (computed without regard to section 802(b)(3)) for the purpose of determining the offsets referred to in section 812(b)(2); and

(ii) Increases an operations loss carryover under section 812 for a succeeding taxable year.

(3) The application of the rules provided in section 809(e)(3) and this paragraph may be illustrated by the following example:

Example. Assume that life insurance company P is organized on January 1, 1958, and has a loss from operations for that year in the amount of \$100,000 which is an operations loss carryover to 1959. In 1959, company P has a gain from operations and tax base (computed without regard to section 802(b)(3)) of \$100,000 before the allowance of a deduction for a \$5,000 charitable contribution made in 1959 and before the application of the operations loss carryover from 1958. Under section 170(b)(2), the operations loss carryover from 1958 is first applied to eliminate the \$100,000 gain from operations and tax base in 1959 and the \$5,000 charitable contribution carryover would (except for the limitation contained in this paragraph) become a charitable contribution carryover to 1960. However, for the purpose of computing the offsets referred to in section 812(b)(2), the \$5,000 charitable contribution is applied to reduce the gain from operations and tax base for 1959 to \$95,000 before the application of the operations carryover from 1958. Since only \$95,000 of the \$100,000 loss from operations in 1958 is an offset for 1959, the remaining \$5,000 becomes an operations loss carryover to 1960. Accordingly, under the limitation contained in this paragraph, the charitable contributions carryover provided under the second sentence of section 170(b)(2) is eliminated.

(d) *Amortizable bond premium.* No deduction shall be allowed under section 171 for the amortization of bond premiums since a special deduction for such premiums is specifically taken into account under section 818(b).

(e) *Net operating loss deduction.* No deduction shall be allowed under section 172 since section 812 allows an "operations loss deduction".

(f) *Partially tax-exempt interest.* No deduction shall be allowed under section 242 for partially tax-exempt interest since section 809(d)(8) allows a deduction for such interest.

(g) *Dividends received.* No deduction shall be allowed under sections 243, 244, and 245 for dividends received since section 809(d)(8) allows a deduction for such dividends.

§ 1.809-7 Limitation on certain deductions.

(a) *In general.* Section 809(f)(1) limits the deductions under section 809(d)(3), (5), and (6), relating to deductions for dividends to policyholders, certain nonparticipating contracts, and group life, accident, and health insurance contracts, respectively. This limitation provides that the amount of such deductions shall not exceed the sum of (1) the amount (if any) by which the gain from operations for the taxable year (determined without regard to such deductions) exceeds the taxpayer's taxable investment income for such year, plus (2) \$250,000.

(b) *Application of limitation.* Section 809(f)(2) provides a priority system for applying the limitation contained in section 809(f)(1) and paragraph (a) of this section. Under this priority system, the limitation shall be applied in the following order:

(1) First to the amount of the deduction under section 809(d)(6) (relating to group life, accident, and health insurance);

(2) Then to the amount of the deduction under section 809(d)(5) (relating to certain nonparticipating contracts); and

(3) Finally to the amount of the deduction under section 809(d)(3) (relating to dividends to policyholders).

(c) *Illustration of principles.* The operation of the limitation and priority system provided by section 809(f) and this section may be illustrated by the following example:

Example. Assume the following facts with respect to M, a life insurance company, for the taxable year 1958:

Gain from operations computed without regard to the deductions under sec. 809(d)(3), (5), and (6)-----	\$100,000,000
Taxable investment income-----	83,000,000
Tentative deduction for group life, accident, and health insurance under sec. 809(d)(6)-----	4,000,000
Tentative deduction for certain nonparticipating contracts under sec. 809(d)(5)-----	6,000,000
Tentative deduction for dividends to policyholders under sec. 809(d)(3)-----	10,000,000

In order to determine the limitation on the deductions under section 809(d)(3), (5),

and (6), M would make up the following schedule:

(1) Statutory amount provided under sec. 809(f)(1)-----	\$250,000
(2) Gain from operations computed without regard to the deductions under sec. 809(d)(3), (5), and (6)-----	\$100,000,000
(3) Taxable investment income-----	83,000,000
(4) Excess of item (2) over item (3)-----	17,000,000
(5) Limitation on deductions under sec. 809(d)(3), (5), and (6) (item (1) plus item (4))-----	17,250,000

Since the total tentative deductions under section 809(d)(3), (5), and (6) (\$20,000,000) exceeds the limitation on such deductions (\$17,250,000), M would make up the following schedule to determine the application of the priority system:

(6) Maximum possible deduction under sec. 809(d)(3), (5), and (6) (item (5))-----	\$17,250,000
(7) Deduction for group life, accident, and health insurance under sec. 809(d)(6) (not in excess of item (6))-----	4,000,000
(8) Maximum possible deduction under sec. 809(d)(5) (item (6) less item (7))-----	13,250,000
(9) Deduction for certain nonparticipating contracts under sec. 809(d)(5) (not in excess of item (8))-----	6,000,000
(10) Maximum possible deduction under sec. 809(d)(3) (item (8) less item (9))-----	7,250,000
(11) Deduction for dividends to policyholders under sec. 809(d)(3) (not in excess of item (10))-----	7,250,000

Thus, as a result of the application of the limitation and priority system for the taxable year 1958, M shall be allowed a deduction of \$4,000,000 under section 809(d)(6), \$6,000,000 under section 809(d)(5), and only \$7,250,000 of the \$10,000,000 tentative deduction under section 809(d)(3).

§ 1.809-8 Limitation on deductions for certain mutualization distributions.

(a) *Deduction not to reduce taxable investment income.* Section 809(g)(1) limits the deduction under section 809(d)(11) for certain mutualization distributions. This limitation provides that such deduction shall not exceed the amount (if any) by which the gain from operations for the taxable year, computed without regard to such deduction (but after the application of the limitation contained in section 809(f) and § 1.809-7), exceeds the taxpayer's taxable investment income for such year.

(b) *Deduction not to reduce tax below that imposed by 1957 law.* Section 809(g)(2) further limits the deduction under section 809(d)(11). Under section 809(g)(2), such deduction shall be allowed only to the extent that it (after the application of all other deductions) does not reduce the tax imposed by section 802(a)(1) for the taxable year below the amount of tax which would have been imposed for such taxable year if

the law in effect for 1957 applied for such taxable year. If such deduction is claimed for 1958 (or 1959), the company shall attach to its return a schedule showing what its tax for 1958 (or 1959) would have been had such tax been computed under the law in effect for 1957.

(c) *Application of section 815.* Section 809(g)(3) provides that any portion of a distribution which is allowed as a deduction under section 809(d)(11) shall not be treated as a distribution to shareholders for purposes of section 815; except that in the case of any distributions made in 1959, such portion shall be treated as a distribution with respect to which a reduction is required under section 815(e)(2)(B) (relating to adjustment in allocation ratio for certain distributions after December 31, 1958).

§ 1.810 Statutory provisions; life insurance companies; rules for certain reserves.

SEC. 810. Rules for certain reserves—(a) Adjustment for decrease. If the sum of the items described in subsection (c) as of the beginning of the taxable year exceeds the sum of such items as of the close of the taxable year (reduced by the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1)), the excess shall be taken into account as a net decrease referred to in section 809(c)(2).

(b) *Adjustment for increase.* If the sum of the items described in subsection (c) as of the close of the taxable year (reduced by the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1)) exceeds the sum of such items as of the beginning of the taxable year, the excess shall be taken into account as a net increase referred to in section 809(d)(2).

(c) *Items taken into account.* The items referred to in subsections (a) and (b) are as follows:

(1) The life insurance reserves (as defined in section 801(b)).

(2) The unearned premiums and unpaid losses included in total reserves under section 801(c)(2).

(3) The amounts (discounted at the rates of interest assumed by the company) necessary to satisfy the obligations under insurance or annuity contracts (including contracts supplementary thereto), but only if such obligations do not involve (at the time with respect to which the computation is made under this paragraph) life, health, or accident contingencies.

(4) Dividend accumulations, and other amounts, held at interest in connection with insurance or annuity contracts (including contracts supplementary thereto).

(5) Premiums received in advance, and liabilities for premium deposit funds.

In applying this subsection, the same item shall be counted only once.

(d) *Adjustment for change in computing reserves—(1) In general.* If the basis for determining any item referred to in subsection (c) as of the close of any taxable year differs from the basis for such determination as of the close of the preceding taxable year, then so much of the difference between—

(A) The amount of the item at the close of the taxable year, computed on the new basis, and

(B) The amount of the item at the close of the taxable year, computed on the old basis,

as is attributable to contracts issued before the taxable year shall be taken into account for purposes of this subpart as follows:

(1) If the amount determined under subparagraph (A) exceeds the amount determined under subparagraph (B), $\frac{1}{10}$ of such excess shall be taken into account, for each of the succeeding 10 taxable years, as a net increase to which section 809(d) (2) applies; or

(ii) If the amount determined under subparagraph (B) exceeds the amount determined under subparagraph (A), $\frac{1}{10}$ of such excess shall be taken into account for each of the 10 succeeding taxable years, as a net decrease to which section 809(c) (2) applies.

(2) *Termination as life insurance company.* Except as provided in section 381(c) (22) (relating to carryovers in certain corporate readjustments), if for any taxable year the taxpayer is not a life insurance company, the balance of any adjustments under this paragraph shall be taken into account for the preceding taxable year.

(3) *Effect of preliminary term election.* An election under section 818(c) shall not be treated as a change in the basis for determining an item referred to in subsection (c) to which this subsection applies. If an election under section 818(c) applies for the taxable year, the amounts of the items referred to in subparagraphs (A) and (B) of paragraph (1) shall be determined without regard to such election. If such an election would apply in respect of such item for the taxable year but for the new basis, the amount of the item referred to in subparagraph (B) shall be determined on the basis which would have been applicable under section 818(c) if the election applied in respect of the item for the taxable year.

(e) *Certain decreases in reserves of voluntary employees' beneficiary associations—*(1) *Decreases due to voluntary lapses of policies issued before January 1, 1958.* For purposes of subsections (a) and (b), in the case of a life insurance company which meets the requirements of section 501(c) (9) other than the requirement of subparagraph (B) thereof, there shall be taken into account only $1\frac{1}{2}$ percent of any decrease in the life insurance reserve on any policy issued before January 1, 1958, which is attributable solely to the voluntary lapse of such policy on or after January 1, 1958. In applying the preceding sentence, the decrease in the reserve for any policy shall be determined by reference to the amount of such reserve as of the beginning of the taxable year, reduced by any amount allowable as a deduction under section 809(d) (1) in respect of such policy by reason of such lapse. This paragraph shall apply for any taxable year only if the taxpayer has made an election under paragraph (3) which is effective for such taxable year.

(2) *Disallowance of carryovers from pre-1958 losses from operations.* In the case of a life insurance company to which paragraph (1) applies for the taxable year, section 812 (b) (1) shall not apply with respect to any loss from operations for any taxable year beginning before January 1, 1958.

(3) *Election.* Paragraph (1) shall apply to any taxpayer for any taxable year only if the taxpayer elects, not later than the time prescribed by law (including extensions thereof) for filing the return for such taxable year, to have such paragraph apply. Such election shall be made in such manner as the Secretary or his delegate shall prescribe by regulations. Such election shall be effective for the taxable year for which made and for all succeeding taxable years, and shall not be revoked except with the consent of the Secretary or his delegate.

[Sec. 810 as added by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 125)]

§ 1.810-1 Taxable years affected.

Sections 1.810-2 through 1.810-4 are applicable only to taxable years begin-

ning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.810-2 Rules for certain reserves.

(a) *Adjustment for decrease or increase in certain reserve items—*(1) *Adjustment for decrease.* Section 810(a) provides that if the sum of the items described in section 810(c) and paragraph (b) of this section at the beginning of the taxable year exceeds the sum of such items at the end of the taxable year (reduced by the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a) (1)), the amount of such excess shall be taken into account as a net decrease referred to in section 809(c) (2) and paragraph (a) (2) of § 1.809-4 in determining gain or loss from operations.

(2) *Adjustment for increase.* Section 810(b) provides that if the sum of the items described in section 810(c) and paragraph (b) of this section at the end of the taxable year (reduced by the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a) (1)) exceeds the sum of such items at the beginning of the taxable year, the amount of such excess shall be taken into account as a net increase referred to in section 809(d) (2) and paragraph (a) (2) of § 1.809-5 in determining gain or loss from operations.

(b) *Items taken into account.* The items described in section 810(c) and referred to in section 810 (a) and (b) and paragraph (a) of this section are:

(1) The life insurance reserves (as defined in section 801(b) and § 1.801-4);

(2) The unearned premiums and unpaid losses included in total reserves under section 801(c) (2) and § 1.801-5;

(3) The amounts (discounted at the rates of interest assumed by the company) necessary to satisfy the obligations under insurance or annuity contracts (including contracts supplementary thereto), but only if such obligations do not involve (at the time with respect to which the computation is made under this subparagraph) life, health, or accident contingencies;

(4) Dividend accumulations, and other amounts, held at interest in connection with insurance or annuity contracts (including contracts supplementary thereto); and

(5) Premiums received in advance, and liabilities for premium deposit funds.

For purposes of this paragraph, the same item shall be counted only once and deficiency reserves (as defined in section 801(b) (4) and paragraph (e) (4) of § 1.801-4) shall not be taken into account.

(c) *Special rules.* For purposes of section 810 (a) and (b) and paragraph (a) of this section, in determining whether there is a net increase or decrease in the sum of the items described in section 810(c) and paragraph (b) of this section for the taxable year, the following rules shall apply:

(1) *Computation of net increase or decrease in reserves.* The sum of the items described in section 810(c) and paragraph (b) of this section at the beginning of the taxable year shall be the aggregate of the sums of each of such items at the beginning of the taxable year. The sum of the items described in section 810(c) and paragraph (b) of this section at the end of the taxable year shall be the aggregate of the sums of each of such items at the end of the taxable year. However, in order to determine whether there is a net increase or decrease in such items for the taxable year, the aggregate of the sums of the items at the end of the taxable year must first be reduced by the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a) (1).

(2) *Effect of change in basis in computing reserves.* Any increase or decrease in the sum of the items described in section 810(c) and paragraph (b) of this section for the taxable year which is attributable to a change in the basis used in computing such items during the taxable year shall not be taken into account under section 810 (a) and (b) and paragraph (a) of this section but shall be taken into account in the manner prescribed in section 810(d) and paragraph (a) of § 1.810-3.

(3) *Effect of section 818(c) election.* If a company which computes its life insurance reserves on a preliminary term basis elects to revalue such reserves on a net level premium basis under section 818(c), the sum of such reserves at the beginning and end of all taxable years (including the first taxable year) for which the election applies shall be the sum of such reserves computed on such net level premium basis.

(4) *Cross references.* See section 810(e) and § 1.810-4 for special rules for determining the net increase or decrease in the sum of the items described in section 810(c) and paragraph (b) of this section in the case of certain voluntary employees' beneficiary associations. For similar special rules in the case of life insurance companies issuing variable annuity contracts, see section 801(g) (4) and the regulations thereunder.

(d) *Illustration of principles.* The provisions of section 810 (a) and (b) and this section may be illustrated by the following examples:

Example (1). Assume the following facts with respect to R, a life insurance company:

Sum of items described in sec. 810(c) (1) through (5) at beginning of taxable year	\$940
Sum of items described in sec. 810(c) (1) through (5) at end of taxable year	1,606
Required interest (as defined in sec. 809(a) (2))	70
Investment yield (as defined in sec. 804(c))	100
Amount of investment yield not included in gain or loss from operations for the taxable year by reason of sec. 809(a) (1)	70

In order to determine the adjustment for decrease or increase in the sum of the items described in section 810(c) for the taxable year, R must first reduce the sum of such items at the end of the taxable year (\$1,060) by the amount of investment yield (\$70) not

included in gain or loss from operations for the taxable year by reason of section 809(a) (1). Since the adjusted sum of such items at the end of the taxable year, \$990 (\$1,060 minus \$70), exceeds the sum of such items at the beginning of the taxable year, \$940, the excess of \$50 (\$990 minus \$940) shall be taken into account as a net increase under section 809(d) (2) and paragraph (a) (2) of § 1.809-5 in determining gain or loss from operations.

Example (2). Assume the facts are the same as in example (1), except that the sum of the items described in section 810(c) at the beginning of the taxable year is \$1000. Since the sum of the items described in section 810(c) at the beginning of taxable year, \$1000, exceeds the sum of such items at the end of the taxable year after adjustment for the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a) (1), \$990 (\$1060 minus \$70), the excess of \$10 (\$1000 minus \$990) shall be taken into account as a net decrease under section 809(c) (2) and paragraph (a) (2) of § 1.809-4 in determining gain or loss from operations.

Example (3). Assume the following facts with respect to S, a life insurance company:

Sum of items described in sec. 810(c) (1) through (5) at beginning of taxable year	\$1,970
Sum of items described in sec. 810(c) (1) through (5) at end of taxable year	2,040
Required interest (as defined in sec. 809(a) (2))	60
Investment yield (as defined in sec. 804(c))	40
Amount of investment yield not included in gain or loss from operations by reason of sec. 809(a) (1)	40

Under the provisions of section 809(a) (1), since the required interest (\$60) exceeds the investment yield (\$40), the share of each and every item of investment yield set aside for policyholders and not included in gain or loss from operations for the taxable year shall be 100 percent. Thus, applying the provisions of section 810 (a) and (b), the sum of the items described in section 810(c) at the end of the taxable year (\$2,040) must first be reduced by the entire amount of the investment yield (\$40) in order to determine the net increase or decrease in the sum of such items for the taxable year. Since the adjusted sum of such items at the end of the taxable year, \$2,000 (\$2,040 minus \$40), is greater than the sum of such items at the beginning of the taxable year, \$1,970, the excess of \$30 (\$2,000 minus \$1,970) shall be taken into account as a net increase under section 809(d) (2) and paragraph (a) (2) of § 1.809-5 in determining gain or loss from operations. No additional deduction is allowed under section 809(d) for the amount (\$20) by which the required interest exceeds the investment yield for the taxable year.

Example (4). Assume the facts are the same as in example (1), except that as a result of a change in the basis used in computing an item described in section 810(c) during the taxable year, the sum of such items at the end of the taxable year is \$1,200. Under the provisions of paragraph (c) (2) of this section, any increase or decrease in the sum of the section 810(c) items for the taxable year which is attributable to a change in the basis used in computing such items during the taxable year shall not be taken into account under section 810 (a) and (b). Thus, for purposes of section 810 (a) and (b), the sum of the items described in section 810(c) at the end of the taxable year shall be \$1,060 (the amount computed without regard to the change in basis) and S shall treat the \$50 computed in the manner described in example (1) as a net increase under section 809(d) (2) and paragraph (a) (2) of § 1.809-5 in determining

its gain or loss from operations for the taxable year. The amount of the increase in the section 810(c) items which is attributable to the change in basis during the taxable year, \$140 (\$1,200 minus \$1,060), shall be taken into account in the manner prescribed in section 810(d) and paragraph (a) of § 1.810-3.

Example (5). The life insurance reserves of M, a life insurance company, computed with respect to contracts for which such reserves are determined on a recognized preliminary term basis amount to \$100 on January 1, 1960, and \$110 on December 31, 1960. For the taxable year 1960, M elects to revalue such reserves on a net level premium basis under section 818(c). Such reserves computed under section 818(c) amount to \$115 on January 1, 1960, and \$127 on December 31, 1960. Under the provisions of paragraph (c) (3) of this section, a company which makes the section 818(c) election must use the net level premium basis in computing the sum of its life insurance reserves at the beginning and end of all taxable years for which the election applies. Thus, for purposes of section 810 (a) and (b), in determining whether there is a net increase or decrease in the sum of the section 810(c) items for the taxable year 1960, M shall include \$115 as its reserves with respect to such contracts under section 810(c) (1) at the beginning of the taxable year and \$127 as its reserves with respect to such contracts under section 810(c) (1) at the end of the taxable year.

§ 1.810-3 Adjustment for change in computing reserves.

(a) *Reserve strengthening or weakening.* Section 810(d) (1) provides that if the basis for determining any item referred to in section 810(c) and paragraph (b) of § 1.810-2 at the end of any taxable year differs from the basis for such determination at the end of the preceding taxable year, then so much of the difference between—

(1) The amount of the item at the end of the taxable year, computed on the new basis, and

(2) The amount of the item at the end of the taxable year, computed on the old basis,

as is attributable to contracts issued before the taxable year shall be taken into account as follows:

(i) If the amount of the item at the end of the taxable year computed on the new basis exceeds the amount of the item at the end of the taxable year computed on the old basis, 1/10 of such excess shall be taken into account, for each of the succeeding 10 taxable years, as a net increase to which section 809(d) (2) and paragraph (a) (2) of § 1.809-5 applies; or

(ii) If the amount of the item at the end of the taxable year computed on the old basis exceeds the amount of the item at the end of the taxable year computed on the new basis, 1/10 of such excess shall be taken into account, for each of the 10 succeeding taxable years, as a net decrease to which section 809(c) (2) and paragraph (a) (2) of § 1.809-4 applies.

(b) *Illustration of principles.* The provisions of section 810(d) (1) and paragraph (a) of this section may be illustrated by the following examples:

Example (1). Assume that the amount of an item described in section 810(c) of L, a life insurance company, at the beginning of the taxable year 1959 is \$100. Assume that at the end of the taxable year 1959, as a result of a change in the basis used in com-

puting such item during the taxable year, the amount of the item (computed on the new basis) is \$200 but computed on the old basis would have been \$150. Since the amount of the item at the end of the taxable year computed on the new basis, \$200, exceeds the amount of the item at the end of the taxable year computed on the old basis, \$150, by \$50, 1/10 of the amount of such excess, or \$5, shall be taken into account as a net increase referred to in section 809(d) (2) and paragraph (a) (2) of § 1.809-5 in determining gain or loss from operations for each of the 10 taxable years immediately following the taxable year 1959. Any increase (or decrease) in the sum of the section 810(c) items computed on the old basis at the end of the taxable year 1959 (\$150) after adjustment for investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a) (1), over the sum of such items computed on the old basis at the beginning of the taxable year 1959 (\$100), shall be taken into account in the manner prescribed in section 810 (a) or (b) and § 1.810-2 for purposes of determining L's gain or loss from operations for 1959.

Example (2). Assume the facts are the same as in example (1), and that the sum of the items described in section 810(c) (computed on the new basis) is \$200 on January 1, 1960, and \$260 on December 31, 1960. Under the provisions of section 810(d) (1), as a result of the reserve strengthening attributable to the change in basis which occurred in 1959, L would include \$5 (computed in the manner described in example (1)) as a net increase under section 809(d) (2) and paragraph (a) (2) of § 1.809-5 in determining its gain or loss from operations for 1960. In addition to this amount, any increase (or decrease) in the sum of the items described in section 810(c) at the end of the taxable year 1960 (\$260) after adjustment for investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a) (1), over the sum of such items at the beginning of the taxable year 1960 (\$200), shall be taken into account in the manner prescribed in section 810 (a) or (b) and § 1.810-2 for purposes of determining L's gain or loss from operations for 1960.

(c) *Termination as life insurance company.* Section 810(d) (2) provides, subject to the provisions of section 381(c) (22) and the regulations thereunder (relating to carryovers in certain corporate readjustments), that if for any taxable year a company which previously was a life insurance company no longer meets the requirements of section 801(a) and paragraph (b) of § 1.801-3 (relating to the definition of a life insurance company), the balance of any adjustments remaining to be made under section 810 (d) (1) and paragraph (a) of this section shall be taken into account for the preceding taxable year.

(d) *Illustration of principles.* The provisions of section 810(d) (2) and paragraph (c) of this section may be illustrated by the following example:

Example. Assume the facts are the same as in example (1) of paragraph (b) of this section, except that for the taxable year 1962, L no longer meets the requirements of section 801(a) (relating to the definition of a life insurance company) and that the provisions of section 381(c) (22) are not applicable. Under the provisions of section 810 (d) (2), the entire balance of the adjustment remaining to be made with respect to the change in basis which occurred in 1959, 1/10 of \$50, or \$5, shall be taken into account for the taxable year 1961, the last year L was a life insurance company. Thus, for the taxable year 1961, the total amount to be taken

into account by L as a net increase referred to in section 809(d)(2) and paragraph (a)(2) of § 1.809-5 in determining its gain or loss from operations shall be \$45. Of this amount, \$5 (1/10 of \$50) represents the amount determined under the provisions of section 810(d)(1), and \$40 represents the amount determined under the provisions of section 810(d)(2).

(e) *Effect of preliminary term election.* (1) Section 810(d)(3) provides that if a company which computes its life insurance reserves on a preliminary term basis elects to revalue such reserves on a net level premium basis under section 818(c), such election shall not be treated as a change in basis within the meaning of section 810(d)(1) and paragraph (a) of this section. Thus, any increase or decrease in reserves attributable to such election shall not be taken into account under section 810(d)(1) and paragraph (a) of this section but shall be taken into account in the manner prescribed in section 810(a) and (b) and paragraph (a) of § 1.810-2. See paragraph (c)(3) of § 1.810-2.

(2) Section 810(d)(3) further provides that where an election under section 818(c) would apply to an item referred to in section 810(c) but for the fact that the basis used in computing such item has actually been changed, any increase or decrease in such item attributable to such actual change in basis shall be subject to the adjustment required under section 810(d)(1) and paragraph (a) of this section. In such a case, however, for purposes of section 810(d)(1)(B) and paragraph (a)(2) of this section, the amount of such item at the end of the taxable year computed on the old basis shall be the amount of such item at the end of the taxable year computed as if the election under section 818(c) applied in respect of such item for the taxable year.

(f) *Illustration of principles.* The provisions of section 810(d)(3) and paragraph (e) of this section may be illustrated by the following examples:

Example (1). Assume that S, a life insurance company which computes its life insurance reserves on a 3-percent assumed rate and the Commissioner's reserve valuation method (one of the recognized preliminary term reserve methods), elects to revalue such reserves on a net level premium method under section 818(c) and that the significant facts are as follows:

	Jan. 1, 1958	Dec. 31, 1958
Book reserves at 3-percent assumed rate, Commissioner's reserve valuation method.....	100	118
Reserves at 3-percent assumed rate, after restatement under section 818(c).....	110	131

Under the provisions of section 810(d)(3), an election under section 818(c) is not treated as a change in basis for purposes of section 810(d)(1). Accordingly, the increase of \$21 (\$131 minus \$110) attributable to such election shall not be subject to the adjustment provided by section 810(d)(1) but shall be taken into account in the manner prescribed in section 810(b). For purposes of determining the amount to be taken into account under section 810(b), the reserves with respect to the contracts subject to the section 818(c) election shall be \$110 at the beginning of the taxable year 1958 and \$131 at the

end of the taxable year 1958. However, as a result of making the election under section 818(c), the difference (\$10) between the reserves computed on the preliminary term basis on January 1, 1958 (\$100) and the reserves restated on the net level premium basis on January 1, 1958 (\$110) shall not be taken into account under section 809(d) for the year 1958, or for any subsequent taxable year.

Example (2). Assume the facts are the same as in example (1), except that during the taxable year 1959, S actually changed from the preliminary term basis to a net level premium basis which was identical with the net level premium basis used under the section 818(c) election and that the significant facts are as follows:

	Jan. 1, 1959	Dec. 31, 1959
Book reserves at 3-percent assumed rate, Commissioner's reserve valuation method.....	118	127
Reserves at 3-percent assumed rate, after restatement under section 818(c).....	131	142
Strengthened reserves at 3-percent assumed rate and net level premium method.....		142

Under the provisions of section 810(d)(3), if a company which has made an election under section 818(c) which has not been revoked actually changes the basis used by it in computing the reserves subject to such election, any increase or decrease in reserves attributable to such change in basis shall be taken into account in the manner prescribed in section 810(d)(1). Since S actually changed to the same basis which it used in computing its reserves under section 818(c), the reserves at the end of the taxable year computed on the new basis (\$142) are the same as the reserves at the end of the taxable year computed on the old basis (\$142), i.e., the basis which would have applied under section 818(c) if the election applied for 1959. Accordingly, no adjustment under section 810(d)(1) is required.

Example (3). Assume the facts are the same as in example (1), except that during the taxable year 1960, S actually changed the basis used by it in computing its reserves on a certain block of contracts subject to the election under section 818(c) and that the significant facts with respect to this block of contracts are as follows:

	Jan. 1, 1960	Dec. 31, 1960
Book reserves at 3-percent assumed rate, Commissioner's reserve valuation method.....	50	63
Reserves at 3-percent assumed rate, after restatement under section 818(c).....	60	75
Strengthened reserves at 2-percent assumed rate and net level premium method.....		95

Under the provisions of section 810(d)(3), the amount of the reserves subject to the section 818(c) election at the end of the taxable year computed on the old basis shall be the amount of such reserves at the end of the taxable year determined under section 818(c) (\$75). Since the reserves at the end of the taxable year computed on the new basis, \$95, exceeds the reserves at the end of the taxable year computed on the old basis, \$75, by \$20, 1/10 of the excess of \$20, or \$2, shall be taken into account as a net increase referred to in section 809(d)(2) and paragraph (a)(2) of § 1.809-5 in determining gain or loss from operations for each of the 10 taxable years immediately following the taxable year 1960. For purposes of determining whether there is a net increase or decrease in the sum of the items described in section 810(c) for the taxable

year 1960 under section 810(a) or (b), the sum of the reserves with respect to such block of contracts shall be \$60 at the beginning of the taxable year and \$75 at the end of the taxable year (the amount of such reserves computed under section 818(c) at the beginning and end of the taxable year). The difference (\$10) between the reserves computed on the preliminary term basis on January 1, 1960 (\$50) and the reserves restated on the net level premium basis on January 1, 1960 (\$60) shall not be taken into account under section 809(d) for the year 1960, or for any subsequent taxable year.

§ 1.810-4 Certain decreases in reserves of voluntary employees' beneficiary associations.

