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# FEDERAL REGISTER

VOLUME 28

NUMBER 61

Washington, Thursday, March 28, 1963

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# Rules and Regulations

## Title 5—ADMINISTRATIVE PERSONNEL

### Chapter I—Civil Service Commission

#### PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

##### Department of Commerce

Effective upon publication in the FEDERAL REGISTER, subparagraphs (45) and (46) of paragraph (a) of § 6.312 are revoked and subparagraphs (12) and (13) are added to paragraph (p) as set out below.

##### § 6.312 Department of Commerce.

(p) Office of the Assistant Secretary for International Affairs. \* \* \*

(12) The Director, Office of Trade Adjustments.

(13) One Private Secretary to the Director, Office of Trade Adjustments.

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

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

[F.R. Doc. 63-3258; Filed, Mar. 27, 1963; 8:51 a.m.]

#### PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

##### Housing and Home Finance Agency

Effective upon publication in the FEDERAL REGISTER, subparagraph (28) of paragraph (a) and subparagraph (2) of paragraph (d) of § 6.342 are revoked.

(R.S. 1758, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

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

[F.R. Doc. 63-3259; Filed, Mar. 27, 1963; 8:51 a.m.]

## Title 13—BUSINESS CREDIT AND ASSISTANCE

### Chapter I—Small Business Administration

[Amdt. 6]

#### PART 105—STANDARDS OF CONDUCT

##### Interest in Firms Receiving SBA Assistance and Other Firms

In Part 105, § 105.4-2, as amended (26 F.R. 8447, 27 F.R. 5653, 27 F.R. 12612),

is hereby further amended by adding the following paragraph (c) thereto:

##### § 105.4-2 Interest in firms receiving SBA assistance and other firms.

(c) For the purposes of 18 U.S.C. 208 and paragraph (b) of this section, any financial interest on the part of persons referred to therein is hereby determined to be not so substantial as to be deemed likely to affect the integrity of the services which the Administration may expect from any employee or special employee when such financial interest results from an ownership interest of less than one percent in any concern in which such ownership interest amounts to less than \$10,000 in equity investment. Computations of dollar-value of stock holdings in corporations for purposes of this paragraph shall be (1) by means of market value in the case of stocks listed on national exchanges, (2) by means of over-the-counter market quotations as reported by the National Daily Quotation Service in the case of unlisted stocks and (3) by means of sound book value in the case of stocks not in the preceding two categories.

Effective date: March 8, 1963.

JOHN E. HORNE,  
Administrator.

[F.R. Doc. 63-3248; Filed, Mar. 27, 1963; 8:49 a.m.]

[Amdt. 3 (Rev. 2)]

#### PART 107—SMALL BUSINESS INVESTMENT COMPANIES

##### Elimination of Requirement for Submission by Licensees of Activity Report

Pursuant to authority contained in section 308 of the Small Business Investment Act of 1958, Pub. Law 85-699, 72 Stat. 694, as amended, there is hereby amended, as set forth below, § 107.802 of Part 107 of Subchapter B, Chapter I of Title 13 of the Code of Federal Regulations, as revised in 27 F.R. 9743-9754 and amended in 28 F.R. 681 and 1627.

*Information.* The amendment to § 107.802 eliminates the requirement for submission by Licensees of the Activity Report, SBA Form 477, by deleting in its entirety paragraph (i) of § 107.802 and the accompanying footnote, and by relettering present paragraph (j) to read (i). Since the amendment removes a requirement formerly imposed by the regulations governing Small Business Investment Companies and is exempt from the rule-making requirements of the Administrative Procedure Act (5 U.S.C. 1003), it shall become effective upon publication in the FEDERAL REGISTER.

The regulations governing Small Business Investment Companies is hereby amended as follows:

1. By deleting paragraph (i) and accompanying footnote 9 of § 107.802 in its entirety.

2. By relettering present paragraph (j) of § 107.802 to read (i).

Dated: March 22, 1963.

JOHN E. HORNE,  
Administrator.

[F.R. Doc. 63-3247; Filed, Mar. 27, 1963; 8:49 a.m.]

## Title 14—AERONAUTICS AND SPACE

### Chapter I—Federal Aviation Agency

#### SUBCHAPTER E—AIRSPACE [NEW]

[Airspace Docket No. 62-AL-14]

#### PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS [NEW]

##### Designation of Control Zone and Transition Area

On December 1, 1962, a notice of proposed rule making was published in the FEDERAL REGISTER (27 F.R. 11900) stating that the Federal Aviation Agency proposed to designate a control zone and transition area at Fort Yukon, Alaska.

No adverse comments were received regarding the proposed amendments.

Subsequent to the issuance of the notice, Parts 600 and 601 of the regulations of the Administrator have been consolidated and recodified into a new Part 71 of the Federal Aviation Regulations which became effective December 12, 1962 (27 F.R. 10352, 220-2, November 10, 1962). The airspace actions taken herein reflect the new format and numbering system adopted for these parts.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated in the notice, the following actions are taken:

1. Section 71.171 (27 F.R. 220-91, November 10, 1962) is amended by adding the following:

Fort Yukon, Alaska.

Within a 5-mile radius of Fort Yukon Municipal Airport (latitude 66°34'15" N, longitude 145°15'10" W.) and within 2 miles either side of the 062° bearing from the Fort Yukon RBN extending from the 5-mile radius zone to 8 miles NE of the RBN, from 0745 to 1645 hours local time, daily.

2. Section 71.181 (27 F.R. 220-139, November 10, 1962) is amended by adding the following:

Fort Yukon, Alaska.

That airspace extending upward from 700 feet above the surface within a 5-mile radius

of Fort Yukon Municipal Airport (latitude 66°34'15" N., longitude 145°15'10" W.), and within 2 miles either side of the 062° bearing from the Fort Yukon RBN extending from the 5-mile radius area to 8 miles NE of the RBN; that airspace extending upward from 1,200 feet above the surface within 5 miles SE and 8 miles NW of the 062° and 242° bearings from the Fort Yukon RBN extending from 7 miles SW to 13 miles NE of the RBN.

These amendments shall become effective 0001 e.s.t., May 30, 1963.

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

Issued in Washington, D.C., on March 21, 1963.

CLIFFORD P. BURTON,

Chief, Airspace Utilization Division.

[F.R. Doc. 63-3222; Filed, Mar. 27, 1963; 8:45 a.m.]

## Title 21—FOOD AND DRUGS

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

#### SUBCHAPTER B—FOOD AND FOOD PRODUCTS

#### PART 19—CHEESES; PROCESSED CHEESES; CHEESE FOODS; CHEESE SPREADS, AND RELATED FOODS; DEFINITIONS AND STANDARDS OF IDENTITY

##### Cottage Cheese, Creamed Cottage Cheese; Order Amending Standards of Identity

In the matter of amending the standards of identity for cottage cheese and creamed cottage cheese:

A notice of proposed rule making was published in the FEDERAL REGISTER of February 8, 1962 (27 F.R. 1173), announcing that a petition had been filed by Milk Industry Foundation, 1145 Nineteenth Street NW., Washington, D.C., The American Cottage Cheese Institute, Ithaca, New York, and others proposing amendments of the standards of identity for cottage cheese and creamed cottage cheese. The petitioners proposed that the identity standard for creamed cottage cheese be amended to permit the use of additional optional ingredients in the creaming mixture and to designate for label designation the optional vegetable gums and other ingredients having a similar function. The petitioners proposed that the standards for both cottage cheese and creamed cottage cheese should be amended to update the citations to the methods of analysis prescribed. They also proposed that each of the standards should be amended to include a provision for these articles to be produced by unspecified alternative make procedures.

The notice invited all interested persons to submit comments on the proposals. In response, a number of comments were received. Some objected to the inclusion of the phraseology providing for unspecified alternative make procedures while others approved of such inclusion. Some comments requested that provision be made for additional stabilizing ingredients to be used in the

creaming mixture. One comment requested that diacetyl be permitted as an optional ingredient, but it failed to mention that under section 403(k) of the Federal Food, Drug, and Cosmetic Act such use would require the label of the creamed cottage cheese to show that it contains artificial flavoring. Comments were submitted proposing that the standard should require pasteurization of the final creaming mixture following the addition of any optional ingredients. A request was received for specifying the particular location on the label for display of the optional ingredient declaration.

On consideration of the information furnished by the petitioners, comments received, and other relevant information, it is concluded that it will promote honesty and fair dealing in the interest of consumers to amend the standards of identity for cottage cheese and creamed cottage cheese as hereinafter set forth. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and in accordance with the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (25 F.R. 8625): *It is ordered*. That the standards of identity for cottage cheese and for creamed cottage cheese (21 CFR 19.525, 19.530) be amended as follows:

1. Section 19.525(a) is revised to read:  
§ 19.525 Cottage cheese; identity.

(a) Cottage cheese is the soft uncured cheese prepared by the procedure set forth in paragraph (b) of this section. The finished cottage cheese contains not more than 80 percent of moisture, as determined by the method prescribed under "Moisture—Official," on page 210 of "Official Methods of Analysis of the Association of Official Agricultural Chemists," Ninth Edition (1960).

2. Section 19.530 is revised to read:  
§ 19.530 Creamed cottage cheese; identity; label statement of optional ingredients.

(a) Creamed cottage cheese is the soft uncured cheese prepared by mixing cottage cheese with a creaming mixture as provided for in paragraph (b) of this section. The creaming mixture is used in such quantity that the milk fat added thereby is not less than 4 percent by weight of the finished creamed cottage cheese. The finished creamed cottage cheese contains not more than 80 percent of moisture, as determined by the method prescribed in § 19.525(a).

(b) The creaming mixture consists of cream or a mixture of cream with milk or skim milk or both, to which salt and one or more of the other optional ingredients specified in this paragraph may be added. Nonfat dry milk or concentrated skim milk may be added to adjust the solids content of the creaming mixture, provided the weight of the solids added thereby does not exceed 3 percent of the weight of the creaming mixture. To the creaming mixture there may be added a culture of harmless lactic acid and

flavor-producing bacteria, with or without rennet, and there may be added a preparation of pasteurized skim milk with added citric acid, which preparation has been cultured with harmless flavor- and aroma-producing bacteria. Other optional ingredients that may be added are:

(1) Lactic acid, citric acid, phosphoric acid.

(2)(i) A stabilizing ingredient consisting of one or any mixture of two or more of the following: Carob (locust) bean gum, guar gum, gum karaya, gum tragacanth; carrageenan, salts of carrageenan, furcelleran, or salts of furcelleran complying with the requirements of §§ 121.1066, 121.1067, 121.1068, and 121.1069 of this chapter; gelatin, lecithin, algin (sodium alginate), propylene glycol alginate, sodium carboxymethylcellulose.

(ii) Stabilizing ingredients used may be added in a mixture with a carrier consisting of one or any mixture of two or more of the following: Sugar, dextrose, corn sirup solids, dextrin, glycerin, propylene glycol. The quantity of the stabilizing ingredient, including any carrier used, is such that the weight of solids contained therein is not more than 0.5 percent of the weight of the creaming mixture.

The creaming mixture is pasteurized, except that the bacterial cultures permitted by this paragraph and the acids listed in subparagraph (1) of this paragraph may be added after pasteurization.

(c) For the purposes of this section "milk" means sweet milk of cows; "skim milk" means milk from which the milk fat has been separated; and "concentrated skim milk" means skim milk from which a portion of the water has been removed by evaporation.

(d) (1) When one or a mixture of two or more of the optional ingredients listed in paragraph (b) (1) and (2) (i) of this section is used, the label shall bear the statement "----- added" or "with added -----," the blank being filled in with the common name or names of the optional ingredients used; *Provided, however*, That the name "vegetable gum" may be used in lieu of the specific names for carob (locust) bean gum, guar gum, gum karaya, and gum tragacanth.

(2) Wherever the name "creamied cottage cheese" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the label declaration prescribed in subparagraph (1) of this paragraph, showing the optional ingredients present, shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the

order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing, and such objections must be supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

*Effective date.* This order shall become effective 60 days from the date of its publication in the FEDERAL REGISTER, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the FEDERAL REGISTER.

(Secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371)

Dated: March 22, 1963.

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

[F.R. Doc. 63-3169; Filed, Mar. 27, 1963; 8:45 a.m.]

**PART 121—FOOD ADDITIVES**

**Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food**

**CHELATING AGENTS USED IN MANUFACTURE OF PAPER AND PAPERBOARD**

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition (FAP 1047), filed by Refined Products Company, 624 Schuyler Avenue, Lyndhurst, New Jersey, and other relevant material, has concluded that the food additive regulations should be amended as hereinafter provided, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec 409 (c)(1), 72 Stat. 1786; 21 U.S.C. 348 (c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625):

Section 121.2515 *Chelating agents used in the manufacture of paper and paperboard* is amended by inserting in paragraph (a) in alphabetical order, the item:

Pentasodium salt of diethylenetriamine pentacetate

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a

memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

*Effective date.* This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: March 22, 1963.

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

[F.R. Doc. 63-3255; Filed, Mar. 27, 1963; 8:50 a.m.]

**PART 121—FOOD ADDITIVES**

**Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food**

**ADHESIVES**

The Commissioner of Food and Drugs, having evaluated the data submitted in petitions filed by:

- Avery Label Co., Division of Avery Adhesive Products, Inc., 1616 South California Avenue, Monrovia, Calif. (FAP 569);
- Dr. Kurt Herberts and Co., Schliessfach 44, Wuppertal-Barmen, Federal Republic of Germany (FAP 709);
- Monsanto Chemical Co., 800 North Lindbergh Boulevard, St. Louis 66, Mo. (FAP 991); and
- Stoner-Mudge Division, Martin Marietta Corp., 2000 Westhall Street, Pittsburgh 33, Pa. (FAP 879);

and other relevant material, has concluded that § 121.2520 (21 CFR 121.2520) of the food additive regulations should be amended as hereinafter provided, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348 (c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625).

Paragraph (c)(5) of § 121.2520 *Adhesives* is amended as follows:

1. By changing the item "1,2,6-Hexanetriol" in the list "Components of Adhesives" to read "Hexanetriols."
2. In the list "Components of Adhesives", under the item "Polymers: Homopolymers and copolymers \* \* \*", the monomer "Fumaric acid" is changed to read: "Fumaric acid and/or its methyl, ethyl, propyl, butyl, amyl, hexyl, heptyl, and octyl esters." Under the same item "Polymers: Homopolymers and copolymers \* \* \*", the new monomer "Propyl acrylate" is inserted in the list of monomers, in alphabetical order.
3. By inserting in the list "Components of Adhesives", in alphabetical order, the following new items:  
4,4'-Butylidenebis(6-tert-butyl-m-cresol).  
Cyclohexanone resin.  
Toluene-2,4-diisocyanate.  
Toluene-2,6-diisocyanate.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW.,

Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

*Effective date.* This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: March 22, 1963.

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

[F.R. Doc. 63-3254; Filed, Mar. 27, 1963; 8:50 a.m.]

**PART 121—FOOD ADDITIVES**

**Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food**

**ZINC-SILICON DIOXIDE MATRIX COATINGS**

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition filed by Humble Oil and Refining Company, Houston 1, Texas, and other relevant material, has concluded that the food additive regulations should be amended to permit the use of zinc-silicon dioxide matrix coatings as the food-contact surfaces of containers for foods other than fats and oils, as presently provided. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), § 121.2548 (d) and (e) are amended to read as follows:

**§ 121.2548 Zinc-silicon dioxide matrix coatings.**

- (d) The coating in the finished form in which it is to contact food, when extracted with the solvent or solvents characterizing the type of food, and under the conditions of its intended use as shown in Tables 1 and 2 of § 121.2514 (d) (using 20 percent alcohol as the solvent when the type of food contains approximately 20 percent alcohol) shall yield total extractives not to exceed those prescribed in § 121.2514(c)(3); lithium extractives not to exceed 0.025 milligram per square inch of surface; and chromium extractives not to exceed 0.05 microgram per square inch of surface.

(e) The coatings are used as food-contact surfaces for bulk reusable containers intended for storing, handling, and transporting food.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date

of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

**Effective date.** This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: March 22, 1963.

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

[F.R. Doc. 63-3256; Filed, Mar. 27, 1963;  
8:51 a.m.]

## Chapter II—Bureau of Narcotics, Department of the Treasury

[T.D. No. 70]

### PART 302—IMPORTATION AND EXPORTATION OF NARCOTIC DRUGS

#### Subpart A—Imports

The 1953 Opium Protocol, restricting importation of opium by Contracting Parties to opium produced in a country which is permitted such production thereby and which has become a Party thereto, came into force on March 8, 1963. In order that the pertinent regulations of the Bureau of Narcotics may conform to the 1953 Opium Protocol, it is necessary that § 302.1, Part 302, Chapter II, Title 21 of the Code of Federal Regulations be amended.

Accordingly, § 302.1 is hereby amended, by the addition thereto of a new sentence immediately preceding the last, currently effective sentence. As amended § 302.1 reads as follows:

#### § 302.1 Importation.

Crude opium and coca leaves may only be imported under formal permit issued by the Commissioner of Narcotics (referred to in this part as the Commissioner) pursuant to a duly executed application therefor, and after a determination by said Commissioner that the quantity of crude opium or coca leaves requested in the application is necessary to provide for, and will be applied to, medical and legitimate uses only. An exception to so much of this rule as requires a formal permit may be made in the case of an emergency which, in the judgment of the Commissioner, so affects the welfare of all or a large proportion of the population as to justify such extraordinary action. No permit shall be granted for the importation of opium to be manufactured into heroin, its salts, derivatives, or preparations. No permit

shall be granted for the importation of opium unless such opium has been produced in a country permitted such production by, and which has become a Party to, the 1953 Opium Protocol. No importation by mail shall be permitted.

Because this amendment conforms § 302.1 with the obligations assumed by the United States in the 1953 Opium Protocol, and is issued pursuant to the authority granted the Commissioner of Narcotics under 21 U.S.C. 173, it is hereby found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

**Effective date.** This Treasury Decision shall become effective upon publication in the FEDERAL REGISTER.

(35 Stat. 614, as amended (21 U.S.C. 173); 1953 Opium Protocol, T.I.A.S. No. 5273)

[SEAL] HENRY L. GIORDANO,  
*Commissioner of Narcotics.*

Approved:

JAMES A. REED,  
*Assistant Secretary of the  
Treasury.*

[F.R. Doc. 63-3287; Filed, Mar. 27, 1963;  
8:54 a.m.]