(a) *Decreases due to voluntary lapses of policies issued before January 1, 1958.*

(1) Section 810(e) provides that if for any taxable year a life insurance company which meets the requirements of section 501(c)(9), other than the requirement of subparagraph (B) thereof, makes an election in the manner provided in section 810(e)(3) and paragraph (b) of this section, only 11 1/2 percent of any decrease in life insurance reserves (as defined in section 801(b) and § 1.801-4) attributable to the voluntary lapse on or after January 1, 1958, of any policy issued prior to that date shall be taken into account under section 810(a) or (b) and paragraph (a) of § 1.810-2 in determining the net increase or decrease in the sum of the items described in section 810(c) during the taxable year. In applying the preceding sentence, the decrease in the reserve for any policy shall be determined by reference to the amount of such reserve at the beginning of the taxable year, reduced by any amount allowable as a deduction under section 809(d)(1) and paragraph (a)(1) of § 1.809-5 in respect of such policy by reason of such lapse. The election under section 810(e) shall be adhered to in computing the company's gain or loss from operation for the taxable year for which the election is made and for all subsequent taxable years, unless consent to revoke such election is obtained from the Commissioner.

(2) The application of the election provided under section 810(e) and subparagraph (1) of this paragraph may be illustrated by the following example:

Example. For the taxable year 1960, M, a life insurance company which meets the requirements of section 501(c)(9), other than the requirement of subparagraph (B) thereof, makes the election under section 810(e). Assume the following facts with respect to a policy issued in 1955 which voluntarily lapsed during the taxable year:

(1) Life insurance reserve on January 1, 1960.....	\$600
(2) Amount allowable as a deduction under sec. 809(d)(1).....	200
(3) Decrease in life insurance reserves for sec. 810(e) purposes (item (1) minus item (2)).....	400
(4) Amount taken into account under sec. 810(a) and (b) by reason of sec. 810(e) election (11 1/2% × \$400).....	46

Under the provisions of section 810(e) and subparagraph (1) of this paragraph, M would include \$46 as its life insurance reserve with respect to such policy under section 810(c)(1) at the beginning of the taxable year 1960 for purposes of determining

the net increase or decrease in the sum of the items described in section 810(c) for the taxable year under section 810 (a) or (b).

(b) *Time and manner of making election.* The election provided by section 810(e) (3) shall be made in a statement attached to the life insurance company's income tax return for the first taxable year for which the company desires the election to apply. The return and statement must be filed not later than the date prescribed by law (including extensions thereof) for filing the return for such taxable year. The statement shall indicate that the company meets the requirements of section 501(c) (9), other than the requirement of subparagraph (B) thereof, and has made the election provided under section 810(e) and paragraph (a) of this section. The statement shall set forth the following information with respect to each policy described in paragraph (a) of this section which has voluntarily lapsed during such year:

- (1) Type of policy.
- (2) Date issued.
- (3) Date lapsed.
- (4) Reason for lapse.
- (5) Policy reserve as of beginning of taxable year.
- (6) Deduction allowable under section 809(d) (1) and paragraph (a) (1) of § 1.809-5 during taxable year by reason of lapse.
- (7) Decrease in policy reserve for section 810(e) purposes (excess of (5) over (6)).

In addition, the statement shall set forth the total of the amounts referred to in subparagraph (7) of this paragraph with respect to all policies described in paragraph (a) of this section which have voluntarily lapsed during the taxable year.

(c) *Scope of election.* An election made under section 810(e) (3) and paragraph (a) of this section shall be effective for the taxable year for which made and for all succeeding taxable years, unless consent to revoke the election is obtained from the Commissioner. However, for taxable years beginning prior to the issuance of the final regulations under subpart C, part I, subchapter L, chapter 1 of the Code, a taxpayer may revoke such election without obtaining consent from the Commissioner by filing, within 90 days after the date of publication of such final regulations in the FEDERAL REGISTER, a statement that the company desires to revoke the election under section 810(e) (3). An amended return reflecting such revocation must accompany the statement for all taxable years for which returns have been filed with respect to such election.

(d) *Disallowance of carryovers from pre-1958 losses from operations.* For any taxable year for which the election provided under section 810(e) (3) and paragraph (b) of this section is effective, the provisions of section 812(b) (1) and § 1.812-4 shall not apply with respect to any loss from operations for any taxable year beginning before January 1, 1958.

§ 1.811 Statutory provisions; life insurance companies; dividends to policyholders.

SEC. 811. *Dividends to policyholders—(a) Dividends to policyholders defined.* For purposes of this part, the term "dividends to policyholders" means dividends and similar distributions to policyholders in their capacity as such. Such term does not include interest paid (as defined in section 805(e)).

(b) *Amount of deduction—(1) In general.* Except as limited by section 809(f), the deduction for dividends to policyholders for any taxable year shall be an amount equal to the dividends to policyholders paid during the taxable year—

(A) Increased by the excess of (1) the amounts held at the end of the taxable year as reserves for dividends to policyholders (as defined in subsection (a)) payable during the year following the taxable year, over (ii) such amounts held at the end of the preceding taxable year, or

(B) Decreased by the excess of (1) such amounts held at the end of the preceding taxable year, over (ii) such amounts held at the end of the taxable year.

For purposes of subparagraphs (A) and (B), there shall be included as amounts held at the end of any taxable year amounts set aside, before the 16th day of the third month of the year following such taxable year (or, in the case of a mutual savings bank subject to the tax imposed by section 594, before the 16th day of the fourth month of the year following such taxable year), for payment during the year following such taxable year.

(2) *Certain amounts to be treated as net decreases.* If the amount determined under paragraph (1) (B) exceeds the dividends to policyholders paid during the taxable year, the amount of such excess shall be a net decrease referred to in section 809(c) (2).

[Sec. 811 as added by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 44); amended by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 126)]

§ 1.811-1 Taxable years affected.

Section 1.811-2, except as otherwise provided therein, is applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.811-2 Dividends to policyholders.

(a) *Dividends to policyholders defined.* Section 811(a) defines the term "dividends to policyholders", for purposes of part I, subchapter L, chapter 1 of the Code, to mean dividends and similar distributions to policyholders in their capacity as such. The term includes amounts returned to policyholders where the amount is not fixed in the contract but depends on the experience of the company or the discretion of the management. In general, any payment not fixed in the contract which is made with respect to a participating contract (that is, a contract which during the taxable year contains a right to participate in the divisible surplus of the company) shall be treated as a dividend to policyholders. Similarly, any amount refunded or allowed as a rate credit with respect to either a participating or a nonparticipating contract shall be treated as a dividend to policyholders if such amount de-

pends on the experience of the company. However, the term does not include interest paid (as defined in section 805(e) and paragraph (b) of § 1.805-8) or return premiums (as defined in section 809(c) and paragraph (a) (1) (ii) of § 1.809-4). Thus, so-called excess-interest dividends and amounts returned by one life insurance company to another in respect of reinsurance ceded shall not be treated as dividends to policyholders even though such amounts are not fixed in the contract but depend upon the experience of the company or the discretion of the management.

(b) *Amount of deduction—(1) In general.* Section 811(b) (1) provides, subject to the limitation of section 809(f), that the deduction for dividends to policyholders for any taxable year shall be an amount equal to the dividends to policyholders paid during the taxable year—

(i) Increased by the excess of the amounts held as reserves for dividends to policyholders at the end of the taxable year for payment during the year following the taxable year, over the amounts held as reserves for dividends to policyholders at the end of the preceding taxable year for payment during the taxable year, or

(ii) Decreased by the excess of the amounts held as reserves for dividends to policyholders at the end of the preceding taxable year for payment during the taxable year, over the amounts held as reserves for dividends to policyholders at the end of the taxable year for payment during the year following the taxable year.

For the rule as to when dividends are considered paid, see section 561 and the regulations thereunder. For the determination of the amounts held as reserves for dividends to policyholders, see paragraph (c) of this section. For special provisions relating to the treatment of dividends to policyholders paid with respect to policies reinsured under modified coinsurance contracts, see section 820(c) (5) and the regulations thereunder.

(2) *Certain amounts to be treated as net decreases.* Section 811(b) (2) provides that if the amount determined under subparagraph (1) (ii) of this paragraph exceeds the dividends to policyholders paid during the taxable year, the amount of such excess shall be a net decrease referred to in section 809(c) (2).

(c) *Reserves for dividends to policyholders defined—(1) In general.* The term "reserves for dividends to policyholders", as used in section 811(b) (1) (A) and (B) and paragraph (b) (1) of this section, means only those amounts—

(i) Actually held, or set aside as provided in subparagraph (2) of this paragraph and thus treated as actually held, by the company at the end of the taxable year, and

(ii) With respect to which, at the end of the taxable year or, if set aside, within the period prescribed in subparagraph (2) of this paragraph, the company is under an obligation, fixed and not contingent, to pay such amounts as divi-

dends to policyholders (as defined in section 811(a) and paragraph (a) of this section) during the year following the taxable year.

(2) *Amounts set aside.* (i) In the case of a life insurance company (as defined in section 801(a) and paragraph (b) of § 1.801-3), all amounts set aside before the 16th day of the 3d month of the year following the taxable year for payment as dividends to policyholders (as defined in section 811(a) and paragraph (a) of this section) during the year following such taxable year shall be treated as amounts actually held at the end of the taxable year.

(ii) In the case of a mutual savings bank subject to the tax imposed by section 594, all amounts set aside before the 16th day of the 4th month of the year following the taxable year for payment as dividends to policyholders (as defined in section 811(a) and paragraph (a) of this section) during the year following such taxable year shall be treated as amounts actually held at the end of the taxable year.

(3) *1958 reserve for dividends to policyholders.* For purposes of section 811 (b) and paragraph (b) of this section, the amounts held at the end of 1957 as reserves for dividends to policyholders payable during 1958 shall be determined as if part I, subchapter L, chapter 1 of the Code (as in effect for 1958) applied for 1957. Any adjustment in the reserves for dividends to policyholders at the beginning of 1957 required as a result of an understatement or overstatement of such reserves by the company shall be made to the balance of such reserves as of the beginning of 1957. For example, if at the beginning of 1957 the reserves for dividends to policyholders are stated to be \$100 and it is subsequently determined that such reserves should have been \$90, the reserves at the beginning of 1957 shall be reduced by \$10. Under no circumstances shall an adjustment required with regard to the beginning 1957 reserves be made to the reserves at the end of 1957.

(4) *Information to be filed.* Every company claiming a deduction for dividends to policyholders shall keep such permanent records as are necessary to establish that the dividends with respect to which such deduction is claimed were actually paid during the taxable year. Such company shall file with its return a copy of the dividend resolution and a concise statement of the pertinent facts relating to the payment of the dividend and to the amounts held or set aside as reserves for dividends to policyholders during the taxable year.

(d) *Illustration of principles.* The provisions of section 811 (b) and this section may be illustrated by the following examples:

Example (1). On December 31, 1959, M, a life insurance company, held \$200 as reserves for dividends to policyholders due and payable in 1960. On March 10, 1960, M set aside an additional \$50 as reserves for dividends to policyholders due and payable in 1960. During the taxable year 1960, M paid \$240 as dividends to its policyholders and at the end of the taxable year 1960, held \$175 as reserves for dividends to policyholders due

and payable in 1961. No additional amount was set aside before March 16, 1961, as reserves for dividends to policyholders due and payable in 1961. For the taxable year 1960, subject to the limitation of section 809(f), M's deduction for dividends to policyholders is \$165, computed as follows:

(1) Dividends paid to policyholders during the taxable year 1960-----	\$240
(2) Decreased by the excess of item (a) over item (b):	
(a) Reserves for dividends to policyholders as of 12-31-59 (including amounts set aside as provided in paragraph (c) (2) of this section)-----	\$250
(b) Reserves for dividends to policyholders as of 12-31-60.....	175
	75
(3) Deduction for dividends to policyholders under sec. 811(b) (computed without regard to the limitation of sec. 809(f))-----	165

Example (2). On December 31, 1960, S, a life insurance company, held \$100 as reserves for dividends to policyholders due and payable in 1961. During the taxable year 1961, S paid \$125 as dividends to its policyholders and at the end of the taxable year 1961, held \$110 as reserves for dividends to policyholders due and payable in 1962. No additional amount was set aside for dividends to policyholders as provided in paragraph (c) (2).

(1) Dividends paid to policyholders during the taxable year 1961-----	\$125
(2) Increased by the excess of item (a) over item (b):	
(a) Reserves for dividends to policyholders as of 12-31-61.....	\$110
(b) Reserves for dividends to policyholders as of 12-31-60.....	100
	10
(3) Deduction for dividends to policyholders under sec. 811(b) (computed without regard to the limitation of sec. 809(f))-----	135

Example (3). Assume the facts are the same as in example (2), except that on December 31, 1960, the amount held as reserves for dividends to policyholders due and payable in 1961 is \$250. For the taxable year 1961, S's deduction for dividends to policyholders is zero, computed as follows:

(1) Dividends paid to policyholders during the taxable year 1961-----	\$125
(2) Decreased by the excess of item (a) over item (b):	
(a) Reserves for dividends to policyholders as of 12-31-60.....	\$250
(b) Reserves for dividends to policyholders as of 12-31-61.....	110
	140
(3) Deduction for dividends to policyholders under sec. 811(b) (computed without regard to the limitation of sec. 809(f))-----	0

Under the provisions of section 811(b) (2) and paragraph (b) (2) of this section, since the decrease in the reserves for dividends to policyholders during the taxable year, \$140 (\$250 minus \$110), exceeds the dividends to policyholders paid during the taxable year 1961, \$125, S shall include \$15 (the amount of such excess) as a net decrease under section 809(c) (2) and paragraph (a) (2) of § 1.809-4 in determining its gain or loss from operations for 1961.

§ 1.812 Statutory provisions; life insurance companies; operations loss deduction.

Sec. 812. *Operations loss deduction*—(a) *Deduction allowed.* There shall be allowed

as a deduction for the taxable year an amount equal to the aggregate of—

(1) The operations loss carryovers to such year, plus

(2) The operations loss carrybacks to such year.

For purposes of this part, the term "operations loss deduction" means the deduction allowed by this subsection.

(b) *Operations loss carrybacks and carryovers*—(1) *Years to which loss may be carried*—(A) *In general.* The loss from operations for any taxable year (hereinafter in this section referred to as the "loss year") beginning after December 31, 1954, shall be—

(i) An operations loss carryback to each of the 3 taxable years preceding the loss year,

(ii) An operations loss carryover to each of the 5 taxable years following the loss year, and

(iii) Subject to subsection (e), if the life insurance company is a new company for the loss year, an operations loss carryover to each of the 3 taxable years following the 5 taxable years described in clause (ii).

(B) *Special transitional rules for carrybacks.* A loss from operations for any taxable year beginning before January 1, 1958, shall not be an operations loss carryback to any taxable year beginning before January 1, 1955. A loss from operations for any taxable year beginning after December 31, 1957, shall not be an operations loss carryback to any taxable year beginning before January 1, 1958.

(C) *Application for years prior to 1958.* For purposes of this section, this part (as in effect for 1958) and section 381(c) (22) shall be treated as applying to all taxable years beginning after December 31, 1954, and before January 1, 1958.

(2) *Amount of carrybacks and carryovers.* The entire amount of the loss from operations for any loss year shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess (if any) of the amount of such loss over the sum of the offsets (as defined in subsection (d)) for each of the prior taxable years to which such loss may be carried.

(c) *Computation of loss from operations.* In computing the loss from operations for purposes of this section—

(1) The operations loss deduction shall not be allowed.

(2) The deductions allowed by sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) as modified by section 809(d) (8) (B).

(d) *Offset defined*—(1) *In general.* For purposes of subsection (b) (2), the term "offset" means, with respect to any taxable year, an amount equal to that increase in the operations loss deduction for the taxable year which reduces the life insurance company taxable income (computed without regard to section 802(b) (3)) for such year to zero.

(2) *Operations loss deduction.* For purposes of paragraph (1), the operations loss deduction for any taxable year shall be computed without regard to the loss from operations for the loss year or for any taxable year thereafter.

(e) *Rules relating to new companies*—

(1) *New company defined.* For purposes of this part, a life insurance company is a new company for any taxable year only if such taxable year begins not more than 5 years after the first day on which it (or any predecessor, if section 381(c) (22) applies or would have applied if in effect) was au-

thorized to do business as an insurance company.

(2) *Limitations on 8-year carryover*—(A) *In general.* For purposes of subsection (b) (1) (A) (iii), a life insurance company shall not be treated as a new company for any loss year if at any time during such year it was a nonqualified corporation. If, at any time during any taxable year after the loss year, the life insurance company is a nonqualified corporation, subsection (b) (1) (A) (iii) shall cease to apply with respect to such loss for such taxable year and all subsequent taxable years.

(B) *Nonqualified corporation defined.* For purposes of subparagraph (A), the term "nonqualified corporation" means any corporation connected through stock ownership with any other corporation, if either of such corporations possesses at least 50 percent of the voting power of all classes of stock of the other such corporation. For purposes of subparagraph (A), a corporation shall be treated as becoming a nonqualified corporation at any time at which it becomes a party to a reorganization (other than a reorganization which is not described in any subparagraph of section 368(a) (1) other than subparagraphs (E) and (F) thereof.

(f) *Application of subtitle A and subtitle F.* Except as provided in section 809(e), subtitle A and subtitle F shall apply in respect of operations loss carrybacks, operations loss carryovers, and the operations loss deduction under this part in the same manner and to the same extent as such subtitles apply in respect of net operating loss carrybacks, net operating loss carryovers, and the net operating loss deduction.

[Sec. 812 as added by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 45); amended by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 127)]

§ 1.812-1 Taxable years affected.

Sections 1.812-2 through 1.812-8, except as otherwise provided therein, are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.812-2 Operations loss deduction.

(a) *Allowance of deduction.* Section 812 provides that a life insurance company shall be allowed a deduction in computing gain or loss from operations for any taxable year beginning after December 31, 1957, in an amount equal to the aggregate of the operations loss carryovers and operations loss carrybacks to such taxable year. This deduction is referred to as the operations loss deduction. The loss from operations (computed under section 809); is the basis for the computation of the operations loss carryovers and operations loss carrybacks and ultimately for the operations loss deduction itself. Section 809(e) (5) provides that the net operating loss deduction provided in section 172 shall not be allowed a life insurance company since the operations loss deduction provided in section 812 and this paragraph shall be allowed in lieu thereof.

(b) *Steps in computation of operations loss deduction.* The three steps to be taken in the ascertainment of the operations loss deduction for any taxable year beginning after December 31, 1957, are as follows:

(1) Compute the loss from operations for any preceding or succeeding taxable year from which a loss from operations may be carried over or carried back to such taxable year.

(2) Compute the operations loss carryovers to such taxable year from such preceding taxable years and the operations loss carrybacks to such taxable year from such succeeding taxable years.

(3) Add such operations loss carryovers and carrybacks in order to determine the operations loss deduction for such taxable year.

(c) *Statement with tax return.* Every life insurance company claiming an operations loss deduction for any taxable year shall file with its return for such year a concise statement setting forth the amount of the operations loss deduction claimed and all material and pertinent facts relative thereto, including a detailed schedule showing the computation of the operations loss deduction.

(d) *Ascertainment of deduction dependent upon operations loss carryback.* If a life insurance company is entitled in computing its operations loss deduction to a carryback which it is not able to ascertain at the time its return is due, it shall compute the operations loss deduction on its return without regard to such operations loss carryback. When the life insurance company ascertains the operations loss carryback, it may within the applicable period of limitations file a claim for credit or refund of the overpayment, if any, resulting from the failure to compute the operations loss deduction for the taxable year with the inclusion of such carryback; or it may file an application under the provisions of section 6411 for a tentative carryback adjustment.

(e) *Law applicable to computations.* The following rules shall apply to all taxable years beginning after December 31, 1957—

(1) In determining the amount of any operations loss carryback or carryover to any taxable year, the necessary computations involving any other taxable year shall be made under the law applicable to such other taxable year.

(2) The loss from operations for any taxable year shall be determined under the law applicable to that year without regard to the year to which it is to be carried and in which, in effect, it is to be deducted as part of the operations loss deduction.

(3) The amount of the operations loss deduction which shall be allowed for any taxable year shall be determined under the law applicable for that year.

(f) *Special rules.* For purposes of taxable years beginning after December 31, 1954, and before January 1, 1958—

(1) The amount of any:

- (i) Loss from operations;
- (ii) Operations loss carryback; and
- (iii) Operations loss carryover.

shall be computed as of part I, subchapter L, chapter 1 of the Code (as in effect for 1958) and section 381(c) (22) applied to such taxable years.

(2) A loss from operations (determined in accordance with the provisions of section 812(b) (1) (C) and this para-

graph) for such taxable years shall in no way affect the tax liability of any life insurance company for such taxable years. However, such loss may, to the extent allowed as an operations loss carryover under section 812, affect the tax liability of a life insurance company for a taxable year beginning after December 31, 1957. For example, for the taxable year 1956, X, a life insurance company, has a loss from operations (determined in accordance with the provisions of section 812(b) (1) (C) and this paragraph). Such loss shall in no way affect X's tax liability for the taxable years 1956 (the year of the loss), 1955 (a year to which such loss shall be carried back), or 1957 (a year to which such loss shall be carried forward). However, to the extent allowed under section 812, any amount of the loss for 1956 remaining after such carryback and carryforward shall be taken into account in determining X's tax liability for taxable years beginning after December 31, 1957.

§ 1.812-3 Computation of loss from operations.

(a) *Modification of deductions.* A loss from operations is sustained by a life insurance company in any taxable year, if and to the extent that, for such year, there is an excess of the sum of the deductions provided by section 809(d) over the sum of (1) the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) as determined under section 809(b) (3), and (2) the sum of the items of gross amount taken into account under section 809(c). In determining the loss from operations for purposes of section 812—

(i) No deduction shall be allowed under section 812 for the operations loss deduction.

(ii) The 85 percent limitation on dividends received provided by section 246 (b) as modified by section 809(d) (8) (B) shall not apply to the deductions otherwise allowed under—

(a) Section 243(a) in respect of dividends received by corporations,

(b) Section 244 in respect of dividends received on certain preferred stock of public utilities, and

(c) Section 245 in respect of dividends received from certain foreign corporations.

(b) *Illustration of principles.* The application of paragraph (a) of this section may be illustrated by the following example:

Example. For the taxable year 1960, X, a life insurance company, has items taken into account under section 809(c) amounting to \$150,000, its share of the investment yield amounts to \$250,000, and total deductions allowed by section 809(d) of \$375,000, exclusive of any operations loss deduction and exclusive of any deduction for dividends received. In 1960, X received as its share of dividends entitled to the benefits of section 243(a) the amount of \$100,000. These dividends are included in X's share of the investment yield. X has no other deductions to which section 812(c) applies. On the basis of these facts, X has a loss from operations

for the taxable year 1960 of \$60,000, computed as follows:

Deductions for 1960	\$375,000
Plus: Deduction for dividends received computed without regard to the limitation provided by sec. 246(b), as modified by sec. 809(d)(8)(B) (85% of \$100,000)	85,000
Total deductions as modified by sec. 812(c)	460,000
Less: Sum of sec. 809(c) items and X's share of investment yield (including \$100,000 of dividends)	400,000
Loss from operations for 1960	(60,000)

§ 1.812-4 Operations loss carrybacks and operations loss carryovers.

(a) *In general*—(1) *Years to which loss may be carried.* In order to compute the operations loss deduction of a life insurance company the company must first determine the part of any losses from operations for any preceding or succeeding taxable years which are carryovers or carrybacks to the taxable year in issue. Except as otherwise provided by this paragraph, a loss from operations for taxable years beginning after December 31, 1954, shall be carried back to each of the 3 taxable years preceding the loss year and shall be carried forward to each of the 5 taxable years succeeding the loss year. Except as limited by section 812(e)(2) and paragraph (b) of § 1.812-6, if the life insurance company is a new company (as defined in section 812(e)(1)) for the loss year, the loss from operations shall be carried back to each of the 3 taxable years preceding the loss year and shall be carried forward to each of the 8 taxable years succeeding the loss year. In determining the span of years for which a loss from operations may be carried, taxable years in which a company does not qualify as a life insurance company (as defined in section 801(a)), or is not treated as a new company, shall be taken into account.

(2) *Special transitional rules.* (i) A loss from operations for any taxable year beginning before January 1, 1958, shall not be carried back to any taxable year beginning before January 1, 1955. Furthermore, a loss from operations for any taxable year beginning after December 31, 1957, shall not be carried back to any taxable year beginning before January 1, 1958.

(ii) If for any taxable year a life insurance company has made an election under section 810(e) (relating to certain decreases in reserves for voluntary employees' beneficiary associations) which is effective for such taxable year, the provisions of section 812(b)(1) and subparagraph (1) of this paragraph shall not apply with respect to any loss from operations for any taxable year beginning before January 1, 1958.

(3) *Illustration of principles.* The provisions of section 812(b)(1) and of this paragraph may be illustrated by the following examples:

Example (1). P, a life insurance company, organized in 1940, has a loss from operations of \$1,000 in 1958. This loss cannot be car-

ried back, but shall be carried forward to each of the 5 taxable years following 1958.

Example (2). Q, a life insurance company, organized in 1940, has a loss from operations of \$1,200 in 1959. This loss shall be carried back to the taxable year 1958 and then shall be carried forward to each of the 5 taxable years following 1959.

Example (3). R, a life insurance company, organized in 1940, has a loss from operations of \$1,300 for the taxable year 1956. This loss shall first be carried back to the taxable year 1955 and then shall be carried forward to each of the 5 taxable years following 1956. The loss for 1956, carryback to 1955, and carryover to 1957 shall each be computed as if part I, subchapter L, chapter 1 of the Code (as in effect for 1958) applied to such taxable years.

Example (4). S, a life insurance company, organized in 1958 and meeting the provisions of section 812(e) (rules relating to new companies), has a loss from operations of \$1,400 for the taxable year 1958. This loss cannot be carried back, but shall be carried forward to each of the 8 taxable years following 1958, provided, however, S is not a nonqualified corporation at any time during the loss year (1958) or any taxable year thereafter.

Example (5). T, a life insurance company, organized in 1954 and meeting the provisions of section 812(e) (rules relating to new companies), has a loss from operations of \$1,500 for the taxable year 1956. This loss shall first be carried back to the taxable year 1955 and then carried forward to each of the 8 taxable years following 1956, provided, however, T is not a nonqualified corporation at any time during the loss year (1956) or any taxable year thereafter. The loss for 1956, carryback to 1955, and carryover to 1957 shall each be computed as if part I of subchapter L (as in effect for 1958) applied to such taxable years.

(4) *Periods of less than 12 months.* A fractional part of a year which is a taxable year under sections 441(b) and 7701(a)(23) is a preceding or a succeeding taxable year for the purpose of determining under section 812 the first, second, etc., preceding or succeeding taxable year. For the determination of the loss from operations for periods of less than 12 months, see section 818(d) and the regulations thereunder.

(5) *Amount of loss to be carried.* The amount which is carried back or carried over to any taxable year is the loss from operations to the extent it was not absorbed in the computation of gain from operations for other taxable years, preceding such taxable year, to which it may be carried back or carried over. For the purpose of determining the gain from operations for any such preceding taxable year, the various operations loss carryovers and carrybacks to such taxable year are considered to be applied in reduction of the gain from operations in the order of the taxable years from which such losses are carried over or carried back, beginning with the loss for the earliest taxable year.

(6) *Corporate acquisitions.* For the computation of the operations loss carryovers in the case of certain acquisitions of the assets of a life insurance company by another life insurance company, see section 381(c)(22) and the regulations thereunder.

(b) *Portion of loss from operations which is a carryback or a carryover to the taxable year in issue*—(1) *Manner of computation.* (i) A loss from operations shall first be carried back to the earliest

taxable year permissible under section 812(b) and paragraph (a) of this section for which such loss is allowable as a carryback or a carryover. The entire amount of the loss from operations shall be carried back to such earliest year.

(ii) Section 812(b)(2) provides that the portion of the loss from operations which shall be carried to each of the taxable years subsequent to the earliest taxable year shall be the excess (if any) of the amount of the loss from operations over the sum of the offsets (as defined in section 812(d) and paragraph (a) of § 1.812-5) for all prior taxable years to which the loss from operations may be carried.

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

Example. T, a life insurance company (which is not a new company as defined in section 812(e)(1)), has a loss from operations for 1960. The entire amount of the loss from operations for 1960 shall first be carried back to 1958. The amount of the carryback to 1959 is the excess (if any) of the 1960 loss over the offset for 1958. The amount of the carryover to 1961 is the excess (if any) of the 1960 loss over the sum of the offsets for 1958 and 1959. The amount of the 1960 loss remaining (if any) to be carried over to 1962, 1963, or 1964 shall be computed in a like manner.

§ 1.812-5 Offset.

(a) *Offset defined.* Section 812(d) defines the term "offset" for purposes of section 812(b)(2) and paragraph (b)(1)(ii) of § 1.812-4. For any taxable year the offset is only that portion of the increase in the operations loss deduction for the taxable year which is necessary to reduce the life insurance company taxable income (computed without regard to section 802(b)(3)) for such year to zero. For purposes of the preceding sentence, the offset shall be determined with the modifications prescribed in paragraph (b) of this section. Such modifications shall be made independently of, and without reference to, the modifications required by paragraph (a) of § 1.812-3 for purposes of computing the loss from operations itself.

(b) *Modifications*—(1) *Operations loss deduction*—(i) *In general.* Section 812(d)(2) provides that for purposes of section 812(d)(1) (relating to the definition of offset), the operations loss deduction for any taxable year shall be computed by taking into account only such losses from operations otherwise allowable as carryovers or as carrybacks to such taxable year as were sustained in taxable years preceding the taxable year in which the life insurance company sustained the loss from operations from which the offset is to be deducted. Thus, for such purposes the loss from operations for the loss year or for any taxable year thereafter shall not be taken into account.

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

Example. In computing the operations loss deduction for 1960, Y, a life insurance company, has a carryover from 1958 of \$9,000, a carryover from 1959 of \$6,000, a carryback from 1961 of \$18,000, and a carryback from 1962 of \$10,000, or an aggregate of \$43,000

in carryovers and carrybacks. Thus, the operations loss deduction for 1960, for purposes of determining the tax liability for 1960, is \$43,000. However, in computing the offset for 1960 which is subtracted from the loss from operations for 1961 for the purpose of determining the portion of such loss which may be carried over to subsequent taxable years, the operations loss deduction for 1960 is \$15,000, that is, the aggregate of the \$9,000 carryover from 1958 and the \$6,000 carryover from 1959. In computing the operations loss deduction for such purpose, the \$18,000 carryback from 1961 and the \$10,000 carryback from 1962 are disregarded. In computing the offset for 1960, however, which is subtracted from the loss from operations for 1962 for the purpose of determining the portion of such 1962 loss which may be carried over for subsequent taxable years, the operations loss deduction for 1960 is \$33,000, that is, the aggregate of the \$9,000 carryover from 1958, the \$6,000 carryover from 1959, and the \$18,000 carryback from 1961. In computing the operations loss deduction for such purpose, the \$10,000 carryback from 1962 is disregarded.

(2) *Recomputation of deductions limited by section 809(f)*—(i) *In general.* If in any taxable year a life insurance company has deductions under section 809(d) (3), (5), and (6), as limited by section 809(f), and sustains a loss from operations in a succeeding taxable year which may be carried back as an operations loss deduction, such limitation and deductions shall be recomputed. This recomputation is required since the carryback must be taken into account for purposes of determining such limitation and deductions.

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

Example. The books of P, a life insurance company, reveal the following facts:

Taxable year	Taxable investment income	Gain from operations	Loss from operations
1959	\$11,000,000	\$10,000,000	
1960			(\$9,800,000)

The gain from operations thus shown is computed without regard to any operations loss deduction or deductions under section 809(d) (3), (5), and (6), as limited by section 809(f). Assume that for the taxable year 1959, P has (without regard to the limitation of section 809(f) or the operations loss deduction for 1959) a deduction under section 809(d) (3) of \$2,500,000 for dividends to policyholders and no deductions under section 809(d) (5) or (6).

(a) *Determination of section 809(f) limitation and deduction for dividends to policyholders without regard to the operations loss deduction for 1959.* In order to determine gain or loss from operations for 1959, P must determine the deduction for dividends to policyholders for such year. Under the provisions of section 809(f), the amount of such deduction shall not exceed the sum of (1) the amount (if any) by which the gain from operations for such year (determined without regard to such deduction) exceeds P's taxable investment income for such year, plus (2) \$250,000. Since the gain from operations as thus determined (\$10,000,000) exceeds the taxable investment income

(\$9,000,000) by \$1,000,000, the limitation on such deduction is \$1,250,000 (\$1,000,000 plus \$250,000). Accordingly, only \$1,250,000 of the \$2,500,000 deduction for dividends to policyholders shall be allowed. The gain from operations for such year is \$8,750,000 (\$10,000,000 minus \$1,250,000).

(b) *Recomputation of section 809(f) limitation and deduction for dividends to policyholders after application of the operations loss deduction for 1959.* Since P has sustained a loss from operations for 1960 which shall be carried back to 1959 as an operations loss deduction, it must recompute the section 809(f) limitation and deduction for dividends to policyholders. Taking into account the \$9,800,000 operations loss deduction for 1959 reduces gain from operations for such year to \$200,000 (\$10,000,000 minus \$9,800,000). Since the gain from operations as thus determined (\$200,000) is less than the taxable investment income (\$9,000,000), the limitation on the deduction for dividends to policyholders is \$250,000. Thus, only \$250,000 of the \$2,500,000 deduction for dividends to policyholders shall be allowed. The gain from operations for such year as thus determined is \$9,750,000 (\$10,000,000 minus \$250,000) since for purposes of this determination the operations loss deduction for 1959 is \$9,750,000 (the increase in the operations loss deduction for 1959, computed without regard to the carryback for 1960, which reduces life insurance company taxable income for 1959 to zero); thus, the portion of the 1960 loss from operations which shall be carried forward to 1961 is \$50,000 (the excess of the 1960 loss (\$9,800,000) over the offset for 1959 (\$9,750,000)).

(3) *Minimum limitation.* The life insurance company taxable income, as modified under this paragraph, shall in no case be considered less than zero.

§ 1.812-6 Rules relating to new companies.

(a) *New company defined.* Section 812(e) (1) provides that for purposes of part I, subchapter L, chapter 1 of the Code, a life insurance company is a "new company" for any taxable year only if such taxable year begins not more than 5 years after the first day on which it (or any predecessor, if section 381(c) (22) applies or would have applied if in effect) was authorized to do business as an insurance company.

(b) *Limitations on 8-year carryover.*

(1) Section 812(e) (2) (A) provides that for purposes of section 812(b) (1) (A) (iii) (relating to an 8-year carryover of losses for new companies), a life insurance company shall not be treated as a new company for any loss year if at any time during such loss year it was a nonqualified corporation (as defined in subparagraph (2) of this paragraph). Furthermore, if at any time during any taxable year after the loss year the life insurance company is a non-qualified corporation, section 812(b) (1) (A) (iii) shall cease to apply to (i) such loss for the taxable year of the nonqualification, and (ii) all subsequent taxable years.

(2) Section 812(e) (2) (B) defines the term "nonqualified corporation" for purposes of section 812(e) (2) (A) as any corporation connected through stock ownership with any other corporation where either of such corporations possesses at least 50 percent of the total combined voting power of all classes of stock entitled to vote of the other corporation. For such purpose, a corporation shall be treated as becoming a nonqualified corporation at any time it becomes a party to a reorganization other than a reorganization described in section 368(a) (1) (E) or (F).

(c) *Illustration of principles.* The provisions of section 812(e) and this section may be illustrated by the following examples:

Example (1). R, a life insurance company, organized on January 1, 1958, and qualifying as a new company, had a loss from operations for the taxable year 1958. Regardless of what events take place in future taxable years, R is a new company for any taxable year beginning not more than 5 years after January 1, 1958. The loss for 1958 may be carried forward to each of the 8 taxable years following 1958, provided, however, R is not a nonqualified corporation at any time during the loss year (1958) or any taxable year thereafter.

Example (2). The facts are the same as in example (1), except that from March 10, 1958 through August 1, 1958, R was a non-qualified corporation. R is still a new company for the taxable year 1958 but shall not be treated as such since it was a nonqualified corporation at some time during such taxable year. Accordingly, the loss for 1958 shall be carried forward to each of the 5 taxable years following 1958, but shall not be carried forward to any of the 3 taxable years following such 5 taxable years.

Example (3). S, a life insurance company organized in 1958, and qualifying as a new company, had a loss from operations for the taxable year 1958. In 1960, S was a non-qualified corporation. Since S was a non-qualified corporation during a taxable year (1960) after the loss year (1958), the loss for 1958 shall be carried forward to each of the 5 taxable years following 1958, but shall not be carried forward to any of the 3 taxable years following such 5 taxable years. In determining the 5 taxable years to which the loss for 1958 may be carried, the taxable year during which S was a nonqualified corporation (1960) shall be taken into account.

Example (4). The facts are the same as in example (3), except that in 1961 S was no longer a nonqualified corporation. With respect to the loss for 1958, the results are the same as in example (3).

Example (5). The facts are the same as in example (4), except that in 1962 S had a loss from operations. With respect to the loss for 1958, the results are the same as in example (4). With respect to the loss for 1962, such loss may be carried forward to each of the 8 taxable years following 1962, provided, however, S is not a nonqualified corporation at any time during the loss year (1962) or any taxable year thereafter.

Example (6). T, a life insurance company, organized on January 1, 1958, and qualifying as a new company, had a loss from operations for the taxable years 1959 and 1964. With respect to the loss for 1959, such loss may be carried forward to each of the 8 taxable years following 1959, provided, however, T is not a nonqualified corporation at any time during the loss year (1959) or any taxable year thereafter. With respect to the loss for 1964, such loss may be carried forward to each of the 5 taxable years following 1964, but not to any of the 3 taxable years following such 5 taxable years since the loss

for 1964 was sustained in a taxable year beginning more than 5 taxable years after the first day (January 1, 1958) on which T was authorized to do business as an insurance company.

Example (7). U, a life insurance company, organized in 1958, and qualifying as a new company, had a loss from operations for the taxable year 1958. In 1965, U was a non-qualified corporation. The loss for 1958 shall be carried forward to each of the 6 taxable years following 1958 (1959, 1960, 1961, 1962, 1963, and 1964), but shall not be carried forward to any of the 2 taxable years following such 6 taxable years (1965 and 1966).

§ 1.812-7 Application of subtitle A and subtitle F.

Section 812(f) provides that except as modified by section 809(e) (relating to modifications of deduction items otherwise allowable under subtitle A of the Code) subtitles A and F of the Code shall apply to operations loss carrybacks and carryovers, and to the operations loss deduction, in the same manner and to the same extent that such subtitles apply in respect of net operation loss carrybacks, net operating loss carryovers, and the net operating loss deduction of corporations generally. For the computation of the operations loss carrybacks and carryovers, and of the operations loss deduction in the case of certain acquisitions of the assets of a life insurance company by another life insurance company, see section 381(c)(22) and the regulations thereunder.

§ 1.812-8 Illustration of operations loss carrybacks and carryovers.

The application of § 1.812-4 may be illustrated by the following example:

(a) *Facts.* The books of M, a life insurance company, organized in 1940, reveal the following facts:

Taxable year	Taxable investment income	Gain from operations	Loss from operations
1958	\$11,000	\$15,000	
1959	23,000	30,000	
1960			(\$75,000)
1961	25,000	20,000	
1962			(150,000)
1963	22,000	30,000	
1964	40,000	35,000	
1965	62,000	75,000	
1966	25,000	17,000	
1967	39,000	53,000	

The gain from operations thus shown is computed without regard to any operations loss deduction. The assumption is also made that none of the other modifications prescribed in paragraph (b) of § 1.812-5 apply. There are no losses from operations for 1955, 1956, 1957, 1968, 1969, 1970.

(b) *Loss sustained in 1960.* The portions of the \$75,000 loss from operations for 1960 which shall be used as carrybacks to 1958 and 1959 and as carryovers to 1961, 1962, 1963, 1964, and 1965 are computed as follows:

(1) *Carryback to 1958.* The carryback to this year is \$75,000, that is, the amount of the loss from operations.

(2) *Carryback to 1959.* The carryback to this year is \$60,000 (the excess of the loss for 1960 over the offset for 1958), computed as follows:

Loss from operations	\$75,000
Less:	
Offset for 1958 (the \$15,000 gain from operations for such year computed without the deduction of the carryback from 1960)	15,000
Carryback	60,000

(3) *Carryover to 1961.* The carryover to this year is \$30,000 (the excess, if any, of the loss for 1960 over the sum of the offsets for 1958 and 1959), computed as follows:

Loss from operations	\$75,000
Less:	
Offset for 1958 (the \$15,000 gain from operations for such year computed without the deduction of the carryback from 1960)	\$15,000
Offset for 1959 (the \$30,000 gain from operations for such year computed without the deduction of the carryback from 1960 or the carryback from 1962)	30,000
Sum of offsets	45,000
Carryover	30,000

(4) *Carryover to 1962.* The carryover to this year is \$10,000 (the excess, if any, of the loss for 1960 over the sum of the offsets for 1958, 1959, and 1961), computed as follows:

Loss from operations	\$75,000
Less:	
Offset for 1958 (the \$15,000 gain from operations for such year computed without the deduction of the carryback from 1960)	\$15,000
Offset for 1959 (the \$30,000 gain from operations for such year computed without the deduction of the carryback from 1960 or the carryback from 1962)	30,000
Offset for 1961 (the \$20,000 gain from operations for such year computed without the deduction of the carryover from 1960 or the carryback from 1962)	20,000
Sum of offsets	65,000
Carryover	10,000

(5) *Carryover to 1963.* The carryover to this year is \$10,000 (the excess, if any, of the loss for 1960 over the sum of the offsets for 1958, 1959, 1961, and 1962), completed as follows:

Loss from operations	\$75,000
Less:	
Offset for 1958 (the \$15,000 gain from operations for such year computed without the deduction of the carryback from 1960)	\$15,000
Offset for 1959 (the \$30,000 gain from operations for such year computed without the deduction of the carryback from 1960 or the carryback from 1962)	30,000

Offset for 1961 (the \$20,000 gain from operations for such year computed without the deduction of the carryover from 1960 or the carryback from 1962)	\$20,000
Offset for 1962 (a year in which a loss from operations was sustained)	0
Sum of offsets	\$65,000
Carryover	10,000

(6) *Carryover to 1964.* The carryover to this year is \$0 (the excess, if any, of the loss from 1960 over the sum of the offsets for 1958, 1959, 1961, 1962, and 1963), computed as follows:

Loss from operations	\$75,000
Less:	
Offset for 1958 (the \$15,000 gain from operations for such year computed without the deduction of the carryback from 1960)	\$15,000
Offset for 1959 (the \$30,000 gain from operations for such year computed without the deduction of the carryback from 1960 or the carryback from 1962)	30,000
Offset for 1961 (the \$20,000 gain from operations for such year computed without the deduction of the carryover from 1960 or the carryback from 1962)	20,000
Offset for 1962 (a year in which a loss from operations was sustained)	0
Offset for 1963 (the \$30,000 gain from operations for such year computed without the deduction of the carryover from 1960 or the carryover from 1962)	30,000
Sum of offsets	95,000
Carryover	0

(7) *Carryover to 1965.* The carryover to this year is \$0 (the excess, if any, of the loss from 1960 over the sum of the offsets for 1958, 1959, 1961, 1962, 1963, and 1964), computed as follows:

Loss from operations	\$75,000
Less:	
Offset for 1958 (the \$15,000 gain from operations for such year computed without the deduction of the carryback from 1960)	\$15,000
Offset for 1959 (the \$30,000 gain from operations for such year computed without the deduction of the carryback from 1960 or the carryback from 1962)	30,000
Offset for 1961 (the \$20,000 gain from operations for such year computed without the deduction of the carryover from 1960 or the carryback from 1962)	20,000
Offset for 1962 (a year in which a loss from operations was sustained)	0

Offset for 1963 (the \$30,000 gain from operations for such year computed without the deduction for the carryover from 1960 or the carryover from 1962) -- \$30,000
 Offset for 1964 (the \$35,000 gain from operations for such year computed without the deduction of the carryover from 1960 or the carryover from 1962) -- 35,000

Sum of offsets ----- \$130,000
 Carryover ----- 0

(c) *Loss sustained in 1962.* The portions of the \$150,000 loss from operations for 1962 which shall be used as carrybacks to 1959, 1960, and 1961 and as carryovers to 1963, 1964, 1965, 1966, and 1967 are computed as follows:

(1) *Carryback to 1959.* The carryback to this year is \$150,000, that is, the amount of the loss from operations.

(2) *Carryback to 1960.* The carryback to this year is \$150,000 (the excess, if any, of the loss from 1962 over the offset for 1959), computed as follows:

Loss from operations ----- \$150,000
 Less:
 Offset for 1959 (the \$30,000 gain from operations for such year reduced by the carryback to such year of \$60,000 from 1960, the carryback from 1962 to 1959 not being taken into account) ----- 0
 Carryback ----- 150,000

(3) *Carryback to 1961.* The carryback to this year is \$150,000 (the excess if any, of the loss from 1962 over the sum of the offsets for 1959 and 1960), computed as follows:

Loss from operations ----- \$150,000
 Less:
 Offset for 1959 (the \$30,000 gain from operations for such year reduced by the carryback to such year of \$60,000 from 1960, the carryback from 1962 to 1959 not being taken into account) ----- \$0
 Offset for 1960 (a year in which a loss from operations was sustained) ----- 0
 Sum of offsets ----- 0
 Carryback ----- 150,000

(4) *Carryover to 1963.* The carryover to this year is \$150,000 (the excess, if any, of the loss from 1962 over the sum of the offsets for 1959, 1960, and 1961), computed as follows:

Loss from operations ----- \$150,000
 Less:
 Offset for 1959 (the \$30,000 gain from operations for such year reduced by the carryback to such year of \$60,000 from 1960, the carryback from 1962 to 1959 not being taken into account) ----- \$0
 Offset for 1960 (a year in which a loss from operations was sustained) ----- 0
 Offset for 1961 the (\$20,000 gain from operations for such year reduced by the carryover to such year of

\$30,000 from 1960, the carryback from 1962 to 1961 not being taken into account) ----- \$0
 Sum of offsets ----- \$0
 Carryover ----- 150,000

(5) *Carryover to 1964.* The carryover to this year is \$130,000 (the excess, if any, of the loss from 1962 over the sum of the offsets for 1959, 1960, 1961, and 1963), computed as follows:

Loss from operations ----- \$150,000
 Less:
 Offset for 1959 (the \$30,000 gain from operations for such year reduced by the carryback to such year of \$60,000 from 1960, the carryback from 1962 to 1959 not being taken into account) ----- \$0
 Offset for 1960 (a year in which a loss from operations was sustained) ----- 0
 Offset for 1961 (the \$20,000 gain from operations for such year reduced by the carryover to such year of \$30,000 from 1960, the carryback from 1962 to 1961 not being taken into account) ----- 0
 Offset for 1963 (the \$30,000 gain from operations for such year reduced by the carryover to such year of \$10,000 from 1960, the carryover from 1962 to 1963 not being taken into account) ----- 20,000
 Sum of offsets ----- 20,000
 Carryover ----- 130,000

(6) *Carryover to 1965.* The carryover to this year is \$95,000 (the excess, if any, of the loss from 1962 over the sum of the offsets for 1959, 1960, 1961, 1963, and 1964), computed as follows:

Loss from operations ----- \$150,000
 Less:
 Offset for 1959 (the \$30,000 gain from operations for such year reduced by the carryback to such year of \$60,000 from 1960, the carryback from 1962 to 1959 not being taken into account) ----- \$0
 Offset for 1960 (a year in which a loss from operations was sustained) ----- 0
 Offset for 1961 (the \$20,000 gain from operations for such year reduced by the carryover to such year of \$30,000 from 1960, the carryback from 1962 to 1961 not being taken into account) ----- 0
 Offset for 1963 (the \$30,000 gain from operations for such year reduced by the carryover to such year of \$10,000 from 1960, the carryover from 1962 to 1963 not being taken into account) ----- 20,000

Offset for 1964 (the \$35,000 gain from operations for such year reduced by the carryover to such year of \$0 from 1960, the carryover from 1962 to 1964 not being taken into account) ----- \$35,000
 Sum of offsets ----- \$55,000
 Carryover ----- 95,000

(7) *Carryover to 1966.* The carryover to this year is \$20,000 (the excess, if any, of the loss from 1962 over the sum of the offsets for 1959, 1960, 1961, 1963, 1964, and 1965), computed as follows:

Loss from operations ----- \$150,000
 Less:
 Offset for 1959 (the \$30,000 gain from operations for such year reduced by the carryback to such year of \$60,000 from 1960, the carryback from 1962 to 1959 not being taken into account) ----- \$0
 Offset for 1960 (a year in which a loss from operations was sustained) ----- 0
 Offset for 1961 (the \$20,000 gain from operations for such year reduced by the carryover to such year of \$30,000 from 1960, the carryback from 1962 to 1961 not being taken into account) ----- 0
 Offset for 1963 (the \$30,000 gain from operations for such year reduced by the carryover from 1962 to 1963 not being taken into account) ----- 20,000
 Offset for 1964 (the \$35,000 gain from operations for such year reduced by the carryover to such year of \$0 from 1960, the carryover from 1962 to 1964 not being taken into account) ----- 35,000
 Offset for 1965 (the \$75,000 gain from operations for such year reduced by the carryover to such year of \$0 from 1960, the carryover from 1962 to 1965 not being taken into account) ----- 75,000
 Sum of offsets ----- 130,000
 Carryover ----- 20,000

(8) *Carryover to 1967.* The carryover to this year is \$3,000 (the excess, if any, of the loss from 1962 over the sum of the offsets for 1959, 1960, 1961, 1963, 1964, 1965, and 1966), computed as follows:

Loss from operations ----- \$150,000
 Less:
 Offset for 1959 (the \$30,000 gain from operations for such year reduced by the carryback to such year of \$60,000 from 1960, the carryback from 1962 to 1959 not being taken into account) ----- \$0

Offset for 1960 (a year in which a loss from operations was sustained)-----	\$0
Offset for 1961 (the \$20,000 gain from operations for such year reduced by the carryover to such year of \$30,000 from 1960, the carryback from 1962 to 1961 not being taken into account)-----	
Offset for 1963 (the \$30,000 gain from operations for such year reduced by the carryover to such year of \$10,000 from 1960, the carryover from 1962 to 1963 not being taken into account)-----	20,000
Offset for 1964 (the \$35,000 gain from operations for such year reduced by the carryover to such year of \$0 from 1960, the carryover from 1962 to 1964 not being taken into account)-----	35,000
Offset for 1965 (the \$75,000 gain from operations for such year reduced by the carryover to such year of \$0 from 1960, the carryover from 1962 to 1965 not being taken into account)-----	75,000
Offset for 1966 (the \$17,000 gain from operations for such year computed without the deduction of the carryover from 1962)-----	17,000
Sum of offsets-----	\$147,000
Carryover-----	3,000

(d) *Determination of operations loss deduction for each year.* The carryovers and carrybacks computed under paragraphs (b) and (c) of this section are used as a basis for the computation of the operations loss deduction in the following manner:

Taxable year	Carryover		Carryback		Operations loss deductions
	From 1960	From 1962	From 1960	From 1962	
1958			\$75,000		\$75,000
1959			60,000	\$150,000	210,000
1961	\$30,000			150,000	180,000
1963	10,000	\$150,000			160,000
1964		130,000			130,000
1965		95,000			95,000
1966		20,000			20,000
1967		3,000			3,000

§ 1.813 Statutory provisions; life insurance companies; adjustment for certain reserves.

SEC. 813. *Adjustment for certain reserves.* In the case of a life insurance company writing contracts other than life insurance, annuity, and noncancellable health and accident insurance contracts (including life insurance or annuity contracts combined with noncancellable health and accident insurance), the term "adjustment for certain reserves" means, for purposes of this subpart, an amount equal to 3¼ percent of the unearned premiums and unpaid losses on such other contracts which are not included in life insurance reserves (as defined in section 801(b)). For purposes of this section, such unearned premiums shall not be considered

to be less than 25 percent of the net premiums written during the taxable year on such other contracts.

[Sec. 813 as added by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 46)]

DISTRIBUTIONS TO SHAREHOLDERS

§ 1.815 Statutory provisions; life insurance companies; distributions to shareholders.

SEC. 815. *Distributions to shareholders—*
(a) *General rule.* For purposes of this section and section 802(b)(3), any distribution to shareholders after December 31, 1958, shall be treated as made—

- (1) First out of the shareholders surplus account, to the extent thereof,
- (2) Then out of the policyholders surplus account, to the extent thereof, and
- (3) Finally out of other accounts.

For purposes of this section, the term "distribution" includes any distribution in redemption of stock or in partial or complete liquidation of the corporation, but does not include any distribution made by the corporation in its stock or in rights to acquire its stock, and does not (except for purposes of paragraph (3) and subsection (e)(2)(B)) include any distribution in redemption of stock issued before 1958 which at all times on and after the date of issuance and on and before the date of redemption is limited as to dividends and is callable, at the option of the issuer, at a price not in excess of 105 percent of the sum of the issue price and the amount of any contribution to surplus made by the original purchaser at the time of his purchase.

(b) *Shareholders surplus account—*(1) *In general.* Each stock life insurance company shall, for purposes of this part, establish and maintain a shareholders surplus account. The amount in such account on January 1, 1958, shall be zero.

(2) *Additions to account.* The amount added to the shareholders surplus account for any taxable year beginning after December 31, 1957, shall be the amount by which—

- (A) The sum of—
 - (i) The life insurance company taxable income (computed without regard to section 802(b)(3)),
 - (ii) In the case of a taxable year beginning after December 31, 1958, the amount (if any) by which the net long-term capital gain exceeds the net short-term capital loss,
 - (iii) The deduction for partially tax-exempt interest provided by section 242 (as modified by section 804(a)(3)), the deductions for dividends received provided by sections 243, 244, and 245 (as modified by section 809(d)(8)(B)), and the amount of interest excluded from gross income under section 103, and
 - (iv) The small business deduction provided by section 809(d)(10), exceeds
- (B) The taxes imposed for the taxable year by section 802(a), determined without regard to section 802(b)(3).

(3) *Subtractions from account—*(A) *In general.* There shall be subtracted from the shareholders surplus account for any taxable year the amount which is treated under this section as distributed out of such account.

(B) *Distributions in 1958.* There shall be subtracted from the shareholders surplus account (to the extent thereof) for any taxable year beginning in 1958 the amount of distributions to shareholders made during 1958.

(c) *Policyholders surplus account—*(1) *In general.* Each stock life insurance company shall, for purposes of this part, establish and maintain a policyholders surplus account. The amount in such account on January 1, 1959, shall be zero.

(2) *Additions to account.* The amount added to the policyholders surplus account for any taxable year beginning after December 31, 1958, shall be the sum of—

(A) An amount equal to 50 percent of the amount by which the gain from operations exceeds the taxable investment income,

(B) The deduction for certain nonparticipating contracts provided by section 809(d)(5) (as limited by section 809(f)), and

(C) The deduction for group life and group accident and health insurance contracts provided by section 809(d)(6) (as limited by section 809(f)).

(3) *Subtractions from account.* There shall be subtracted from the policyholders surplus account for any taxable year an amount equal to the sum of—

(A) The amount which (without regard to subparagraph (B)) is treated under this section as distributed out of the policyholders surplus account, and

(B) The amount (determined without regard to section 802(a)(3)) by which the tax imposed for the taxable year by section 802(a)(1) is increased by reason of section 802(b)(3).

(d) *Special rules—*(1) *Election to transfer amounts from policyholders surplus account to shareholders surplus account—*(A) *In general.* A taxpayer may elect for any taxable year for which it is a life insurance company to subtract from its policyholders surplus account any amount in such account as of the close of such taxable year. The amount so subtracted, less the amount of the tax imposed with respect to such amount by reason of section 802(b)(3), shall be added to the shareholders surplus account as of the beginning of the succeeding taxable year.

(B) *Manner and effect of election.* The election provided by subparagraph (A) shall be made (in such manner and in such form as the Secretary or his delegate may by regulations prescribe) after the close of the taxable year and not later than the time prescribed by law for filing the return (including extensions thereof) for the taxable year. Such an election, once made, may not be revoked.

(2) *Termination as life insurance company—*(A) *Effect of termination.* Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if—

(i) For any taxable year the taxpayer is not an insurance company, or

(ii) For any two successive taxable years the taxpayer is not a life insurance company, then the amount taken into account under section 802(b)(3) for the last preceding taxable year for which it was a life insurance company shall be increased (after the application of subparagraph (B)) by the amount remaining in its policyholders surplus account at the close of such last preceding taxable year.

(B) *Effect of certain distributions.* If for any taxable year the taxpayer is an insurance company but not a life insurance company, then any distribution to shareholders during such taxable year shall be treated as made on the last day of the last preceding taxable year for which the taxpayer was a life insurance company.

(3) *Treatment of certain indebtedness.* If—

(A) The taxpayer makes any payment in discharge of its indebtedness, and

(B) Such indebtedness is attributable to a distribution by the taxpayer to its shareholders after February 9, 1959,

then the amount of such payment shall, for purposes of this section and section 802(b)(3), be treated as a distribution in cash to shareholders, but only to the extent that the distribution referred to in subparagraph (B) was treated as made out of accounts other than the shareholders and policyholders surplus accounts.

(4) *Limitation on amount in policyholders surplus account.* There shall be treated as a subtraction from the policyholders surplus account for a taxable year for which the taxpayer is a life insurance company the

amount by which the policyholders surplus account (computed at the end of the taxable year without regard to this paragraph) exceeds whichever of the following is the greatest—

(A) 15 percent of life insurance reserves at the end of the taxable year,

(B) 25 percent of the amount by which the life insurance reserves at the end of the taxable year exceed the life insurance reserves at the end of 1958, or

(C) 50 percent of the net amount of the premiums and other consideration taken into account for the taxable year under section 809(c) (1).

The amount so treated as subtracted, less the amount of the tax imposed with respect to such amount by reason of section 802(b) (3), shall be added to the shareholders surplus account as of the beginning of the succeeding taxable year.

(e) *Special rule for certain mutualizations*—(1) *In general.* For purposes of this section and section 802(b) (3), any distribution to shareholders after December 31, 1958, in acquisition of stock pursuant to a plan of mutualization shall be treated—

(A) First, as made out of paid-in capital and paid-in surplus, to the extent thereof,

(B) Thereafter, as made in two allocable parts—

(i) One part of which is made out of the other accounts referred to in subsection (a) (3), and

(ii) The remainder of which is a distribution to which subsection (a) applies.

(2) *Special rules*—(A) *Allocation ratio.* The part referred to in paragraph (1) (B) (1) is the amount which bears the same ratio to the amount to which paragraph (1) (B) applies as—

(i) The excess (determined as of December 31, 1958, and adjusted to the beginning of the year of the distribution as provided in subparagraph (B)) of the assets over the total liabilities, bears to

(ii) The sum (determined as of the beginning of the year of the distribution) of the excess described in clause (i), the amount in the shareholders surplus account, plus the amount in the policyholders surplus account.

(B) *Adjustment for certain distributions.* The excess described in subparagraph (A) (1) shall be reduced by the aggregate of the prior distributions which have been treated under subsection (a) (3) as made out of accounts other than the shareholders surplus account and the policyholders surplus account.

[Sec. 815 as added by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 129)]

§ 1.815-1 Taxable years affected.