## Title 28—JUDICIAL ADMINISTRATION

### Chapter I—Department of Justice

[Order No. 293-63]

#### PART 44—EMPLOYEE-MANAGEMENT COOPERATION IN THE DEPARTMENT OF JUSTICE

By virtue of the authority vested in me by section 161 of the Revised Statutes, section 2 of Reorganization Plan No. 2 of 1950 (64 Stat. 1261) and Executive Order No. 10988, I hereby order as follows:

##### Subpart A—Purpose, Scope, and Implementation

- Sec.  
44.1 Purpose.  
44.2 Scope.  
44.3 Implementation.

##### Subpart B—Rights of Employees

- 44.4 Membership in employee organizations.  
44.5 Existing rights unaffected.

##### Subpart C—Recognition of and Dealings With Employee Organizations

- 44.6 Definition of employee organization.  
44.7 General principles applicable to recognition of employee organizations.  
44.8 Requests for recognition; information to be furnished.  
44.9 Informal recognition.  
44.10 Formal recognition.  
44.11 Exclusive recognition.  
44.12 Subjects for consultation and negotiation.  
44.13 Determination of appropriate unit and of majority representation.  
44.14 Collective bargaining agreements.  
44.15 Use of official time for activities of employee organizations.

AUTHORITY: §§ 44.1 to 44.15 issued under R.S. 161; sec. 2, Reorg. Plan No. 2 of 1950; E.O. 10988, 3 CFR 1962 Supp.

#### Subpart A—Purpose, Scope and Implementation

##### § 44.1 Purpose.

This part is issued to implement Executive Order 10988, dated January 17, 1962, and to state the policies which will be applied by the Department of Justice in dealing with its employees and with organizations representing such employees.

##### § 44.2 Scope.

This part is applicable to all employees of the Department of Justice (including United States Attorneys and United States Marshals and their staffs), except that (a) no portion of this part is applicable to any employee of the Federal Bureau of Investigation, and (b) certain provisions of this part are, to the extent stated in § 44.7, inapplicable to United States Marshals and Deputy Marshals, to employees in the Bureau of Prisons (including the Federal Prison Industries) and to certain employees in the Immigration and Naturalization Service. As to each category of employees thus excepted from certain provisions of this part, I hereby determine that such employees are employed in offices, bureaus and activities primarily performing intelligence, investigative or security functions, and that the provisions of this part from which such employees are excepted cannot be applied to them in a manner consistent with national security requirements and considerations.

##### § 44.3 Implementation.

(a) The officials named in this paragraph shall be responsible for implementation of this part, including the training of supervisors at all levels in the discharge of their employee-management relations responsibilities under this part, and the issuance of any additional instructions or interpretations for the guidance of employees and employee organizations.

The Director, Bureau of Prisons, with respect to all matters involving employees of the Bureau of Prisons (including the Federal Prison Industries);

The Commissioner of Immigration and Naturalization, with respect to all matters involving employees of the Immigration and Naturalization Service;

The Administrative Assistant Attorney General with respect to all matters involving other employees subject to this part.

(b) The officials named in paragraph (a) of this section, or such individuals as they may designate, shall receive and act on requests for recognition, make all determinations in connection with such requests (other than determinations under § 44.7(c)), and conduct the discussions, consultations and bargaining provided for by this part.

(c) The Deputy Attorney General will provide overall policy guidance and may, in his discretion, take any action authorized by this part (other than determinations under § 44.7(c)) or require that any such action be subject to his approval.

(d) A copy of this part shall be furnished to each employee subject to this part.

### Subpart B—Rights of Employees

#### § 44.4 Membership in employee organizations.

(a) Employees shall have and shall be protected in the exercise of the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization, or to refrain from forming, joining or assisting any employee organization.

(b) The rights specified in this section include the right to hold office in, act as a representative of, or otherwise participate in the management of an employee organization, including presentation of its views to officials of the Executive Branch, the Congress or other appropriate authority, except where such participation or activity would result in a conflict of interests or otherwise be incompatible with law or with the official duties of such employee.

(c) In any case in which either the Department or an employee consider that there is a significant possibility that the holding of an office or other participation by the employee in the management of an employee organization will be contrary to paragraph (b), of this section, they shall discuss the matter fully and frankly. Any employee who anticipates that he may be elected or otherwise designated to hold office in or otherwise participate in the management of an employee organization, and that a possibility of inconsistency with paragraph (b) of this section might result, shall promptly advise his immediate superior. The officials designated in § 44.3(a), or such individuals as they may designate, shall be responsible for determining whether the holding of an office or other participation in the management of an employee organization by an employee is inconsistent with paragraph (b) of this section, and for deciding upon the remedial action necessary to eliminate such inconsistency.

(d) A reasonable time shall be afforded any existing officer or representative of an employee organization to eliminate any inconsistency with this section.

#### § 44.5 Existing rights unaffected.

Nothing in this part, or in any action taken thereunder, shall:

(a) Preclude any employee from bringing matters of personal concern to the attention of his immediate superior or other appropriate officials;

(b) Preclude any employee from acting as, or choosing, his own representative in any appeal from or other consideration of any personnel action or grievance;

(c) Preclude any employee from becoming a member or officer of a veterans, religious, social, fraternal or other lawful organization or association, not qualified hereunder as an employee organization;

(d) Modify or supersede existing grievance procedures and policies established by Order No. 186-59, except to the extent if any expressly provided in

an agreement entered into pursuant to § 44.14.

### Subpart C—Recognition of and Dealings With Employee Organizations

#### § 44.6 Definition of employee organization.

When used in this part, the term "employee organization" means any lawful association, labor organization, federation, council, or brotherhood having as a primary purpose the improvement of working conditions among federal employees, or any craft, trade or industrial union whose membership includes both employees of the Department of Justice and employees of private organizations; but such term shall not include any organization (a) which asserts the right to strike against the Government of the United States or any agency thereof, or to assist or participate in any such strike, or which imposes a duty or obligation to conduct, assist or participate in any such strike, or (b) which advocates the overthrow of the constitutional form of Government in the United States, or (c) which discriminates with regard to terms or conditions of membership because of race, color, creed or national origin.

#### § 44.7 General principles applicable to recognition of employee organizations.

(a) Recognition may be informal, formal or exclusive, as provided in this subpart, except that exclusive recognition will not be granted for units which include:

(1) United States marshals or deputy marshals; or

(2) Employees of the Bureau of Prisons (including the Federal Prison Industries); or

(3) Any of the following employees of the Immigration and Naturalization Service or their supervisors: Intelligence officers, investigators, immigrant inspectors, immigration patrol inspectors, detention guards, general attorneys (nationality).

(b) Recognition shall continue for so long as the organization satisfies the criteria of this part applicable to such recognition: *Provided*, That no determination of exclusive status as to any unit need be made within 12 months after a prior determination of exclusive status as to the same unit or any part thereof.

(c) No recognition shall be accorded to any organization which the Attorney General considers to be so subject to corrupt influences or influences opposed to basic democratic principles that its recognition would be inconsistent with the objectives of Executive Order 10988 and this part.

(d) Recognition of any type shall not preclude or restrict consultations and dealings between the Department or any entity thereof and a veterans' organization with respect to matters of particular interest to employees with veterans' preference.

(e) Recognition of any type shall not preclude or restrict consultations and dealings between the Department or any entity thereof and a religious, social,

fraternal or other lawful association, not qualified hereunder as an employee organization, with respect to matters which involve members of such association and are of particular applicability to it or its members: *Provided*, Such consultations and dealings do not result in discrimination against or injury to the interests of other employees.

#### § 44.8 Requests for recognition; information to be furnished.

(a) Employee organizations may request recognition by filing a written request stating the type of recognition desired (i.e., informal, formal or exclusive), and whether such recognition is desired on a Departmentwide basis, or for one or more functional or geographic entities within the Department.

(b) Requests for recognition shall include the following information:

(1) The official name of the organization;

(2) A roster of its current officers and representatives;

(3) A copy of its constitution and bylaws;

(4) A statement of its objectives;

(5) Such other information as is required by §§ 44.9 to 44.11.

(c) The requesting organization shall furnish any other information which may be reasonably required in order to make any determination called for by this part as to its eligibility for recognition.

(d) Any organization accorded recognition shall furnish any information which may, at any time, be reasonably required in order to determine whether it continues to satisfy the criteria of this part applicable to such recognition.

(e) Failure to submit the foregoing information may be grounds for denying or terminating recognition.

#### § 44.9 Informal recognition.

(a) Any employee organization so requesting, which has members in the Department or the entity thereof for which recognition is sought, shall be accorded informal recognition as representative of its member employees. Requests for informal recognition shall state the number of members of the organization who are employed in the Department or the entity for which recognition is sought.

(b) To the extent consistent with the efficient and orderly conduct of the public business, it will be the policy of the Department to discuss, with any organization which has received informal recognition, matters of concern to its members and to permit such organization to present to appropriate officials its views on such matters.

#### § 44.10 Formal recognition.

(a) Any employee organization so requesting shall be accorded formal recognition as the representative of its members in an appropriate unit determined pursuant to § 44.13 when (1) no other employee organization is qualified for exclusive recognition as representative of any employees in such unit, and (2) it is determined by the officer acting on the request that the employee organization has a substantial and stable mem-

bership of no less than 10 percent of the employees in the unit. When, in the opinion of the officer acting on the request, an employee organization has a sufficient number of local organizations or a sufficient total membership, such organization may be accorded formal recognition at the national level, but such recognition shall not preclude dealings at the national level with any other employee organization on matters affecting its members.

(b) Requests for formal recognition shall identify the unit or units for which such recognition is sought, state the basis on which each such unit is deemed to be appropriate, and state the number of members of the organization employed in such unit at the time the request is made, and the average number of members so employed during the preceding 12 months.

(c) Subject to § 44.12, it will be the policy of the Department to consult from time to time with any organization granted formal recognition in the formulation and implementation of personnel policies and practices and matters affecting working conditions that are of concern to its members. Any such organization shall be entitled from time to time to raise such matters for discussion with appropriate officials and at all times to present its views thereon in writing.

#### § 44.11 Exclusive recognition.

(a) An employee organization shall be accorded recognition as the exclusive representative of the employees in an appropriate unit when such organization is eligible for formal recognition pursuant to § 44.10, and has been designated or selected by a majority of the employees of such unit as the representative of the employees in such unit.

(b) Requests for exclusive recognition shall (1) identify the unit or units for which such recognition is sought and state the basis on which each such unit is believed to be appropriate; (2) state whether the organization has previously requested formal or exclusive recognition for such unit or units and the action taken on such request; and (3) submit facts relevant to a determination whether the organization has been designated or selected as their representative by a majority of the employees in each unit covered by the request.

(c) The Department shall serve a copy of any request for exclusive recognition on each other organization which is then recognized as the formal or exclusive representative of any employees to which such request is applicable. Reasonable opportunity will be given organizations so served to respond to the request.

(d) When an employee organization has been recognized as the exclusive representative of employees of an appropriate unit, it shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership. Subject to § 44.12, such employee organization shall be given the opportunity to be represented at discussions between manage-

ment and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit. It will be the policy of the Department to meet with such employee organization at reasonable times and confer with respect to personnel policy and practices and matters affecting working conditions, so far as may be appropriate subject to law and policy requirements. This policy extends to the negotiation of an agreement, or any question arising thereunder, the determination of appropriate techniques, consistent with the terms and purposes of this part, to assist in such negotiation, and the execution of a written memorandum of agreement or understanding incorporating any agreement reached by the parties. In exercising authority to make rules and regulations relating to personnel policies and practices and working conditions, the Department will have due regard for the foregoing policy.

#### § 44.12 Subjects for consultation and negotiation.

(a) The policies of consultation established by §§ 44.10 and 44.11 shall not extend to such areas of discretion and policy as the mission of the Department, its budget, its organization, the assignment of personnel, or the techniques of performing work.

(b) The following are illustrations of matters which, depending on the circumstances, may be appropriate subjects for consultation, subject to requirements of applicable law, regulations and government-wide policies:

(1) Development and operation of grievance and appeals system;

(2) Policies with respect to work environment, including light, heat, ventilation, cleanliness, sanitation, and safety practices and equipment;

(3) Policies with respect to tours of duty, overtime work, meal periods, vacation scheduling, and the application of rotation scheduling and assignments to categories of employees;

(4) Policies with respect to promotion plans, opportunities for career mobility and for training, reduction-in-force procedures and disciplinary practices and procedures (but not including individual case application);

(5) Policies with respect to employee benefits and services such as coffee breaks, banking and check cashing, transportation and parking arrangements;

(6) Policies with respect to overtime, call back and differential pay, and opportunities to earn such special types of pay within the limitations of overall policy;

(7) Policies with respect to use of bulletin boards and other government-owned facilities by employee organizations;

(8) Problems with respect to dealings between the Department and employee organizations, and actions of management or union official which impair good relationships.

(c) The following are illustrations of matters that will ordinarily not be the subject of consultation:

(1) Individual grievances, classification of a specific position, rates of pay applying to a particular employee, etc.;

(2) Assignment of work and work loads except to the extent covered in paragraph (b) (3) of this section;

(3) Any matter which in the opinion of the Director, Bureau of Prisons directly affects the security of the Federal Prison Service or the control over or care, training or treatment of prisoners;

(4) Any matter which in the opinion of the Commissioner of Immigration and Naturalization directly affects the efficiency of the investigative and law enforcement activities of the Immigration and Naturalization Service;

(5) Any matter which in the opinion of the Administrative Assistant Attorney General directly affects the efficiency of the law enforcement activities of United States marshals and deputy marshals.

(d) Matters referred to in paragraphs (a) and (c) of this section or in paragraph (b) of § 44.14 will not ordinarily be subject to negotiation.

#### § 44.13 Determination of appropriate unit and of majority representation.

(a) Units for purposes of formal or exclusive recognition may be established on any plant, installation, craft, functional or other basis which will ensure a clear and identifiable community of interest among the employees concerned, but no unit shall be established solely on the basis of the extent to which employees in the proposed unit have organized. Except where otherwise required by established practice, prior agreement or special circumstances, no unit shall be established for purposes of exclusive recognition which includes (1) any managerial executive, (2) any employee engaged in Federal personnel work in other than a purely clerical capacity, (3) both supervisors who officially evaluate the performance of employees and the employees whom they supervise, or (4) both professional employees and non-professional employees unless a majority of such professional employees vote for inclusion in such unit.

(b) Whether an employee organization has been designated or selected by a majority of the employees in such a unit as the representative of such employees shall be determined by election or other appropriate means under procedures, established by the official responsible for making the determination, which shall be fair and equitable to all employees and organizations affected by the determination.

#### § 44.14 Collective bargaining agreements.

(a) Any basic or initial agreement entered into pursuant to § 44.11 shall be approved by the Commissioner of Immigration and Naturalization or the Administrative Assistant Attorney General within their respective authority as described in § 44.3(a).

(b) All agreements with employee organizations shall be subject to the following requirements, which shall be expressly stated in the initial or basic agreement and shall be applicable be-

tween the Department and the organization:

(1) In the administration of all matters covered by the agreement officials and employees are governed by the provisions of any existing or future laws and regulations, including policies set forth in the Federal Personnel Manual and agency regulations, which may be applicable, and the agreement shall at all times be applied subject to such laws, regulations and policies.

(2) Management officials of the agency retain the right, in accordance with applicable laws and regulations, (i) to direct employees of the agency, (ii) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees, (iii) to relieve employees from duties because of lack of work or for other legitimate reasons, (iv) to maintain the efficiency of the Government operations entrusted to them, (v) to determine the methods, means and personnel by which such operations are to be conducted; and (vi) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency.

(c) Agreements entered into or negotiated in accordance with this part with an employee organization which is the exclusive representative of employees in an appropriate unit may contain provisions, applicable only to employees in the unit, concerning procedures for consideration of grievances. Such procedures (1) shall conform to standards issued by the Civil Service Commission, and (2) may not in any manner diminish or impair any rights which would otherwise be available to any employee in the absence of an agreement providing for such procedures.

(d) Procedures established by an agreement which are otherwise in conformity with this section may include provisions for the arbitration of grievances. Such arbitration (1) shall be advisory in nature with any decisions or recommendations subject to the approval of the agency head or his designated representative; (2) shall extend only to the interpretation or application of agreement or agency policy and not to changes in or proposed changes in agreements or agency policy; and (3) shall be invoked only with the approval of the individual employee or employees concerned.

**§ 44.15 Use of official time for activities of employee organizations.**

Solicitation of memberships or dues, and other internal employee organization business, shall be conducted during the non-duty hours of the employees concerned. Officially requested or approved consultations, meetings and negotiations between management officials

and representatives of recognized employee organizations shall, whenever practicable, be conducted on official time.

Dated: March 20, 1963.

NICHOLAS DEB. KATZENBACH,  
*Acting Attorney General.*

[F.R. Doc. 63-3310; Filed Mar. 27, 1963;  
8:54 a.m.]

## Title 43—PUBLIC LANDS: INTERIOR

### Chapter I—Bureau of Land Management, Department of the Interior

#### APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2993]

#### ALASKA

#### Withdrawal of Lands for Use of Departments of Army and Air Force

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Subject to valid existing rights, the lands hereinafter described are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws, and reserved as follows:

a. For use of the Department of the Army as an air defense site:

[Anchorage 033854]

SEWARD MERIDIAN

GOOSE BAY AREA

T. 15 N., R. 3 W.,  
Sec. 16, lots 1, 2, and 3.

Containing 113.13 acres.

b. For use by the Department of the Air Force in connection with operations at Elmendorf Air Force Base:

[Anchorage 043101]

SEWARD MERIDIAN

T. 14 N., R. 3 W.,  
Sec. 16, lots 1, 2, 3, 5, SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ ,  
NW $\frac{1}{4}$ SE $\frac{1}{4}$ , and N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ .

Aggregating 293.92 acres.

c. For use of the Department of the Air Force as a radio relay station:

[Anchorage 036591]

SEWARD MERIDIAN

RABBIT CREEK AREA

T. 12 N., R. 3 W.,  
Sec. 36, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ .

Containing about 2.50 acres.

JOHN A. CARVER, Jr.,  
*Assistant Secretary of the Interior.*

MARCH 22, 1963.

[F.R. Doc. 63-3242; Filed, Mar. 27, 1963;  
8:48 a.m.]

# Proposed Rule Making

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

[ 26 CFR Part 1 ]

### INCOME TAX

#### Proposed Credit for Investment in Certain Depreciable Property

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: 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] MORTIMER M. CAPLIN,  
Commissioner of Internal Revenue.