Sections 1.815-2 through 1.815-6 are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.815-2 Distributions to shareholders.

(a) *In general.* Section 815 provides that every stock life insurance company subject to the tax imposed by section 802 shall establish and maintain two special surplus accounts for Federal income tax purposes. These special accounts are the shareholders surplus account (as defined in section 815(b) and § 1.815-3) and the policyholders surplus account (as defined in section 815(c) and § 1.815-4). To the extent that a distribution to shareholders (as defined in paragraph (c) of this section) is treated as being made out of the shareholders

surplus account, no tax is imposed on the company with respect to such distribution. However, to the extent that a distribution to shareholders is treated as being made out of the policyholders surplus account, the amount subtracted from the policyholders surplus account by reason of such distribution shall be taken into account in determining life insurance company taxable income under section 802(b).

(b) *Priority system for distributions to shareholders.* (1) For purposes of section 815 (other than subsection (e) thereof relating to certain mutualizations) and section 802(b) (3) (relating to the determination of life insurance company taxable income), any distribution made to shareholders after December 31, 1958, shall be treated in the following manner:

(i) Distributions shall be treated as first being made out of the shareholders surplus account (as defined in section 815(b) and § 1.815-3);

(ii) Once the shareholders surplus account has been reduced to zero, distributions shall then be treated as being made out of the policyholders surplus account (as defined in section 815(c) and § 1.815-4) until that account has been reduced to zero; and

(iii) Finally, any distributions in excess of the amounts in the shareholders surplus account and the policyholders surplus account shall be treated as being made out of other accounts (as defined in § 1.815-5).

(2) For purposes of subparagraph (1) of this paragraph, in order to determine whether a distribution (or any portion thereof) shall be treated as being made out of the shareholders surplus account, policyholders surplus account, or other accounts, the amount in such accounts at the end of any taxable year shall be the cumulative balance in such accounts at the end of the taxable year, computed without diminution by reason of a distribution (or any portion thereof) during the taxable year which is treated as being made out of such accounts. For example, on January 1, 1960, S, a stock life insurance company, had \$1,000 in its shareholders surplus account and \$3,000 in its policyholders surplus account. On November 1, 1960, S distributed \$4,000 to its shareholders. Under the provisions of section 815(b) (2) and paragraph (b) of § 1.815-3, S added \$5,000 to its shareholders surplus account for the taxable year 1960. Since the distributions to shareholders during the taxable year 1960, \$4,000, does not exceed the cumulative balance in the shareholders surplus account at the end of the taxable year, computed without diminution by reason of distributions treated as made out of such account during the taxable year, \$6,000 (\$1,000 plus \$5,000), the entire distribution is treated as being made out of the shareholders surplus account.

(3) Except in the case of a distribution in cash and as otherwise provided herein, the amount to be charged to the special surplus accounts referred to in subparagraph (1) of this paragraph with respect to any distributions to shareholders (as defined in section 815(a) and

paragraph (c) of this section) shall be the fair market value of the property distributed, determined as of the date of distribution. However, for the amount of the adjustment to earnings and profits reflecting such distributions, see section 312 and the regulations thereunder. For a special rule relating to the determination of the amount to be charged to such special surplus accounts in the case of a distribution by a foreign life insurance company carrying on a life insurance business within the United States, see section 819(c) (1) and the regulations thereunder.

(c) *Distributions to shareholders defined.* (1) Except as provided in subparagraph (2) of this paragraph, the term "distribution," as used in section 815(a) and paragraph (b) of this section, means any distribution of property made by a life insurance company to its shareholders. For purposes of the preceding sentence, the term "property" means any property (including money, securities, and indebtedness to the company) other than stock, or rights to acquire stock, in the company making the distribution. Thus, for example, the term includes a distribution which is considered a dividend under section 316, but is not limited to the extent that such distribution must be made out of the accumulated or current earnings and profits of the company making the distribution. Similarly, there is a distribution within the meaning of this paragraph in any case in which a corporation acquires the stock of a shareholder in exchange for property in a redemption treated as a distribution in exchange for stock under section 302(a) or treated as a distribution of property under section 302(d). For special rules relating to distributions to shareholders in acquisition of stock pursuant to a plan of mutualization, see section 815(e) and paragraph (e) of § 1.815-6.

(2) The term "distribution", as used in section 815(a) and paragraph (b) of this section, does not (except for purposes of section 815(a) (3) and (e) (2) (B)) include any distribution in redemption of stock issued prior to January 1, 1958, where such stock was at all times on and after the date of its issuance and on and before the date of its redemption limited as to the amount of dividends payable and was callable, at the option of the issuer, at a price not in excess of 105 percent of the sum of its issue price plus the amount of contribution to surplus (if any) made by the original purchaser at the time of his purchase.

§ 1.815-3 Shareholders surplus account.

(a) *In general.* Every stock life insurance company subject to the tax imposed by section 802 shall establish and maintain a shareholders surplus account. This account shall be established as of January 1, 1958, and the beginning or opening balance of the shareholders surplus account on that date shall be zero.

(b) *Additions to shareholders surplus account.* (1) The amount added to the shareholders surplus account for any taxable year beginning after December

31, 1957, shall be the amount by which the sum of—

(i) The life insurance company taxable income (computed without regard to section 802(b)(3)),

(ii) In the case of a taxable year beginning after December 31, 1958, the amount (if any) by which the net long-term capital gain exceeds the net short-term capital loss,

(iii) The deduction for partially tax-exempt interest provided by section 242 (as modified by section 804(a)(3)), the deductions for dividends received provided by sections 243, 244, and 245 (as modified by section 809(d)(8)(B)), and the amount of interest excluded from gross income under section 103, and

(iv) The small business deduction provided by section 809(d)(10),

exceeds the taxes imposed for the taxable year by section 802(a), computed without regard to section 802(b)(3).

(2) For amounts which are to be added to the shareholders surplus account at the beginning of the succeeding taxable year, see section 815(d)(1) and (4) and paragraphs (a) and (d) of § 1.815-6.

(c) *Subtractions from shareholders surplus account*—(1) *In general.* There shall be subtracted from the cumulative balance in the shareholders surplus account at the end of any taxable year, computed without diminution by reason of distributions made during the taxable year, the amount which is treated as being distributed out of such account under section 815(a) and paragraph (b) of § 1.815-2.

(2) *Special rule; distributions in 1958.* There shall be subtracted from the shareholders surplus account (to the extent thereof) for any taxable year beginning in 1958 the amount of the distributions to shareholders made by the company during 1958. For example, assume S, a stock life insurance company, had additions to its shareholders surplus account (as determined under section 815(b)(2) and paragraph (b) of this section) for the taxable year 1958 of \$10,000, and actually distributed as dividends to its shareholders \$8,000 during the year 1958. The balance in S's shareholders surplus account as of January 1, 1959, shall be \$2,000. If S had distributed \$12,000 as dividends in 1958, the balance in its shareholders surplus account as of January 1, 1959, would be zero and the other accounts referred to in section 815(a)(3) and paragraph (b)(1)(iii) of § 1.815-2 would be reduced by \$2,000.

(d) *Illustration of principles.* The application of section 815(b) and this section may be illustrated by the following example:

Example. The books of S, a stock life insurance company, reflect the following items for the taxable year 1960:

Balance in shareholders surplus account as of 1-1-60	\$5,000
Life insurance company taxable income computed without regard to sec. 802(b)(3)	4,000
Excess of net long-term capital gain over net short-term capital loss	1,700
Tax-exempt interest included in gross investment income under sec. 804(b)	100
Small business deduction (determined under sec. 809(d)(10))	200

Tax liability under sec. 802(a)(1) and (2) computed without regard to sec. 802(b)(3)	\$1,625
Amount distributed to shareholders	9,000

For purposes of determining the amount to be subtracted from its shareholders surplus account for the taxable year, S would first make up the following schedule in order to determine the cumulative balance in the shareholders surplus account at the end of the taxable year, computed without diminution by reason of distributions made during the taxable year:

(1) Balance in shareholders surplus account as of 1-1-60	\$5,000
(2) Additions to account:	
(a) Life insurance company taxable income computed without regard to sec. 802(b)(3)	\$4,000
(b) Excess of net long-term capital gain over net short-term capital loss	1,700
(c) Tax-exempt interest included in gross investment income under sec. 804(b)	100
(d) Small business deduction (determined under sec. 809(d)(10))	200
Total	6,000
Less:	
Tax liability under sec. 802(a)(1) and (2) computed without regard to sec. 802(b)(3)	1,625
	4,375
(3) Cumulative balance in shareholders surplus account as of 12-31-60 (item (1) plus item (2))	9,375

Since the amount distributed to shareholders during the taxable year, \$9,000, does not exceed the cumulative balance in the shareholders surplus account at the end of the taxable year, computed without diminution by reason of distributions made during the taxable year, \$9,375, under the provisions of section 815(a), the entire distribution shall be treated as being made out of the shareholders surplus account. Thus, \$9,000 shall be subtracted from the shareholders surplus account (leaving a balance of \$375 in such account at the end of the taxable year) and S shall incur no additional tax liability by reason of the distribution to its shareholders during the taxable year 1960.

§ 1.815-4 Policyholders surplus account.

(a) *In general.* Every stock life insurance company subject to the tax imposed by section 802 shall establish and maintain a policyholders surplus account. This account shall be established as of January 1, 1959, and the beginning or opening balance of the policyholders surplus account on that date shall be zero.

(b) *Additions to policyholders surplus account.* The amount added to the policyholders surplus account for any taxable year beginning after December 31, 1958, shall be the sum of—

(1) An amount equal to 50 percent of the amount by which the gain from operations for the taxable year exceeds the taxable investment income,

(2) The deduction for certain nonparticipating contracts provided by section 809(d)(5) (as limited by section 809(f)), and

(3) The deduction for group life and group accident and health insurance contracts provided by section 809(d)(6) (as limited by section 809(f)).

(c) *Subtractions from policyholders surplus account*—(1) *In general.* There shall be subtracted from the cumulative balance in the policyholders surplus account at the end of any taxable year, computed without diminution by reason of distributions made during the taxable year, an amount equal to the sum of—

(i) The amount which (without regard to subdivision (ii) of this subparagraph) is treated under section 815(a) as distributed out of the policyholders surplus account for the taxable year, plus

(ii) The amount (determined without regard to section 802(a)(3)) by which the tax imposed for the taxable year by section 802(a)(1) is increased by reason of section 802(b)(3).

In addition, there shall be subtracted from the policyholders surplus account for the taxable year those amounts which, at the close of the taxable year, are subtracted or treated as subtracted from the policyholders surplus account under section 815(d)(1) and (4) and paragraphs (a) and (d) of § 1.815-6. For purposes of this paragraph, the subtractions from the policyholders surplus account shall be treated as made in the following order:

(a) First the amount determined under section 815(c)(3) by reason of distributions to shareholders during the taxable year which are treated as being made out of the policyholders surplus account;

(b) Next the amount elected to be subtracted from the policyholders surplus account for the taxable year under section 815(d)(1);

(c) Then the amount which is treated as a subtraction from the policyholders surplus account for the taxable year by reason of the limitation provided in section 815(d)(4); and

(d) Finally the amount taken into account upon termination as a life insurance company as provided in section 815(d)(2).

(2) *Method of computing amount subtracted from policyholders surplus account*—(i) *Where life insurance company taxable income, computed without regard to section 802(b)(3), exceeds \$25,000.* If the life insurance company taxable income for any taxable year computed under section 802(b), computed without regard to section 802(b)(3), exceeds \$25,000, the amount subtracted from the policyholders surplus account shall be determined by multiplying the amount treated as distributed out of such account by a ratio, the numerator of which is 100 percent and the denominator of which is 100 percent minus the sum of the normal tax rate and the surtax rate for the taxable year.

(ii) *Where life insurance company taxable income does not exceed \$25,000.* If the life insurance company taxable income for any taxable year, computed under section 802(b), does not exceed \$25,000, the amount subtracted from the policyholders surplus account shall be determined by multiplying the amount treated as distributed out of such ac-

count by a ratio, the numerator of which is 100 percent and the denominator of which is 100 percent minus the normal tax rate for the taxable year.

(iii) Where life insurance company taxable income, computed without regard to section 802(b)(3) does not exceed \$25,000, but computed with regard to section 802(b)(3) does exceed \$25,000. If the life insurance company taxable income for any taxable year, computed without regard to section 802(b)(3) does not exceed \$25,000, but computed with regard to section 802(b)(3) does exceed \$25,000, the amount subtracted from the policyholders surplus account shall be determined in the following manner:

(a) First, determine the amount by which \$25,000 exceeds the amount determined under section 802(b)(1) and (2);

(b) Then, multiply the amount determined under (a) by a ratio, the numerator of which is 100 percent minus the normal tax rate and the denominator of which is 100 percent;

(c) Next, determine the amount by which the amount treated as distributed out of the policyholders surplus account exceeds the amount determined under (b) and multiply such excess by a ratio, the numerator of which is 100 percent and the denominator of which is 100 percent minus the sum of the normal tax rate and the surtax rate; and

(d) Finally, add the amounts determined under (a) and (c).

(3) Illustration of principles. The application of section 815(c)(3) and subparagraph (2) of this paragraph may be illustrated by the following examples:

Example (1). The life insurance company taxable income of S, a stock life insurance company, computed without regard to section 802(b)(3), exceeds \$25,000 for the taxable year 1959. Assume that of the amount distributed by S to its shareholders during the taxable year, \$9,600 (as determined under section 815(a) and without regard to section 815(c)(3)(B)) is treated as distributed out of the policyholders surplus account. Since the sum of the normal tax rate (30%) and the surtax rate (22%) in effect for 1959 is 52 percent, S shall subtract \$20,000 from its policyholders surplus account for the taxable year 1959, computed as follows:

$$\$9,600 \times \frac{100}{(100-52)} = \$9,600 \times \frac{100}{48} = \$20,000$$

Of this amount, \$9,600 is due to the application of section 815(c)(3)(A) and \$10,400 to the application of section 815(c)(3)(B).

Example (2). Assume that for the taxable year 1960, S, a stock life insurance company, has taxable investment income of \$1,000 and a gain from operations of \$2,000. Assume further that of the amount distributed by S to its shareholders during the taxable year, \$3,500 (as determined under section 815(a) and without regard to section 815(c)(3)(B)) is treated as distributed out of the policyholders surplus account. Since S's life insurance company taxable income does not exceed \$25,000 for the taxable year and the normal tax rate in effect for 1960 is 30 percent, S shall subtract \$5,000 from its policyholders surplus account for the taxable year 1960, computed as follows:

$$\$3,500 \times \frac{100}{(100-30)} = \$3,500 \times \frac{100}{70} = \$5,000$$

Of this amount, \$3,500 is due to the application of section 815(c)(3)(A), and \$1,500 to the application of section 815(c)(3)(B).

Example (3). For the taxable year 1960, the life insurance company taxable income of S, a stock life insurance company, computed without regard to section 802(b)(3), is \$10,000. Assume that of the amount distributed by S to its shareholders during the taxable year, \$12,000 (as determined under section 815(a) and without regard to section 815(c)(3)(B)) is treated as distributed out of the policyholders surplus account. Since the life insurance company taxable income of S, computed with regard to section 802(b)(3), exceeds \$25,000, in order to determine the amount to be subtracted from its policyholders surplus account, S would make up the following schedule:

(1) \$25,000 minus life insurance company taxable income, computed without regard to sec. 802(b)(3) (\$25,000 minus \$10,000)	\$15,000
(2) Item (1) multiplied by 100 percent minus the normal tax rate as in effect for 1960, over 100 percent $(\$15,000 \times \frac{(100-30)}{100})$	10,500
(3) Amount by which the amount treated as distributed out of policyholders surplus account (\$12,000) exceeds item (2) (\$10,500), multiplied by 100 percent over 100 percent minus the sum of the normal tax rate and the surtax rate as in effect for 1960 $(\$1,500 \times \frac{100}{(100-52)})$	3,125
(4) Item (1) plus item (3) (\$15,000 plus \$3,125)	18,125

For the taxable year 1960, S shall subtract \$18,125 from its policyholders surplus account. Of this amount, \$10,500 represents the distribution from the policyholders surplus account which is taxed at a 30 percent tax rate and \$1,500 the distribution from the policyholders surplus account which is taxed at a 52 percent tax rate. Thus, of the amount subtracted from the policyholders surplus account for the taxable year 1960, \$12,000 is due to the application of section 815(c)(3)(A), and \$6,125 to the application of section 815(c)(3)(B).

(d) Illustration of principles. The application of section 815(c) and this section may be illustrated by the following example:

Example. The books of S, a stock life insurance company, reflect the following items for the taxable year 1960:

Taxable investment income	\$25,000
Gain from operations	30,000
Tax base (sec. 802(b)(1) and (2))	27,500
Deduction for certain nonparticipating policies provided by sec. 809(d)(5) (as limited by sec. 809(f))	600
Deduction for group policies provided by sec. 809(d)(6) (as limited by sec. 809(f))	400
Amount distributed to shareholders	60,000
Cumulative balance in shareholders surplus account as of 12-31-60	36,000
Balance in policyholders surplus account as of 1-1-60	48,000

For purposes of determining the amount to be subtracted from its policyholders surplus account for the taxable year, S would first make up the following schedule in order to determine the cumulative balance in the policyholders surplus account at the end of the taxable year, computed without diminution by reason of distributions made during the taxable year:

(1) Balance in policyholders surplus account as of 1-1-60	\$48,000
(2) Additions to account:	
(a) 50 percent of the amount by which the gain from operations (\$30,000) exceeds the taxable investment income (\$25,000) ($\frac{1}{2} \times \$5,000$)	\$2,500
(b) The deduction for certain nonparticipating contracts provided by sec. 809(d)(5) (as limited by sec. 809(f))	600
(c) The deduction for group contracts provided by sec. 809(d)(6) (as limited by sec. 809(f))	400
(3) Cumulative balance in policyholders account as of 12-31-60 (item (1) plus item (2))	51,500

Under the provisions of section 815(a), since the amount distributed to shareholders during the taxable year, \$60,000, exceeds the cumulative balance in the shareholders surplus at the end of the taxable year, computed without diminution by reason of distributions during the taxable year, \$36,000, the shareholders surplus account shall first be reduced to zero. The remaining \$24,000 (\$60,000 minus \$36,000) of the distribution shall then be treated as made out of the policyholders surplus account. Thus, since the tax base under section 802(b)(1) and (2) is in excess of \$25,000, the total amount to be subtracted from the policyholders surplus account at the end of the taxable year

would be \$50,000 $(\$24,000 \times \frac{100}{100-52})$. Of

this amount \$26,000 (\$50,000 minus \$24,000) represents the tax on the portion of the distribution to shareholders which is treated as being out of the policyholders surplus account.

(e) Special rule for 1959 and 1960. For a special transitional rule applicable to any increase in tax liability under section 802(b)(3) for the taxable years 1959 and 1960 which is due solely to the operation of section 815(c)(3) and this section, see section 802(a)(3) and § 1.802-5.

§ 1.815-5 Other accounts defined.

The term "other accounts", as used in section 815(a)(3) and paragraph (b) of § 1.815-2, means all amounts which are not specifically included in the shareholders surplus account under section 815(b) and paragraph (b) of § 1.815-3, or in the policyholders surplus account under section 815(c) and paragraph (b) of § 1.815-4. Thus, for example, other accounts include amounts representing the increase in tax due to the operation of section 802(b)(3) which is not taken into account for the taxable years 1959 and 1960 because of the special transitional rule provided in section 802(a)(3) and § 1.802-5, earnings and profits accumulated prior to January 1, 1958, paid-in surplus, capital, etc. To the extent that a distribution (or any portion thereof) is treated as being made out of other accounts, no tax is imposed on the company with respect to such distribution.

§ 1.815-6 Special rules.

(a) *Election to transfer amounts from policyholders surplus account to shareholders surplus account*—(1) *In general.* Section 815(d)(1) permits a life insurance company to elect, after the close of any taxable year for which it is a life insurance company, to subtract any amount (or any portion thereof) in its policyholders surplus account as of the close of the taxable year. The effect of such election is to subject the company to tax on the amounts elected to be subtracted for the taxable year for which the election applies. The amount so subtracted, less the amount of tax imposed with respect to such amount by reason of section 802(b)(3), shall be added to the shareholders surplus account as of the beginning of the taxable year following the taxable year for which the election applies and no further tax shall be imposed upon the company if the amount elected to be transferred to the shareholders surplus account is subsequently distributed to shareholders.

(2) *Manner and effect of election.* (i) The election provided by section 815(d)(1) and this section shall be made in a statement attached to the life insurance company's income tax return for any taxable year for which the company desires the election to apply. The statement shall include the name and address of the taxpayer, shall be signed by the taxpayer (or his duly authorized representative), and shall be filed not later than the date prescribed by law (including extensions thereof) for filing the return for such taxable year. In addition, the statement shall indicate that the company has made the election provided under section 815(d)(1) for the taxable year and the amount elected to be subtracted from the policyholders surplus account.

(ii) An election made under section 815(d)(1)(B) and subdivision (i) of this subparagraph shall be effective only with respect to the taxable year for which the election is made. Thus, the company must make a new election for each taxable year for which it desires the election to apply. Once such an election has been made for any taxable year it may not be revoked.

(3) The application of subparagraph (1) of this paragraph may be illustrated by the following example:

Example. For the taxable year 1960, the life insurance company taxable income of S, a stock life insurance company, computed without regard to section 802(b)(3), exceeds \$25,000. Assume that S elects to subtract \$20,000 from its policyholders surplus account under section 815(d)(1) for the taxable year. Since S is subject to a 52 percent tax rate, the tax on the amount elected to be subtracted from the policyholders surplus account (as of the close of the taxable year 1960) is \$10,400 ($\$20,000 \times 52$ percent). Thus, the amount to be added to the shareholders surplus account as of January 1, 1961, is \$9,600 (the amount subtracted from the policyholders surplus account by virtue of the section 815(d)(1) election, less the tax imposed upon such amount by reason of section 802(b)(3), or \$20,000 minus \$10,400).

(b) *Termination as life insurance company*—(1) *Effect of termination.*

Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), section 815(d)(2)(A) provides that if for any taxable year the taxpayer is not an insurance company (as defined in paragraph (a) of § 1.801-3), or if for any two successive taxable years the taxpayer is not a life insurance company (as defined in section 801(a) and paragraph (b) of § 1.801-3), the amount taken into account under section 802(b)(3) for the last preceding year for which the company was a life insurance company shall be increased (after the application of section 815(d)(2)(B)) by the entire balance in the policyholders surplus account at the close of such last preceding taxable year.

(2) *Effect of certain distributions.* If for any taxable year the taxpayer is an insurance company (as defined in paragraph (a) of § 1.801-3) but is not a life insurance company (as defined in section 801(a) and paragraph (b) of § 1.801-3), section 815(d)(2)(B) provides that any distribution to shareholders during such taxable year shall be treated as having been made on the last day of the last preceding taxable year for which the company was a life insurance company.

(3) *Examples.* The application of section 815(d)(2) and this paragraph may be illustrated by the following examples:

Example (1). At the end of the taxable year 1959, the balance in the policyholders surplus account of S, a life insurance company within the meaning of section 801(a) and paragraph (b) of § 1.801-3, is \$12,000. If S fails to qualify as an insurance company (as defined in paragraph (a) of § 1.801-3) for the taxable year 1960, and section 381(c)(22) does not apply, under the provisions of section 815(d)(2)(A), the entire balance of \$12,000 in the policyholders surplus account at the end of 1959, the last year S was a life insurance company, shall be taken into account under section 802(b)(3) for purposes of determining S's tax liability for the taxable year 1959.

Example (2). Assume the facts are the same as in example (1), except that for the taxable years 1960 and 1961, S qualifies as an insurance company (as defined in paragraph (a) of § 1.801-3) but does not qualify as a life insurance company within the meaning of section 801(a) and paragraph (b) of § 1.801-3. Assume further that as a result of a distribution by S to its shareholders in 1960, \$4,800 (as determined under section 815(a) and without regard to section 815(c)(3)(B)) is treated as distributed out of the policyholders surplus account. Under the provisions of section 815(d)(2)(B), if section 381(c)(22) does not apply, any distribution to shareholders during the taxable years 1960 and 1961 shall be treated as having been made on December 31, 1959 (the last day of the last preceding taxable year for which S was a life insurance company). Thus, assuming S is subject to a 52 percent tax rate on additions to life insurance company taxable income, \$10,000 ($\$4,800$ plus \$5,200, the tax on the portion of the distribution treated as made out of the policyholders surplus account) shall be treated as being subtracted from the policyholders surplus account at the end of 1959 and shall be taken into account under section 802(b)(3) for purposes of determining S's tax liability for the taxable year 1959. Under the provisions of section 815(d)(2)(A), the entire balance of \$2,000 ($\$12,000$ minus \$10,000) in the policyholders surplus account at the end of

1959 (after the application of section 815(d)(2)(B)), shall also be taken into account under section 802(b)(3) for purposes of determining S's tax liability for the taxable year 1959.

(c) *Treatment of certain indebtedness.* Section 815(d)(3) provides that if a taxpayer makes any payment in discharge of its indebtedness which is attributable to a distribution of such indebtedness by the taxpayer to its shareholders after February 9, 1959, the amount of such payment shall be treated as a distribution in cash to the shareholders both for purposes of section 802(b)(3) and section 815. However, this paragraph shall only apply to the extent that the distribution of such indebtedness to shareholders was treated as being out of accounts other than the shareholders and policyholders surplus accounts at the time of distribution.

(d) *Limitation on amount in policyholders surplus account*—(1) *In general.* Section 815(d)(4) provides a limitation on the amount that any life insurance company may accumulate in its policyholders surplus account. If the policyholders surplus account at the end of any taxable year (computed without regard to this paragraph) exceeds whichever of the following is the greatest—

(i) 15 percent of life insurance reserves (as defined in section 801(b) and paragraph (a) of § 1.801-4) at the end of the taxable year,

(ii) 25 percent of the amount by which the life insurance reserves at the end of the taxable year exceed the life insurance reserves at the end of 1958, or

(iii) 50 percent of the net amount of the premiums and other consideration taken into account for the taxable year under section 809(c)(1),

then such excess shall be treated as a subtraction from the policyholders surplus account as of the end of such taxable year. The amount so treated as subtracted, less the amount of tax imposed with respect to such amount by reason of section 802(b)(3), shall be added to the shareholders surplus account at the beginning of the succeeding taxable year.

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

Example. The books of S, a stock life insurance company, reflect the following items for the taxable year 1960:

Balance in policyholders surplus account, computed without regard to sec. 815(d)(4), as of 12-31-60.....	\$175
Life insurance reserves (as defined in sec. 801(b)) as of 12-31-60.....	4,500
Life insurance reserves (as defined in sec. 801(b)) as of 12-31-58.....	3,900
Premiums and other consideration taken into account for the taxable year under sec 809(c)(1).....	310

In order to determine the limitations on the amount that it may accumulate in its policyholders surplus account at the end of the taxable year under section 815(d)(4), S would make up the following schedule:

(1) 15 percent of life insurance reserves at the end of the taxable year (15% \times \$4,500).....	\$675
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- (2) 25 percent of amount by which life insurance reserves at the end of the taxable year (\$4,500) exceed life insurance reserves as of 12-31-58 (\$3,900) (25% × \$600)----- \$150
- (3) 50 percent of premiums and other consideration taken into account under sec. 809(c)(1) for the taxable year (50% × \$310)--- 155
- (4) Limitation on policyholders surplus account (the greatest of items (1), (2), or (3))----- 675

Since the balance in the policyholders surplus account at the end of the taxable year 1960, \$175, does not exceed the limitation provided by section 815(d)(4), \$675, S is not required to make any further adjustment to its policyholders surplus account at the end of the taxable year.

(e) *Special rule for certain mutualizations*—(1) *In general.* Section 815(e) provides a rule for determining priorities which shall operate in place of section 815(a) and paragraph (b) of § 1.815-2 where a life insurance company makes any distribution to its shareholders after December 31, 1958, in acquisition of stock pursuant to a plan of mutualization. Section 815(e)(1) provides that such a distribution shall first be treated as being made out of paid-in capital and paid-in surplus, and, to the extent thereof, no tax shall be imposed on the company with respect to such distribution. Thereafter, distributions made pursuant to such plan of mutualization shall be treated as made in two allocable parts. One part shall be treated as being made out of other accounts (as defined in § 1.815-5) and the company shall incur no tax with respect to such portion of the distribution. The other part shall be treated as a distribution to which section 815(a) and paragraph (b) of § 1.815-2 applies. Thus, such portion of the distribution shall be treated as first being made out of the shareholders surplus account (as defined in section 815(b) and § 1.815-3), to the extent thereof, and then out of the policyholders surplus account (as defined in section 815(c) and § 1.815-4), to the extent thereof. See paragraph (a) of § 1.815-2. For purposes of this paragraph, a distribution shall be considered as being made pursuant to a plan of mutualization only if the requirements of applicable State law for the adoption of such plan (as, for example, approval by the requisite majority of the board of directors, shareholders, and policyholders) have been fulfilled.

(2) *Allocation ratio.* Section 815(e)(2)(A) provides an allocation ratio which when applied to the amount distributed under a plan of mutualization in excess of the balance in the paid-in capital and paid-in surplus accounts determines the portion of such excess to be treated as distributed out of the shareholders surplus account, policyholders surplus account, or other accounts. The numerator of this ratio is the excess of the assets of the company (as defined in section 805(b)(4) and paragraph (a)(4) of § 1.805-5) over the total liabilities (including reserves), both determined as of December 31,

1958, and adjusted in the manner provided in subparagraph (3) of this paragraph. The denominator of this ratio is the amount included in the numerator plus the amounts in the shareholders surplus account and policyholders surplus account, all determined as of the beginning of the year of the distribution.

(3) *Adjustment for certain distributions.* Section 815(e)(2)(B) provides that if between 1958 and the year of distribution the taxpayer has been treated as having made a distribution (under a plan of mutualization or otherwise) which is treated as a return of paid-in capital and paid-in surplus or as out of other accounts (as defined in § 1.815-5), the aggregate amount of any such prior distributions must be subtracted from the numerator and denominator in all cases where the allocation ratio provided by subparagraph (2) of this paragraph applies.

(f) *Recomputation required as a result of a subsequent loss from operations under section 812*—(1) *In general.* Any amounts added to or subtracted from the special surplus accounts referred to in section 815(a) and paragraph (b) of § 1.815-2 for any taxable year shall be adjusted to the extent necessary to properly reflect a subsequent loss from operations which under section 812 is carried back to the taxable year for which such additions or subtractions were made.

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

Example. Assume that for the taxable years 1959 through 1961, the books of S, a stock life insurance company subject to a 30 percent tax rate for all taxable years involved, reflect the following items:

	1959	1960	1961
Taxable investment income.....	\$40.00	\$40.00	\$40.00
Gain from operations.....	60.00	60.00	60.00
Tax base (sec. 802(b)(1) and (2)).....	50.00	50.00	50.00
Tax (sec. 802(b)(1) and (2) base).....	15.00	15.00	15.00
Shareholders surplus account—			
At beginning of year.....	0	35.00	37.00
Added at beginning of year by reason of election under sec. 815(d)(1).....	0	7.00	0
Added for year (with regard to election under sec. 815(d)(1)).....	35.00	35.00	35.00
Subtracted (distributions).....	0	40.00	40.00
Policyholders surplus account—			
At beginning of year.....	0	0	10.00
Added for year.....	10.00	10.00	10.00
Subtracted (distributions).....	0	0	0
Subtracted (by reason of election under sec. 815(d)(1)).....	10.00	0	0
Tax base (sec. 802(b)(3)).....	10.00	0	0
Tax (sec. 802(b)(3) base).....	3.00	0	0

Assume further that S has a loss from operations for the taxable year 1962 of \$25. Under provisions of section 812, the \$25 loss from operations would be carried back to the taxable year 1959 and would reduce the 1959 tax base under section 802(b)(1) and (2) to \$35 (\$60 minus \$25). After adjustments reflecting the 1962 loss from operations, the results for the taxable years 1959 through the beginning of 1962 would be as follows:

	1959	1960	1961	1962
Taxable investment income.....	\$40.00	\$40.00	\$40.00	-----
Gain from operations.....	35.00	60.00	60.00	-----
Tax base (sec. 802(b)(1) and (2)).....	35.00	50.00	50.00	-----
Tax (sec. 802(b)(1) and (2) base).....	10.50	15.00	15.00	-----
Shareholders surplus account—				
At beginning of year.....	0	24.50	19.50	\$14.50
Added for year (without regard to election under sec. 815(d)(1)).....	24.50	35.00	35.00	-----
Added by reason of election under sec. 815(d)(1).....	0	0	0	-----
Subtracted (distributions).....	0	40.00	40.00	-----
Policyholders surplus account—				
At beginning of year.....	0	0	10.00	20.00
Added for year.....	0	10.00	10.00	-----
Subtracted (distributions).....	0	0	0	-----
Subtracted (by reason of election under sec. 815(d)(1)).....	0	0	0	-----
Tax base (sec. 802(b)(3)).....	0	0	0	-----
Tax (sec. 802(b)(3) base).....	0	0	0	-----

As a result of the loss from operations for 1962, the election under section 815(d)(1) for the taxable year 1959 has become inapplicable in its entirety since the balance in the policyholders surplus account at the end of 1959, as recomputed, is zero. Thus, S would be entitled to a total refund of \$7.50 for the taxable year 1959. Of this amount, \$4.50 is due to the recomputation of the section 802(b)(1) and (2) tax base and \$3 to the amount of tax paid by reason of the election under section 815(d)(1).

§ 1.816 Statutory provisions; life insurance companies; foreign life insurance companies.

Sec. 816. *Foreign life insurance companies*—(a) *Carrying on United States insurance business.* A foreign life insurance company carrying on a life insurance business within the United States, if with respect to its United States business it would qualify as a life insurance company under section 801, shall be taxable in the same manner as a domestic life insurance company; except that the determinations necessary for purposes of this subtitle shall be made on the basis of the income, disbursements, assets, and liabilities reported in the annual statement for the taxable year of the United States business of such company on the form approved for life insurance companies by the National Association of Insurance Commissioners.

[Sec. 816 as added by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 46)]

[F.R. Doc. 60-11400; Filed, Dec. 9, 1960; 8:45 a.m.]

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Acquisitions Made To Evade or Avoid Income Tax

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final

adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

The following regulations are hereby prescribed under sections 269 (relating to acquisitions made to evade or avoid income tax) and 482 (relating to allocation of income and deductions among taxpayers) of the Internal Revenue Code of 1954:

- Sec.
1.269 Statutory provisions; acquisitions made to evade or avoid income tax.
1.269-1 Meaning and use of terms.
1.269-2 Purpose and scope of section 269.
1.269-3 Instances in which section 269(a) disallows a deduction, credit, or other allowance.
1.269-4 Power of district director to allocate deduction, credit, or allowance in part.
1.269-5 Presumption in case of disproportionate purchase price.
1.269-6 Relationship of section 269 to section 382.
1.482 Statutory provisions; allocation of income and deductions among taxpayers.
1.482-1 Determination of the taxable income of a controlled taxpayer.

§ 1.269 Statutory provisions; acquisitions made to evade or avoid income tax.

SEC. 269. *Acquisitions made to evade or avoid income tax*—(a) *In general.* If—

- (1) Any person or persons acquire, or acquired on or after October 8, 1940, directly or indirectly, control of a corporation, or
- (2) Any corporation acquires, or acquired on or after October 8, 1940, directly or indirectly, property of another corporation, not controlled, directly or indirectly, immediately before such acquisition, by such acquiring corporation or its stockholders, the basis of which property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation,

and the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy, then such deduction, credit, or other allowance shall not be allowed. For purposes of paragraphs (1) and (2), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 per-

cent of the total value of shares of all classes of stock of the corporation.

(b) *Power of Secretary or his delegate to allow deduction, etc., in part.* In any case to which subsection (a) applies the Secretary or his delegate is authorized—

- (1) To allow as a deduction, credit, or allowance any part of any amount disallowed by such subsection, if he determines that such allowance will not result in the evasion or avoidance of Federal income tax for which the acquisition was made; or

- (2) To distribute, apportion, or allocate gross income, and distribute, apportion, or allocate the deductions, credits, or allowances the benefit of which was sought to be secured, between or among the corporations, or properties, or parts thereof, involved, and to allow such deductions, credits, or allowances so distributed, apportioned, or allocated, but to give effect to such allowance only to such extent as he determines will not result in the evasion or avoidance of Federal income tax for which the acquisition was made; or

- (3) To exercise his powers in part under paragraph (1) and in part under paragraph (2).

(c) *Presumption in case of disproportionate purchase price.* The fact that the consideration paid upon an acquisition by any person or corporation described in subsection (a) is substantially disproportionate to the aggregate—

- (1) Of the adjusted basis of the property of the corporation (to the extent attributable to the interest acquired specified in paragraph (1) of subsection (a)), or of the property acquired specified in paragraph (2) of subsection (a); and

- (2) Of the tax benefits (to the extent not reflected in the adjusted basis of the property) not available to such person or corporation otherwise than as a result of such acquisition,

shall be prima facie evidence of the principal purpose of evasion or avoidance of Federal income tax. This subsection shall apply only with respect to acquisitions after March 1, 1954.

§ 1.269-1 Meaning and use of terms.

As used in section 269 and §§ 1.269-2 through 1.269-6—

(a) *Allowance.* The term "allowance" refers to anything in the internal revenue laws which has the effect of diminishing tax liability. The term includes, among other things, a deduction, a credit, an adjustment, an exemption, or an exclusion.

(b) *Evasion or avoidance.* The phrase "evasion or avoidance" is not limited to cases involving criminal penalties, or civil penalties for fraud.

(c) *Control.* The term "control" means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote, or at least 50 percent of the total value of shares of all classes of stock of the corporation. For control to be "acquired on or after October 8, 1940", it is not necessary that all of such stock be acquired on or after October 8, 1940. Thus, if A, on October 7, 1940, and at all times thereafter, owns 40 percent of the stock of X Corporation and acquires on October 8, 1940, an additional 10 percent of such stock, an acquisition within the meaning of such phrase is made by A on October 8, 1940. Similarly, if B, on October 7, 1940, owns certain assets and transfers on October 8, 1940, such assets to a newly organized Y Corporation in exchange for all the stock

of Y Corporation, an acquisition within the meaning of such phrase is made by B on October 8, 1940. If, under the facts stated in the preceding sentence, B is a corporation, all of whose stock is owned by Z Corporation, then an acquisition within the meaning of such phrase is also made by Z Corporation on October 8, 1940, as well as by the shareholders of Z Corporation taken as a group on such date, and by any of such shareholders if such shareholders as a group own 50 percent of the stock of Z on such date.

(d) *Person.* The term "person" includes an individual, a trust, an estate, a partnership, an association, a company, or a corporation.

§ 1.269-2 Purpose and scope of section 269.

(a) *General.* Section 269 is designed to prevent in the instances specified therein the use of the sections of the Internal Revenue Code providing deductions, credits, or allowances in evading or avoiding Federal income tax. See § 1.269-3.

(b) *Disallowance of deduction, credit, or other allowance.* Under the Code, an amount otherwise constituting a deduction, credit, or other allowance becomes unavailable as such under certain circumstances. Characteristic of such circumstances are those in which the effect of the deduction, credit, or other allowance would be to distort the liability of the particular taxpayer when the essential nature of the transaction or situation is examined in the light of the basic purpose or plan which the deduction, credit, or other allowance was designed by the Congress to effectuate. The distortion may be evidenced, for example, by the fact that the transaction was not undertaken for reasons germane to the conduct of the business of the taxpayer, by the unreal nature of the transaction such as its sham character, or by the unreal or unreasonable relation which the deduction, credit, or other allowance bears to the transaction. The principle of law making an amount unavailable as a deduction, credit, or other allowance in cases in which the effect of making an amount so available would be to distort the liability of the taxpayer, has been judicially recognized and applied in several cases. Included in these cases are Gregory v. Helvering (1935) (293 U.S. 465; Ct. D. 911, C.B. XIV-1, 193); Griffiths v. Helvering (1939) (308 U.S. 355; Ct. D. 1431, C.B. 1940-1, 136); Higgins v. Smith (1940) (308 U.S. 473; Ct. D. 1434, C.B. 1940-1, 127); and J. D. & A. B. Spreckles Co. v. Commissioner (1940) (41 B.T.A. 370). In order to give effect to such principle, but not in limitation thereof, several provisions of the Code, for example, section 267 and section 270, specify with some particularity instances in which disallowance of the deduction, credit, or other allowance is required. Section 269 is also included in such provisions of the Code. The principle of law and the particular sections of the Code are not mutually exclusive and in appropriate circumstances they may operate together or they may operate separately. See, for example, § 1.269-6.

§ 1.269-3 Instances in which section 269 (a) disallows a deduction, credit, or other allowance.

(a) *Instances of disallowance.* Section 269 specifies two instances in which a deduction, credit, or other allowance is to be disallowed. These instances, described in paragraphs (1) and (2) of section 269(a), are those in which—

(1) Any person or persons acquire, or acquired on or after October 8, 1940, directly or indirectly, control of a corporation, or

(2) Any corporation acquires, or acquired on or after October 8, 1940, directly or indirectly, property of another corporation (not controlled, directly or indirectly, immediately before such acquisition by such acquiring corporation or its stockholders), the basis of which property in the hands of the acquiring corporation is determined by reference to the basis in the hands of the transferor corporation.

In either instance the principal purpose for which the acquisition was made must have been the evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy. The principal purpose actuating the acquisition must have been to secure the benefit which such person or persons or corporation would not otherwise enjoy. If this requirement is satisfied, it is immaterial by what method or by what conjunction of events the benefit was sought. Thus, an acquiring person or corporation may secure the benefit of a deduction, credit, or other allowance within the meaning of section 269 even though it is the acquired corporation that is entitled to such deduction, credit, or other allowance in the determination of its tax. If the purpose to evade or avoid Federal income tax exceeds in importance any other purpose, it is the principal purpose. This does not mean that only those acquisitions fall within the provisions of section 269 which would not have been made if the evasion or avoidance purpose was not present. The determination of the purpose for which an acquisition was made requires a scrutiny of the entire circumstances in which the transaction or course of conduct occurred, in connection with the tax result claimed to arise therefrom. For the presumption of a principal purpose of tax evasion or avoidance, see section 269(c) and § 1.269-5.

(b) *Acquisition of control; transactions indicative of purpose to evade or avoid tax.* If the requisite acquisition of control within the meaning of paragraph (1) of section 269(a) exists, the transactions set forth in the following subparagraphs are among the transactions which ordinarily are indicative that the principal purpose for which such acquisition of control was made is evasion or avoidance of Federal income tax:

(1) A corporation or other business enterprise (or the interest controlling such corporation or enterprise) with large profits acquires control of a corporation with current, past, or prospective

credits, deductions, net operating losses, or other allowances and the acquisition is followed by such transfers or other action as is necessary to bring the deduction, credit, or other allowance into conjunction with the income (see further § 1.269-6). This subparagraph may be illustrated by the following example:

Example. Individual A acquires all of the stock of L Corporation which has been engaged in the business of operating retail drug stores. At the time of the acquisition, L Corporation has net operating loss carryovers aggregating \$50,000 and its net worth is \$100,000. After the acquisition, L Corporation continues to engage in the business of operating retail drug stores but the profits attributable to such business after the acquisition are not sufficient to absorb any substantial portion of the net operating loss carryovers. Shortly after the acquisition, individual A causes to be transferred to L Corporation the assets of a hardware business previously controlled by A which business produces profits sufficient to absorb a substantial portion of L Corporation's net operating loss carryovers. The transfer of the profitable business, which has the effect of using net operating loss carryovers to offset gains of a business unrelated to that which produced the losses, indicates that the principal purpose for which the acquisition of control was made is evasion or avoidance of Federal income tax.

(2) A person organizes two or more corporations instead of a single corporation in order to secure the benefit of multiple surtax exemptions (see section 11(c) or multiple minimum accumulated earnings credits (see section 535(c) (2) and (3)).

(3) A corporation with high earning assets transfers them to a newly organized subsidiary retaining assets likely to produce losses or to be disposed of at a loss for the purpose of securing refunds through a utilization of the net operating loss carryback.

(c) *Acquisition of property; transactions indicative of purpose to evade or avoid tax.* If the requisite acquisition of property within the meaning of paragraph (2) of section 269(a) exists, the transactions set forth in the following subparagraphs are among the transactions which ordinarily are indicative that the principal purpose for which such acquisition of property was made is evasion or avoidance of Federal income tax:

(1) A corporation acquires property having in its hands a carryover basis which is materially greater than its fair market value at the time of such acquisition in order to utilize the property to create tax-reducing losses.

(2) A subsidiary corporation, which has sustained large net operating losses in the operation of business X and which has filed separate returns for the taxable years in which the losses were sustained, acquires high earning assets, comprising business Y, from its parent corporation. The acquisition occurs at a time when the parent would not succeed to the net operating loss carryovers of the subsidiary if the subsidiary were liquidated, and the profits of business Y are sufficient to offset a substantial portion of the net operating loss carryovers attributable to business X (see further example (3) of § 1.269-6).

§ 1.269-4 Power of district director to allocate deduction, credit, or allowance in part.

The district director is authorized by section 269(b) to allow a part of the amount disallowed by section 269(a), but he may allow such part only if and to the extent that he determines that the amount allowed will not result in the evasion or avoidance of Federal income tax for which the acquisition was made. The district director is also authorized to use other methods to give effect to part of the amount disallowed under section 269(a), but only to such extent as he determines will not result in the evasion or avoidance of Federal income tax for which the acquisition was made. Whenever appropriate to give proper effect to the deduction, credit, or other allowance, or such part of it which may be allowed, this authority includes the distribution, apportionment, or allocation of both the gross income and the deductions, credits, or other allowances the benefit of which was sought, between or among the corporations, or properties, or parts thereof, involved, and includes the disallowance of any such deduction, credit, or other allowance to any of the taxpayers involved.

§ 1.269-5 Presumption in case of disproportionate purchase price.

Section 269(c) provides that the fact that the consideration paid upon an acquisition by any person or corporation described in section 269(a) is substantially less than the aggregate—

(a) Of the adjusted basis of the property of the corporation (to the extent attributable to the interest acquired specified in paragraph (1) of section 269(a)), or of the property acquired specified in paragraph (2) of section 269(a); and

(b) Of the tax benefits (to the extent not reflected in the adjusted basis of the property) not available to such person or corporation otherwise than as a result of such acquisition,

shall be prima facie evidence of the principal purpose of evasion or avoidance of Federal income tax. Under principles applicable to income tax litigation generally, the Commissioner's determination that an acquisition was made for the principal purpose of evasion or avoidance of Federal income tax is presumptively correct, and the burden of proving such determination wrong by a preponderance of the evidence, together with the corresponding burden of first going forward with the evidence, is on the taxpayer. The effect of section 269(c), if applicable, is to give further weight to the presumption of correctness already arising from the Commissioner's determination, by expressly providing an additional presumption of the existence of a principal purpose of evasion or avoidance of Federal income tax. Section 269(c) shall apply only with respect to acquisitions occurring after March 1, 1954.

§ 1.269-6 Relationship of section 269 to section 382.

Section 269 and §§ 1.269-1 through 1.269-5 may be applied to disallow a net

operating loss carryover even though such carryover is not disallowed (in whole or in part) under section 382 and the regulations thereunder. This section may be illustrated by the following examples:

Example (1). L Corporation has been computing its taxable income on a calendar year basis and has been sustaining heavy net operating losses for a number of years. Assume that A purchases all of the stock of L Corporation on December 31, 1955, with the intention of changing its business to a profitable new business in order to utilize its net operating loss carryovers. Assume further that A makes no attempt to revitalize the business of L Corporation during the calendar year 1956 and that during January 1957 the business is changed to an entirely new and profitable business. If the net operating loss carryovers are not eliminated under the provisions of section 382, the carryovers will be disallowed under the provisions of section 269(a).

Example (2). L Corporation has been sustaining heavy net operating losses for a number of years and the outlook for its business in the future is very poor. P Corporation, a profitable corporation, wishes to utilize the net operating loss carryovers of L Corporation. Assume that on December 31, 1955, P Corporation purchases 60 percent of the stock of L Corporation for the purpose of liquidating L Corporation in order to utilize the net operating loss carryovers of L Corporation against the profits of P Corporation's business. During 1956, no attempt is made to revitalize the business of L Corporation. Assume further that on January 2, 1957, P Corporation purchases the rest of the stock of L Corporation and that on January 3, 1957, a plan of liquidation is adopted by L Corporation and the corporation is liquidated soon thereafter. If P Corporation would be entitled to the net operating loss carryovers of L Corporation under the provisions of section 381, and if section 382 does not operate to eliminate the carryovers, the carryovers will be disallowed under the provisions of section 269(a).

Example (3). L Corporation has been sustaining net operating losses for a number of years. P Corporation, a profitable corporation, on December 31, 1955, acquires all the stock of L Corporation for the purpose of continuing and improving the operation of L Corporation's business. Under the provisions of sections 334(b)(2) and 381(a)(1), P Corporation would not succeed to L Corporation's net operating loss carryovers if L Corporation were liquidated pursuant to a plan of liquidation adopted within two years after the date of the acquisition. During 1956, P Corporation transfers a profitable business to L Corporation for the purpose of using the profits of such business to absorb the net operating loss carryovers of L Corporation. The transfer is such as to cause the basis of the transferred assets in the hands of L Corporation to be determined by reference to their basis in the hands of P Corporation. If L Corporation's net operating loss carryovers are not eliminated under the provisions of section 382, the carryovers will be disallowed under the provisions of section 269(a).

§ 1.482 Statutory provisions; allocation of income and deductions among taxpayers.

Sec. 482. Allocation of income and deductions among taxpayers. In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Secretary or his delegate may distribute, apportion,

or allocate gross income, deductions, credits, or allowances between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses.

§ 1.482-1 Determination of the taxable income of a controlled taxpayer.

(a) *Definitions.* When used in this section—

(1) The term "organization" includes any organization of any kind, whether it be a sole proprietorship, a partnership, a trust, an estate, an association, or a corporation (as each is defined or understood in the Internal Revenue Code or the regulations thereunder), irrespective of the place where organized, where operated, or where its trade or business is conducted, and regardless of whether domestic or foreign, whether exempt, whether affiliated, or whether a party to a consolidated return.

(2) The term "trade" or "business" includes any trade or business activity of any kind, regardless of whether or where organized, whether owned individually or otherwise, and regardless of the place where carried on.

(3) The term "controlled" includes any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised. It is the reality of the control which is decisive, not its form or the mode of its exercise. A presumption of control arises if income or deductions have been arbitrarily shifted.

(4) The term "controlled taxpayer" means any one of two or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests.

(5) The terms "group" and "group of controlled taxpayers" mean the organizations, trades, or businesses owned or controlled by the same interests.

(6) The term "true taxable income" means, in the case of a controlled taxpayer, the taxable income (or, as the case may be, any item or element affecting taxable income) which would have resulted to the controlled taxpayer, had it in the conduct of its affairs (or, as the case may be, in the particular contract, transaction, arrangement, or other act) dealt with the other member or members of the group at arm's length. It does not mean the income, the deductions, the credits, the allowances, or the item or element of income, deductions, credits, or allowances, resulting to the controlled taxpayer by reason of the particular contract, transaction, or arrangement, the controlled taxpayer, or the interests controlling it, chose to make (even though such contract, transaction, or arrangement be legally binding upon the parties thereto).

(b) *Scope and purpose.* (1) The purpose of section 482 is to place a controlled taxpayer on a tax parity with an uncontrolled taxpayer, by determining, according to the standard of an uncontrolled taxpayer, the true taxable income from the property and business of a controlled taxpayer. The interests

controlling a group of controlled taxpayers are assumed to have complete power to cause each controlled taxpayer so to conduct its affairs that its transactions and accounting records truly reflect the taxable income from the property and business of each of the controlled taxpayers. If, however, this has not been done, and the taxable incomes are thereby understated, the district director shall intervene, and, by making such distributions, apportionments, or allocations as he may deem necessary of gross income, deductions, credits, or allowances, or of any item or element affecting taxable income, between or among the controlled taxpayers constituting the group, shall determine the true taxable income of each controlled taxpayer. The standard to be applied in every case is that of an uncontrolled taxpayer dealing at arm's length with another uncontrolled taxpayer.

(2) Section 482 and this section apply to the case of any controlled taxpayer, whether such taxpayer makes a separate or a consolidated return. If a controlled taxpayer makes a separate return, the determination is of its true separate taxable income. If a controlled taxpayer is a party to a consolidated return, the true consolidated taxable income of the affiliated group and the true separate taxable income of the controlled taxpayer are determined consistently with the principles of a consolidated return.

(3) Section 482 grants no right to a controlled taxpayer to apply its provisions at will, nor does it grant any right to compel the district director to apply such provisions. It is not intended (except in the case of the computation of consolidated taxable income under a consolidated return) to effect in any case such a distribution, apportionment, or allocation of gross income, deductions, credits, or allowances, or any item of gross income, deductions, credits, or allowances, as would produce a result equivalent to a computation of consolidated taxable income under subchapter A, chapter 6 of the Code.

(c) *Application.* Transactions between one controlled taxpayer and another will be subjected to special scrutiny to ascertain whether the common control is being used to reduce, avoid, or escape taxes. In determining the true taxable income of a controlled taxpayer, the district director is not restricted to the case of improper accounting, to the case of a fraudulent, colorable, or sham transaction, or to the case of a device designed to reduce or avoid tax by shifting or distorting income, deductions, credits, or allowances. The authority to determine true taxable income extends to any case in which either by inadvertence or design the taxable income, in whole or in part, of a controlled taxpayer, is other than it would have been had the taxpayer in the conduct of his affairs been an uncontrolled taxpayer dealing at arm's length with another uncontrolled taxpayer.

[F.R. Doc. 60-11543; Filed, Dec. 9, 1960; 8:53 a.m.]

[26 CFR (1954) Part 25]

ESTATE AND GIFT TAXES

Notice of Proposed Rule Making

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 comments or suggestions 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. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

In order to conform the Gift Tax Regulations (26 CFR Part 25) to sections 23(f), 30(d), 43(b), 68, and 102(b) of the Technical Amendments Act of 1958 (72 Stat. 1623, 1631, 1641, 1659, 1674) and to section 4(d) of Public Law 86-779 (74 Stat. 1000), and in order to make a correction of a typographical error in paragraph (f) (4) of § 25.2523(e)-1 such regulations are amended as follows:

PARAGRAPH 1. Paragraph (a) of § 2501 is amended to read as follows:

§ 25.01 Introduction.

(a) *In general.* (1) The regulations in this part are designated "Gift Tax Regulations." These regulations pertain to (i) the gift tax imposed by chapter 12 of subtitle B of the Internal Revenue Code on the transfer of property by gift by individuals in the calendar year 1955 and subsequent calendar years, and (ii) certain related administrative provisions of subtitle F of the Code. It should be noted that the application of some of the provisions of these regulations may be affected by the provisions of an applicable gift tax convention with a foreign country. Unless otherwise indicated, references in these regulations to the "Internal Revenue Code" or the "Code" are references to the Internal Revenue Code of 1954, as amended, and references to a section or other provision of law are references to a section or other provision of the Internal Revenue Code of 1954, as amended. The Gift Tax Regulations are applicable to the transfer of property by gift by individuals in the calendar year 1955 and subsequent calendar years, and super-

sede the regulations contained in Part 86, Subchapter B, Chapter I, Title 26, Code of Federal Regulations (1939) (Regulations 108, Gift Tax), as prescribed and made applicable to the Internal Revenue Code of 1954 by Treasury Decision 6091, signed August 16, 1954 (19 F.R. 5167, Aug. 17, 1954).

(2) Section 2501(b) makes the provisions of chapter 12 of the Code apply in the case of gifts made after September 2, 1958, by certain citizens of the United States who were residents of a possession thereof at the time the gifts were made. Section 2501(c) makes the provisions of chapter 12 apply in the case of gifts made after September 14, 1960, by certain other citizens of the United States who were residents of a possession thereof at the time the gifts were made. See paragraphs (c) and (d) of § 25.2501-1. Except as otherwise provided in paragraphs (c) and (d) of § 25.2501-1, the provisions of these regulations do not apply to the making of gifts by such citizens.

PAR. 2. Section 25.2501 is amended to read as follows:

§ 25.2501 Statutory provisions; imposition of tax.

SEC. 2501. *Imposition of tax*—(a) *General rule.* For the calendar year 1955 and each calendar year thereafter a tax, computed as provided in section 2502, is hereby imposed on the transfer of property by gift during such calendar year by any individual, resident or nonresident, except transfers of intangible property by a nonresident not a citizen of the United States and who was not engaged in business in the United States during such calendar year.

(b) *Certain residents of possessions considered citizens of the United States.* A donor who is a citizen of the United States and a resident of a possession thereof shall, for purposes of the tax imposed by this chapter, be considered a "citizen" of the United States within the meaning of that term wherever used in this title unless he acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(c) *Certain residents of possessions considered nonresidents not citizens of the United States.* A donor who is a citizen of the United States and a resident of a possession thereof shall, for purposes of the tax imposed by this chapter, be considered a "nonresident not a citizen of the United States" within the meaning of that term wherever used in this title, but only if such donor acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(d) *Cross references.* (1) For increase in basis of property acquired by gift for gift tax paid, see section 1015(d).

(2) For exclusion of transfers of property outside the United States by a nonresident who is not a citizen of the United States, see section 2511(a).

[Sec. 2501 as amended by secs. 43(b) and 102(b), Technical Amendments Act 1958 (72 Stat. 1641, 1674) and as amended by sec. 4(d), Act of Sept. 14, 1960, Pub. Law 86-779 (74 Stat. 1000)]

PAR. 3. Section 25.2501-1 is amended by striking paragraph (b) and inserting in lieu thereof the following paragraphs:

§ 25.2501-1 Imposition of tax.

(b) *Resident.* A resident is an individual who has his domicile in the United States at the time of the gift. For this purpose the United States includes the States and the District of Columbia. The term also includes the Territories of Alaska and Hawaii prior to admission as a State. See section 7701(a)(9). All other individuals are nonresidents. A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of moving therefrom. Residence without the requisite intention to remain indefinitely will not constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal.

(c) *Certain residents of possessions considered citizens of the United States.* As used in this part, the term "citizen of the United States" includes a person who makes a gift after September 2, 1958 and who, at the time of making the gift, was domiciled in a possession of the United States and was a United States citizen, and who did not acquire his United States citizenship solely by reason of his being a citizen of such possession or by reason of his birth or residence within such possession. The gift of such a person is, therefore, subject to the tax imposed by section 2501 in the same manner in which a gift made by a resident of the United States is subject to the tax. See paragraph (a) of § 25.01 and paragraph (d) of this section for further information relating to the application of the Federal gift tax to gifts made by persons who were residents of possessions of the United States. The application of this paragraph may be illustrated by the following example and the examples set forth in paragraph (d) of this section:

Example. A, a citizen of the United States by reason of his birth in the United States at San Francisco, established residence in Puerto Rico and acquired Puerto Rican citizenship. A makes a gift of stock of a Spanish corporation on September 4, 1958, while a citizen and domiciliary of Puerto Rico. A's gift is, by reason of the provisions of section 2501(b) subject to the tax imposed by section 2501 inasmuch as his United States citizenship is based on birth in the United States and is not based solely on being a citizen of a possession or solely on birth or residence in a possession.