In order to conform the Income Tax Regulations (26 CFR Part 1) to certain provisions of section 2 of the Revenue Act of 1962 (76 Stat. 962), relating to credit for investment in certain depreciable property, such regulations are amended as follows:

Sec.	
1.38	Statutory provisions; investment in certain depreciable property.
1.39	Statutory provisions; overpayments of tax.
1.46	Statutory provisions; amount of credit.
1.46-1	Determination of amount.
1.46-2	Carryback and carryover of unused credit.
1.46-3	Qualified investment.
1.46-4	Limitations with respect to certain persons.
1.47	Statutory provisions; certain dispositions, etc., of section 38 property.
1.47-1	[Reserved]
1.48	Statutory provisions; definitions; special rules.
1.48-1	Definition of section 38 property.
1.48-2	New section 38 property.
1.48-3	Used section 38 property.
1.48-4	Election of lessor of new section 38 property to treat lessee as purchaser.

Sec.	
1.48-5	Electing small business corporations.
1.48-6	Estates and trusts.
1.48-7	Adjustment to basis.

PARAGRAPH 1. The following new inferior center heading is inserted after the center heading "Credits Against Tax" which appears immediately preceding § 1.31:

#### CREDITS ALLOWABLE

PAR. 2. Section 1.38 is redesignated as § 1.39 and there is inserted immediately after § 1.37-5 a new § 1.38. The new and redesignated sections read as follows:

#### § 1.38 Statutory provisions; investment in certain depreciable property.

Sec. 38. *Investment in certain depreciable property*—(a) *General rule.* There shall be allowed, as a credit against the tax imposed by this chapter, the amount determined under subpart B of this part.

(b) *Regulations.* The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section and subpart B.

[Sec. 38 as added by sec. 2(a), Rev. Act 1962 (76 Stat. 962)]

#### § 1.39 Statutory provisions; overpayments of tax.

Sec. 39. *Overpayments of tax.* For credit against the tax imposed by this subtitle for overpayments of tax, see section 6401.

[Sec. 39 as renumbered by sec. 2(a), Rev. Act 1962 (76 Stat. 962)]

PAR. 3. There are inserted immediately after § 1.39 the following new sections:—

#### RULES FOR COMPUTING CREDIT FOR INVESTMENT IN CERTAIN DEPRECIABLE PROPERTY.

#### § 1.46 Statutory provisions; amount of credit.

Sec. 46. *Amount of credit*—(a) *Determination of amount*—(1) *General rule.* The amount of the credit allowed by section 38 for the taxable year shall be equal to 7 percent of the qualified investment (as defined in subsection (c)).

(2) *Limitation based on amount of tax.* Notwithstanding paragraph (1), the credit allowed by section 38 for the taxable year shall not exceed—

(A) So much of the liability for tax for the taxable year as does not exceed \$25,000 plus

(B) 25 percent of so much of the liability for tax for the taxable year as exceeds \$25,000.

(3) *Liability for tax.* For purposes of paragraph (2), the liability for tax for the taxable year shall be the tax imposed by this chapter for such year, reduced by the sum of the credits allowable under—

(A) Section 33 (relating to foreign tax credit),

(B) Section 34 (relating to dividends received by individuals),

(C) Section 35 (relating to partially tax-exempt interest), and

(D) Section 37 (relating to retirement income).

For purposes of this paragraph, any tax imposed for the taxable year by section 531 (relating to accumulated earnings tax) or

by section 541 (relating to personal holding company tax) shall not be considered tax imposed by this chapter for such year.

(4) *Married individuals.* In the case of a husband or wife who files a separate return, the amount specified under subparagraphs (A) and (B) of paragraph (2) shall be \$12,500 in lieu of \$25,000. This paragraph shall not apply if the spouse of the taxpayer has no qualified investment for, and no unused credit carryback or carryover to, the taxable year of such spouse which ends within or with the taxpayer's taxable year.

(5) *Affiliated groups.* In the case of an affiliated group, the \$25,000 amount specified under subparagraphs (A) and (B) of paragraph (2) shall be reduced for each member of the group by apportioning \$25,000 among the members of such group in such manner as the Secretary or his delegate shall by regulations prescribe. For purposes of the preceding sentence, the term "affiliated group" has the meaning assigned to such term by section 1504(a), except that all corporations shall be treated as includible corporations (without any exclusion under section 1504(b)).

(b) *Carryback and carryover of unused credits*—(1) *Allowance of credit.* If the amount of the credit determined under subsection (a)(1) for any taxable year exceeds the limitation provided by subsection (a)(2) for such taxable year (hereinafter in this subsection referred to as "unused credit year"), such excess shall be—

(A) An investment credit carryback to each of the 3 taxable years preceding the unused credit year, and

(B) An investment credit carryover to each of the 5 taxable years following the unused credit year,

and shall be added to the amount allowable as a credit by section 38 for such years, except that such excess may be a carryback only to a taxable year ending after December 31, 1961. The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 8 taxable years to which (by reason of subparagraphs (A) and (B)) such credit may be carried, and then to each of the other 7 taxable years to the extent that, because of the limitation contained in paragraph (2), such unused credit may not be added for a prior taxable year to which such unused credit may be carried.

(2) *Limitation.* The amount of the unused credit which may be added under paragraph (1) for any preceding or succeeding taxable year shall not exceed the amount by which the limitation provided by subsection (a)(2) for such taxable year exceeds the sum of—

(A) The credit allowable under subsection (a)(1) for such taxable year, and

(B) The amounts which, by reason of this subsection, are added to the amount allowable for such taxable year and attributable to taxable years preceding the unused credit year.

(3) *Effect of net operating loss carryback.* To the extent that the excess described in paragraph (1) arises by reason of a net operating loss carryback, subparagraph (A) of paragraph (1) shall not apply.

(4) *Taxable year beginning before January 1, 1962.* For purposes of determining the amount of an investment credit carryback that may be added under paragraph (1) for a taxable year beginning before January 1, 1962, and ending after December 31,

1961, the amount of the limitation provided by subsection (a) (2) is the amount which bears the same ratio to such limitation as the number of days in such year after December 31, 1961, bears to the total number of days in such year.

(c) *Qualified investment*—(1) *In general.* For purposes of this subpart, the term "qualified investment" means, with respect to any taxable year, the aggregate of—

(A) The applicable percentage of the basis of each new section 38 property (as defined in section 48(b)) placed in service by the taxpayer during such taxable year, plus

(B) The applicable percentage of the cost of each used section 38 property (as defined in section 48(c) (1)) placed in service by the taxpayer during such taxable year.

(2) *Applicable percentage.* For purposes of paragraph (1), the applicable percentage for any property shall be determined under the following table:

If the useful life is—	The applicable percentage is—
4 years or more but less than 6 years	33 1/3
6 years or more but less than 8 years	66 2/3
8 years or more	100

For purposes of this paragraph, the useful life of any property shall be determined as of the time such property is placed in service by the taxpayer.

(3) *Public utility property.* (A) In the case of section 38 property which is public utility property, the amount of the qualified investment shall be 3/4 of the amount determined under paragraph (1).

(B) For purposes of subparagraph (A), the term "public utility property" means property used predominantly in the trade or business of the furnishing or sale of—

- (i) Electrical energy, water, or sewage disposal services,
- (ii) Gas through a local distribution system,
- (iii) Telephone service, or
- (iv) Telegraph service by means of domestic telegraph operations (as defined in section 222(a) (5) of the Communications Act of 1934, as amended; 47 U.S.C., sec. 222 (a) (5)).

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

(4) *Certain replacement property.* For purposes of paragraph (1), if section 38 property is placed in service by the taxpayer to replace property which was—

- (A) Destroyed or damaged by fire, storm, shipwreck, or other casualty, or
- (B) Stolen,

the basis of such section 38 property (in the case of new section 38 property), or the cost of such section 38 property (in the case of used section 38 property), which (but for this paragraph) would be taken into account under paragraph (1) shall be reduced by an amount equal to the amount received by the taxpayer as compensation, by insurance or otherwise, for the property so destroyed, damaged, or stolen, or to the adjusted basis of such property, whichever is the lesser. No reduction in basis or cost shall be made under the preceding sentence in any case in which the reduction in qualified investment attributable to the substitution required by section 47(a) (1) with respect to the property so destroyed, damaged, or stolen (determined without regard to section 47(a) (4)) is greater than the reduction described in the preceding sentence.

(d) *Limitations with respect to certain persons*—(1) *In general.* In the case of—

(A) An organization to which section 593 applies,

(B) A regulated investment company or a real estate investment trust subject to taxation under subchapter M (sec. 851 and following), and

(C) A cooperative organization described in section 1381(a),

the qualified investment and the \$25,000 amount specified under subparagraphs (A) and (B) of subsection (a) (2) shall equal such person's ratable share of such items.

(2) *Ratable share.* For purposes of paragraph (1), the ratable share of any person for any taxable year of the items described therein shall be—

(A) In the case of an organization referred to in paragraph (1) (A), 50 percent thereof,

(B) In the case of a regulated investment company or a real estate investment trust, the ratio (i) the numerator of which is its taxable income and (ii) the denominator of which is its taxable income computed without regard to the deduction for dividends paid provided by section 852(b) (2) (D) or 857(b) (2) (C), as the case may be, and

(C) In the case of a cooperative organization, the ratio (i) the numerator of which is its taxable income and (ii) the denominator of which is its taxable income increased by amounts to which section 1382 (b) or (c) applies and similar amounts the tax treatment of which is determined without regard to subchapter T (sec. 1381 and following).

For purposes of subparagraph (B) of the preceding sentence, the term "taxable income" means in the case of a regulated investment company its investment company taxable income (within the meaning of section 852(b) (2)), and in the case of a real estate investment trust its real estate investment trust taxable income (within the meaning of section 857(b) (2)).

[Sec. 46 as added by sec. 2(b), Rev. Act 1962 (76 Stat. 963)]

§ 1.46-1 Determination of amount.

(a) *In general.* Except as otherwise provided in this section and in § 1.46-2, the amount of the credit allowed by section 38 for the taxable year is equal to 7 percent of the taxpayer's qualified investment for such year (as determined under section 46(c)). The amount equal to 7 percent of qualified investment shall be referred to in this section and §§ 1.46-2 through 1.48-7 as the "credit earned".

(b) *Limitation based on amount of tax.* Notwithstanding the amount of the credit earned for the taxable year, the credit allowed by section 38 for the taxable year is limited to—

(1) If the liability for tax (as defined in paragraph (c) of this section) is \$25,000 or less, the liability for tax; or

(2) If the liability for tax is more than \$25,000, the first \$25,000 of the liability for tax plus 25 percent of the liability for tax in excess of \$25,000.

However, such \$25,000 amount may be reduced in the case of certain married individuals filing separate returns (see paragraph (e) of this section); corporations which are members of an affiliated group (see paragraph (f) of this section); trusts and estates (see paragraph (c) of § 1.48-6); and organizations to which section 593 applies, regulated investment companies or real estate investment trusts subject to taxation under subchapter M, chapter 1 of the Code, and cooperative organizations

described in section 1381(a) (see § 1.46-4). The excess of the credit earned for the taxable year over the limitation described in this paragraph for such taxable year is an unused credit which may be carried back or forward to other taxable years in accordance with § 1.46-2.

(c) *Liability for tax.* For the purpose of computing the limitation based on amount of tax, section 46(a) (3) defines the liability for tax as the income tax imposed for the taxable year by chapter 1 (including the 2-percent tax on consolidated taxable income), reduced by the sum of the credits allowable under—

(1) Section 33 (relating to taxes of foreign countries and possessions of United States),

(2) Section 34 (relating to dividends received by individuals),

(3) Section 35 (relating to partially tax-exempt interest received by individuals), and

(4) Section 37 (relating to retirement income).

For purposes of this paragraph, the tax imposed by section 531 (relating to imposition of accumulated earnings tax) or by section 541 (relating to imposition of personal holding company tax) shall not be considered tax imposed by chapter 1. Thus, the liability for tax and the credit allowed by section 38 for the taxable year are determined before computing any tax imposed by section 531 or 541. In addition, any increase in tax resulting from the application of section 47 (relating to certain dispositions, etc., of section 38 property) shall not be treated as tax imposed by chapter 1 for purposes of computing the liability for tax. See section 47(c).

(d) *Example.* The application of paragraphs (a), (b), and (c) of this section may be illustrated by the following example:

*Example.* X Corporation's qualified investment for its taxable year ending December 31, 1963, is \$2,050,000. X's credit earned for the taxable year is \$143,500 (7 percent of \$2,050,000). X's income tax for such year, computed without regard to credits against tax or tax imposed by section 531 or 541, is \$190,000. Such amount includes \$5,000 resulting from the application of section 47. X is allowed under section 33 a foreign tax credit of \$50,000. X's liability for tax is computed as follows:

<i>Liability for tax</i>	
Income tax (including increase in tax under section 47, but before credits and section 531 or 541 tax)	\$190,000
Less: Increase in tax resulting from application of section 47	\$5,000
Foreign tax credit	50,000
	55,000
Liability for tax	135,000

X's credit allowed by section 38 for the taxable year is \$52,500 (\$25,000 plus 25 percent of \$110,000). X has an unused credit for the taxable year of \$91,000 (\$143,500 less \$52,500) which it may carry back or over to other taxable years in accordance with § 1.46-2.

(e) *Married individuals.* If a separate return is filed by a husband or wife, the limitation based on amount of tax under paragraph (b) of this section shall be computed by substituting a \$12,500

amount for the \$25,000 amount in applying paragraph (b) (1) and (2) of this section. However, this reduction of the \$25,000 amount to \$12,500 applies only if the taxpayer's spouse is entitled to a credit under section 38 for the taxable year of such spouse which ends with, or within, the taxpayer's taxable year. The taxpayer's spouse is entitled to a credit under section 38 either because of investment made in qualified property for such taxable year of the spouse (whether directly made by such spouse or whether apportioned to such spouse, for example, from an electing small business corporation, as defined in section 1371(b)), or because of an investment credit carryback or carryover to such taxable year. The determination of whether an individual is married shall be made under the principles of section 143 and the regulations thereunder.

(f) *Apportionment of \$25,000 amount among members of an affiliated group—*

(1) *In general.* Section 46(a)(5) provides that in the case of an affiliated group (as defined in subparagraph (5) of this paragraph), the \$25,000 amount specified in section 46(a)(2) shall be reduced for each member of the group by apportioning \$25,000 among the members of the group. Except as otherwise provided in this paragraph, the \$25,000 amount shall be apportioned among those corporations which are members of the affiliated group on the last day of the taxable year of the common parent. For the taxable year of each such member ending with, or within which falls, the last day of the taxable year of the common parent, the credit allowed by section 38 cannot exceed—

(i) So much of its liability for tax for such taxable year as does not exceed its share of the \$25,000 amount apportioned to it under the rules prescribed in this paragraph, plus

(ii) 25 percent of so much of its liability for tax for such taxable year as exceeds its share of the \$25,000 amount so apportioned to it.

(2) *Manner of apportionment.* (i) In the case of corporations which are members of an affiliated group on the last day of the taxable year of the common parent, the \$25,000 amount may be apportioned among such members (for the taxable year of each such member ending with, or within which falls, the last day of the taxable year of the common parent) in any manner such members may select if all such members consent to the apportionment plan. However, no portion of the \$25,000 amount shall be apportioned to a taxable year ending before January 1, 1962. The consent of each such member to the apportionment plan shall be in the form of a statement signed by the member consenting to the plan. The statement shall set forth the name, address, and taxpayer account number of each such member of the affiliated group and of any other corporation to which any portion of such group's \$25,000 amount is apportionable under subparagraph (3) of this paragraph; the identity of the common parent; the last day of the common parent's taxable year; and the amount apportioned to each corporation. The consents may be incorporated in one statement. The

statement (or statements) shall be attached to the timely filed income tax return of the common parent and shall be irrevocable after the due date of such return (including extensions of time). However, if the due date (including extensions of time) of the return of a common parent is before February 28, 1963, the required statement (or statements) shall be considered timely filed if filed on or before February 28, 1963, with the district director with whom the common parent files its return. Each member of the affiliated group consenting to the apportionment plan shall attach a copy of its consent (or a copy of the statement containing all the consents) to its income tax return or, in the case of a return filed before February 28, 1963, to any amended return or claim for refund.

(ii) An apportionment plan adopted by an affiliated group with respect to a particular taxable year of the common parent shall be valid only for the taxable year of each member of the group which ends with, or within which falls, the last day of such taxable year of the common parent. Thus, an affiliated group must file a separate consent to an apportionment plan with respect to each taxable year of the common parent as to which an apportionment plan is desired.

(iii) If the apportionment plan is not timely selected, the \$25,000 amount specified in section 46(a)(2) shall be reduced for each member of the affiliated group, for its taxable year ending with, or within which falls, the last day of the common parent's taxable year, to an amount equal to (a) \$25,000, divided by (b) the number of corporations in such group as of the close of such last day. If the taxable year of the common parent or any other member of such group ends before January 1, 1962, any such parent or member shall not be considered a member of the group for any such taxable year in determining the number of corporations referred to in (b) of the preceding sentence.

(3) *Short taxable year.* (i) If (a) the return of a corporation is for a short period ending after December 31, 1961, (b) such corporation is a member of an affiliated group as of the last day of such period, and (c) the last day of the common parent's taxable year does not end with or within such short period, then the \$25,000 amount shall be reduced for such corporation to an amount equal to \$25,000 divided by the number of corporations in such group as of the close of such corporation's short period. In such case, the total amount that may be apportioned under subparagraph (2) of this paragraph (either equally or according to a plan) among the members of an affiliated group which have the same common parent as the corporation with the short period shall be \$25,000 less the amount apportioned to such corporation for its short period ending in the taxable year of the common parent of the affiliated group. If the common parent of the corporation with the short period is not affiliated with any other corporation at the end of such parent's taxable year within which the short period ends, the \$25,000 amount shall be reduced for the

parent by the amount apportioned to such corporation for its short period.

(ii) In lieu of the apportionment provided for in subdivision (i) of this subparagraph, a corporation (with a short period) may waive its right to receive the part of the \$25,000 amount apportionable to it by specifically so indicating on a statement meeting the requirements of subdivision (iii) of this subparagraph. In such case, no amount shall be considered apportioned to such corporation.

(iii) The corporation with the short period shall attach a statement to its timely filed income tax return (including extensions of time). However, if the due date of the return (including extensions of time) is before February 28, 1963, the statement may be filed on or before such date with the district director with whom the return has been filed. The statement shall indicate the name, address, and taxpayer account number of each member of the affiliated group as of the close of the short period; the identity of the common parent and the last day of the common parent's taxable year; and the amount apportioned to itself or, if appropriate, a waiver of the amount apportionable to it. A copy of the statement shall be furnished to the common parent.

(4) *Two or more common parents.* If a corporation during its taxable year is a member of two or more affiliated groups as of the last day of the taxable year of the common parent of each such group, such corporation shall be considered to be a member of only the affiliated group whose common parent's taxable year ends earliest in such corporation's taxable year.

(5) *Definition of affiliated group.* For purposes of this paragraph, an affiliated group means one described in section 1504(a), except that all corporations shall be treated as includible corporations, without any exclusion under section 1504(b). Thus, a foreign corporation or a corporation exempt from taxation under section 501 may be a member of an affiliated group for purposes of this paragraph even though under section 1504(b) neither corporation would be an includible corporation.

(6) *Affiliated group filing a consolidated return.* The limitation based on amount of tax for an affiliated group all of whose members join in the filing of a consolidated return shall be so much of the consolidated liability for tax as does not exceed \$25,000, plus 25 percent of the consolidated liability for tax in excess of \$25,000. If, however, there are other members of the affiliated group which do not join in the filing of the consolidated return (such as a corporation exempt from taxation under section 501), and a consent is not timely filed apportioning the \$25,000 amount among the group filing the consolidated return and the other members of the affiliated group, each member of the group which joins in filing the consolidated return shall be treated as a separate corporation for purposes of equally apportioning the \$25,000 amount. In such case, the limitation based on amount of tax from the group filing the consolidated return shall be computed

by substituting for the \$25,000 amount the total of the amounts apportioned to each corporation which joins in filing the consolidated return. If the group filing the consolidated return and the other members of the affiliated group adopt an apportionment plan, the group filing the consolidated return shall be treated as a single member for the purpose of applying subparagraph (2) (i) of this paragraph. Thus, for example, only one consent to the apportionment plan is required for the group filing the consolidated return.

(7) *Nonresident foreign corporation.*

(i) No part of the \$25,000 amount shall be apportioned under this paragraph to a foreign corporation not engaged in trade or business within the United States (hereinafter referred to in this subparagraph as a "nonresident foreign corporation"), nor shall such corporation be considered as a member for purposes of determining the number of corporations which divide equally the \$25,000 amount under subparagraph (2) (iii) of this paragraph. Furthermore, the consent of such corporation to an apportionment plan is not required.

(ii) A nonresident foreign corporation which is a common parent of an affiliated group shall be considered to have a taxable year ending December 31.

(iii) If a nonresident foreign corporation is a common parent of an affiliated group, the statement (or statements) containing the consents of members of the group, required by subparagraph (2) (i) of this paragraph, shall be considered timely filed if filed with the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C., within 75 days after the end of its taxable year (as determined under subdivision (ii) of this subparagraph) or February 28, 1963, whichever is later.

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

*Example (1).* P, a domestic corporation files an income tax return for its taxable year ending January 31, 1962. On such date P owns all the outstanding stock of S, also a domestic corporation. S files a separate income tax return on the basis of a fiscal year ending June 30. The membership of the affiliated group is ascertained as of the close of January 31, 1962, the last day of the taxable year of the common parent, P. On that day the affiliated group consists of P and S. P and S consent to an apportionment plan in which the \$25,000 amount is apportioned entirely to S for its taxable year ending June 30, 1962 (S's taxable year within which the last day of the taxable year of the common parent, January 31, 1962, falls). Such consent is timely filed. For purposes of computing the credit under section 38, S's limitation based on amount of tax for its taxable year ending June 30, 1962, is so much of S's liability for tax as does not exceed \$25,000, plus 25 percent of S's liability for tax in excess of \$25,000. P's limitation for its taxable year ending January 31, 1962, is equal to 25 percent of P's liability for tax. On the other hand, if an apportionment plan is not timely filed, P's limitation would be so much of P's liability for tax as does not exceed \$12,500 plus 25 percent of P's liability for tax in excess of \$12,500, and S's limitation would be computed similarly.

*Example (2).* Assume the same facts as in example (1), except that P's taxable year

ends December 31, 1961, on which date it owns all the outstanding stock of S. No portion of the \$25,000 amount is apportioned to P since its taxable year ends before January 1, 1962. Accordingly, S is apportioned the entire \$25,000 amount for its taxable year ending June 30, 1962.

*Example (3).* F, a domestic corporation exempt from taxation under section 501, files a return for its taxable year ending December 31, 1963, on which date it owns all the stock of P, a domestic corporation. P files a consolidated return as a common parent for its fiscal year ending June 30, 1964, with its two wholly owned domestic subsidiaries, S and A. The membership of the affiliated group is ascertained as of the close of December 31, 1963, the last day of the taxable year of the common parent, F, and accordingly consists of F, P, S, and A. No consent to an apportionment plan is filed. Therefore, each member is apportioned \$6,250 of the \$25,000 amount (\$25,000 divided by the four members). The limitation based on amount of tax for the affiliated group filing a consolidated return (P, S, and A) for the year ending June 30, 1964 (the consolidated taxable year within which December 31, 1963, falls), is computed by using \$18,750 instead of the \$25,000 amount. The \$18,750 is arrived at by adding together the \$6,250 amounts apportioned to P, S, and A. If the consolidated liability for tax of P, S, and A is \$27,750 for the taxable year ending June 30, 1964, then the credit allowed by section 38 for such group for such taxable year cannot exceed \$21,000 (\$18,750 plus 25 percent of \$9,000).

*Example (4).* Assume the same facts as in example (3), except that a consent by F and P is filed with the timely filed return of F apportioning the entire \$25,000 amount to the group filing a consolidated tax return (P, S, and A). The credit allowed by section 38 for such group for its taxable year ending June 30, 1964, cannot exceed \$25,687.50 (\$25,000 plus 25 percent of \$2,750).

*Example (5).* P, a domestic corporation filing income tax returns on a calendar-year basis, owns all the stock of S, T, and U, all domestic corporations. S, T, and U file separate returns on a calendar-year basis. On June 30, 1963, S is liquidated, and therefore has a short taxable-year beginning January 1, 1963, and ending June 30, 1963. S does not waive its right to its equal portion of the \$25,000 amount. For such short taxable year, the \$25,000 amount shall be reduced for S to \$6,250 (\$25,000 divided by 4, the number of corporations in the affiliated group at the close of S's short taxable year). The total amount apportionable to the members of the affiliated group of which P is the common parent for their taxable years ending December 31, 1963, is \$18,750 (\$25,000 minus the \$6,250 apportioned to S for its short taxable year ending June 30, 1963). The \$18,750 amount may be apportioned according to an apportionment plan or, if a plan is not timely filed, will be apportioned equally among P, T, and U.

**§ 1.46-2 Carryback and carryover of unused credit.**

(a) *Allowance of unused credit as carryback or carryover.* (1) Section 46 (b) (1) provides for a 3-year carryback and a 5-year carryover of any unused credit. An unused credit is the excess of the credit earned for the taxable year (as defined in paragraph (a) of § 1.46-1) over the limitation based on amount of tax for such taxable year (as determined under paragraph (b) of § 1.46-1). Subject to the limitation contained in paragraph (b) of this section, an unused credit shall be added to the amount allowable as a credit under section 38 for the years to which the unused credit can

be carried. The year with respect to which an unused credit arises shall be referred to in this section as the "unused credit year".

(2) An unused credit shall be an investment credit carryback to each of the 3 taxable years preceding the unused credit year and an investment credit carryover to each of the 5 taxable years succeeding the unused credit year, except that an unused credit shall be a carryback only to taxable years ending after December 31, 1961. An unused credit must be carried first to the earliest of the 8 taxable years to which it may be carried, and then to each of the other 7 taxable years (in order of time) to the extent that the unused credit may not be added (because of the limitation contained in paragraph (b) of this section) to the amount allowable as a credit under section 38 for a prior taxable year.

(b) *Limitation on allowance of unused credit.* The amount of the unused credit from any particular unused credit year which may be added to the amount allowable as a credit under section 38 for any of the 3 preceding or 5 succeeding taxable years to which such credit may be carried shall not exceed the amount by which the limitation based on amount of tax for such preceding or succeeding taxable year exceeds the sum of (1) the credit earned for such preceding or succeeding year, and (2) other unused credits carried to such preceding or succeeding year which are attributable to unused credit years prior to the particular unused credit year. Thus, in determining the amount, if any, of an unused credit from a particular unused credit year which shall be added to the amount allowable as a credit for any preceding or succeeding taxable year, the credit earned for such preceding or succeeding taxable year, plus any unused credits originating in taxable years prior to the particular unused credit year, shall first be applied against the limitation based on amount of tax for such preceding or succeeding taxable year. To the extent the limitation based on amount of tax for the preceding or succeeding year exceeds the sum of the credit earned for such year and other unused credits attributable to years prior to the particular unused credit year, the unused credit from the particular unused credit year shall be added to the amount allowable as a credit under section 38 for such preceding or succeeding year. To the extent that an unused credit cannot be added for a particular preceding or succeeding taxable year because of the limitation contained in this paragraph, such unused credit shall be available as a carryback or carryover to the next succeeding taxable year to which it may be carried.

(c) *Effect of net operating loss carryback.* If the effect of a net operating loss carryback is to create an unused credit (as defined in paragraph (a) (1) of this section), such unused credit shall not be treated as an investment credit carryback. However, the full amount of the unused credit so arising shall be available for use as an investment credit carryover for the 5 taxable years following the unused credit year. Thus, assume a taxpayer's credit earned for its taxable

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year 1965 is \$25,000, and such credit is allowable in full under section 38 for such year. In a subsequent taxable year, such taxpayer has a net operating loss which he carries back to 1965 and which results in eliminating the taxpayer's taxable income and liability for tax for 1965. In such case, the \$25,000 credit earned (no longer allowable for the year 1965) becomes an unused credit which, although it shall not be treated as an investment credit carryback, shall be carried forward to 1966 and to each of the subsequent years to which it may be carried.

(d) *Taxable years beginning before January 1, 1962, and ending after December 31, 1961.* Section 46(b) (4) provides a transition rule relating to the amount of an investment credit carryback which may be added to the amount allowable as a credit under section 38 for a taxable year beginning before January 1, 1962, and ending after December 31, 1961. For purposes of determining the amount of unused credits which may be carried back to such a taxable year and added to the amount allowable as a credit for such year, the limitation based on amount of tax for such year (determined without regard to this paragraph) shall be reduced to an amount which bears the same ratio to such limitation as the number of days in such taxable year after December 31, 1961, bears to the total number of days in such year.

(e) *Corporate acquisitions.* For the carryover of unused credits in the case of certain corporate acquisitions, see section 381(c) (23).

(f) *Periods of less than 12 months.* A fractional part of a year which is considered as a taxable year under sections 441(b) and 7701(a) (23) shall be treated as a preceding or a succeeding taxable year for the purpose of determining under section 46(b) the taxable years to which an unused credit may be carried.

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

*Example (1).* Corporation X files its income tax return on the basis of the calendar year. X's credit earned and its limitation based on amount of tax for each of its taxable years 1962 through 1968 are as follows:

	Credit earned	Limitation based on amount of tax
1962	\$175,000	\$200,000
1963	250,000	160,000
1964	200,000	210,000
1965	210,000	230,000
1966	220,000	260,000
1967	260,000	220,000
1968	270,000	280,000

(1) Corporation X's credit earned for 1962, \$175,000, is allowable in full as a credit under section 38 for 1962 since such amount is less than the limitation based on amount of tax for such year, \$200,000. Since the limitation based on amount of tax for 1963 is \$160,000, only \$160,000 of the \$250,000 credit earned for such year is allowable under section 38 as a credit for 1963. The unused credit for 1963 of \$90,000 (\$250,000 less \$160,000) is an investment credit carryback to 1962 and an investment credit carryover to 1964 and subsequent years. The portions of the \$90,000 unused credit which shall be

added to the amount allowable as a credit under section 38 for 1962 and for 1964 and subsequent years are computed as follows:

(i) *1962.* The portion of the unused credit for 1963 (\$90,000) which is allowable as a credit for 1962 is \$25,000. This amount shall be added to the amount allowable as a credit for 1962. The balance of the unused credit for 1963 to be carried to 1964 is \$65,000. These amounts are computed as follows:

Carryback to 1962	.....	\$90,000
1962 limitation based on tax	.....	\$200,000
Less: Credit earned for 1962	.....	\$175,000
Unused credits attributable to years preceding 1963	.....	0
Limit on amount of 1963 unused credit which may be added as a credit for 1962	.....	25,000
Balance of 1963 unused credit to be carried to 1964	.....	65,000

(ii) *1964.* The portion of the balance of the unused credit for 1963 (\$65,000) allowable as a credit for 1964 is \$10,000. This amount shall be added to the amount allowable as a credit for 1964. The balance of the unused credit for 1963 to be carried to 1965 is \$55,000. These amounts are computed as follows:

Carryover to 1964	.....	\$65,000
1964 limitation based on tax	.....	\$210,000
Less: Credit earned for 1964	.....	\$200,000
Unused credits attributable to years preceding 1963	.....	0
Limit on amount of 1963 unused credit which may be added as a credit for 1964	.....	10,000
Balance of 1963 unused credit to be carried to 1965	.....	55,000

(iii) *1965.* The portion of the balance of the unused credit for 1963 (\$55,000) allowable as a credit for 1965 is \$20,000. This amount shall be added to the amount allowable as a credit for 1965. The balance of the unused credit for 1963 to be carried to 1966 is \$35,000. These amounts are computed as follows:

Carryover to 1965	.....	\$55,000
1965 limitation based on tax	.....	\$230,000
Less: Credit earned for 1965	.....	\$210,000
Unused credits attributable to years preceding 1963	.....	0
Limit on amount of 1963 unused credit which may be added as a credit for 1965	.....	20,000
Balance of 1963 unused credit to be carried to 1966	.....	35,000

(iv) *1966.* The entire balance of the unused credit for 1963 (\$35,000) is allowable as a credit for 1966, since the limitation based on amount of tax for 1966 exceeds the sum of the credit earned for 1966 and unused credits attributable to years prior to 1963 by an amount in excess of \$35,000. Since the balance of the unused credit for 1963 has been fully allowed, no portion thereof remains to be carried to 1967 or 1968. This is illustrated as follows:

Carryover to 1966	.....	\$35,000
1966 limitation based on tax	.....	\$260,000
Less: Credit earned for 1966	.....	\$220,000
Unused credits attributable to years preceding 1963	.....	0
Limit on amount of 1963 unused credit which may be added as a credit for 1966	.....	40,000
Balance of 1963 unused credit to be carried to 1967	.....	0

(2) Since the limitation based on amount of tax for 1967 is \$220,000, only \$220,000 of the \$260,000 credit earned for such year is allowable as a credit for 1967. The unused credit for 1967 of \$40,000 (\$260,000 less \$220,000) is an investment credit carryback to 1964, 1965, and 1966 and an investment credit carryover to 1968 and sub-

sequent years. The portions of the \$40,000 unused credit which shall be added to the amount allowable as a credit for such years are computed as follows:

(i) *1964.* The portion of the unused credit for 1967 (\$40,000) allowable as a credit for 1964 is zero. The balance of the unused credit for 1967 to be carried to 1965 is \$40,000. These amounts are computed as follows:

Carryback to 1964	.....	\$40,000
1964 limitation based on tax	.....	\$210,000
Less: Credit earned for 1964	.....	\$200,000
Unused credits attributable to years preceding 1967 (unused credit from 1963)	.....	10,000
Limit on amount 1967 unused credit which may be added as a credit for 1964	.....	0
Balance of 1967 unused credit to be carried to 1965	.....	40,000

(ii) *1965.* The portion of the unused credit for 1967 (\$40,000) allowable as a credit for 1965 is zero. The balance of the unused credit for 1967 to be carried to 1966 is \$40,000. These amounts are computed as follows:

Carryback to 1965	.....	\$40,000
1965 limitation based on tax	.....	\$230,000
Less: Credit earned for 1965	.....	\$210,000
Unused credits attributable to years preceding 1967 (unused credit from 1963)	.....	20,000
Limit on amount of 1967 unused credit which may be added as a credit for 1965	.....	0
Balance of 1967 unused credit to be carried to 1966	.....	40,000

(iii) *1966.* The portion of the unused credit for 1967 (\$40,000) allowable as a credit for 1966 is \$5,000. This amount shall be added to the amount allowable as a credit for 1966. The balance of the unused credit for 1967 to be carried to 1968 is \$35,000. These amounts are computed as follows:

Carryback to 1966	.....	\$40,000
1966 limitation based on tax	.....	\$260,000
Less: Credit earned for 1966	.....	\$220,000
Unused credits attributable to years preceding 1967 (unused credit from 1963)	.....	35,000
Limit on amount of 1967 unused credit which may be added as a credit for 1966	.....	5,000
Balance of 1967 unused credit to be carried to 1968	.....	35,000

(iv) *1968.* The portion of the balance of the unused credit for 1967 (\$35,000) allowable as a credit for 1968 is \$10,000. This amount shall be added to the amount allowable as a credit for 1968. The balance of the unused credit for 1967 to be carried to 1969 and subsequent years is \$25,000. These amounts are computed as follows:

Carryover to 1968	.....	\$35,000
1968 limitation based on tax	.....	\$280,000
Less: Credit earned for 1968	.....	\$270,000
Unused credits attributable to years preceding 1967	.....	0
Limit on amount of 1967 unused credit which may be added as a credit for 1968	.....	10,000
Balance of 1967 unused credit to be carried to 1969	.....	25,000

*Example (2).* Corporation Y files its income tax return on the basis of a fiscal year ending June 30. For its taxable year beginning July 1, 1961, and ending June 30, 1962, Y's credit earned is \$65,000, and its limitation based on amount of tax is \$200,000. The full credit earned (\$65,000) is allowable for Y's taxable year ending June 30, 1962, as a credit against tax since such amount is less than the limitation (\$200,000). For purposes of determining the amount of an investment credit carryback from any subsequent taxable year which may be added

to the amount allowable as a credit for the taxable year ending June 30, 1962, the limitation based on amount of tax for such year shall be reduced from \$200,000 to \$99,178  $200,000 \times \left(\frac{181}{365}\right)$ . Therefore, the total investment credit carrybacks to the taxable year ending June 30, 1962, may not exceed \$34,178 (\$99,178 less \$65,000).