(d) *Certain residents of possessions considered nonresidents not citizens of the United States.* As used in this part, the term "nonresident not a citizen of the United States" includes a person who makes a gift after September 14, 1960, and who at the time of making the gift, was domiciled in a possession of the United States and was a United States citizen, and who acquired his United States citizenship solely by reason of his being a citizen of such possession or by reason of his birth or residence within such possession. The gift of such a person is, therefore, subject to the tax imposed by section 2501 in the same manner in which a gift is subject to the tax when made by a donor who is a "nonres-

ident not a citizen of the United States." See paragraph (a) of § 25.01 and paragraph (c) of this section for further information relating to the application of the Federal gift tax to gifts made by persons who were residents of possessions of the United States. The application of this paragraph may be illustrated by the following examples and the example set forth in paragraph (c) of this section. In each of the following examples the person who makes the gift is deemed a "nonresident not a citizen of the United States" and his gift is subject to the tax imposed by section 2501 in the same manner in which a gift is subject to the tax when made by a donor who is a nonresident not a citizen of the United States, since he made the gift after September 14, 1960, but would not have been so deemed and subject to such tax if the person who made the gift had made it on or before September 14, 1960.

Example (1). C, who acquired his United States citizenship under section 5 of the Act of March 2, 1917 (39 Stat. 953), by reason of being a citizen of Puerto Rico, while domiciled in Puerto Rico makes a gift on October 1, 1960, of real estate located in New York. C is considered to have acquired his United States citizenship solely by reason of his being a citizen of Puerto Rico.

Example (2). E, whose parents were United States citizens by reason of their birth in Boston, was born in the Virgin Islands on March 1, 1927. On September 30, 1960, while domiciled in the Virgin Islands, he made a gift of tangible personal property situated in Kansas. E is considered to have acquired his United States citizenship solely by reason of his birth in the Virgin Islands (section 306 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C. 1406)).

Example (3). N, who acquired United States citizenship by reason of being a native of the Virgin Islands and a resident thereof on June 28, 1932 (section 306 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C. 1406)), made a gift on October 1, 1960, at which time he was domiciled in the Virgin Islands, of tangible personal property situated in Wisconsin. N is considered to have acquired his United States citizenship solely by reason of his birth or residence in the Virgin Islands.

Example (4). P, a former Danish citizen, who on January 17, 1917, resided in the Virgin Islands, made the declaration to preserve his Danish citizenship required by Article 6 of the treaty entered into on August 4, 1916, between the United States and Denmark. Subsequently P acquired United States citizenship when he renounced such declaration before a court of record (section 306 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C. 1406)). P, while domiciled in the Virgin Islands, made a gift on October 1, 1960, of tangible personal property situated in California. P is considered to have acquired his United States citizenship solely by reason of his birth or residence in the Virgin Islands.

Example (5). R, a former French citizen, acquired his United States citizenship through naturalization proceedings in a court located in the Virgin Islands after having qualified for citizenship by residing in the Virgin Islands for 5 years. R, while domiciled in the Virgin Islands, made a gift of tangible personal property situated in Hawaii on October 1, 1960. R is considered to have acquired his United States citizenship solely by reason of his birth or residence within the Virgin Islands.

PAR. 4. Paragraph (b) of § 25.2511-1 is amended to read as follows:

§ 25.2511-1 Transfers in general.

(b) In the case of a nonresident not a citizen who was not engaged in business in the United States (see § 25.2501-1) during the calendar year, the tax is imposed only if the gift consisted of real estate or tangible personal property situated within the United States at the time of transfer. See §§ 25.2501-1 and 25.2511-3.

PAR. 5. Section 25.2511-3 is amended to read as follows:

§ 25.2511-3 Transfers by nonresidents not citizens.

(a) *In general.* Sections 2511 and 2501 contain provisions relating to the taxation of transfers by a donor who is a nonresident not a citizen of the United States. (See paragraph (b) of § 25.2501-1 for definition of the term "resident".) As combined these rules are—

(1) If the nonresident not a citizen of the United States was not engaged in business in the United States during the calendar year in which the gift was made, the tax applies only to the transfer of real property and tangible personal property situated in the United States.

(2) If the nonresident not a citizen of the United States was engaged in business in the United States during the calendar year in which the gift was made, the tax applies to the transfer of all property (whether real or personal, tangible or intangible) situated in the United States.

(b) *Situs of property.* (1) Real property, tangible personal property, and, except as otherwise provided in subparagraph (2) of this paragraph (relating to shares of stock), the written evidence of intangible personal property which is treated as being the property itself are within the United States if physically situated therein. For example, a bond for the payment of money is not within the United States unless physically situated therein. Intangible personal property the written evidence of which is not treated as being the property itself constitutes property within the United States if consisting of a property right issuing from or enforceable against a resident of the United States or a domestic corporation (public or private) irrespective of where such written evidence is physically located.

(2) Shares of stock owned and held by a nonresident not a citizen of the United States constitute property within the United States if issued by a domestic corporation, irrespective of where the certificates are physically located. However, since a share of stock is intangible property, the transfer by gift by a nonresident not a citizen of the United States of a share of stock issued by a domestic corporation would, under the provisions of paragraph (a) of this section, be subject to the tax only if the donor was engaged in business in the United States during the calendar year in which the gift was made.

(3) Shares of stock owned and held by a nonresident not a citizen of the United

States do not constitute property within the United States if issued by a corporation which is not a domestic corporation, irrespective of where the certificates are physically located. Therefore, the tax will not under any circumstances apply to the transfer of a share of such stock by a nonresident not a citizen of the United States.

PAR. 6. Section 25.2512-6 is amended by adding at the end thereof the following additional example:

§ 25.2512-6 Valuation of certain life insurance and annuity contracts.

Example (5). A donor purchases from a life insurance company for \$15,198 a joint and survivor annuity contract which provides for the payment of \$60 a month to the donor during his lifetime, and then to his sister for such time as she may survive him. The premium which would have been charged by the company for an annuity of \$60 monthly payable during the life of the donor alone is \$10,690. The value of the gift is \$4,508 (\$15,198 less \$10,690).

PAR. 7. There is inserted immediately after § 25.2516-2 the following new sections:

§ 25.2517 Statutory provisions; certain annuities under qualified plans.

SEC. 2517. *Certain annuities under qualified plans—*(a) *General rule.* The exercise or nonexercise by an employee of an election or option whereby an annuity or other payment will become payable to any beneficiary at or after the employee's death shall not be considered a transfer for purposes of this chapter if the option or election and annuity or other payment is provided for under—

(1) An employees' trust (or under a contract purchased by an employees' trust) forming part of a pension, stock bonus, or profit-sharing plan which, at the time of such exercise or nonexercise, or at the time of termination of the plan if earlier, met the requirements of section 401(a);

(2) A retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan which, at the time of such exercise or nonexercise, or at the time of termination of the plan if earlier, met the requirements of section 401(a) (3), (4), (5), and (6); or

(3) A retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 503(b) (1), (2), or (3), and which is exempt from tax under section 501(a).

(b) *Transfers attributable to employee contributions.* If the annuity or other payment referred to in subsection (a) is attributable to any extent to payments or contributions made by the employee, then subsection (a) shall not apply to that part of the value of such annuity or other payment which bears the same proportion to the total value of the annuity or other payment as the total payments or contributions made by the employee bear to the total payments or contributions made. For purposes of the preceding sentence, payments or contributions made by the employee's employer or former employer toward the purchase of an annuity contract described in subsection (a) (3) shall, to the extent not excludable from gross income under section 403(b), be considered to have been made by the employee.

(c) *Employee defined.* For purposes of this section, the term "employee" includes a former employee.

[Sec. 2517 as added by sec. 68 and as amended by sec. 23(f), Technical Amendments Act 1958 (72 Stat. 1659)]

§ 25.2517-1 Employees' annuities.

(a) *In general.* (1) Section 2517 provides an exception to the general rule of section 2511 by exempting from gift tax all or part of the value of certain annuities or other payments for the benefit of employees' surviving beneficiaries. Under the general rule in section 2511, where an employee has an unqualified right to an annuity but takes a lesser annuity with the provision that upon his death a survivor annuity or other payment will be paid to his designated beneficiary, the employee has made a gift to the beneficiary at the time he gives up his power to deprive the beneficiary of the survivor annuity or other payment. See especially § 25.2511-1(h)(10). The making of such a gift by the employee may be accomplished in three principal ways:

(i) By irrevocably electing to take the reduced annuity and designating the individual who is to receive the survivor annuity or other payment. In this case the gift is made at the time the election and designation are irrevocably made.

(ii) By permitting a prior revocable election of a reduced annuity and designation of beneficiary to become irrevocable through failure to revoke during the period during which revocation could be made. In this case the gift is made at the time the prior election and designation become irrevocable.

(iii) By permitting an option to expire under which the employee could, by exercising the option, have defeated the beneficiary's interest in the survivor annuity or other payment, and thereby regain for himself the right to a full annuity. In this case the gift is made at the time the employee permits the option to expire.

The value of the gift is the value, on the date of the gift, of the survivor annuity or other payment, computed in accordance with the principles set forth in §§ 25.2512-1, 25.2512-5, and 25.2512-6. It should be noted that such a gift is a gift of a future interest within the contemplation of § 25.2503-3 and no part thereof may be excluded in determining the total amount of gifts made during the calendar year.

(2) Section 2517 exempts from gift tax all or a portion of the value of the annuities or other payments described in subparagraph (1) of this paragraph which otherwise would be considered as gifts by employees to their beneficiaries. See paragraph (b) of this section for a complete description of the annuities and other payments to which the exemption applies. Also see paragraph (c) of this section for the portion of the annuity or other payment which is to be excluded in those cases where the annuity or other payment is attributable to payments or contributions made by both the employee and the employer. In the case of an annuity or other payment payable under an employees' trust or under a retirement annuity contract described in paragraph (b)(1)(i) or (ii) of this section, the exemption applies if the gift would otherwise be considered

as having been made on or after January 1, 1955. In the case of an annuity or other payment payable under a retirement annuity contract described in paragraph (b)(1)(iii) of this section, the exclusion applies if the gift would otherwise be considered as having been made on or after January 1, 1958.

(b) *Annuities or other payments to which section 2517 applies.* (1) Except to the extent provided otherwise in paragraph (c) of this section, section 2517 exempts from transfers subject to the gift tax the value of an annuity or other payment which, upon the death of an employee, will become payable to the employee's beneficiary under:

(i) An employees' trust (or under a contract purchased by an employees' trust) forming part of a pension, stock bonus or profit-sharing plan which, at the time of such exercise or nonexercise, or at the time of termination of the plan if earlier, met the requirements of section 401(a);

(ii) A retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan which, at the time of such exercise or non-exercise, or at the time of termination of the plan if earlier, met the requirements of section 401(a)(3), (4), (5), and (6); or

(iii) A retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 503(b)(1), (2), or (3), and which is exempt from tax under section 501(a).

(2) The term "annuity or other payment" as used in this section, has reference to one or more payments extending over any period of time. The payments may be equal or unequal, conditional or unconditional, periodic or sporadic. For purposes of this section, the term "employee" includes a former employee. The application of this paragraph may be illustrated by the following example:

Example. Pursuant to a pension plan, the employer made contributions to a trust which was to provide each employee, upon his retirement at age 60, with an annuity for life, and which contained a provision for designating either before or after retirement, a surviving beneficiary. No contributions under the plan were made by the employee. At the time of designating the surviving beneficiary (January 20, 1955), the pension trust formed part of a plan meeting the requirements of section 401(a). Assume that an employee made an irrevocable election whereby he would receive a lesser annuity, and after his death, annuity payments would be continued to his wife. Since the wife was designated annuitant under a qualified pension plan, no part of the value of such annuity is includible in the total amount of gifts for the calendar year by reason of the provisions of section 2517.

(c) *Amount excludable from gift.* (1) If an annuity or other payment described in paragraph (a)(1) of this section is attributable to payments or contributions made by both the employee and the employer, the exclusion is limited to that proportion of the value on the date of the gift (see paragraph (a)(1) of this section) of the annuity or other payment which the employer's contribution (or a contribution made on the employer's behalf) to the plan on the

employee's account bears to the total contributions to the plan on the employee's account. In applying the ratio set forth in the preceding sentence, payments or contributions made by the employer toward the purchase of an annuity contract described in paragraph (b)(1)(iii) of this section are considered to be contributions made by the employee (and not by the employer) to the extent that such contributions are, or were, not excludable from the employee's gross income under section 403(b). The application of this subparagraph may be illustrated by the following examples:

Example (1). Pursuant to a pension plan, contributions were made by employer and employee to a trust which was to provide the employee, upon his retirement at age 60, with an annuity for life, and which contained a provision for designating either before or after retirement, a surviving beneficiary upon the employee's death. Assume that the employee made an irrevocable election on January 20, 1955, whereby he would receive a lesser annuity and that after his death annuity payments would be continued to his wife. At the time of making the election, the pension trust formed part of a plan meeting the requirements of section 401(a); contributions to the plan on the employee's account amounted to \$20,000 of which \$15,000 was contributed by the employer and \$5,000 was contributed by the employee; and the value of the survivor annuity was \$8,000. Since the wife's annuity was receivable under a qualified pension plan, that part of the value of such annuity which is attributable to the employer's contributions (\$15,000/\$20,000 × \$8,000 or \$6,000) is excludable from gifts by reason of the provisions of section 2517(b).

Example (2). An employer purchased a retirement annuity contract for an employee which was to provide the employee, upon his retirement at age 60, with an annuity for life and which in accordance with the employee's irrevocable election, under which he agreed to accept reduced annuity payments, provided that annuity payments would be continued to his wife after his death. At the time of making the election (January 20, 1955), the plan under which the retirement annuity contract was purchased met the requirements of section 401(a)(3), (4), (5), and (6). The retirement annuity contract was purchased from a life insurance company at a cost of \$15,198 of which \$3,039.60 was contributed by the employee. The premium which would have been charged by the life insurance company for the reduced retirement annuity payments for the life of the employee alone is \$10,690. The value, at the time of the election, of the survivor annuity which will become payable to the wife if she survives the employee is \$4,508 (\$15,198 - \$10,690). Of such amount, only \$901.60 is includible in the employee's gifts, computed as follows:

\$3,039.60 (employee's contribution)	
\$15,198.00 (total contribution)	
	× \$4,508 = \$901.60.

Example (3). An employer purchased a retirement annuity contract for an employee which was to provide the employee, upon his retirement at age 60, with an annuity for life and which contained a provision for designating a surviving beneficiary. Assume that the employee made an irrevocable election whereby he would receive a lesser annuity, and after his death, annuity payments would be continued to his wife. At the time of making the election (January 20, 1959), the employer was an organization referred to

in section 503(b) (1), (2), or (3) and exempt from tax under section 501(a). As of the date of the election the total contributions toward the cost of the annuity, all by the employer, amounted to \$25,000. Of this amount \$5,000 was includible in the employee's income under the requirements of section 403(b) and is, therefore, considered as the employee's contributions for the purpose of applying section 2517(b).

(2) In certain cases, the employer's contribution (or a contribution made on his behalf) to a plan on the employee's account and thus the total contributions to the plan on the employee's account cannot be readily ascertained. In order to apply the ratio stated in subparagraph (1) of this paragraph in such a case, the method outlined in the following two sentences must be used unless a more precise method is presented. In such a case, the total contributions to the plan on the employee's account is the value of the annuities or other payments payable to the employee and his beneficiary computed in accordance with the rules set forth in § 25.2512-5. By subtracting from such value the amount of the employee's contribution to the plan, the amount of the employer's contribution to the plan on the employee's account may be obtained. The application of this subparagraph may be illustrated by the following example:

Example. Pursuant to a pension plan, the employer and the employee contributed to a trust which was to provide the employee, upon his retirement at age 60, with an annuity for life, and which contained a provision for designating either before or after retirement, a surviving beneficiary to receive an annuity upon the employee's death. At the time of the employee's retirement on January 20, 1955, he made an irrevocable election designating his wife as beneficiary. Also, at that time, the pension trust formed part of a plan meeting the requirements of section 401(a). Assume the following: (i) That the employer's contributions to the fund were not credited to the accounts of individual employees; (ii) that the value of the employee's annuity and his wife's annuity, computed as of the time of the employee's retirement, was \$40,000; (iii) that the employee contributed \$10,000 to the plan; and (iv) that the value at the time of the employee's retirement of the wife's annuity was \$16,000. On the basis of these facts, the total contributions to the fund on the employee's account are presumed to be \$40,000 and the employer's contribution to the plan on the employee's account is presumed to be \$30,000 (\$40,000 less \$10,000). Since the election and the wife's annuity were provided for under a qualified pension plan, that part of the value of such annuity which is attributable to the employer's contributions $\left(\frac{\$30,000}{\$40,000} \times \$16,000, \text{ or } \$12,000 \right)$ is excludable in determining the total amount of gifts for the calendar year by reason of the provisions of section 2517. Since the wife's right to a deferred annuity is a gift of a future interest the \$3,000 exclusion provided in section 2503 is not allowable.

PAR. 8. Section 25.2522(c) is amended to read as follows:

§ 25.2522(c) Statutory provisions; charitable and similar gifts; disallowance of deductions in certain cases.

SEC. 2522. Charitable and similar gifts.
* * *

(c) *Disallowance of deductions in certain cases.* For disallowance of certain charitable, etc., deductions otherwise allowable under this section, see sections 503 and 681. [Sec. 2522(c) as amended by sec. 30(d), Technical Amendments Act 1958 (72 Stat. 1631)]

PAR. 9. Subparagraph (4) of § 25.2523(e)-1(f) is revised to read as follows:

§ 25.2523(e)-1 Marital deduction; life estate with power of appointment in donee spouse.

* * * * *

(f) *Right to income.* * * *

(4) Provisions granting administrative powers to the trustees will not have the effect of disqualifying an interest transferred in trust unless the grant of powers evidences the intention to deprive the donee spouse of the beneficial enjoyment required by the statute. Such an intention will not be considered to exist if the entire terms of the instrument are such that the local courts will impose reasonable limitations upon the exercise of the powers. Among the powers which if subject to reasonable limitations will not disqualify the interest transferred in trust are the power to determine the allocation or apportionment of receipts and disbursements between income and corpus, the power to apply the income or corpus for the benefit of the spouse, and the power to retain the assets transferred to the trust. For example, a power to retain trust assets which consist substantially of unproductive property will not disqualify the interest if the applicable rules for the administration of the trust require, or permit the spouse to require, that the trustee either make the property productive or convert it within a reasonable time. Nor will such a power disqualify the interest if the applicable rules for administration of the trust require the trustee to use the degree of judgment and care in the exercise of the power which a prudent man would use if he were owner of the trust assets. Further, a power to retain a residence for the spouse or other property for the personal use of the spouse will not disqualify the interest transferred in trust.

[F.R. Doc. 60-11516; Filed, Dec. 9, 1960; 8:50 a.m.]

[26 CFR (1954) Part 170]

MISCELLANEOUS REGULATIONS RELATING TO LIQUORS

Redemption of Stamps in Puerto Rico

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25,

D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Director within the 30-day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

The purpose of this Treasury decision is to provide regulations for the redemption, in Puerto Rico, of certain stamps which, by reason of the amendment of 26 CFR Part 250, are no longer required. In order to accomplish this, the regulations in 26 CFR Part 170 are amended by adding, immediately following § 170-618, a new Subpart V, as follows:

Subpart V—Redemption of Stamps in Puerto Rico

Preamble. The regulations in this part shall not affect any act done or any liability or right accruing or accrued, or any suit or proceeding had or commenced before the effective date of the regulations in this subpart.

Sec.

170.631 Scope of subpart.
170.632 Meaning of terms.

REDEMPTION OF STAMPS IN PUERTO RICO

170.633 Stamps eligible for redemption.
170.634 Claim, Form 843.
170.635 Time for filing claim.
170.636 Authorized claimant.

AUTHORITY: §§ 170.631 to 170.636 issued under sec. 7805, I.R.C., 68A Stat. 917; 26 U.S.C. 7805. Provisions of section 6805 I.R.C., 68A Stat. 830, 26 U.S.C. 6805, interpreted.

§ 170.631 Scope of subpart.

The regulations in this subpart provide for the allowance or redemption, by refund of monies paid therefor, of unused special Puerto Rican rectification stamps and of unused rectification tax sheet stamps procured by bottlers in Puerto Rico.

§ 170.632 Meaning of terms.

When used in this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Words in the plural shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine.

Chief, Collection Branch. The principal revenue officer in Puerto Rico charged with the duty of collecting internal revenue taxes, in Puerto Rico, under the jurisdiction of the Director of the Office of International Operations, Internal Revenue Service, Treasury Department, Washington, D.C.

I.R.C. The Internal Revenue Code of 1954, as amended.

Person. An individual, trust, estate, partnership, association, company, or corporation.

U.S.C. The United States Code.

REDEMPTION OF STAMPS IN PUERTO RICO

§ 170.633 Stamps eligible for redemption.

Subject to the provisions of section 6805, I.R.C., and of this subpart, unused Puerto Rican special rectification stamps, or unused rectification tax sheet stamps, may be redeemed if claim is filed within 3 years of the date of purchase of the stamps.

§ 170.634 Claim, Form 843.

Redemption of unused stamps under this subpart shall be allowed by the Chief, Collection Branch, pursuant to a claim on Form 843, for refund of the amount paid for unused stamps and shall be made only to the person or his legal representative, who purchased such stamps from the Government. The claim shall be filed with the Chief, Collection Branch. Separate claims shall be filed for each of the premises for which the stamps were procured. The stamps for which claim is made shall be attached to the Form 843, and the class, number, and denomination thereof shall be listed in the claim or in an attachment thereto. If the claim includes stamps which had been destroyed, evidence satisfactory to the Chief, Collection Branch, establishing such destruction must accompany the claim.

§ 170.635 Time for filing claim.

No claim for the redemption of stamps eligible for redemption under § 170.633 shall be allowed unless presented within 3 years after the purchase of such stamps from the Government.

§ 170.636 Authorized claimant.

Claims should be made in the name of the purchaser of the stamps, except that in the case where such person is deceased the claim should be made in the name of the executor or administrator. Certified copies of the letters of administration or letters testamentary, or other similar evidence, should be attached to the claim to show that the claimant is the executor, etc. If the claim is signed by an attorney-in-fact for an individual, partnership, association, or corporation, or by one of the members of a partnership or association, or, in the case of a corporation, by an officer or other person, the authority for such signing must be evidenced by a duly authenticated copy of the power of attorney conferring authority upon the person signing the document to execute the same or, in the case of a corporation, by properly certified copies of extracts of the minutes of meetings of the board of directors authorizing certain officers or other persons to sign for the corporation: *Provided*, That such evidence of authority to sign need not be submitted with the claim where such document has previously been filed by the claimant with the Chief, Collection Branch. Powers of attorney shall be executed on Form 1534.

[F.R. Doc. 60-11515; Filed, Dec. 9, 1960; 8:49 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-NY-125]

FEDERAL AIRWAYS, CONTROL AREAS AND REPORTING POINTS

Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Parts 600 and 601 of the regulations of the Administrator, the substance of which is stated below.

Red Federal airway No. 19 extends from Traverse City, Mich., to Flint, Mich., and Brooke, Va., to Cape Charles, Va.

In an amendment to the Regulations of the Administrator, published in the FEDERAL REGISTER by the Federal Aviation Agency on November 29, 1960 (25 F.R. 12173), as Airspace Docket No. 60-KC-65 it was stated that the segment of Red 19 from Traverse City, Mich., to Flint, Mich., and its associated control areas and reporting points would be revoked effective February 9, 1961.

The Federal Aviation Agency is now considering revoking the remaining segment of Red 19 from Brooke, Va., to Cape Charles, Va. It is the policy of this Agency to revoke L/MF airways wherever adequate VOR airways are available, and it appears that the route from Brooke to Cape Charles is adequately served by VOR Federal airway No. 286. Therefore, it appears that retention of this airway is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke Red 19, and its associated control areas from Brooke to Cape Charles. Adoption of this proposal would not necessarily result in discontinuance of the low frequency navigational aids associated with this airway. Any proposals to discontinue one or more of these aids would be processed in accordance with current Agency procedures. Concurrently with this action, § 601.4219, relating to reporting points associated with Red 19, would also be revoked.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal con-

tained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 5, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11493; Filed, Dec. 9, 1960; 8:46 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-NY-118]

FEDERAL AIRWAYS, CONTROL AREAS AND REPORTING POINTS

Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Parts 600 and 601 of the regulations of the Administrator, the substance of which is stated below.

Red Federal airway No. 33 extends from Norfolk, Va., to Richmond, Va. The Federal Aviation Agency is considering revoking this airway. It is the policy of this Agency to revoke L/MF airways wherever adequate VOR airways are available, and it appears that the route between the Norfolk and Richmond terminal areas presently served by Red 33 is adequately served by a combination of VOR Federal airways No. 260, No. 156 and the application of radar air traffic control procedures by the Norfolk Air Route Traffic Control Center. In addition, the Federal Aviation Agency IFR peak-day airway traffic survey for the period July 1, 1959, through June 30, 1960, shows a maximum of nine aircraft movements between any two reporting points on this airway. Therefore, it appears that the retention of this airway is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke Red 33, its associated control areas and reporting points. Adoption of this proposal would not necessarily result in discontinuance of the low frequency navigational aids associated with this airway. Any proposals to discontinue one or more of these aids would be processed in accordance with current Agency procedures. Concurrently with this action, § 601.4233, relating to designated reporting points on Red 33 would be revoked.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after pub-

lication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 5, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11492; Filed, Dec. 9, 1960;
8:46 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-NY-115]

FEDERAL AIRWAYS, CONTROL AREAS AND REPORTING POINTS

Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Parts 600 and 601 of the regulations of the Administrator, the substance of which is stated below.

Red Federal airway No. 73 extends from the intersection of the west course of the New Castle, Del., radio range and the west course of the Philadelphia, Pa., radio range via the New Castle radio range to the intersection of the east course of the New Castle radio range and the northeast course of the Millville, N.J., radio range. The Federal Aviation Agency is considering revoking this airway. A Federal Aviation Agency IFR peak-day airway traffic survey for the period July 1, 1959, through June 30, 1960, showed one aircraft movement on the segment from the Newfield Intersection to the Elmer Intersection and no movements on the remainder of the airway. Therefore, it appears that the retention of this airway is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke Red 73 and its associated control areas. Adoption of this proposal would not necessarily result in discontinuance

of the low frequency navigational aids associated with this airway. Any proposals to discontinue one or more of these aids would be processed in accordance with current Agency procedures. Concurrently with this action, § 601.4273 relating to reporting points associated with Red 73 would also be revoked.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 5, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11494; Filed, Dec. 9, 1960;
8:47 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1032]

CARROTS GROWN IN SOUTH TEXAS

Notice of Proposed Expenses and Rate of Assessment

Notice is hereby given that the Secretary of Agriculture is considering the approval of the expenses and rate of assessment hereinafter set forth, which were recommended by the South Texas Carrot Committee, established pursuant to Marketing Agreement No. 142 and Marketing Order No. 132 (7 CFR Part 1032; 25 F.R. 9523).

Said marketing order regulates the handling of carrots grown in designated counties of South Texas, and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

Consideration will be given to any data, views, or arguments pertaining thereto which are filed with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., not later than 15 days following publication of this notice in the FEDERAL REGISTER.

§ 1032.201 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred by the South Texas Carrot Committee, established pursuant to Marketing Agreement No. 142, and Order No. 132, to enable such committee to perform its functions pursuant to the provisions of the aforesaid marketing agreement and order during the fiscal period October 5, 1960, through July 31, 1961, will amount to \$50,000.

(b) The rate of assessment to be paid by each handler pursuant to Marketing Agreement No. 142 and Order No. 132 shall be one and one-fourth cents (\$0.0125) per 50 pound sack (or crate) of carrots, or the equivalent quantity thereof packed in other containers, handled by him as the first handler thereof during said fiscal period.

(c) All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 142 and Order No. 132 (7 CFR Part 1032; 25 F.R. 9523).

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

Dated: December 7, 1960.

FLOYD F. HEDLUND,
Deputy Director,
Fruit and Vegetable Division.

[F.R. Doc. 60-11513; Filed, Dec. 9, 1960;
8:49 a.m.]

Commodity Stabilization Service

[7 CFR Part 812]

HAWAII AND PUERTO RICO

Sugar Requirements for 1961 and Quotas for the Three-Month Period Ending March 31, 1961

Notice is hereby given that the Secretary of Agriculture, pursuant to authority vested in him by the Sugar Act of 1948, as amended (61 Stat. 922, as amended), is considering the determination of sugar requirements for local consumption in Hawaii and Puerto Rico for the calendar year 1961 and the establishment of quotas for the three-month period ending March 31, 1961.

In accordance with the rule making requirements of the Administrative Procedure Act (60 Stat. 237) all persons who desire to submit written data, views or arguments for consideration in connection with the proposed regulation may file the same in duplicate with the Director of the Sugar Division, Commodity Stabilization Service, United States Department of Agriculture, Washington 25, D.C., within 10 days after publication of this notice in the FEDERAL REGISTER.

The proposed determination of sugar requirements for Hawaii and Puerto

Rico for 1961 and quotas for the three-month period ending March 31, 1961, set forth in form and language appropriate for issuance, if adopted by the Secretary, is as follows:

Basis and purpose. The purpose of Sugar Regulation 812 is to determine pursuant to sections 201 and 203 of the Sugar Act of 1948, as amended (hereinafter referred to as the "act"), the amount of sugar needed to meet the requirements of consumers in Hawaii and in Puerto Rico and to establish quotas for local consumption in such areas. To the extent required by Sec. 201 of the act, this regulation establishes sugar requirements based on official estimates of the Department of Agriculture and on statistics published by other agencies of the government.

Since the act provides that the Secretary of Agriculture determine during December 1960 sugar requirements for local consumption in Hawaii and in Puerto Rico and establish local consumption quotas for the three-month period ending March 31, 1961, it is found to be impracticable and not in the public interest to comply with the 30-day effective date requirements of the Administrative Procedure Act, and these regulations shall be effective January 1, 1961.