**§ 1.46-3 Qualified investment.**

(a) *In general.* (1) With respect to any taxable year, the qualified investment of the taxpayer is the aggregate (expressed in dollars) of (i) the applicable percentage of the basis of each new section 38 property placed in service by the taxpayer during such taxable year, plus (ii) the applicable percentage of the cost of each used section 38 property placed in service by the taxpayer during such taxable year. With respect to any section 38 property, qualified investment means the applicable percentage of the basis (or cost) of such property. Section 38 property placed in service by the taxpayer during the taxable year includes the taxpayer's share of the basis (or cost) of section 38 property placed in service by a partnership in the taxable year of such partnership ending with or within the taxpayer's taxable year. In the case of a shareholder of an electing small business corporation (as defined in section 1371(b)), or a beneficiary of an estate or trust, see §§ 1.48-5 and 1.48-6, respectively, for appointment of the basis (or cost) of section 38 property placed in service by such corporation, estate, or trust. For the definitions of new section 38 property and used section 38 property, see §§ 1.48-2 and 1.48-3, respectively.

(2) The basis (or cost) of section 38 property placed in service during a taxable year shall not be taken into account in determining qualified investment for such year if such property is disposed of or otherwise ceases to be section 38 property during such year, except where section 47(b) or 46(c) (4) applies. Thus, if individual A places in service during a taxable year section 38 property and later in the same year sells such property, the basis (or cost) of such property shall not be taken into account in determining A's qualified investment. On the other hand, if A places in service section 38 property during a taxable year and dies later in the same year, the basis (or cost) of such property would be taken into account in computing qualified investment. Similarly, if section 38 property is destroyed by fire in the same year in which it is placed in service and section 46(c) (4) applies to reduce the basis (or cost) of replacement property, the basis (or cost) of the destroyed property would be taken into account in computing qualified investment.

(3) Qualified investment is reduced in the case of property which is "public utility property" (see paragraph (h) of this section), and in the case of property of organizations to which section 593 applies, regulated investment companies or real estate investment trusts subject to taxation under subchapter M, chapter 1 of the Code, and cooperative organizations described in section 1381(a) (see § 1.46-4).

(b) *Applicable percentage.* The applicable percentage to be applied to the basis (or cost) of property is 33 $\frac{1}{3}$  percent if the estimated useful life of the property is 4 years or more but less than 6 years; 66 $\frac{2}{3}$  percent if the estimated useful life is 6 years or more but less than 8 years; or 100 percent if the estimated useful life is 8 years or more. The provisions of this paragraph may be illustrated by the following example:

*Example.* Corporation Y acquires and places in service during 1963 the following new and used section 38 properties:

Property	Estimated useful life	Basis (or cost)
A (new).....	5 years.....	\$60,000
B (new).....	10 years.....	90,000
C (new).....	6 years.....	150,000
D (used).....	4 years.....	30,000

Corporation Y's qualified investment for 1963 is \$220,000 determined in the following manner:

Property	Basis (or cost)	Applicable percentage	Qualified investment
A.....	\$60,000	33 $\frac{1}{3}$ %	\$20,000
B.....	90,000	100	90,000
C.....	150,000	66 $\frac{2}{3}$ %	100,000
D.....	30,000	33 $\frac{1}{3}$ %	10,000
Total.....			220,000

(c) *Basis or cost.* (1) The basis of any new section 38 property shall be determined in accordance with the general rules for determining the basis of property. Thus, the basis of property would generally be its cost (see section 1012), unreduced by the adjustment to basis provided by section 48(g) (1) and any other adjustment to basis, such as that for depreciation, and would include all items properly included by the taxpayer in the depreciable basis of the property, such as installation and freight costs. If new section 38 property is acquired in exchange for cash and other property in a transaction described in section 1031 in which no gain or loss is recognized, the basis of the newly acquired property for purposes of determining qualified investment would be equal to the adjusted basis of the other property plus the cash paid. See § 1.48-4 for the basis of property to a lessee where the lessor has elected to treat such lessee as a purchaser.

(2) The cost of any used section 38 property shall be determined in accordance with paragraph (b) of § 1.48-3. However, the aggregate cost of used section 38 property which may be taken into account in any taxable year in computing qualified investment cannot exceed \$50,000 (see paragraph (c) of § 1.48-3).

(3) For reduction in the basis (or cost) of certain property which replaces other property which was destroyed or damaged by fire, storm, shipwreck, or other casualty, or which was stolen, see section 46(c) (4).

(d) *Placed in service.* (1) For purposes of the credit allowed by section 38, property shall be considered placed in service in the earlier of the following taxable years:

(i) The taxable year in which, under the taxpayer's depreciation practice, the

period for depreciation with respect to such property begins; or

(ii) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business, in the production of income, in a tax-exempt activity, or in a personal activity.

Thus, if property meets the conditions of subdivision (ii) of this subparagraph in a taxable year, it shall be considered placed in service in such year notwithstanding that the period for depreciation with respect to such property begins in a succeeding taxable year because, for example, under the taxpayer's depreciation practice such property is accounted for in a multiple asset account and depreciation is computed under an "averaging convention" (see § 1.167 (a)-10), or depreciation with respect to such property is computed under the completed contract method or the unit of production method.

(2) In the case of property acquired by a taxpayer for use in his trade or business (or in the production of income), the following are examples of cases where property shall be considered in a condition or state of readiness and availability for a specifically assigned function:

(i) Parts are acquired and set aside during the taxable year for use as replacements for a particular machine in order to avoid operational time loss.

(ii) Operational farm equipment is acquired during the taxable year and it is not practicable to use such equipment for its specifically assigned function in the taxpayer's business of farming until the following year.

(3) Notwithstanding subparagraph (1) of this paragraph, property held by the taxpayer for the purposes of leasing shall be considered placed in service in the taxable year in which possession is transferred to a lessee or in the taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such property begins, whichever occurs first.

(4) The credit allowed by section 38 with respect to any property shall be allowed only for the first taxable year in which such property is placed in service by the taxpayer. The determination of whether property is section 38 property in the hands of the taxpayer shall be made with respect to such first taxable year. Thus, if a taxpayer places property in service in a taxable year and such property does not qualify as section 38 property (or only a portion of such property qualifies as section 38 property) in such year, no credit (or a credit only as to the portion which qualifies in such year) shall be allowed to the taxpayer with respect to such property notwithstanding that such property (or a greater portion of such property) qualifies as section 38 property in a subsequent taxable year. For example, if a taxpayer places property in service in 1963 and uses the property entirely for personal purposes in such year, but in 1964 begins using the property in a trade or business, no credit is allowable to the taxpayer under section 38 with respect to such

property. See § 1.48-1 for the definition of section 38 property.

(e) *Estimated useful life.* (1) The estimated useful life assigned to each property shall be based on the facts and circumstances known with respect to each property as of the time it is placed in service by the taxpayer. If property is placed in a single asset account for purposes of computing depreciation, the estimated useful life used for that purpose shall be used in determining qualified investment. If property is placed in a multiple asset account (including a guideline class account described in Revenue Procedure 62-21) in which a group, classified or composite rate is used in computing depreciation, the determination of useful life for each property in the account shall be made individually on the best estimate obtainable on the basis of all the facts and circumstances.

(2) With respect to assets similar in kind with approximately the same estimated useful lives contained in a multiple asset account, the taxpayer may assign to each of such assets the average useful life of such assets, or he may assign separate lives to such assets based on the estimated range of years taken into consideration in establishing the average useful life. Thus, for example, if a taxpayer places 9 similar trucks with an average estimated useful life of 7 years, based on an estimated range of 6 to 8 years (2 trucks with a useful life of 6 years, 5 trucks with a useful life of 7 years, and 2 trucks with a useful life of 8 years), in a multiple asset account in which a group rate is used in computing depreciation, he may either assign a useful life of 6 years to 2 of the trucks, 7 years to 5 of the trucks, and 8 years to 2 of the trucks, or he may assign the average useful life of the trucks (7 years) to each of the 9 trucks. Similarly, if a taxpayer places 100 telephone poles with an average useful life of 28 years, based on an estimated range of 3 to 40 years (2 with a useful life of less than 4 years, 3 with a useful life of 4 to 6 years, 4 with a useful life of 6 to 8 years, and 91 with a useful life of more than 8 years), in a multiple asset account in which a group rate is used in computing depreciation, he may either assign useful lives corresponding to the estimated range of years of the poles (i.e., a useful life of less than 4 years to 2 of the poles, etc.), or he may assign the average useful life of the poles (28 years) to each of the poles.

(3) In the case of property with respect to which amortization in lieu of depreciation is allowable, the term over which amortization deductions are taken shall be considered as the estimated useful life of such property.

(4) If a taxpayer is using a method of depreciation, such as the unit of production method, which does not measure the life of the property in terms of years, he must estimate such life in years in order to compute his qualified investment.

(5) The useful life of each asset may be estimated by the taxpayer in terms of the useful life category in which the property falls. Thus, for purposes of

computing qualified investment, the taxpayer may assign a life of 4 years or more but less than 6 years, 6 years or more but less than 8 years, or 8 years or more, whichever is appropriate, to his section 38 property.

(f) *Partnerships*—(1) *In general.* In the case of a partnership, each partner shall take into account separately, for his taxable year with or within which the partnership taxable year ends, his share of the basis of partnership new section 38 property and his share of the cost of partnership used section 38 property placed in service by the partnership during such partnership taxable year. Each partner shall be treated as the taxpayer with respect to his share of the basis of partnership new section 38 property and his share of the cost of partnership used section 38 property. The estimated useful life to each partner of such property shall be deemed to be the estimated useful life of the property in the hands of the partnership. Partnership section 38 property shall not, by reason of each partner taking his share of the basis or cost into account, lose its character as either new section 38 property or used section 38 property, as the case may be.

(2) *Determination of partner's share.*

(i) Each partner's share of the basis (or cost) of any section 38 property shall be determined in accordance with the ratio in which the partners divide the general profits of the partnership (that is, the taxable income of the partnership as described in section 702(a)(9)). However, if the ratio in which the partners divide the general profits of the partnership changes during the taxable year of the partnership, the ratio effective for the date on which the property is placed in service shall apply.

(ii) Notwithstanding subdivision (i) of this subparagraph, if all related items of income, gain, loss, and deduction with respect to any item of partnership section 38 property are specially allocated in the same manner and if such special allocation is recognized under section 704 (a) and (b) and paragraph (b) of § 1.704-1, then each partner's share of the basis of such item of new section 38 property or the cost of such item of used section 38 property shall be determined by reference to such special allocation effective for the date on which the property is placed in service.

(3) *Examples.* This paragraph may be illustrated by the following examples:

*Example (1).* Partnership ABCD acquires and places in service on January 1, 1962, an item of new section 38 property, and acquires and places in service on September 1, 1962,

another item of new section 38 property. The ABCD partnership and each of its partners reports income on the basis of the calendar year. Partners A, B, C, and D share partnership profits equally. Each partner's share of the basis of each new partnership section 38 property is 25 percent.

*Example (2).* Assume the same facts as in example (1) and the following additional facts: A dies on June 30, 1962, and B purchases A's interest as of such date. Each partner's share of the profits from January 1 to June 30 is 25 percent. From July 1 to December 31, B's share of the profits is 50 percent, and C and D's share of the profits is 25 percent each. For A's last taxable year (January 1 to June 30, 1962), A shall take into account 25 percent of the basis of the section 38 property placed in service on January 1. B shall take into account 25 percent of the basis of the section 38 property placed in service on January 1 and 50 percent of the basis of the section 38 property placed in service on September 1. C and D shall each take into account 25 percent of the basis of each new section 38 property placed in service by the partnership in 1962.

*Example (3).* Partnership MR is engaged in the business of renting soda fountain equipment and icemakers to restaurants. The partnership makes no elections under § 1.48-4 to treat its lessees as having purchased such property. Under the terms of the partnership agreement, the income, gain or loss on disposition, depreciation, and other deductions attributable to the icemakers are specially allocated 70 percent to partner M and 30 percent to partner R. In all other respects M and R share profits and losses equally. If the special allocation with respect to the icemakers is recognized under section 704 (a) and (b) and paragraph (b) of § 1.704-1, the basis (or cost) of the icemakers which qualify as partnership section 38 property shall be taken into account 70 percent by M and 30 percent by R. The basis (or cost) of partnership section 38 property not subject to the special allocation shall be taken into account equally by M and R.

*Example (4).* Assume the same facts as in example (3) and the following additional facts: During November 1962, the partnership, which reports its income on the basis of a fiscal year ending May 31, acquires and places in service two items which qualify as new section 38 property, an icemaker and a soda fountain. The icemaker has an estimated useful life of 8 years to the partnership and a basis of \$1,000. The soda fountain has an estimated useful life of 6 years to the partnership and a basis of \$600. Partner M also owns and operates a business as a sole proprietorship and reports income on the calendar year basis. During 1963, M acquires and places in service in his sole proprietorship a machine which qualifies as new section 38 property. This machine has an estimated useful life of 4 years and a basis of \$300. M owns no interest in any other partnerships, electing small business corporations, estates, or trusts. M's total qualified investment for 1963 is \$1,000, computed as follows:

Property	Estimated useful life	Basis	M's share of basis	Applicable percentage	Qualified investment
<i>Partnership MR</i>					
Icemaker.....	8	\$1,000	\$700	100	\$700
Soda fountain.....	6	600	300	66½	200
<i>Sole proprietorship</i>					
Machine.....	4	300	-----	33½	100
Total.....	-----	-----	-----	-----	1,000

(g) *Public utility property.* (1) In the case of section 38 property which is public utility property, the amount of the qualified investment with respect to such property shall be ¾ of the amount otherwise determined under this section with respect to such property.

(2) The term "public utility property" means property used predominantly in the trade or business of the furnishing or sale of—

- (i) Electrical energy, water, or sewage disposal services,
- (ii) Gas through a local distribution system,
- (iii) Telephone service, or
- (iv) Telegraph service by means of domestic telegraph operations (as defined in section 222(a)(5) of the Communications Act of 1934, as amended; 47 U.S.C., sec. 222(a)(5)),

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State (including the District of Columbia) or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof. The term "established or approved" includes the filing of a schedule of rates with any body named in the preceding sentence which has the power to approve such rates, even though such body has taken no action on the filed schedule. For purposes of this paragraph, any activity described in subdivision (i), (ii), (iii), or (iv) of this subparagraph, which is regulated in a manner described in this subparagraph, shall be referred to as a "public utility activity". If property is used by a taxpayer both in a public utility activity and in another activity, the characterization of such property shall be based on the predominant use of such property during the taxable year in which it is placed in service.

(3) Public utility property includes property which is leased to others by a taxpayer where the leasing of such property is part of the lessor's public utility activity. Thus, such leased property is public utility property even though the lessee uses such property in an activity which is not a public utility activity, and whether or not the lessor of such property makes a valid election under § 1.48-4 to treat the lessee as having purchased such property for purposes of the credit allowed by section 38. Property leased by a lessor, where the leasing is not part of a public utility activity, to a lessee who uses such property predominantly in a public utility activity is public utility property for purposes of computing the lessor's or lessee's qualified investment with respect to such property.

(4) (i) With respect to properties of a taxpayer engaged in both the production or transmission of gas and the local distribution of gas, section 38 property shall be considered as used predominantly in the trade or business of the furnishing or sale of gas through a local distribution system if expenditures for such property are chargeable to any of the following accounts under either the uniform system of accounts prescribed for natural gas companies (class A and class B) by the Federal Power Commission, effective January 1, 1961, or the uniform system of accounts for class A and B gas utilities adopted in 1958 by the National Association of Railroad and

Utility Commissioners (or would be chargeable to any of the following accounts if the taxpayer used either of such systems):

- (a) Accounts 360 through 363, inclusive (Local Storage Plant), or
- (b) Accounts 374 through 387, inclusive (Distribution Plant).

(ii) If expenditures for section 38 property are chargeable (or would be chargeable) to any of the following accounts under either of the systems named in subdivision (i) of this subparagraph, the determination of whether or not such property is used predominantly in the trade or business of the furnishing or sale of gas through a local distribution system shall be made under all the facts and circumstances relating to the actual use of such property in the year such property is placed in service:

- (a) Accounts 304 through 320, inclusive (Manufactured Gas Production Plant), or
- (b) Accounts 389 through 399, inclusive (General Plant).

For example, if an office machine is used 55 percent of the time for billing customers of the taxpayer's local distribution system in the year in which it is placed in service, such office machine shall be considered as used predominantly in the trade or business of the furnishing or sale of gas through a local distribution system.

(h) [Reserved]

#### § 1.46-4 Limitations with respect to certain persons.

(a) *Mutual savings institutions.* In the case of an organization to which section 593 applies (that is, a mutual saving bank, a cooperative bank, or a domestic building and loan association)—

(1) The qualified investment with respect to each section 38 property shall be 50 percent of the amount otherwise determined under § 1.46-3, and

(2) The \$25,000 amount specified in section 46(a)(2)(A) and (B), relating to limitation based on amount of tax, shall be reduced by 50 percent of such amount.

For example, if a domestic building and loan association places in service on January 1, 1963, new section 38 property with a basis of \$30,000 and an estimated useful life of 6 years, its qualified investment for 1963 with respect to such property computed under § 1.46-3 is \$20,000 (66⅔ percent of \$30,000). However, under this paragraph such amount is reduced to \$10,000 (50 percent of \$20,000). If an organization to which section 593 applies is a member of an affiliated group (as defined in section 46(a)(5)), the \$25,000 amount specified in section 46(a)(2)(A) and (B) shall be reduced in accordance with the provisions of paragraph (f) of § 1.46-1 before such amount is further reduced under this paragraph.

(b) *Regulated investment companies and real estate investment trusts.* (1) In the case of a regulated investment company or a real estate investment trust subject to taxation under subchapter M, chapter 1 of the Code—

(i) The qualified investment with respect to each section 38 property otherwise determined under § 1.46-3, and

(ii) The \$25,000 amount specified in section 46(a)(2)(A) and (B), relating to limitation based on amount of tax, shall be reduced to such person's ratable share of each such amount. If a regulated investment company or a real estate investment trust is a member of an affiliated group (as defined in section 46(a)(5)), the \$25,000 amount specified in section 46(a)(2)(A) and (B) shall be reduced in accordance with the provisions of paragraph (f) of § 1.46-1 before such amount is further reduced under this paragraph.

(2) A person's ratable share of the amount described in subparagraph (1)(i) and the amount described in subparagraph (1)(ii) of this paragraph shall be the ratio which—

(i) Taxable income for the taxable year, bears to

(ii) Taxable income for the taxable year plus the amount of the deduction for dividends paid taken into account under section 852(b)(2)(D) in computing investment company taxable income, or under section 857(b)(2)(C) in computing real estate investment trust taxable income, as the case may be.

For purposes of the preceding sentence, taxable income means, in the case of a regulated investment company its investment company taxable income (within the meaning of section 852(b)(2)), and in the case of a real estate investment trust its real estate investment trust taxable income (within the meaning of section 857(b)(2)). For purposes of this paragraph only, in computing taxable income a regulated investment company or a real estate investment trust may compute depreciation deductions with respect to section 38 property without regard to the reduction in basis of such property required under § 1.48-7.

(3) This paragraph may be illustrated by the following example:

*Example.* (i) Corporation X, a regulated investment company subject to taxation under section 852 of the Code, places in service on January 1, 1963, section 38 property with a basis of \$30,000 and an estimated useful life of 6 years. Such property is depreciated on the straight-line method. Corporation X's investment company taxable income under section 852(b)(2), computed for purposes of this paragraph only, is \$10,000 after taking into account a deduction for dividends paid of \$90,000 and after taking into account a depreciation deduction (determined without regard to the reduction in basis under § 1.48-7) of \$5,000 (\$30,000 divided by 6) with respect to such section 38 property.

(ii) Under this paragraph, corporation X's qualified investment for the taxable year 1963 with respect to such property is \$2,000, computed as follows: (a) \$20,000 (qualified investment under § 1.46-3), multiplied by (b) \$10,000 (taxable income), divided by (c) \$100,000 (taxable income plus the deduction for dividends paid). For 1963, the \$25,000 amount specified in section 46(a)(2)(A) and (B) is reduced to \$2,500. Since the basis of the section 38 property must be reduced, under § 1.48-7, by \$140 (7 percent of \$2,000) to \$29,860 (\$30,000 minus \$140), X's depreciation allowance for the taxable

year 1963 with respect to such property is \$4,976.67 (\$29,860 divided by 6). Thus, corporation X's investment company taxable income under section 852(b)(2), after the depreciation deduction, is \$10,023.33 (\$10,000 plus \$23.33, the difference between actual depreciation (\$4,976.67) and depreciation computed without regard to § 1.48-7 (\$5,000)).

(c) *Cooperatives.* (1) In the case of a cooperative organization described in section 1381(a)—

(i) The qualified investment with respect to each section 38 property otherwise determined under § 1.46-3, and

(ii) The \$25,000 amount specified in section 46(a)(2)(A) and (B), relating to limitation based on amount of tax,

shall be reduced to such cooperative's ratable share of each such amount. If a cooperative organization described in section 1381(a) is a member of an affiliated group (as defined in section 46(a)(5)), the \$25,000 amount specified in section 46(a)(2)(A) and (B) shall be reduced in accordance with the provisions of paragraph (f) of § 1.46-1 before such amount is further reduced under this paragraph.

(2) A cooperative's ratable share of the amount described in subparagraph (1)(i) and the amount described in subparagraph (1)(ii) of this paragraph shall be the ratio which—

(i) Taxable income for the taxable year, bears to

(ii) Taxable income for the taxable year plus the sum of (a) the amount of the deductions allowed under section 1382(b), (b) the amount of the deductions allowed under section 1382(c), and (c) amounts similar to the amounts described in (a) and (b) of this subdivision the tax treatment of which is determined without regard to subchapter T, chapter 1 of the Code and the regulations thereunder.

Amounts similar to deductions allowed under section 1382 (b) or (c) are, for example, in the case of a taxable year of a cooperative organization beginning before January 1, 1963, the amount of patronage dividends which are excluded or deducted and any nonpatronage distributions which are deducted under section 522(b)(1). In the case of a taxable year of a cooperative organization beginning after December 31, 1962, such amounts are the amount of patronage dividends and nonpatronage distributions which are excluded or deducted without regard to section 1382 (b) or (c) because they are paid with respect to patronage occurring before 1963. For purposes of this paragraph only, in computing taxable income a cooperative may compute depreciation deductions with respect to section 38 property without regard to the reduction in basis of such property required under § 1.48-7.

(3) This paragraph may be illustrated by the following example:

*Example.* (1) Cooperative X, an organization described in section 1381(a), places in service on January 1, 1963, section 38 property with a basis of \$30,000 and an estimated useful life of 6 years. Such property is depreciated on the straight-line method. Cooperative X's taxable income, computed for purposes of this paragraph only, is \$10,000 after taking into account deductions of

\$20,000 allowed under section 1382(b), deductions of \$60,000 allowed under section 1382(c), deductions of \$10,000 allowed under section 522(b)(1)(B), and after taking into account a depreciation deduction (determined without regard to the reduction in basis under § 1.48-7) of \$5,000 (\$30,000 divided by 6) with respect to such section 38 property.

(ii) Under this paragraph, cooperative X's qualified investment for the taxable year 1963 with respect to such property is \$2,000, computed as follows: (a) \$20,000 (qualified investment under § 1.46-3), multiplied by (b) \$10,000 (taxable income), divided by (c) \$100,000 (taxable income plus the sum of the deductions allowed under sections 1382(b), 1382(c), and 522(b)(1)(B)). The \$25,000 amount specified in section 46(a)(2)(A) and (B) is reduced to \$2,500. Since the basis of the section 38 property must be reduced, under § 1.48-7, by \$140 (7 percent of \$2,000) to \$29,860 (\$30,000 minus \$140), X's depreciation allowance for the taxable year 1963 with respect to such property is \$4,976.67 (\$29,860 divided by 6). Thus, cooperative X's taxable income, after the depreciation deduction, is \$10,023.33 (\$10,000 plus \$23.33, the difference between actual depreciation (\$4,976.67) and depreciation computed without regard to § 1.48-7 (\$5,000)).

#### § 1.47 Statutory provisions; certain dispositions, etc., of section 38 property.

Sec. 47. *Certain dispositions, etc., of section 38 property—(a) General rule.* Under regulations prescribed by the Secretary or his delegate—

(1) *Early disposition, etc.* If during any taxable year any property is disposed of, or otherwise ceases to be section 38 property with respect to the taxpayer, before the close of the useful life which was taken into account in computing the credit under section 38, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from substituting, in determining qualified investment, for such useful life the period beginning with the time such property was placed in service by the taxpayer and ending with the time such property ceased to be section 38 property.

(2) *Property becomes public utility property.* If during any taxable year any property taken into account in determining qualified investment becomes public utility property (within the meaning of section 46(c)(3)(B)), then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from treating the property, for purposes of determining qualified investment, as public utility property (after giving due regard to the period before such change in use). If the application of this paragraph to any property is followed by the application of paragraph (1) to such property, proper adjustment shall be made in applying paragraph (1).

(3) *Carrybacks and carryovers adjusted.* In the case of any cessation described in paragraph (1) or any change in use described in paragraph (2), the carrybacks and carryovers under section 46(b) shall be adjusted by reason of such cessation (or change in use).

(4) *Property destroyed by casualty, etc.* No increase shall be made under paragraph (1) and no adjustment shall be made under paragraph (3) in any case in which—

(A) Any property is disposed of, or otherwise ceases to be section 38 property with respect to the taxpayer, on account of its destruction or damage by fire, storm, shipwreck, or other casualty, or by reason of its theft,

(B) Section 38 property is placed in service by the taxpayer to replace the property described in subparagraph (A), and

(C) The reduction in basis or cost of such section 38 property described in the first sentence of section 46(c)(4) is equal to or greater than the reduction in qualified investment which (but for this paragraph) would be made by reason of the substitution required by paragraph (1) with respect to the property described in subparagraph (A).

(b) *Section not to apply in certain cases.* Subsection (a) shall not apply to—

(1) A transfer by reason of death, or

(2) A transaction to which section 381(a) applies.

For purposes of subsection (a), property shall not be treated as ceasing to be section 38 property with respect to the taxpayer by reason of a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as section 38 property and the taxpayer retains a substantial interest in such trade or business.

(c) *Special rule.* Any increase in tax under subsection (a) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under subpart A.

[Sec. 47 as added by sec 2(b), Rev. Act 1962 (76 Stat. 963)]

#### § 1.47-1 [Reserved]

#### § 1.48 Statutory provisions; definitions; special rules.

Sec. 48. *Definitions; special rules—(a) Section 38 property—(1) In general.* Except as provided in this subsection, the term "section 38 property" means—

(A) Tangible personal property, or

(B) Other tangible property (not including a building and its structural components) but only if such property—

(1) Is used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or

(2) Constitutes a research or storage facility used in connection with any of the activities referred to in clause (1).

Such term includes only property with respect to which depreciation (or amortization in lieu of depreciation) is allowable and having a useful life (determined as of the time such property is placed in service) of 4 years or more.

(2) *Property used outside the United States—(A) In general.* Except as provided in subparagraph (B), the term "section 38 property" does not include property which is used predominantly outside the United States.

(B) *Exceptions.* Subparagraph (A) shall not apply to—

(i) Any aircraft which is registered by the Administrator of the Federal Aviation Agency and which is operated to and from the United States;

(ii) Rolling stock, of a domestic railroad corporation subject to part I of the Interstate Commerce Act, which is used within and without the United States;

(iii) Any vessel documented under the laws of the United States which is operated in the foreign or domestic commerce of the United States;

(iv) Any motor vehicle of a United States person (as defined in section 7701(a)(30)) which is operated to and from the United States;

(v) Any container of a United States person which is used in the transportation of property to and from the United States; and

(vi) Any property (other than a vessel or an aircraft) of a United States person which is used for the purpose of exploring for, developing, removing, or transporting

resources from the outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act, as amended and supplemented; 43 U.S.C., sec. 1331).

(3) *Property used for lodging.* Property which is used predominantly to furnish lodging or in connection with the furnishing of lodging shall not be treated as section 38 property. The preceding sentence shall not apply to—

(A) Nonlodging commercial facilities which are available to persons not using the lodging facilities on the same basis as they are available to persons using the lodging facilities, and

(B) Property used by a hotel or motel in connection with the trade or business of furnishing lodging where the predominant portion of the accommodations is used by transients.

(4) *Property used by certain tax-exempt organizations.* Property used by an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter shall be treated as section 38 property only if such property is used predominantly in an unrelated trade or business the income of which is subject to tax under section 511.

(5) *Property used by governmental units.* Property used by the United States, any State or political subdivision thereof, any international organization, or any agency or instrumentality of any of the foregoing shall not be treated as section 38 property.

(6) *Livestock.* Livestock shall not be treated as section 38 property.

(b) *New section 38 property.* For purposes of this subpart, the term "new section 38 property" means section 38 property—

(1) The construction, reconstruction, or erection of which is completed by the taxpayer after December 31, 1961, or

(2) Acquired after December 31, 1961, if the original use of such property commences with the taxpayer and commences after such date.

In applying section 46(c)(1)(A) in the case of property described in paragraph (1), there shall be taken into account only that portion of the basis which is properly attributable to construction, reconstruction, or erection after December 31, 1961.

(c) *Used section 38 property.*—(1) *In general.* For purposes of this subpart, the term "used section 38 property" means section 38 property acquired by purchase after December 31, 1961, which is not new section 38 property. Property shall not be treated as "used section 38 property" if, after its acquisition by the taxpayer, it is used by a person who used such property before such acquisition (or by a person who bears a relationship described in section 179(d)(2)(A) or (B) to a person who used such property before such acquisition).

(2) *Dollar limitation.*—(A) *In general.* The cost of used section 38 property taken into account under section 46(c)(1)(B) for any taxable year shall not exceed \$50,000. If such cost exceeds \$50,000, the taxpayer shall select (at such time and in such manner as the Secretary or his delegate shall by regulations prescribe) the items to be taken into account, but only to the extent of an aggregate cost of \$50,000. Such a selection, once made, may be changed only in the manner, and to the extent, provided by such regulations.

(B) *Married individuals.* In the case of a husband or wife who files a separate return, the limitation under subparagraph (A) shall be \$25,000 in lieu of \$50,000. This subparagraph shall not apply if the spouse of the taxpayer has no used section 38 property which may be taken into account as qualified investment for the taxable year of such spouse which ends within or with the taxpayer's taxable year.

(C) *Affiliated groups.* In the case of an affiliated group, the \$50,000 amount specified under subparagraph (A) shall be reduced for each member of the group by apportioning \$50,000 among the members of such group in accordance with their respective amounts of used section 38 property which may be taken into account.

(D) *Partnerships.* In the case of a partnership, the limitation contained in subparagraph (A) shall apply with respect to the partnership and with respect to each partner.

(3) *Definitions.* For purposes of this subsection—

(A) *Purchase.* The term "purchase" has the meaning assigned to such term by section 179(d)(2).

(B) *Cost.* The cost of used section 38 property does not include so much of the basis of such property as is determined by reference to the adjusted basis of other property held at any time by the person acquiring such property. If property is disposed of (other than by reason of its destruction or damage by fire, storm, shipwreck, or other casualty, or its theft) and used section 38 property similar or related in service or use is acquired as a replacement therefor in a transaction to which the preceding sentence does not apply, the cost of the used section 38 property acquired shall be its basis reduced by the adjusted basis of the property replaced. The cost of used section 38 property shall not be reduced with respect to the adjusted basis of any property disposed of if, by reason of section 47, such disposition involved an increase of tax or a reduction of the unused credit carrybacks or carryovers described in section 46(b).

(C) *Affiliated group.* The term "affiliated group" has the meaning assigned to such term by section 1504(a), except that—

(i) The phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1504(a), and

(ii) All corporations shall be treated as includible corporations (without any exclusion under section 1504(b)).

(d) *Certain leased property.* A person (other than a person referred to in section 46(d)) who is a lessor of property may (at such time, in such manner, and subject to such conditions as are provided by regulations prescribed by the Secretary or his delegate) elect with respect to any new section 38 property to treat the lessee as having acquired such property for an amount equal to—

(1) If such property was constructed by the lessor (or by a corporation which controls or is controlled by the lessor within the meaning of section 368(c)), the fair market value of such property, or

(2) If paragraph (1) does not apply, the basis of such property to the lessor.

The election provided by the preceding sentence may be made only with respect to property which would be new section 38 property if acquired by the lessee. For purposes of the preceding sentence and section 46(c), the useful life of property in the hands of the lessee is the useful life of such property in the hands of the lessor. If a lessor makes the election provided by this subsection with respect to any property, the lessee shall be treated for all purposes of this subpart as having acquired such property. If a lessor makes the election provided by this subsection with respect to any property, then, under regulations prescribed by the Secretary or his delegate, subsection (g) shall not apply with respect to such property and the deductions otherwise allowable under section 162 to the lessee for amounts paid to the lessor under the lease shall be adjusted in a manner consistent with the provisions of subsection (g).

(e) *Subchapter S corporations.* In the case of an electing small business corporation (as defined in section 1371)—

(1) The qualified investment for each taxable year shall be apportioned pro rata among the persons who are shareholders of such corporation on the last day of such taxable year; and

(2) Any person to whom any investment has been apportioned under paragraph (1) shall be treated (for purposes of this subpart) as the taxpayer with respect to such investment, and such investment shall not (by reason of such apportionment) lose its character as an investment in new section 38 property or used section 38 property, as the case may be.

(f) *Estates and trusts.* In the case of an estate or trust—

(1) The qualified investment for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each,

(2) Any beneficiary to whom any investment has been apportioned under paragraph (1) shall be treated (for purposes of this subpart) as the taxpayer with respect to such investment, and such investment shall not (by reason of such apportionment) lose its character as an investment in new section 38 property or used section 38 property, as the case may be, and

(3) The \$25,000 amount specified under subparagraphs (A) and (B) of section 46(a)(2) applicable to such estate or trust shall be reduced to an amount which bears the same ratio to \$25,000 as the amount of the qualified investment allocated to the estate or trust under paragraph (1) bears to the entire amount of the qualified investment.

(g) *Adjustments to basis of property.*—

(1) *In general.* The basis of any section 38 property shall be reduced, for purposes of this subtitle other than this subpart, by an amount equal to 7 percent of the qualified investment as determined under section 46(c) with respect to such property.

(2) *Certain dispositions, etc.* If the tax under this chapter is increased for any taxable year under paragraph (1) or (2) of section 47(a) or an adjustment in carrybacks or carryovers is made under paragraph (3) of such section, the basis of the property described in such paragraph (1) or (2), as the case may be (immediately before the event on account of which such paragraph (1), (2), or (3) applies), shall be increased by an amount equal to the portion of such increase and the portion of such adjustment attributable to such property.

(h) *Cross reference.* For application of this subpart to certain acquiring corporations, see section 381(c)(23).

[Sec. 48 as added by sec. 2(b), Rev. Act 1962 (76 Stat. 963)]

§ 1.48-1 Definition of section 38 property.

(a) *In general.* Property which qualifies for the credit allowed by section 38 is known as "section 38 property". Except as otherwise provided in this section, the term "section 38 property" means property (1) with respect to which depreciation (or amortization in lieu of depreciation) is allowable to the taxpayer, (2) which has an estimated useful life of 4 years or more (determined as of the time such property is placed in service), and (3) which is either (i) tangible personal property, or (ii) other tangible property (not including a building and its structural components) but only if such other property is used as an integral part of manu-

facturing, production, or extraction, or as an integral part of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services by a person engaged in a trade or business of furnishing any such service, or is a research or storage facility used in connection with any of the foregoing activities. The determination of whether property qualifies as section 38 property in the hands of the taxpayer for purposes of the credit allowed by section 38 must be made with respect to the first taxable year in which such property is placed in service by the taxpayer. See paragraph (d) of § 1.46-3. For the meaning of "estimated useful life", see paragraph (e) of § 1.46-3.

(b) *Depreciation allowable.* (1) Property is not section 38 property unless a deduction for depreciation (or amortization in lieu of depreciation) with respect to such property is allowable to the taxpayer for the taxable year. However, if property is placed in service (within the meaning of paragraph (d) of § 1.46-3) in a trade or business (or in the production of income), but under the taxpayer's depreciation practice the period for depreciation with respect to such property begins in a taxable year subsequent to the taxable year in which such property is placed in service, then a deduction for depreciation shall be treated as allowable with respect to such property in the earlier taxable year. Thus, for example, if a machine is placed in service in a trade or business in 1963, but the period for depreciation with respect to such machine begins in 1964, because the taxpayer uses an averaging convention (see § 1.167 (a)-10) in computing depreciation, then, for purposes of determining whether the machine qualifies as section 38 property, a deduction for depreciation shall be treated as allowable in 1963.