§ 812.1 Sugar requirements and quota—Hawaii.

It is hereby determined, pursuant to section 203 of the act, that the amounts of sugar needed to meet the requirements of consumers in Hawaii for the calendar year 1961 is 45,000 short tons, raw value, and a quota of 11,250 short tons, raw value, is hereby established for Hawaii for local consumption for the three-month period ending March 31, 1961.

§ 812.2 Sugar requirements and quota—Puerto Rico.

It is hereby determined, pursuant to section 203 of the act, that the amount of sugar needed to meet the requirements of consumers in Puerto Rico for the calendar year 1961 is 120,000 short tons, raw value, and a quota of 30,000 short tons, raw value, is hereby established for Puerto Rico for local consumption for the three-month period ending March 31, 1961.

§ 812.3 Restrictions on marketing.

Pursuant to section 209 of the act, for the three-month period ending March 31, 1961, all persons are hereby prohibited from marketing, pursuant to Part 816 of this chapter (23 F.R. 1943), in Hawaii or in Puerto Rico, for consumption therein, any sugar or liquid sugar after the quota for the area for the three-month period ending March 31, 1961, has been filled. Pursuant to section 211(c) of the act, the quota for each area may be filled only with sugar produced from sugarcane grown in the respective area.

STATEMENT OF BASES AND CONSIDERATIONS

Pursuant to section 203 of the act, the provisions of section 201 of the act deemed applicable to the determination of the amounts of sugar needed to meet the requirements of consumers in Hawaii and in Puerto Rico relate to (1) the quantities of sugar distributed for local consumption in Hawaii and in Puerto Rico during the twelve-month period ended October 31, 1960, (2) deficiencies or surpluses in inventories of sugar, and (3) changes in consumption because of changes in population and demand conditions.

The quantities of sugar distributed for consumption in Hawaii and Puerto Rico, including that which was lost in refining after charge to the local quotas, during such twelve-month period were approximately 41,000 short tons of sugar, raw value, and 113,000 short tons of sugar, raw value, respectively.

The official estimate of the total population for Hawaii as of April 1, 1960, is 632,772 and for Puerto Rico 2,349,544. Compared to official estimates of 1959 population, this represents a minute increase for Puerto Rico and a small decline for Hawaii. No official estimate for either of these areas for 1961 is available.

In Hawaii industrial use accounts for a substantial portion of the total consumption of sugar and this demand varies enough to make it a significant factor in the total sugar requirements. Recent trends and year-to-year variations suggest the possibility that requirements may be considerably higher in

1961 than in the twelve months ended October 31, 1960, when distribution was approximately 41,000 short tons, raw value.

In Puerto Rico during the first ten months of 1960, local distribution plus refining losses totaled 92,998 short tons, raw value. If stocks of refiners in Puerto Rico on December 31, 1960, are the same as a year previous, the total quantity of sugar used to meet the local needs in 1960 may approximate 117,000 short tons, raw value. In view of such possible local consumption in 1960, and after making allowance for expected consumption increases in 1961 resulting from population increases, the total sugar needed to meet requirements for local consumption in Puerto Rico in 1961 may be approximately 120,000 short tons, raw value.

Circumstances prevailing in the utilization of quota for local consumption in Hawaii and Puerto Rico are such that no special problems arise nor are the objectives of the act jeopardized if the 1961 local quota is not completely filled. It is, therefore, desirable to establish the 1961 requirements and quotas sufficiently high initially so that later adjustments may be avoided.

In accordance with the above, the requirements for local consumption in Hawaii and Puerto Rico for 1961 have been determined to be 45,000 and 120,000 short tons, raw value, respectively. Pursuant to Public Law 86-592 approved July 6, 1960, the quotas for local consumption in Hawaii and Puerto Rico for the three-month period ending March 31, 1961, have been established at one-fourth of the determined local consumption requirements for 1961.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interprets or applies Secs. 201, 203, 209, 210, 412; 61 Stat. 923, as amended, 925, 928; 7 U.S.C. 1111, 1112, 1119, 1120; Sec. 1, Pub. Law 86-592)

Done at Washington, D.C., this 7th day of December 1960.

CLARENCE L. MILLER,
Acting Secretary.

[F.R. Doc. 60-11540; Filed, Dec. 9, 1960; 8:52 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[No. 41]

RIVERTON PROJECT, WYOMING

Annual Water Rental Charges

NOVEMBER 29, 1960.

1. *Water rental.* Irrigation water will be furnished upon a rental basis during the irrigation season of 1961 to the irrigable acreages within the lands described in Public Notice No. 28 for the North Pavillion area, and in Public Notice No. 30 for the North Portal Area.

2. *Charges and terms of payment.* A minimum water rental charge shall be payable for irrigable acreages within the lands described in Public Notices Nos. 28 and 30, whether water is used or not. Such minimum charge need not be paid in any year for any acreage which the Riverton Project Manager certifies to be temporarily nonirrigable during such year due to seepage, land subsidence, shallow or impermeable soils, or excessive amounts of salts. Payment of the minimum water rental charge will entitle the water user to two acre-feet of water per irrigable acre. The minimum charge shall be payable in advance, and no water will be furnished until such charge is paid in full. Charges for water furnished in excess of two acre-feet per irrigable acre shall be payable on January 1 for water furnished during the preceding year.

The minimum water rental charge for lands in the North Pavillion and North Portal Areas described in Public Notices Nos. 28 and 30 shall be \$2.30 per irrigable acre. Water in addition to two acre-feet per irrigable acre, if available, shall be furnished at the rate of \$2.00 per acre-foot, or such lower rate as may be determined by the Secretary on or about November 15 or the year in which the water is used.

3. *Water for other lands.* Irrigation water, when available, will also be furnished at the rates described in Paragraph 2, to other lands in the North Pavillion and North Portal Areas upon the filing each year of a temporary water rental application covering such other lands. The approval of a water rental application for these lands shall not be deemed to constitute an action leading to a continuing right to receive water in subsequent years. The application for water on other lands can be made at any time during the irrigation year. At the time of application, the water rental charge is due, and no water will be delivered until all charges have been paid in full.

4. *Discounts and penalties.* If payment of the minimum charge for 1961 is made on or before December 31, 1960,

a discount of 5 percent of such charge will be allowed. If payment of the charge for additional water used in 1961 is made on or before December 31, 1961, a discount of 5 percent will be allowed. If payment of the minimum is not made by April 1, 1961, and if payment for additional water furnished to any lands is not made by April 1, 1962, there shall be added on the following day a penalty of one-half of one percent of the amount unpaid and the same penalty shall be added on the first day of each calendar month thereafter so long as such default shall continue, and no water will be delivered until all charges and penalties have been paid in full.

5. *Place of payment.* Payment of water rental charges shall be made at the Bureau of Reclamation office in Riverton, Wyoming, or mailed to the Bureau of Reclamation, Riverton, Wyoming.

6. *Public Notice.* This notice supersedes Public Notices Nos. 39 and 40 with respect to water furnished in 1960, and supplements subparagraphs 24(b) and 24(c) of Public Notice No. 28, and subparagraphs 25(a) and 25(b) of Public Notice No. 30, Riverton Project.

BRUCE JOHNSON,
Regional Director.

[F.R. Doc. 60-11503; Filed, Dec. 9, 1960;
8:48 a.m.]

Fish and Wildlife Service

HUNTING OF CANADA GEESE IN ALEXANDER, JACKSON, UNION AND WILLIAMSON COUNTIES, ILLINOIS

Notice of Closing of Canada Goose Season

Pursuant to the regulations prescribed and published in the FEDERAL REGISTER of September 9, 1960 (25 F.R. 8717), which limit to 14,000 the number of Canada geese that may be killed in the counties of Alexander, Jackson, Union and Williamson, Illinois, it having been determined that on the basis of the daily kill which has occurred since the opening of the hunting season November 1, 1960, the permissive kill of 14,000 Canada geese will occur on or before 3:00 p.m., Monday, December 12, 1960, the hunting season on Canada geese will be closed effective at 3:00 p.m. December 12, 1960, and no Canada geese shall be killed in these four counties after 3:00 p.m.

DANIEL H. JANZEN,
Director, Bureau of
Sport Fisheries and Wildlife.

DECEMBER 7, 1960.

[F.R. Doc. 60-11545; Filed, Dec. 9, 1960;
8:53 a.m.]

Office of the Secretary

CALIFORNIA

Topaz Lake and Tower House Springs Wildlife Area Classification Agree- ments

DECEMBER 5, 1960.

On pages 8036 and 3037 of the FEDERAL REGISTER for August 19, 1960, there was published a notice of preliminary approval of the classification agreements opening to oil and gas leasing certain lands withdrawn for the Topaz Lake Public Fishing Area and the Tower House Springs Upland Game Management Area in accordance with the regulations 43 CFR 192.9 as amended January 8, 1958. Interested persons were given thirty days within which to submit written comments, suggestions, or objections to the classification agreements. No adverse comments having been received, the Topaz Lake and Tower House Springs classification agreements are hereby finally approved without change.

FRED A. SEATON,
Secretary of the Interior.

DECEMBER 5, 1960.

[F.R. Doc. 60-11504; Filed, Dec. 9, 1960;
8:48 a.m.]

CALIFORNIA

Honey Lake Waterfowl Management Area Classification Agreement

DECEMBER 5, 1960.

On page 8036 of the FEDERAL REGISTER for August 19, 1960, there was published a notice of preliminary approval of the classification agreement closing to oil and gas leasing certain lands withdrawn for the Honey Lake Waterfowl Management Area in accordance with the regulations 43 CFR 192.9 as amended January 8, 1958. Interested persons were given thirty days within which to submit written comments, suggestions, or objections to the classification agreement. No adverse comments having been received, the Honey Lake classification agreement is hereby finally approved without change.

FRED A. SEATON,
Secretary of the Interior.

[F.R. Doc. 60-11535; Filed, Dec. 9, 1960;
8:53 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

CANNED RIPE PITTED OLIVES

Notice of Purchase Program BMP 1960

In order to encourage the domestic consumption of olives by diverting them

from the normal channels of trade and commerce in accordance with section 32, Public Law 320, 74th Congress, approved August 24, 1935, as amended, the Agricultural Marketing Service offers to purchase canned ripe pitted olives from 1960 crop olives grown in the United States, for subsequent use in nonprofit school lunch programs and other eligible outlets. Details and specification of the offer to purchase are contained in Canned Ripe Pitted Olives Announcement FV-292 issued by the Department. Purchases will depend upon the quantities and prices offered. Information concerning this purchase program may be obtained from Mr. W. Allmendinger, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2082 Center Street, Berkeley 4, California, or the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington 25, D.C.

(Sec. 32, 49 Stat. 774, as amended, 7 U.S.C. 612c)

Dated: December 7, 1960.

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

[F.R. Doc. 60-11539; Filed, Dec. 9, 1960; 8:52 a.m.]

FRESH PEACHES GROWN IN GEORGIA

Order Directing That a Referendum Be Conducted; Designation of Referendum Agents To Conduct Such Referendum; and Determination of Representative Period

Pursuant to the applicable provisions of Marketing Agreement No. 99, as amended, and Order No. 62, as amended (7 CFR Part 962), and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674), it is hereby directed that a referendum be conducted among the growers who, during the calendar year 1960 (which period is hereby determined to be a representative period for the purpose of such referendum), were engaged, in Georgia, in the production of peaches for market to determine whether such growers favor the termination of the said amended marketing agreement and order. M. F. Miller of the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is hereby designated as agent of the Secretary of Agriculture to perform the following functions in connection with the referendum:

(a) Conduct said referendum in the manner herein prescribed:

(1) By giving opportunity to each of the aforesaid growers to cast his ballot, in the manner herein authorized, relative to the aforesaid termination of the amended marketing agreement and order, on a copy of the appropriate ballot form. A cooperative association of such growers, bona fide engaged in

marketing fresh peaches grown in Georgia or in rendering services for or advancing the interests of the growers of such peaches, may vote for the growers who are members of, stockholders in, or under contract with, such cooperative association (such vote to be cast on a copy of the appropriate ballot form), and the vote of such cooperative association shall be considered as the vote of such growers.

(2) By determining the time of commencement and termination of the period of the referendum and by giving public notice, as prescribed in (a)(3) hereof, (i) of the time during which the referendum will be conducted, (ii) that any ballot may be cast by mail, and (iii) that all ballots so cast must be addressed to the Fruit and Vegetable Division, Agricultural Marketing Service, P.O. Box 19, Lakeland, Florida, and the time prior to which such ballots must be post-marked.

(3) By giving public notice (i) by utilizing available agencies of public information (without advertising expense) including both press and radio facilities in the State of Georgia; (ii) by mailing a notice thereof (including a copy of the appropriate ballot form) to each such cooperative association and to each grower whose name and address are known; and (iii) by such other means as said referendum agent may deem advisable.

(4) By conducting meetings of growers and arranging for balloting at the meeting places, if said referendum agent determines that voting shall be at meetings. At each such meeting, balloting shall continue until all of the growers who are present, and who desire to do so, have had an opportunity to vote. Any grower may cast his ballot at any such meeting in lieu of voting by mail.

(5) By giving ballots to growers at the meeting; and receiving any ballots when they are cast.

(6) By securing the name and address of each person casting a ballot and inquiring into the eligibility of such person to vote in the referendum.

(7) By giving public notice of the time and place of each meeting authorized hereunder by posting a notice thereof, at least two days in advance of each such meeting, at each such meeting place, and in two or more public places within the applicable area; and, so far as may be practicable, by giving additional notice in the manner prescribed in paragraph (a)(3) hereof.

(8) By appointing any county agricultural agent in the State of Georgia, and any other persons deemed necessary or desirable, to assist the said referendum agent in performing his duties hereunder. Each county agricultural agent and other person so appointed shall serve without compensation and may be authorized, by the said referendum agent, to perform any or all of the functions set forth in paragraphs (a)(5), (6), (7), and (8) hereof (which, in the absence of such appointment of subagents, shall be performed by said referendum agent) in accordance with the requirements herein set forth, and shall forward to M. F.

Miller, Field Representative, Fruit and Vegetable Division, Agricultural Marketing Service, P.O. Box 19, Lakeland, Florida, immediately after the close of the referendum, the following:

(i) A register containing the name and address of each grower to whom a ballot form was given;

(ii) A register containing the name and address of each grower from whom an executed ballot was received;

(iii) All of the ballots received by the respective referendum agent in connection with the referendum, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and which were received by the respective agent during the referendum period;

(iv) A statement showing when and where each notice of referendum posted by said agents was posted and, if the notice was mailed to growers, the mailing list showing the names and addresses to which the notice was mailed and the time of such mailing; and

(v) A detailed statement reciting the method used in giving publicity to such referendum.

(b) Upon receipt by M. F. Miller of all ballots cast in accordance with the provisions hereof, he shall canvass the ballots and prepare and submit to the Secretary a detailed report covering the results of the referendum, the manner in which the referendum was conducted, the extent and kind of public notice given, and all other information pertinent to the full analysis of the referendum and its results; and shall forward such report, together with the ballots and other information and data, to the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C.

(c) The referendum agent and appointee pursuant hereto shall not refuse to accept a ballot submitted or cast; but should he, or any of them, deem that a ballot should be challenged for any reason, or if such ballot is challenged by any other person, said agent or appointee shall endorse above his signature, on the back of said ballot, a statement that such ballot was challenged, by whom challenged, and the reasons therefor; and the number of such challenged ballots shall be stated when they are forwarded as provided herein.

(d) All ballots shall be treated as confidential.

The Director of the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is hereby authorized to prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the said referendum agent and appointees in conducting said referendum.

Copies of the text of aforesaid amended marketing agreement and order may be examined in the Office of the Hearing Clerk, United States Department of Agriculture, Washington, D.C., and at the Office of W. E. Leigh, Manager, Industry Committee, Georgia Peach Marketing Agreement and Order, currently at 704 Grand Bldg., Macon, Georgia.

Ballots to be cast in the referendum may be obtained from the referendum agent and any appointee hereunder.

Dated: December 6, 1960.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60-11478; Filed, Dec. 8, 1960;
8:53 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 13841; FCC 60-1421]

COASTAL BROADCASTING CO. (WLAT)

Order Designating Application for Hearing on Stated Issues

In re application of Loys Marsdon Hawley and Herman Lee Hanks, d/b as Coastal Broadcasting Company (WLAT), Conway, South Carolina, has 1330 kc, 5 kw, D, requests 1330 kc, 500 w, 5 kw-L.S, DA-N, U, Docket No. 13841, File No. BMP-8480; for construction permit.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 30th day of November 1960;

The Commission having under consideration the above-captioned and described application;

It appearing that except as indicated by the issues specified below, the instant applicant is legally, technically, financially, and otherwise qualified to construct and operate the instant proposal; and

It further appearing that pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated June 24, 1960, and incorporated herein by reference, notified the applicant that the instant proposal would lose approximately 88.5 percent of the normally protected nighttime service area and about 46 percent of the population residing therein owing to interference received, and that, therefore, a question obtained as to whether the proposal represented an efficient utilization of the channel; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing that the applicant filed a timely reply to the aforementioned letter, stating that Conway has no existing nighttime facility; that this proposal would serve the entire city of Conway; and that WLAT is, therefore, proposing the first primary nighttime service to 100 percent of the population within the proposed nighttime service area and falls within one of the express exceptions to § 3.28(c) of the rules; but we are of the opinion that a question still obtains as to whether, under § 3.24(b) of the rules, this proposal represents an efficient utilization of the channel; and that the Commission is unable to make a determination in this matter on the basis of the information

before it and that an evidentiary hearing is necessary to obtain complete information relative to the above-captioned proposal and the grounds advanced in support of the applicant's belief that a grant of the application would serve the public interest; and is of the opinion that the application must be designated for hearing on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant application is designated for hearing, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Station WLAT and the availability of other primary service to such areas and populations.

2. To determine whether, because of interference received, the proposed operation of WLAT would be consistent with § 3.24(b) of the rules, and, if not, whether circumstances exist which would warrant a waiver of said section.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the instant applications would serve the public interest, convenience and necessity.

It is further ordered, That this Order shall supersede the Commission's Order (FCC 60-1319) adopted herein on November 2, 1960.

Released: December 6, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11526; Filed, Dec. 9, 1960;
8:50 a.m.]

[Docket Nos. 12925-12927; FCC 60M-2061]

EAST TEXAS TRANSMISSION CO.

Order Continuing Hearing

In re applications of East Texas Transmission Company, Tyler, Texas: For construction permit for new fixed video radio station. Frequencies: 5937.5, 6037.5, 6137.5 and 6237.5 Mc. Location: Hwy No. 429, 0.6 miles SW of College Mound, Texas, Docket No. 12925, File No. 2007-C1-P-58; for construction permit for new fixed video radio station. Frequencies: 5987.5, 6087.5, 6187.5 and 6287.5 Mc. Location 1.3 miles NW of Colfax, Texas, Docket No. 12926, File No. 2008-C1-P-58; for construction permit for new fixed video radio station. Frequencies: 5937.5, 6037.5, 6137.5 and 6237.5 Mc. Location: North Glenwood Blvd. and West Cloud St., Tyler, Texas, Docket No. 12927, File No. 2009-C1-P-58.

It is ordered, This 5th day of December 1960, on the Chief Hearing Examiner's own motion, that, because of the illness of the presiding Hearing Examiner, formal hearing in the above-entitled proceeding, which is scheduled to commence on December 12, 1960, is continued indefinitely, and that, in the near

future, a new date will be specified by the presiding Hearing Examiner.

Released: December 6, 1960.

FEDERAL COMMUNICATIONS

COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11527; Filed, Dec. 9, 1960;
8:50 a.m.]

[Docket No. 13659; FCC 60M-2054]

W. R. FRIER (WBHF)

Order Continuing Hearing

In re application of W. R. Frier (WBHF), Cartersville, Georgia, Docket No. 13659, File No. BP-12264; for construction permit.

The Chief Hearing Examiner having under consideration a petition filed on November 30, 1960, by the applicant, for continuance of hearing in the above-entitled proceeding which is presently scheduled to commence December 5, 1960;

It appearing that good cause exists to warrant a continuance of this matter and it is appropriate that the exact date be specified by the presiding Hearing Examiner;

It is ordered, This 2d day of December 1960, that the petition is granted and that hearing in the above proceeding is continued to a date to be specified by a subsequent order.

Released: December 5, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11528; Filed, Dec. 9, 1960;
8:51 a.m.]

[Docket Nos. 13356, 13857; FCC 60-1419]

QUEEN CITY BROADCASTING CO. AND VAL VERDE BROADCASTING CO.

Order Designating Applications for Consolidated Hearing on Stated Issues

in re applications of Queen City Broadcasting Company, Del Rio, Texas, requests 1490 kc, 250 w, U, Docket No. 13856, File No. BP-12115; Eugene Albert Houghton and Alton W. Stewart d/b as Val Verde Broadcasting Company, Del Rio, Texas, requests 1490 kc, 250 w, U, Docket No. 13857, File No. BP-13050; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 30th day of November 1960;

The Commission having under consideration the above-captioned and described applications;

It appearing, that except as indicated by the issues specified below, the Queen City Broadcasting Company is legally, technically, financially and otherwise qualified to construct its proposed sta-

tion; and the Val Verde Broadcasting Company is legally and technically qualified but may not be financially and otherwise qualified; and

It further appearing, that pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission in letters dated February 25, September 3, and November 17, 1959, and April 8, 1960, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of either of the applications would serve the public interest, convenience, and necessity; and that copies of the aforementioned letters are available for public inspection at the Commission's offices; and

It further appearing, that the instant applicants filed timely replies to the aforementioned letters; and

It further appearing, that in an affidavit filed on June 1, 1959, E. A. Houghton, a partner in Val Verde Broadcasting Company, alleged that Julius Sadowsky, an officer and stockholder in Queen City Broadcasting Company, is not qualified to own and operate a broadcast station, but that the Commission is of the opinion that Houghton has stated insufficient facts to support said allegation or to raise a substantial question as to the qualifications of Julius Sadowsky; and

It further appearing that Don R. Howard tr/as Del Rio Broadcasting Company, licensee of Station KDLK, Del Rio, Texas, has alleged that the Queen City Broadcasting Company's estimates of construction and operating costs and expected revenues are unrealistic and that Queen City Broadcasting Company has not demonstrated its financial ability to meet the costs of constructing and operating its proposed station; but that examination of the Queen City application and amendments thereto indicates that Queen City is financially qualified to meet the costs of construction and initial operation of its proposed station; and

It further appearing that the licensee of Station KDLK, by a series of correspondence and pleadings dating from January 8, 1959, contends, in substance, that the authorizations of a second standard broadcast station in Del Rio would result in economic injury to KDLK, that the Del Rio and Val Verde County area cannot support another radio station at this time, that the granting of either application herein would result in financial destruction of both the successful applicant and KDLK to the detriment of the public interest, convenience and necessity, would be a disservice to the public and would deprive the public of the excellent radio coverage it presently enjoys; and that, therefore, KDLK must be made a party to a hearing proceeding on the applications herein; and

It further appearing that the above contentions have not been sufficiently supported by factual allegations to warrant the specification of an issue as to whether the operation of a second standard broadcast station in Del Rio would be detrimental to the public interest; and

It further appearing that Don R. Howard's allegations that he is the licensee of the only standard broadcast station in Del Rio and that said station would suffer economic injury as a result of the operation of a second station in Del Rio require that Howard be named a party to the hearing ordered below; and

It further appearing that by letters dated March 4, and April 13, 1960, the Queen City Broadcasting Company alleged, in substance, that the transmitter site proposed by the Val Verde Broadcasting Company was purchased from two persons, one of whom is the father of Don R. Howard, licensee of KDLK, that the application of the Val Verde Broadcasting Company was not filed in good faith but for the purpose of impeding, obstructing or delaying determination on the Queen City application; that Queen City has requested a conditional grant of its application pursuant to § 1.362(b)(1) of the Commission rules; that by affidavit filed May 16, 1960, the Val Verde Broadcasting Company denied that its application was filed to block or delay the granting of any other application; that, on the basis of the information before it, the Commission is unable to conclude that the facts alleged raise a substantial question with respect to the bona fides of the Val Verde Broadcasting Company in filing its application; and

It further appearing that the Commission letter of April 8, 1960, advised the Val Verde Broadcasting Company that the information then on file did not show that adequate funds were available to finance the construction and initial operation of its proposed station; and that, on the basis of additional information filed in response to the Commission's letter, it cannot be determined that the Val Verde Broadcasting Company has sufficient cash or liquid assets available in sufficient amount over and above those needed to meet current expenditures to demonstrate that the Val Verde Broadcasting Company is financially qualified; and

It further appearing that, by amendment filed April 28, 1960, the application of the Val Verde Broadcasting Company was amended to show geographical coordinates which correctly indicate the location of the proposed antenna site; and that the antenna structure at the site proposed may constitute a hazard to air navigation; and

It further appearing that after consideration of the applicant's replies, the Commission is still unable to make the statutory finding that a grant of either of the instant applications would serve the public interest, convenience and necessity, and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine whether the Val Verde Broadcasting Company is financially

qualified to construct and operate its proposed station.

2. To determine whether the antenna system proposed by Val Verde Broadcasting Company would constitute a hazard to air navigation.

3. To determine, on a comparative basis, which of the instant proposals would better serve the public interest, convenience and necessity in the light of the evidence adduced pursuant to the foregoing issues and the record made with respect to the significant differences between the applicants as to:

a. The background and experience of each having a bearing on the applicant's ability to own and operate its proposed station.

b. The proposals of each of the applicants with respect to the management and operation of the proposed station.

c. The programming service proposed in each of the said applicants.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either of the instant applications should be granted.

It is further ordered, That Don R. Howard tr/as Del Rio Broadcasting Company, licensee of Station KDLK, Del Rio, Texas, is made a party to the proceeding.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and party respondent herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within twenty (20) days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

It is further ordered, That, the issues in the above-captioned proceedings may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue:

To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: December 7, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,¹

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11529; Filed, Dec. 9, 1960;
8:51 a.m.]

[Docket Nos. 13749-13753; FCC 60M-2064]

ROLLINS BROADCASTING, INC., ET AL.

Order Continuing Hearing

In re applications of Rollins Broadcasting, Inc., Wilmington, Delaware, Docket No. 13749, File No. BPCT-2583; The Wilmington Television Co., Inc., Wilmington, Delaware, Docket No. 13750, File No. BPCT-2603; WHY, Inc., Wil-

¹ Commissioner King dissenting.

ilmington, Delaware, Docket No. 13751, File No. BPCT-2634; Metropolitan Broadcasting Corporation, Wilmington, Delaware, Docket No. 13752, File No. BPCT-2715; National Telefilm Associates, Inc., Wilmington Delaware, Docket No. 13753, File No. BPCT-2769; for construction permits for new television broadcast stations (Channel 12).

It is ordered, This 5th day of December 1960, on the Chief Hearing Examiner's own motion, that, because of the illness of the presiding Hearing Examiner herein, the dates presently scheduled for (a) exchange of direct cases (December 9, 1960); (b) commencement of hearing (January 9, 1961); (c) notification of witnesses desired for cross-examination (January 23, 1961); and (d) further hearing (February 6, 1961), in the above-entitled proceeding, are hereby cancelled, and that new dates will be specified, in the near future, by the presiding Hearing Examiner.

Released: December 6, 1960.

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

[F.R. Doc. 60-11530; Filed, Dec. 9, 1960;
8:51 a.m.]

[Docket Nos. 13663-13666; FCC 60M-2063]

NORMAN A. THOMAS ET AL.

Order Continuing Hearing

In re applications of Norman A. Thomas, Greeneville, Tennessee, Docket No. 13663, File No. BP-12729; Greene County Broadcasting Company, Incorporated, Greeneville, Tennessee, Docket No. 13664, File No. BP-13271; Wilkes Broadcasting Company (WATA), Boone, North Carolina, Docket No. 13665, File No. BP-13451; Radio Hendersonville, Inc. (WHKP), Hendersonville, North Carolina, Docket No. 13666, File No. BP-13487; for construction permits.

The Hearing Examiner having under consideration a "Petition for Continuance of Procedural Dates" filed by Greene County Broadcasting Company, Inc., on December 2, 1960, requesting a continuance of the procedural dates established by the parties in the above-entitled proceeding at a conference on October 5, 1960;

It appearing that the date established for the exchange of exhibits in response to issues 6 and 8 as set forth in the Commission Order of Designation was December 5, 1960; that notification of witnesses and program logs desired was December 15, 1960; and formal hearing to begin on January 4, 1961; and

It further appearing that additional time will be required for the preparation of the engineering exhibit; and

It further appearing that counsel for all of the parties have consented to a grant of the instant petition, and have agreed to waive the provisions of § 1.43 of the Commission's rules to permit immediate consideration thereof;

Now, therefore, it is ordered, This 5th day of December 1960 that the "Petition for Continuance of Procedural Dates"

filed by Greene County Broadcasting Company, Inc., on December 2, 1960, be, and the same is, hereby granted, and that the dates for the exchange of exhibits, the notification of witnesses and program logs, and the formal hearing, presently scheduled for December 5, 1960, December 15, 1960, and January 4, 1961, be, and the same are, hereby continued to January 9, 1961, January 18, 1961, and February 1, 1961, respectively.

Released: December 6, 1960.

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

[F.R. Doc. 60-11531; Filed, Dec. 9, 1960;
8:51 a.m.]

[Docket Nos. 13828, 13829; FCC 60M-2058]

WALTERBORO RADIOCASTING CO. (WALD) AND ALTAMAHA BROADCASTING CO. (WBGR)

Order Continuing Hearing

In re applications of Walterboro Radiocasting Company (WALD), Walterboro, South Carolina, Docket No. 13828, File No. BP-12246, William Glenn Thomas, tr/as Altamaha Broadcasting Company (WBGR), Jesup, Georgia, Docket No. 13829, File No. BP-12461, for construction permits.