(2) If, for the taxable year in which property is placed in service, a deduction for depreciation is allowable to the taxpayer only with respect to a part of such property, then only the proportionate part of the property with respect to which such deduction is allowable qualifies as section 38 property for the purpose of determining the amount of credit allowable under section 38. Thus, for example, if property is used 80 percent of the time in a trade or business and is used 20 percent of the time for personal purposes, only 80 percent of the basis (or cost) of such property qualifies as section 38 property. Further, property does not qualify to the extent that a deduction for depreciation thereon is disallowed under section 274 (relating to disallowance of certain entertainment, etc., expenses).

(c) *Definition of tangible personal property.* If property is tangible personal property it may qualify as section 38 property irrespective of whether it is used as an integral part of an activity (or constitutes a research or storage facility used in connection with such activity) specified in paragraph (a) of this section. Local law shall not be controlling for purposes of determining whether property is or is not "tangible" or "personal". Thus, the fact that under

local law property is held to be personal property or tangible property shall not be controlling. Conversely, property may be personal property for purposes of the investment credit even though under local law the property is considered to be a fixture and therefore real property. For purposes of this section, the term "tangible personal property" means any tangible property except land and improvements thereto, such as buildings or other inherently permanent structures (including items which are structural components of such buildings or structures). Thus, buildings, swimming pools, paved parking areas, wharves and docks, bridges, and fences are not tangible personal property. Tangible personal property includes all property (other than structural components) which is contained in or attached to a building. Thus, such property as production machinery, printing presses, transportation and office equipment, refrigerators, grocery counters, testing equipment, display racks and shelves, and neon and other signs, which is contained in or attached to a building constitutes tangible personal property for purposes of the credit allowed by section 38. Further, all property which is in the nature of machinery (other than structural components of a building or other inherently permanent structure) shall be considered tangible personal property even though located outside a building. Thus, for example, a gasoline pump, hydraulic car lift, or automatic vending machine, although annexed to the ground, shall be considered tangible personal property.

(d) *Other tangible property.*—(1) *In general.* In addition to tangible personal property, any other tangible property (but not including a building and its structural components) used as an integral part of manufacturing, production, or extraction, or as an integral part of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services by a person engaged in a trade or business of furnishing any such service, or which constitutes a research or storage facility used in connection with any of the foregoing activities, may qualify as section 38 property.

(2) *Manufacturing, production, and extraction.* For purposes of the credit allowed by section 38, the terms "manufacturing", "production", and "extraction" include the construction, reconstruction, or making of property out of scrap, salvage, or junk material, as well as from new or raw material, by processing, manipulating, refining, or changing the form of an article, or by combining or assembling two or more articles, and include the cultivation of the soil, the raising of livestock, and the mining of minerals. Thus, section 38 property would include, for example, property used as an integral part of the extracting, processing, or refining of metallic and nonmetallic minerals, including oil, gas, rock, marble, or slate; the construction of roads, bridges, or housing; the processing of meat, fish or other foodstuffs; the cultivation of orchards, gardens, or nurseries; the operation of sawmills, the production of

lumber, lumber products or other building materials; the fabrication or treatment of textiles, paper, leather goods, or glass; and the rebuilding, as distinguished from the mere repairing, of machinery.

(3) *Transportation and communications businesses.* Examples of transportation businesses include railroads, airlines, bus companies, shipping or trucking companies, and oil pipeline companies. Examples of communications businesses include telephone or telegraph companies and radio or television broadcasting companies.

(4) *Integral part.* In order to qualify for the credit, property (other than tangible personal property and research or storage facilities used in connection with any of the activities specified in subparagraph (1) of this paragraph) must be used as an integral part of one or more of the activities specified in subparagraph (1) of this paragraph. Property such as pavements, parking areas, inherently permanent advertising displays or inherently permanent outdoor lighting facilities, or swimming pools, although used in the operation of a business, ordinarily is not used as an integral part of any of such specified activities. Property is used as an integral part of one of the specified activities if it is used directly in the activity and is essential to the completeness of the activity. Thus, for example, in determining whether property is used as an integral part of manufacturing, all properties used by the taxpayer in acquiring or transporting raw materials or supplies to the point where the actual processing commences (such as docks, railroad tracks and bridges), or in processing raw materials into the taxpayer's final product, would be considered as property used as an integral part of manufacturing. Specific examples of property which normally would be used as an integral part of one of the specified activities are blast furnaces, oil and gas pipelines, railroad tracks and signals, telephone poles, broadcasting towers, oil derricks, and fences used to confine livestock. Property shall be considered used as an integral part of one of the specified activities if so used either by the owner of the property or by the lessee of the property.

(5) *Research or storage facilities.* If property (other than a building and its structural components) constitutes a research or storage facility and if it is used in connection with an activity specified in subparagraph (1) of this paragraph, such property may qualify as section 38 property even though it is not used as an integral part of such activity. Examples of research facilities include wind tunnels and test stands. Examples of storage facilities include oil and gas storage tanks and grain storage bins. Although a research or storage facility must be used in connection with, for example, a manufacturing process, the taxpayer-owner of such facility need not be engaged in the manufacturing process.

(e) *Definition of building and structural components.* (1) Buildings and structural components thereof do not qualify as section 38 property. The term

"building" generally means any structure or edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is, for example, to provide shelter or housing, or to provide working, office, parking, display, or sales space. The term includes, for example, structures such as apartment houses, factory and office buildings, warehouses, barns, garages, railway or bus stations, and stores. Such term does not include (i) a structure which is essentially an item of machinery or equipment, or (ii) an enclosure which is so closely combined with the machinery or equipment which it supports, houses, or serves that it must be replaced, retired, or abandoned contemporaneously with such machinery or equipment, and which is depreciated over the life of such machinery or equipment. Thus, the term "building" does not include such structures as oil and gas storage tanks, grain storage bins, silos, fractionating towers, blast furnaces, coke ovens, brick kilns, and coal tipples.

(2) The term "structural components" includes such parts of a building as walls, partitions, floors, and ceilings, as well as any permanent coverings therefor such as panelling or tiling; windows and doors; all components of a central air conditioning or heating system, including motors, compressors, pipes and ducts; plumbing and plumbing fixtures, such as sinks and bathtubs; electric wiring and lighting fixtures; chimneys; stairs, escalators, and elevators, including all components thereof; sprinkler systems; fire escapes; and other components relating to the operation or maintenance of a building.

(f) *Intangible property.* Intangible property, such as patents, copyrights, and subscription lists, does not qualify as section 38 property.

(g) *Property used outside the United States—(1) General rule.* (i) Except as provided in subparagraph (2) of this paragraph, the term "section 38 property" does not include property which is used predominantly outside the United States (as defined in section 7701(a)(9)) during the taxable year. The determination of whether property is used predominantly outside the United States during the taxable year shall be made by comparing the period of time in such year during which the property is physically located outside the United States with the period of time in such year during which the property is physically located within the United States. If the property is physically located outside the United States during more than 50 percent of the taxable year, such property shall be considered used predominantly outside the United States during that year. If property is placed in service after the first day of the taxable year, the determination of whether such property is physically located outside the United States during more than 50 percent of the taxable year shall be made with respect to the period beginning on the date on which the property is placed in service and ending on the last day of such taxable year.

(ii) Since the determination of whether a credit is allowable to the tax-

payer with respect to any property may be made only with respect to the taxable year in which the property is placed in service by the taxpayer, property used predominantly outside the United States during the taxable year in which it is placed in service cannot qualify as section 38 property with respect to such taxpayer, regardless of the fact that the property is permanently returned to the United States in a later year. Furthermore, if property is used predominantly in the United States in the year in which it is placed in service by the taxpayer, and a credit under section 38 is allowed with respect to such property, but such property is thereafter in any one year used predominantly outside the United States, such property ceases to be section 38 property with respect to the taxpayer and is subject to the application of section 47.

(ii) This subparagraph applies whether property is used predominantly outside the United States by the owner of the property, or by the lessee of the property. If property is leased and if the lessor makes a valid election under § 1.48-4 to treat the lessee as having purchased such property for purposes of the credit allowed by section 38, the determination of whether such property is physically located outside the United States during more than 50 percent of the taxable year shall be made with respect to the taxable year of the lessee; however, if the lessor does not make such an election, such determination shall be made with respect to the taxable year of the lessor.

(2) *Exceptions.* The provisions of subparagraph (1) of this paragraph do not apply to—

(i) Any aircraft which is registered by the Administrator of the Federal Aviation Agency and which is operated, whether on a scheduled or nonscheduled basis, to and from the United States. The term "to and from the United States" is not intended to exclude an aircraft which makes flights from one point in a foreign country to another such point, as long as such aircraft returns to the United States with some degree of frequency;

(ii) Rolling stock, of a domestic railroad corporation subject to part I of the Interstate Commerce Act, which is used within and without the United States. For purposes of this subparagraph, the term "rolling stock" means locomotives, freight and passenger train cars, floating equipment, and miscellaneous transportation equipment on wheels, the expenditures for which are chargeable to the equipment investment accounts in the uniform system of accounts for railroad companies prescribed by the Interstate Commerce Commission;

(iii) Any vessel documented under the laws of the United States which is operated in the foreign or domestic commerce of the United States. A vessel is documented under the laws of the United States if it is registered, enrolled, or licensed under the laws of the United States by the Commissioner of Customs. Vessels operated in the foreign or domestic commerce of the United States

include those documented for use in foreign trade, coastwise trade, or fisheries;

(iv) Any motor vehicle of a United States person (as defined in section 7701(a)(30)) which is operated to and from the United States with some degree of frequency;

(v) Any container of a United States person which is used in the transportation of property to and from the United States;

(vi) Any property (other than a vessel or an aircraft) of a United States person which is used for the purpose of exploring for, developing, removing, or transporting resources from the outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act, as amended and supplemented; 43 U.S.C., sec. 1331). Thus, for example, offshore drilling equipment may be section 38 property.

(h) *Property used for lodging—(1).*

*In general.* (i) Except as provided in subparagraph (2) of this paragraph, the term "section 38 property" does not include property which is used predominantly to furnish lodging or is used predominantly in connection with the furnishing of lodging during the taxable year. Property used in the living quarters of a lodging facility, including beds and other furniture, refrigerators, ranges, and other equipment, shall be considered as used predominantly to furnish lodging. The term "lodging facility" includes an apartment house, hotel, motel, dormitory, or any other facility (or part of a facility) where sleeping accommodations are provided and let, except that such term does not include a facility used primarily as a means of transportation (such as an aircraft, vessel, or a railroad car) or used primarily to provide medical or convalescent services, even though sleeping accommodations are provided.

(ii) Property which is used predominantly in the operation of a lodging facility or in serving tenants shall be considered used in connection with the furnishing of lodging, whether furnished by the owner of the lodging facility or another person. Thus, for example, lobby furniture, office equipment, and laundry and swimming pool facilities used in the operation of an apartment house or in serving tenants would be considered used predominantly in connection with the furnishing of lodging. However, property which is not owned by or leased to the management of a lodging facility and which is not used directly by either the management or the tenants shall not be treated as property used in connection with the furnishing of lodging. Thus, such items as gas and electric meters, telephone poles and lines, and water and gas mains, furnished by a public utility would not be considered as property used in connection with the furnishing of lodging.

(2) *Exceptions—(i) Nonlodging commercial facility.* A nonlodging commercial facility which is available to persons not using the lodging facility on the same basis as it is available to the tenants of the lodging facility shall not be treated as property which is used predominantly to furnish lodging or pre-

dominantly in connection with the furnishing of lodging. Examples of non-lodging commercial facilities include restaurants, drug stores, grocery stores, and vending machines located in a lodging facility.

(ii) *Property used by a hotel or motel.* Property used by a hotel, motel, inn, or other similar establishment, in connection with the trade or business of furnishing lodging shall not be considered as property which is used predominantly to furnish lodging or predominantly in connection with the furnishing of lodging, provided that the predominant portion of the living accommodations in the hotel, motel, etc., is used by transients during the taxable year. For purposes of the preceding sentence, the term "predominant portion" means "more than one-half". Thus, if more than one-half of the living quarters of a hotel, motel, inn, or other similar establishment is used during the taxable year to accommodate tenants on a transient basis, none of the property used by such hotel, motel, etc., in the trade or business of furnishing lodging shall be considered as property which is used predominantly to furnish lodging or predominantly in connection with the furnishing of lodging. Accommodations shall be considered used on a transient basis if the rental period is normally less than 30 days.

(i) [Reserved]

(j) *Property used by certain tax-exempt organizations.* The term "section 38 property" does not include property used by an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by chapter 1 of the Code unless such property is used predominantly in an unrelated trade or business the income of which is subject to tax under section 511. The term "property used by an organization" means (1) property owned by the organization (whether or not leased to another person), (2) property leased to the organization, and (3) any other property used directly by the organization or by its employees in performing their duties. Thus, for example, a data processing or copying machine, which is leased to an organization exempt from tax or is used by the employees of such organization, would be considered as property used by such organization. However, property on the premises of an organization exempt from tax which is not owned by or leased to the organization but is used by employees of the organization for personal purposes, such as a vending machine or the facilities of a cafeteria, would not be treated as property used by such organization. Further, property which is not owned by or leased to the organization exempt from tax and which is not used directly by the organization or by its employees would not be considered as property used by the organization. Thus, such items as gas and electric meters, telephone poles and lines, and water and gas mains, furnished by a public utility, would not be considered as property used by such organization.

Property (unless used predominantly in an unrelated trade or business) leased by another person to an organization exempt from tax or leased by such an organization to another person is not section 38 property to either the lessor or the lessee, and in either case the lessor may not elect under § 1.48-4 to treat the lessee of such property as having purchased such property for purposes of the credit allowed by section 38. This paragraph shall not apply to property leased on a casual or short-term basis to an organization exempt from tax.

(k) *Property used by governmental units.* The term "section 38 property" does not include property used by the United States, any State (including the District of Columbia) or political subdivision thereof, any international organization (as defined in section 7701 (a)(18)), or any agency or instrumentality of the United States, of any State or political subdivision thereof, or of any international organization. The term "property used by the United States, etc." means (1) property owned by any such governmental unit (whether or not leased to another person), (2) property leased to any such governmental unit, and (3) any other property used directly by any such governmental unit or by its employees in performing their duties. Thus, for example, a data processing or copying machine, which is leased to any such governmental unit or is used by the employees of such governmental unit, would be considered as property used by such governmental unit. However, property on the premises of any such governmental unit which is not owned by or leased to such governmental unit but is used by employees of such governmental unit for personal purposes, such as a vending machine or the facilities of a cafeteria, would not be treated as property used by such governmental unit. Further, property which is not owned by or leased to any such governmental unit and which is not used directly by such governmental unit or its employees would not be considered as property used by such governmental unit. Thus, such items as gas and electric meters, telephone poles and lines, and water and gas mains, furnished by a public utility, would not be considered as property used by such governmental unit. Property leased by another person to any such governmental unit or leased by such governmental unit to another person is not section 38 property to either the lessor or the lessee, and in either case the lessor may not elect under § 1.48-4 to treat the lessee of such property as having purchased such property for purposes of the credit allowed by section 38. This paragraph shall not apply to property leased on a casual or short-term basis to any such governmental unit.

(l) *Livestock.* The term "section 38 property" does not include livestock. The term "livestock" includes horses, cattle, hogs, sheep, goats, and mink and other fur-bearing animals, irrespective of the use to which they are put or the purpose for which they are held.

#### § 1.48-2 New section 38 property.

(a) *In general.* Section 48(b) defines "new section 38 property" as section 38 property—

(1) The construction, reconstruction, or erection of which is completed by the taxpayer after December 31, 1961, or

(2) Which is acquired by the taxpayer after December 31, 1961, provided that the original use of such property commences with the taxpayer and commences after such date.

In the case of construction, reconstruction, or erection of such property commenced before January 1, 1962, and completed after December 31, 1961, there shall be taken into account as the basis of new section 38 property in determining qualified investment only that portion of the basis which is properly attributable to construction, reconstruction, or erection after December 31, 1961. See § 1.48-1 for the definition of section 38 property.

(b) *Special rules for determining date of acquisition, original use, and basis attributable to construction, reconstruction, or erection.* For purposes of paragraph (a) of this section, the principles set forth in paragraph (a) (1) and (2) of § 1.167(c)-1 shall be applied. Thus, for example, the following rules are applicable:

(1) Property is considered as constructed, reconstructed, or erected by the taxpayer if the work is done for him in accordance with his specifications.

(2) The portion of the basis of property attributable to construction, reconstruction, or erection after December 31, 1961, consists of all costs of construction, reconstruction, or erection allocable to the period after December 31, 1961, including the cost or other basis of materials entering into such work (but not including, in the case of reconstruction of property, the adjusted basis of the reconstructed property as of the time such reconstruction is commenced).

(3) It is not necessary that materials entering into construction, reconstruction, or erection be acquired after December 31, 1961, or that they be new in use.

(4) If construction or erection by the taxpayer began after December 31, 1961, the entire cost or other basis of such construction or erection may be taken into account as the basis of new section 38 property.

(5) Construction, reconstruction, or erection by the taxpayer begins when physical work is started on such construction, reconstruction, or erection.

(6) Property shall be deemed to be acquired when reduced to physical possession, or control.

(7) The term "original use" means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer (for example, a reconditioned or rebuilt machine acquired by the taxpayer will not be treated as being put to original use by the taxpayer).

(c) *Examples.* This section may be illustrated by the following examples:

*Example (1).* If a machine with a total cost of \$100,000 is completed after December 31, 1961, and the portion attributable to construction by the taxpayer after December 31, 1961, is determined by engineering estimates or by cost accounting records to be \$30,000, the \$30,000 amount shall be taken into account by the taxpayer in computing qualified investment in new section 38 property.

*Example (2).* In 1965, a taxpayer reconditions a machine, which he constructed and placed in service in 1962 and which has an adjusted basis in 1965 of \$10,000. The cost of reconditioning amounts to an additional \$20,000. The basis of the machine which shall be taken into account in computing qualified investment in new section 38 property for 1965 is \$20,000, whether he contracts to have it reconditioned or reconditions it himself, and irrespective of whether the materials used for reconditioning are new in use.

*Example (3).* In 1961, a taxpayer pays the entire purchase price of \$10,000 for section 38 property to be delivered in 1962. In 1962 he takes possession of the property and commences the original use of the asset in that year. The \$10,000 amount shall be taken into account in computing qualified investment in new section 38 property for 1962.

*Example (4).* A taxpayer, instead of reconditioning his old machine, buys a "factory reconditioned" or "rebuilt" machine in 1962 to replace it. The reconditioned or rebuilt machine is not new section 38 property since such taxpayer is not the first user of the machine. See, however, § 1.48-3 (relating to used section 38 property).