A prehearing conference in the above-entitled proceeding having been held as scheduled on December 2, 1960, and counsel having reached agreement on the procedures to be adopted which meet with the Examiner's approval;

It is ordered, This 5th day of December 1960, that the hearing presently scheduled to commence at 10:00 a.m. on December 13, 1960, at the Commission's offices, Washington, D.C., is hereby continued to Tuesday, February 7, 1961, at the same time and place;

It is ordered further, That engineering exhibits complete, but in draft form, are to be exchanged by January 13, 1961, that all exhibits in final form are to be exchanged by January 27 (with copies to be provided the hearing examiner), and that all other matters agreed upon are hereby deemed incorporated by reference to the transcript of the prehearing conference.

Released: December 5, 1960.

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

[F.R. Doc. 60-11532; Filed, Dec. 9, 1960;
8:51 a.m.]

[Docket No. 13596]

STANDARD BROADCAST STATIONS

Operation With Full Carrier and Single Sideband; Order Providing Time for Filing Reply Comments

In the matter of Inquiry into amendment of Part 3 of the Commission's rules and technical standards to permit standard broadcast stations to operate with full carrier and single sideband; Docket No. 13596 (RM-156).

1. The Commission has before it for consideration a request of Westinghouse Broadcasting Company, Inc., filed on November 30, 1960, for authorization to file reply comments during a period of at least 45 days after original comments are filed.

2. Westinghouse submits that it has experimented with single sideband operation on its experimental station KG2XIB for a period of time after April 1953; that its engineers have observed laboratory tests conducted by the Kahn Research Laboratories; and that it is not able to submit further comments and views until it has had an opportunity to examine the comments filed by the Kahn Laboratories and others. It therefore urges that the Commission authorize a period of not less than 45 days for the filing of reply comments.

3. The Commission is of the view that the public interest would be served by granting the request.

4. *In view of the foregoing, it is ordered*, This 5th day of December 1960, that the request of Westinghouse Broadcasting Company is granted, and that the time for filing comments in reply to original comments filed in this proceeding is specified as January 16, 1961.

Released: December 7, 1960.

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

[F.R. Doc. 60-11533; Filed, Dec. 9, 1960;
8:51 a.m.]

[Docket No. 13855; FCC 60-1417]

MANDAN RADIO ASSN.

Order To Show Cause

In the matter of revocation of license of Mandan Radio Association, for standard broadcast Station KBOM, Bismarck-Mandan, North Dakota, Docket No. 13855.

The Commission having under consideration certain violations of the Communications Act of 1934, as amended, and the Commission's rules involving (1) a series of Ownership Reports—FCC Form 323—filed by Mandan Radio Association on August 8, 1956, March 6, 1959, April 27, 1959, June 8, 1959, and April 11, 1960, respectively, pursuant to §§ 1.342 and 1.343 of the Commission's rules and regulations; (2) an application (BR-658) for the renewal of license of Station KBOM, which application was filed on March 6, 1959, by Mandan Radio Association and granted by the Commission on September 30, 1959; (3) a pending application (BTC-3423) filed by Mandan Radio Association on April 11, 1960, for Commission consent to the unauthorized relinquishment of positive control of said licensee through sale of stock from Charles E. Kempel to Clifford Nygard and 38 others (all stockholders); (4) a failure on the part of Mandan Radio Association, licensee of Station KBOM, Bismarck-Mandan, North Dakota, to file, in compliance with § 1.327 of the Commission's rules an application for modification of license to change its name to Mandan Radio Association, Inc.; and (5)

certain misrepresentations and concealments of material facts; and

It appearing (1) That in the August 8, 1956, Ownership Report—FCC Form 323—which is signed by John K. Harris as President, it is indicated that the licensee had increased its capital authorization to 100,000 shares of common voting, \$1.00 par value stock (previously 500 shares at \$100 par value), of which 48,300 shares (previously 483 shares issued) had been issued to only three stockholders, as follows: 38,300 shares (79.30 percent) to C. E. Kempel, Chairman of the Board—5000 shares (10.35 percent) to John K. Harris, President and Manager—5000 shares (10.35 percent) to Richard C. Johnson, Secretary—and that the licensee was also authorized to issue 500 shares of preferred non-voting stock of \$100 par value, of which none had been issued;

(2) That in the March 6, 1959 Ownership Report submitted with the above renewal application (BR-658), which was signed by Richard C. Johnson, Secretary, Messrs. Kempel, Harris and Johnson are represented, as to their holdings and offices, as in the August 8, 1956 report, but it is indicated that the preferred stock authorized was increased to 50,000 shares; that on the April 27, 1959 Ownership Report which was signed by Richard C. Johnson, Secretary, although Messrs. Kempel, Harris and Johnson maintained their offices in the licensee, the following changes had occurred as to stock: 57,000 shares of common stock were issued—C. E. Kempel owning 38,300 (67.19 percent)—John K. Harris owning 5,000 (8.77 percent)—Richard C. Johnson owning 13,700 (24.04 percent), and that 43,500 shares of preferred stock had now been issued (no stockholders listed); and that in the June 8, 1959 Ownership Report, which is signed by Richard C. Johnson, Secretary, all entries remained as stated above except that the preferred stock authorization was now at 500 shares of which 435 shares had been issued to 40 stockholders;

(3) That said licensee has changed its name to Mandan Radio Association, Inc., without having filed an application with the Commission requesting a modification of license to properly effectuate said change and without receiving Commission authorization therefor; and

It further appearing that subsequent to the grant of the above renewal of license application, and the filing of the above-mentioned Ownership Reports, information was brought to the attention of the Commission which indicated

(1) That an unauthorized transfer of control of Mandan Radio Association had been effectuated in 1956, in that Charles E. Kempel sold his 80 percent holdings in the licensee to several persons, and that John K. Harris had sold his 10 percent holdings; that Richard C. Johnson advised the Commission on November 16, 1959, that he would file an application showing that a transfer of control of the licensee had occurred in 1956; that on January 6, 1960, the Commission informed the licensee that no application had as yet been received and that an unauthorized transfer of

control of the licensee had taken place; and that it was not until April 11, 1960, that the above-captioned application (BTC-3423) was filed by the licensee for Commission consent to the unauthorized relinquishment of positive control of said licensee by Charles E. Kempel to Clifford Nygard and 38 others;

(2) That section II, page 2, paragraph 12 of said application refers to one Merrel T. Elberg as a voting stockholder, said Mr. Elberg never having appeared on any of the licensee's Ownership Reports as such throughout its history, and whom it is later alleged by the licensee resigned as director and sold his stock in 1958; that Exhibit 2 of said application, showing stockholders and amounts, in general, remains inconsistent as to dates and amounts; that page 2 of said Exhibit 2 is incompatible with prior and subsequent statements regarding stock acquisitions by Messrs. Kempel, Harris and Johnson; and that section I, page 5, para. 2, is inconsistent with the stated facts surrounding the unauthorized transfer of control of the licensee;

(3) That in their sworn statement submitted with said application, Messrs. Kempel and Johnson alleged, among other things, that the duty to seek Commission consent to the stock transactions and informing the Commission of increases in stock authorizations was left to John K. Harris; that the unauthorized and unreported transactions occurred from July 1, 1956, to February 1, 1957, with the unauthorized transfer of control occurring on July 1, 1956; that between May 1956, and December 15, 1957, Mr. Harris was ill; that on December 15, 1957, Mr. Harris resigned his position at the station; that at the same time, the station's chief engineer resigned; that several stock transactions occurred as a result of the two foregoing resignations; that a Mr. Leupp replaced the engineer and Mr. Johnson assumed management of the station; that on January 20, 1958, the 8,000 shares of stock belonging to one Merrel T. Elberg were sold to his wife and son; and that it was not until 1958 that Mr. Johnson and Mr. Leupp became aware of the station's situation; and

It further appearing that after receipt of the above-mentioned application, further inquiry by the Commission disclosed, among other things,

(1) That several unauthorized and unreported transactions amounting to an unauthorized transfer of control had been effectuated within the licensee corporation from July 1, 1956 through 1958; that although John K. Harris had resigned his office in 1957 and disposed of his stock to Mr. Johnson, he had been carried as President and 8.77 percent stockholder of the licensee in its Ownership Reports through June 8, 1959; that Messrs. Kempel and Johnson could give no explanation as to the discrepancies concerning Messrs. Elberg and Harris except to say that these were part of a series of transactions they intended to clear up after the grant of the above renewal of license application; and that Mr. Elberg actually acquired 8,000 shares of stock from Mr. Kempel on July 1, 1956,

and disposed of same to Mrs. Elberg on January 20, 1958;

(2) That it was admitted by Mr. Johnson that the only reason for not making any report to the Commission as to the unauthorized transactions, although he had knowledge of same in 1958, was that he wanted the renewal of license application to be granted first; that he admitted he believed that if a report had been made to the Commission, it would have delayed the grant of said renewal of license application; that he realized that, at the time of the grant of said renewal of license application, he had sworn to misrepresentations to the Commission; and that he could offer no excuse or reason for having waited so long to correct his and the station's situation except that he believed proper disclosure to the Commission would have jeopardized the granting of said renewal of license application; and

It further appearing that in the above-described applications (BR-658) and (BTC-3423), and in the above-described Ownership Reports Charles E. Kempel, John K. Harris, Richard C. Johnson and Mandan Radio Association did wilfully and knowingly, in violation of section 310 of the Communications Act of 1934, as amended, and of §§ 1.303, 1.304, 1.327, 1.329, 1.342 and 1.343 of the Commission's rules and regulations, and in order to deceive the Commission, make misrepresentations and false statements concerning the ownership and control of Mandan Radio Association and Station KBOM, upon which misrepresentations and statements the Commission relied in granting the application (BR-658) for renewal of license of Station KBOM on September 30, 1959; in accepting the Ownership Reports submitted to it on August 8, 1956, March 6, 1959, April 27, 1959, June 8, 1959, and April 11, 1960; and in accepting for filing on April 11, 1960, the application (BTC-3423) for Commission consent to the unauthorized relinquishment of positive control of Mandan Radio Association through the sale of stock from Charles E. Kempel to Clifford Nygard and 38 others (all stockholders);

It is ordered, This 30th day of November 1960, pursuant to the provisions of sections 301, 308(b), 312(a)(1), 312(a)(2), 312(a)(4) and 312(c) of the Communications Act of 1934, as amended, that the said licensee, Mandan Radio Association, is directed to show cause why an order revoking the aforementioned license for standard broadcast Station KBOM, Bismarck-Mandan, North Dakota, should not be issued, and to appear and give evidence with respect thereto at a hearing¹ to be held at a

¹ Section 1.62 of the Commission's rules provides that a licensee, in order to avail itself of the opportunity to be heard, shall, in person or by its attorney, file with the Commission, within thirty days of the receipt of the order to show cause, a written statement stating that it will appear at the hearing and present evidence on the matter specified in the order. In the event it would not be possible for respondent to appear for hearing in the proceeding if scheduled to be held in Washington, D.C., it should advise the Commission of the reasons for such inability within five days of the receipt of this

time and place to be specified by subsequent order, said time in no event to be less than 30 days after receipt of this Order; and

It is further ordered, That the Acting Secretary of the Commission send a copy of this Order by Registered Mail, Return Receipt Requested to the said licensee, Mandan Radio Association.

Released: December 7, 1960.

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

[F.R. Doc. 60-11534; Filed, Dec. 9, 1960;
8:51 a.m.]

DEPARTMENT OF COMMERCE

Bureau of the Census

DISTRIBUTORS' STOCKS OF CANNED FOOD

Notice of Consideration To Continue Surveys

Notice is hereby given that the Bureau of the Census is planning to conduct its usual annual survey of inventories covering 32 canned and bottled products, including vegetables, fruits, juices, and fish as of December 31, 1960, under the provisions of the Act of Congress approved August 31, 1954, 13 U.S.C. 181, 224, and 225. This survey, together with the previous surveys, provides the only continuing source of information on stocks of the specified canned foods held by wholesalers and in warehouses of retail multi-unit organizations.

On the basis of information received by the Bureau of the Census, these data will have significant application to the needs of the public, industry and the distributive trades, and governmental agencies and are not publicly available from nongovernmental or other governmental sources.

Such survey, if conducted, shall begin not earlier than 30 days after publication of this notice in the FEDERAL REGISTER.

Reports will not be required from all firms but will be limited to a scientifically selected sample of wholesalers and

order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty days of the receipt of the order to show cause. If such statement contains, with particularity, factual allegations denying or justifying the facts upon which the show cause order is based, the Hearing Examiner may call upon the submitting party to furnish additional information, and shall request all opposing parties to file an answer to the written statement and/or additional information. The record will then be closed and an initial decision issued on the basis of such procedure. Where a hearing is waived and no written statement has been filed within the thirty days of the receipt of the order to show cause, the allegations of fact contained in the order to show cause will be deemed correct and the sanctions specified in the order to show cause will be invoked.

retail multi-unit organizations handling canned foods, in order to provide year-end inventories of the specified canned food items with measurable reliability. These stocks will be measured in terms of actual cases with separate data requested for "all sizes smaller than No. 10" and for "sizes No. 10 or larger."

Copies of the proposed forms and a description of the collection methods are available upon request to the Director, Bureau of the Census, Washington 25, D.C.

Any suggestions or recommendations concerning the subject matter of this proposed survey should be submitted in writing to the Director of the Census within 30 days after the date of this publication and will receive consideration.

ROBERT W. BURGESS,
Director, Bureau of the Census.

[F.R. Doc. 60-11524; Filed, Dec. 9, 1960;
8:50 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 11934]

AEROVIAS NACIONALES DE COLOMBIA, S.A.

Notice of Prehearing Conference

In the matter of the application of Aerovias Nacionales de Colombia, S.A. for an amendment of its foreign air carrier permit authorizing it to engage in foreign air transportation with respect to persons, property and mail between a point or points in Colombia, an intermediate point in Panama City, Panama (Tocumen), an intermediate point in Jamaica, British West Indies, and the co-terminal points Miami, Florida, and New York, New York.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on December 15, 1960, at 10:00 a.m., e.s.t., Room 701, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner John A. Cannon.

Dated at Washington, D.C., December 6, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-11536; Filed, Dec. 9, 1960;
8:52 a.m.]

[Docket 11826]

QANTAS EMPIRE AIRWAYS LTD.

Notice of Hearing

In the matter of the application of Qantas Empire Airways Limited for amendment of its foreign air carrier permit under section 402 of the Federal Aviation Act of 1958, as amended.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled proceeding is assigned to be held on December 20, 1960, at 10:00 a.m., e.s.t., in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Joseph L. Fitzmaurice.

Dated at Washington, D.C., December 6, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-11537; Filed, Dec. 9, 1960;
8:52 a.m.]

FEDERAL POWER COMMISSION

[Project No. 2283]

CENTRAL MAINE POWER CO.

Notice of Application for License

DECEMBER 6, 1960.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Central Maine Power Company, of Augusta, Maine, for license for a constructed hydroelectric development, known as the Gulf Island-Deer Rips Project, designated Project No. 2283, and situated on the Androscoggin River, navigable waters of the United States, in Androscoggin County, Maine.

The project consists of two dams and three powerhouses and other appurtenant facilities, described as follows: Gulf Island—a concrete and earthfill dam, the concrete portion being comprised of a spillway section equipped with 7-foot hinged flashboards, two Stoney gates and seven Tainter gates, a powerhouse intake section and bulkhead section; a reservoir with an area of about 4,000 acres with normal water surface at an elevation of 262 feet (USGS) and extending upstream about 17 miles; a powerhouse integral with the dam containing three 9,000 horsepower turbines each connected to a 6,400-kilowatt generator; step-up transformers; and appurtenant facilities; Deer Rips—a concrete dam comprised of four gravity overflow sections, a canal intake section and powerhouse intake section; a reservoir with an area of about 130 acres with normal water surface at an elevation of 205.7 feet (USGS) and extending upstream to the tailwater of Gulf Island; a canal on the right bank extending about 600 feet to the Deer Rips powerhouse, which contains seven generating units with a total turbine capacity of 10,650 horsepower and generator capacity of 6,440 kilowatts; a step-up transformer; a forebay on the left bank about 25 feet long connecting the intake to Androscoggin No. 3 powerhouse, which contains one 5,500-horsepower turbine connected to a 3,600-kilowatt generator; excavated tail-races at both powerhouses; and appurtenant facilities.

Protests and petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day on which protests or petitions may be filed is January 31, 1961. The application is on file with the Commission for public inspection.

JOSEPH H. GUTRIE,
Secretary.

[F.R. Doc. 60-11495; Filed, Dec. 9, 1960;
8:47 a.m.]

[Project No. 2284]

CENTRAL MAINE POWER CO.**Notice of Application for License**

DECEMBER 6, 1960.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Central Maine Power Company, of Augusta, Maine, for license for a constructed hydroelectric development, known as the Brunswick-Topsham Project, designated Project No. 2284, and situated on the Androscoggin River, navigable waters of the United States, in Cumberland and Sagadahoc Counties, Maine.

The project consists of two dams and two powerhouses and other appurtenant facilities, described as follows: Brunswick—a dam comprised of two timber-crib overflow sections and a short concrete masonry non-overflow section connecting to the powerhouse on the right bank; a reservoir, with an area of about 12 acres and normal water surface at elevation 17.4 feet (USGS) contained within the river banks; a powerhouse containing four 483-horsepower turbines connected to three 375-kilowatt generators and one 348-kilowatt generator; step-up transformers; and appurtenant facilities; Topsham—a dam comprised of two concrete and one timber-crib sections; two intake sections, one on each shore; a reservoir, with an area of about 300 acres and normal water surface at elevation 39 feet (USGS), extending upstream about 4½ miles; an enclosed concrete flume extending from the left bank intake to a powerhouse containing three 400-horsepower turbines each connected to a 300-kilowatt generator; an overhead circuit to a non-project substation; step-up transformers; and appurtenant facilities.

Protests and petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day on which protests or petitions may be filed is January 31, 1961. The application is on file with the Commission for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-11496; Filed, Dec. 9, 1960;
8:47 a.m.]

[Docket No. E-6971]

KANSAS GAS AND ELECTRIC CO.**Notice of Application**

DECEMBER 5, 1960.

Take notice that on November 29, 1960, an application was filed with the Federal Power Commission pursuant to section 204 of the Federal Power Act by Kansas Gas and Electric Company ("Applicant"), a corporation organized under the laws of the State of West Virginia and doing business in the State of Kansas with its principal business office at Wichita, Kansas, seeking an order authorizing the issuance of \$7,000,000 principal amount of First Mortgage Bonds,

-- percent Series due 1991. Applicant proposes to issue \$7,000,000 in principal amount of First Mortgage Bonds, -- percent Series due 1991 under a Mortgage and Deed of Trust to Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York) and Wesley L. Baker (successor individual Trustee), as Trustees, dated as of April 1, 1940, as supplemented thereafter and as it will be further supplemented by a proposed Eighth Supplemental Indenture to be dated as of January 1, 1961. The interest rate to be borne by the Bonds (which shall be a multiple of ⅓ of 1 percent) and the price (exclusive of accrued interest) to be paid to Applicant for the Bonds (which shall be not less than the principal amount thereof and not more than 102¾ percent of such principal amount) will be determined by competitive bidding. Applicant states that the proceeds from the issuance and sale of the aforesaid First Mortgage Bonds will be used to meet expenditures in connection with its construction program.

Any person desiring to be heard or to make any protests with reference to said application should on or before the 30th day of December 1960, file with the Federal Power Commission, Washington 25, D.C. petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11497; Filed, Dec. 9, 1960;
8:47 a.m.]

[Docket No. RP61-15]

TEXAS GAS TRANSMISSION CORP.**Order Permitting Filing of Tariff Sheets and Providing for Hearing on Proposed Revised Tariff Sheets and Suspension of Certain Filings**

DECEMBER 5, 1960.

Texas Gas Transmission Corporation (Texas Gas) tendered for filing 52 revised tariff sheets¹ proposing an increase in rates over those established by the Commission's order issued October 14, 1960 in settlement of the rate proceedings in Docket No. G-18886. The increased charges amount to \$4,742,199, or 4.4 percent, annually based upon sales for the year ended June 30, 1960, as adjusted. Texas Gas requests an effective date of December 6, 1960, for the in-

¹ Third Revised Sheet No. 68-I; Fourth Revised Sheets Nos. 68-BB, 68-G, 68-H, 68-K, 68-L and 70-A; Fifth Revised Sheets Nos. 13, 15 and 68-C, Sixth Revised Sheets Nos. 7, 9, 19, 21, 25, 27 and 71; Seventh Revised Sheets Nos. 68-A, 68-B, 68-E and 68-F; Eighth Revised Sheets Nos. 45, 47, 51, 79-I and 79-J; Ninth Revised Sheets Nos. 5, 11, 23, 29, 33, 41, 49, 53, 55, 59, 61, 63, 67, 69, 70, 73 and 74; Tenth Revised Sheets Nos. 17, 31, 35, 37, 43, 57 and 65 and Eleventh Revised Sheet No. 39 to FPC Gas Tariff, Second Revised Volume No. 1 and First Revised Sheet No. 254 to FPC Gas Tariff, Original Volume No. 2.

creases, but Texas Gas further requests that if its suspendable filings are in fact suspended, the non-suspendable filings—concerning the sale of gas for resale for industrial use only²—be made effective on the date the suspended tariff sheets become effective.

In support of its filings Texas Gas alleges (1) increased costs of purchased gas due to increased rates of suppliers and to shifts in sources from cheaper to higher priced gas, (2) reduced sales and volumes transported, (3) increased wages and salaries, (4) increased regulatory expenses, (5) increased depreciation expenses, and (6) a need for a 6½ percent rate of return and associated income taxes.

The claimed increased cost of purchased gas is partly contingent, the rates of 39 of Texas Gas's suppliers being effective subject to refund and the increased rates of two suppliers being suspended. In addition, several items in the cost data submitted by Texas Gas are questionable. Some of the questionable items are the 6½ percent rate of return and associated taxes, the extent of the reduction in volumes sold and transported, the claimed regulatory expense, the allocation of costs, and the rate tilt.

The proposed increased rates and charges provided for in the above-designated revised tariff tendered by Texas Gas on October 21, 1960, may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

(1) 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 changes in rates, charges, classifications or services, and that certain of the above-designated revised tariff sheets be suspended and the use thereof be deferred as hereinafter ordered.

(2) Good cause exists for waiving the 60-day maximum notice limit of § 154.22 of the Commission's regulations under the Natural Gas Act; for permitting the filing of Eighth Revised Sheet Nos. 45, 47, and 51 and Ninth Revised Sheet No. 49 to Texas Gas's FPC Gas Tariff, Second Revised Volume No. 1; and for making the said tariff sheets effective on the date hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure and regulations under the Natural Gas Act (18 CFR, Ch. I), a public hearing be held on a date to be designated by notice from the Secretary of the Commission, concerning the lawfulness of the rates, charges, classifications, and services contained in Texas Gas's proposed revised tariff sheets filed on October 21, 1960.

(B) Pending such hearing and decision thereon, Texas Gas's proposed Third Revised Sheet No. 68-I, Fourth Revised Sheets Nos. 68-BB, 68-G, 68-H,

² Eighth Revised Sheets Nos. 45, 47, and 51 and Ninth Revised Sheet No. 49.

68-K, 68-L, and 70-A; Fifth Revised Sheets Nos. 13, 15 and 68-C; Sixth Revised Sheets Nos. 7, 9, 19, 21, 25, 27 and 71; Seventh Revised Sheets Nos. 68-A, 68-B, 68-E and 68-F; Eighth Revised Sheets Nos. 70-I and 79-J; Ninth Revised Sheets Nos. 5, 11, 23, 29, 33, 41, 53, 55, 59, 61, 63, 67, 69, 70, 73 and 74; Tenth Revised Sheets Nos. 17, 31, 35, 37, 43, 57 and 65 and Eleventh Revised Sheet No. 39 to Texas Gas' FPC Gas Tariff, Second Revised Volume No. 1 and First Revised Sheet No. 254 to Texas Gas' FPC Gas Tariff, Original Volume No. 2 are hereby suspended and the use thereof deferred until May 6, 1961, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) The 60-days-maximum notice limit of § 154.22 of the Commission's regulations under the Natural Gas Act is waived; Eighth Revised Sheet Nos. 45, 47 and 51 and Ninth Revised Sheet No. 49 to Texas Gas's FPC Gas Tariff, Second Revised Volume No. 1, may be filed; and said tariff sheets shall become effective on the date the tariff sheets suspended in paragraph (B) above become effective.

(D) Neither the tariff sheets suspended, nor the tariffs 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.

(E) Notices of intervention 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 and 1.37(f)) on or before January 20, 1961.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-11493; Filed, Dec. 9, 1960;
8:47 a.m.]

SECURITIES AND EXCHANGE COMMISSION

ALUMINUM COMPANY OF AMERICA ET AL.

Notice of Applications for Unlisted Trading Privileges and of Oppor- tunity for Hearing

DECEMBER 6, 1960.

In the matter of applications of the Cincinnati Stock Exchange for unlisted trading privileges in certain securities.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f) (2) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

Aluminum Co. of America	File No. 7-2110
Ampex Corp.	7-2111

General Telephone and Electronics Corp.	File No. 7-2112
Goodyear Tire and Rubber Co.	7-2113
Gulf Oil Corp.	7-2114
Minnesota Mining and Manufacturing Co.	7-2115
United Aircraft Corp.	7-2116
Western Union Telegraph Co.	7-2117

Upon receipt of a request, on or before December 23, 1960 from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission, on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F.R. Doc. 60-11505; Filed, Dec. 9, 1960;
8:48 a.m.]

HOOVER BALL AND BEARING CO.

Notice of Application for Unlisted Trading Privileges and of Oppor- tunity for Hearing

DECEMBER 6, 1960.

In the Matter of Application of the Detroit Stock Exchange for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f) (2) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchanges:

Hoover Ball and Bearing Co., File 7-2119.

Upon receipt of a request, on or before December 23, 1960 from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts

stated therein and other information contained in the official files of the Commission pertaining thereto.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F.R. Doc. 60-11506; Filed, Dec. 9, 1960;
8:48 a.m.]

[File No. 1-1368]

HOOVER BALL AND BEARING CO.

Notice of Application To Strike From Listing and Registration and of Opportunity for Hearing

DECEMBER 6, 1960.

In the Matter of Hoover Ball and Bearing Company, Common Stock, File No. 1-1368.

Detroit Stock Exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-1(b) promulgated thereunder, to strike the specified security from listing and registration thereon.

The reasons alleged in the application for striking this security from listing and registration include the following: This application is made at the request of the issuer. The stock remains listed on the New York Stock Exchange.

Upon receipt of a request, on or before December 23, 1960, 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 files of the Commission pertaining to the matter.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F.R. Doc. 60-11507; Filed, Dec. 9, 1960;
8:48 a.m.]

ROHR AIRCRAFT CORP.

Notice of Application for Unlisted Trading Privileges and of Oppor- tunity for Hearing

DECEMBER 6, 1960.

In the matter of application of the Philadelphia-Baltimore Stock Exchange For Unlisted Trading Privileges in a Certain Security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission

pursuant to section 12(f)(2) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchanges:

Rohr Aircraft Corp., File 7-2118.

Upon receipt of a request, on or before December 23, 1960 from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

By the Commission.

NELLYE A. THORSEN,
Assistant Secretary.

[F.R. Doc. 60-11508; Filed, Dec. 9, 1960;
8:48 a.m.]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Area 300]

KANSAS

Declaration of Disaster Area

Whereas, it has been reported that during the month of November, 1960, because of the effects of certain disasters, damage resulted to residences and business property located in certain areas in the State of Kansas;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act.

Now, therefore, as Deputy Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b) of the Small Business Act may be received and considered by the Offices below indicated from persons or firms whose property situated in the following county (including any areas adjacent to said county) suffered damage or destruction as a result of the catastrophe hereinafter referred to:

County: Cloud (tornado occurring on or about November 26 and 27, 1960).

Offices: Small Business Administration Regional Office, Home Savings Building, Fifth Floor, 1006 Grand Avenue, Kansas City 6, Mo. Small Business Administration Branch Office, Board of Trade Building, Room 215, 120 South Market Street, Wichita 2, Kans.

2. No special field offices will be established at this time.

3. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to May 31, 1961.

Dated: November 30, 1960.

ROBERT F. BUCK,
Deputy Administrator.

[F.R. Doc. 60-11509; Filed, Dec. 9, 1960;
8:48 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 7, 1960.

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. 36764: *Substituted service—C&EI and L&N for Jones Truck Lines, Inc.* Filed by Central and Southern Motor Freight Tariff Association, Incorporated, Agent (No. 43), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Chicago, Ill., and Memphis, Tenn., on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief—Motor-truck competition.

Tariff—Supplement 1 to Central and Southern Motor Freight Tariff Association, Incorporated tariff MF-I.C.C. 228.

FSA No. 36765: *Substituted service—IC for Jones Truck Lines, Inc.* Filed by Central and Southern Motor Freight Tariff Association, Incorporated, Agent (No. 44), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Chicago, Ill., on the one hand, and East St. Louis, Ill., and Memphis, Tenn., on the other, also between East St. Louis, Ill., and Memphis, Tenn., on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief—Motor-truck competition.

Tariff—Supplement 1 to Central and Southern Motor Freight Tariff Association, Incorporated tariff MF-I.C.C. 228.

FSA No. 36766: *Substituted service—L&N for T.I.M.E. Incorporated.* Filed by Central and Southern Motor Freight Tariff Association, Incorporated, Agent (No. 45), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between East St. Louis, Ill., and Atlanta, Ga., on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief—Motor-truck competition.

Tariff—Supplement 1 to Central and Southern Motor Freight Tariff Association, Incorporated tariff MF-I.C.C. 228.

By the Commission.

[SEAL] HAROLD D. McCoy,
Secretary.

[F.R. Doc. 60-11523; Filed, Dec. 9, 1960;
8:50 a.m.]

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