*Example (5).* In 1962, a taxpayer buys from X for \$20,000 an item of section 38 property which has been previously used by X. The taxpayer in 1962 makes an expenditure on the property of \$5,000 of the type that must be capitalized. Regardless of whether the \$5,000 is added to the basis of such property or is capitalized in a separate account, such amount shall be taken into account by the taxpayer in computing qualified investment in new section 38 property for 1962. No part of the \$20,000 purchase price may be taken into account for such purpose. See, however, § 1.48-3 (relating to used section 38 property).

#### § 1.48-3 Used section 38 property.

(a) *In general.* (1) Section 48(c) provides that "used section 38 property" means section 38 property acquired by purchase after December 31, 1961, which is not "new section 38 property". See §§ 1.48-1 and 1.48-2, respectively, for definitions of section 38 property and new section 38 property. In determining whether property is acquired by purchase, the provisions of paragraph (c) (1) of § 1.179-3 shall apply, except that (i) "1961" shall be substituted for "1957", and (ii) the definition of "affiliated group" in paragraph (e) (6) of this section shall be substituted for the definition of such term in paragraph (e) of § 1.179-3.

(2) (i) Property shall not qualify as used section 38 property if, after its acquisition by the taxpayer, it is used by (a) a person who used such property before such acquisition, or (b) a person who bears a relationship described in section 179(d) (2) (A) or (B) to a person who used such property before such acquisition. Thus, for example, if property is used by a person and is later sold by him under a sale and lease-back arrangement, such property in the hands of the purchaser-lessor is not used sec-

tion 38 property because the property, after its acquisition, is being used by the same person who used it before its acquisition. Similarly, where a lessee has been leasing property and subsequently purchases it (whether or not the lease contains an option to purchase), such property is not used section 38 property with respect to the purchaser because the property is being used by the same person who used it before its acquisition. In addition, if property owned by a lessor is sold subject to the lease, or is sold upon the termination of the lease, the property will not qualify as used section 38 property with respect to the purchaser if, after the purchase, the property is used by a person who used the property as a lessee before the purchase.

(ii) For purposes of applying subdivision (i) of this subparagraph, (a) property used by a partnership shall be considered as used by each partner, and (b) property shall not be considered as used by a person before its acquisition if such property was used only on a casual basis by such person.

(iii) In determining whether a person bears a relationship described in section 179(d) (2) (A) or (B) to a person who used property before its acquisition by the taxpayer, the provisions of paragraph (c) (1) (i) and (ii) of § 1.179-3 shall apply, except that the definition of "affiliated group" in paragraph (e) (6) of this section shall be substituted for the definition of such term in paragraph (e) of § 1.179-3.

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

*Example (1).* Corporation P acquires properties 1 and 2 in 1960 and uses them in its trade or business until 1962. In 1962, corporation P sells such properties to corporation Y, which leases back property 1 to corporation P and leases property 2 to corporation S, a wholly owned subsidiary of corporation P. Property 1 is not used section 38 property in the hands of corporation Y because, after its acquisition by corporation Y, it is used by a person (corporation P) who used it prior to such acquisition. Property 2 is not used section 38 property because, after its acquisition by corporation Y, it is used by a person (corporation S) who is related, within the meaning of section 179(d) (2) (B), to a person (corporation P) who used it before such acquisition.

*Example (2).* In 1962, corporation L leases property from corporation M. In 1964, corporation L acquires the property that it previously had been leasing. The property acquired by corporation L is not used section 38 property because such property is used after such acquisition by the same person (corporation L) who used the property before its acquisition (corporation L).

*Example (3).* Corporation X buys property in 1962 and leases such property to corporation Y. Corporation X in 1965 sells the property to A subject to the lease. The property acquired by A is not used section 38 property if such property continues to be used by corporation Y, because corporation Y used the property before its acquisition by A.

*Example (4).* A owns a bulldozer which he rents out to a number of different users, including B. In 1962, B used the bulldozer from February 16 to March 12 and again on October 15 and 16. B purchases the bulldozer from A on December 1, 1962. The prior use of the property by B does not disqualify

such property as used section 38 property to B, because he used such property only on a casual basis prior to its purchase.

*Example (5).* C places machine 1 in service in his individually owned business during 1961. During 1963, C sells machine 1 to partnership CDE in which he shares one-third of the profits and losses. The machine is not used section 38 property to partnership CDE because it is used after acquisition by the same person (partner C) who used the property before acquisition. Similarly, if partnership CDE places machine 2 in service during 1961 and sells that machine to partner C during 1963, machine 2 would not be used section 38 property to partner C. Moreover, if F buys partner C's interest in partnership CDE, such acquisition would not result in the acquisition of used section 38 property by F (whether or not the optional adjustment to basis of partnership property provided by section 743 applies) because the partnership property is used, after F acquires his interest, by the same persons (partners D and E) who used the property before the acquisition.

(b) *Cost.* (1) The cost of used section 38 property is equal to the basis of such property, but does not include so much of such basis as is determined by reference to the adjusted basis of other property (whether or not section 38 property) held at any time by the taxpayer acquiring such used section 38 property.

(2) If property (whether or not section 38 property) is disposed of by the taxpayer (other than by reason of its destruction or damage by fire, storm, shipwreck, or other casualty, or its theft) and used section 38 property similar or related in service or use is acquired as a replacement therefor in a transaction in which the basis of the replacement property is not determined by reference to the adjusted basis of the property replaced, then the cost of the used section 38 property so acquired shall be its basis reduced by the adjusted basis of the property replaced. The preceding sentence shall apply only if the taxpayer acquires (or enters into a contract to acquire) the replacement property within a period of 60 days before or after the date of the disposition.

(3) Notwithstanding subparagraphs (1) and (2) of this paragraph, the cost of used section 38 property shall not be reduced with respect to the adjusted basis of any property disposed of if, by reason of section 47, such disposition resulted in an increase of tax or a reduction of investment credit carrybacks or carryovers described in section 46(b).

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

*Example (1).* In 1972, A acquires machine 2 (an item of used section 38 property which has a sales price of \$5,600) by trading in machine 1 (an item of section 38 property acquired in 1962), and by paying an additional \$4,000 cash. The adjusted basis of machine 1 is \$1,600. Under the provisions of sections 1012 and 1031(d), the basis of machine 2 is \$5,600 (\$1,600 adjusted basis of machine 1 plus cash expended of \$4,000). The cost of machine 2 which may be taken into account in computing qualified investment for 1972 is \$4,000 (basis of \$5,600 less \$1,600 adjusted basis of machine 1).

*Example (2).* The facts are the same as in example (1) except that machine 2 has a sales price of \$6,000. The trade-in allowance on machine 1 is \$2,000. The result is the same as in example (1), that is, the basis

of machine 2 is \$5,600 (\$1,600 plus \$4,000); therefore, the cost of machine 2 which may be taken into account in computing qualified investment for 1972 is \$4,000 (basis of \$5,600 less \$1,600 adjusted basis of machine 1).

*Example (3).* On September 18, 1962, B sells truck 1, which he acquired in 1961 and which has an adjusted basis in his hands of \$1,200. On October 15, 1962, he purchases for \$2,000 truck 2 (an item of used section 38 property) as a replacement therefor. The cost of truck 2 which may be taken into account in computing qualified investment is \$800 (\$2,000 less \$1,200).

*Example (4).* In 1962, C acquires property 1, an item of new section 38 property with a basis of \$12,000 and a useful life of eight years or more. He is allowed a credit under section 38 of \$840 (7 percent of \$12,000) with respect to such property. In 1968, C acquires property 2 (an item of used section 38 property) by trading in property 1 and by paying an additional amount in cash. Section 47(a) applies to the disposition of property 1 and C's tax liability for 1968 is increased by \$280. Since the application of section 47(a) results in an increase in tax, for purposes of computing qualified investment the cost of property 2 is not reduced by any part of the adjusted basis of the property traded in.

(c) *Dollar limitation*—(1) *In general.* Section 48(c)(2) provides that the aggregate cost of used section 38 property which may be taken into account for any taxable year in computing qualified investment under section 46(c)(1)(B) shall not exceed \$50,000. If the total cost of used section 38 property exceeds \$50,000, there must be selected, in the manner provided in subparagraph (4) of this paragraph, the particular items of used section 38 property the cost of which is to be taken into account in computing qualified investment. The cost of used section 38 property that may be taken into account by a person in applying the \$50,000 limitation for any taxable year includes not only the cost of used section 38 property placed in service by such person during such taxable year, but also the cost of used section 38 property apportioned to such person. For purposes of this section, the cost of used section 38 property apportioned to any person means the cost of such property apportioned to him by a trust, estate, or electing small business corporation (as defined in section 1371(b)), and his share of the cost of partnership used section 38 property, with respect to the taxable year of such trust, estate, corporation or partnership ending with or within such person's taxable year. Thus, if an individual places in service during his taxable year used section 38 property with a cost of \$25,000, if the cost of used section 38 property apportioned to him by an electing small business corporation for such year is \$30,000, and if his share for such year of the cost of used section 38 property placed in service by a partnership is \$20,000, he may select from the used section 38 property with a total cost of \$75,000 the particular used section 38 property the cost of which he wishes to take into account. No part of the excess of \$25,000 (\$75,000 cost minus \$50,000 annual limitation) may be taken into account in any other taxable year. For determining the

amount of the cost to be apportioned by an electing small business corporation, see paragraph (a)(2) of § 1.48-5; in the case of estates and trusts, see paragraph (a)(2) of § 1.48-6. See paragraph (e) of this section for application of \$50,000 limitation in the case of affiliated groups.

(2) *Married individuals filing separate returns.* In the case of a husband or wife who files a separate return, the aggregate cost of used section 38 property which may be taken into account for the taxable year to which such return relates cannot exceed \$25,000. The preceding sentence shall not apply, however, unless the taxpayer's spouse places in service (or is apportioned the cost of) used section 38 property for the taxable year of such spouse which ends with or within the taxpayer's taxable year. Thus, if a husband and wife who file separate returns on a calendar year basis both place in service used section 38 property during the taxable year, the maximum cost of used section 38 property which may be taken into account by each is \$25,000. However, in such case, if only one spouse places in service (or is apportioned the cost of) used section 38 property during the taxable year, such spouse may take into account a maximum of \$50,000 for such year. The determination of whether an individual is married shall be made under the principles of section 143 and the regulations thereunder.

(3) *Partnerships.* In the case of a partnership, the aggregate cost of used section 38 property placed in service by the partnership (or apportioned to the partnership) which may be taken into account by the partners with respect to any taxable year of the partnership may not exceed \$50,000. If such aggregate cost exceeds \$50,000, the partnership must make a selection in the manner provided in subparagraph (4) of this paragraph. The \$50,000 limitation applies to each partner, as well as to the partnership.

(4) *Selection of \$50,000 cost.* (i) If the sum of (a) the cost of used section 38 property placed in service during the taxable year by any person, (b) such person's share of the cost of partnership used section 38 property placed in service during the taxable year of a partnership ending with or within such person's taxable year, and (c) the cost of used section 38 property apportioned to such person for such taxable year by an electing small business corporation, estate, or trust, exceeds \$50,000, such person must make a selection for such taxable year in the manner provided in subdivision (ii) of this subparagraph.

(ii) For purposes of computing qualified investment (or, in the case of a partnership, electing small business corporation, estate, or trust, for purposes of selecting used section 38 property the cost of which may be taken into account by the partners, shareholders, or estate or trust and its beneficiaries) any person to whom subdivision (i) of this subparagraph applies must select a total cost of

\$50,000 from (a) the cost of specific used section 38 property placed in service by such person, (b) such person's share of the cost of specific used section 38 property placed in service by a partnership, and (c) the cost of used section 38 property apportioned to such person by an electing small business corporation, estate, or trust. When a particular property is selected, the entire cost (or entire share of cost of a particular property in the case of partnership property) of such property must be taken into account unless, as a result of the selection of such particular property, the \$50,000 limitation is exceeded. Likewise, in the case of an apportionment from an electing small business corporation, estate, or trust, when the cost in a particular useful life category is selected, the entire cost in such category must be taken into account unless, as a result of the selection of such cost, the \$50,000 limitation is exceeded. Thus, if a person places in service during the taxable year three items of used section 38 property, each with a cost of \$20,000, he must select the entire cost of two of the items and only \$10,000 of the cost of the third item; he may not select a portion of the cost of each of the three items. The selection by any person shall be made by taking the cost of used section 38 property into account in computing qualified investment (or in selecting the used section 38 property the cost of which may be taken into account by the partners, etc.), and if such property was placed in service by such person, he must maintain records which permit specific identification of any item of used section 38 property selected.

(iii) In the event that the selection is not made in the manner provided in subdivision (ii) of this subparagraph, then for all purposes of the investment credit, the taxpayer will be deemed to have made his selection in the following order:

(a) First, assets with a useful life of 8 years or more placed in service by the taxpayer, in the order of time that such assets were placed in service;

(b) Second, assets with a useful life of 6 years or more but less than 8 years placed in service by the taxpayer, in the order of time that such assets were placed in service;

(c) Third, assets with a useful life of 4 years or more but less than 6 years placed in service by the taxpayer, in the order of time that such assets were placed in service;

(d) Last, cost apportioned to the taxpayer from a partnership, estate, trust, or electing small business corporation, in the order of the longest useful life category to the shortest useful life category.

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

*Example (1).* H, who operates a sole proprietorship, purchases and places in service in 1963 used section 38 property with a cost of \$60,000. His spouse, W, is a shareholder in an electing small business corporation which purchases and places in service during

its fiscal year ending June 30, 1963, used section 38 property with a cost of \$50,000. Both spouses file separate returns on a calendar year basis. W, as a 60 percent shareholder on the last day of the taxable year of the corporation, is apportioned \$30,000 (60 percent of \$50,000) of the cost of the used section 38 property placed in service by the corporation. The cost of used section 38 property that may be taken into account by H on his separate return is \$25,000. The cost of used section 38 property that may be taken into account by W on her separate return is \$25,000. On the other hand, if the corporation had made no investment in used section 38 property, H could take \$50,000 of the \$60,000 cost into account.

*Example (2).* Partners X, Y, and Z share the profits and losses of partnership XYZ in the ratio of 50 percent, 30 percent, and 20 percent, respectively. The partnership and each partner make returns on the basis of the calendar year. Each partner also operates a sole proprietorship. In 1963, the partnership and the partners purchase and place in service the following used section 38 property:

Property	Estimated useful life	Cost
<i>Partnership XYZ</i>		
Property No. 1.....	9 years.....	\$10,000
Property No. 2.....	7 years.....	50,000
Property No. 3.....	7 years.....	50,000
Property No. 4.....	5 years.....	30,000
<i>Partner X</i>		
Property No. 5.....	6 years.....	30,000
<i>Partner Y</i>		
Property No. 6.....	10 years.....	60,000
<i>Partner Z</i>		
Property No. 7.....	4 years.....	36,000

(i) *Selection by partnership.* In accordance with subparagraph (4) (ii) of this paragraph, the partnership selects property No. 1 and \$40,000 of the cost of property No. 2 to be taken into account. Therefore, each partner's share of cost of the property selected by the partnership is as follows:

Property No.	Estimated useful life	Selected cost	Partner's share of cost		
			X (50%)	Y (30%)	Z (20%)
1.....	9 years.....	\$10,000	\$5,000	\$3,000	\$2,000
2.....	7 years.....	40,000	20,000	12,000	8,000
Total.....		50,000	25,000	15,000	10,000

(ii) *Selection by partners.* In accordance with subparagraph (4) (ii) of this paragraph, the partners make the following selections: Partner X selects property No. 5 (\$30,000), his share of the cost of property No. 1 (\$5,000), and \$15,000 of his share of the cost of property No. 2. Partner Y selects \$50,000 of the cost of property No. 6, and no part of his share of the cost of partnership property. Partner Z, having an aggregate cost of used section 38 property of only \$46,000 (partnership property of \$10,000 and individually owned property of \$36,000), takes into account the entire \$46,000.

(iii) *Qualified investment of partner X.* X's total qualified investment in used section 38 property for 1963 is \$35,000, computed as follows:

Property No.	Estimated useful life	Selected cost	Applicable percentage	Qualified investment
1.....	9 years.....	\$5,000	100	\$5,000
2.....	7 years.....	15,000	66 $\frac{2}{3}$	10,000
6.....	6 years.....	30,000	66 $\frac{2}{3}$	20,000
Total.....		50,000		35,000

(iv) *Qualified investment of partner Y.* Y's total qualified investment in used section 38 property for 1963 is \$50,000 (100 percent of \$50,000) since he selected \$50,000 of the cost of property No. 6 which has a useful life of 8 years or more.

(v) *Qualified investment of partner Z.* Z's total qualified investment in used section 38 property for 1963 is \$19,333, computed as follows:

Property No.	Estimated useful life	Selected cost	Applicable percentage	Qualified investment
1.....	9 years.....	\$2,000	100	\$2,000
2.....	7 years.....	8,000	66 $\frac{2}{3}$	5,333
7.....	4 years.....	36,000	33 $\frac{1}{3}$	12,000
Total.....		46,000		19,333

(d) [Reserved]

(e) *Dollar limitation for members of an affiliated group—(1) In general.* (i) Section 48(c) (2) (C) provides that the \$50,000 limitation on the cost of used section 38 property which may be taken into account for any taxable year shall, in the case of an affiliated group (as defined in subparagraph (6) of this paragraph), be reduced for each member of the group by apportioning the \$50,000 amount among those corporations which are the members of such group in accordance with their respective amounts of used section 38 property which may be taken into account, that is, in accordance with the total cost of used section 38 property placed in service by each member during its taxable year (without regard to the \$50,000 limitation or the applicable percentages to be applied in computing qualified investment).

(ii) Except as otherwise provided in this paragraph, the \$50,000 amount shall be apportioned among those corporations which are members of the affiliated group on the last day of the taxable year of the common parent. For the taxable year of each such member ending with, or within which falls, the last day of the taxable year of the common parent, the cost of used section 38 property taken into account in computing qualified investment under section 46(c) (1) (B) shall not exceed an amount which bears the same ratio to \$50,000 as (a) the cost of used section 38 property placed in service by such member for such taxable year, bears to (b) the total cost of used section 38 property placed in service by all members of the affiliated group for their taxable years ending with, or within which falls, such last day of the taxable year of the common parent.

(iii) There shall be attached to the common parent's income tax return a statement containing the name, address, and taxpayer account number of each member of the affiliated group as of the last day of the common parent's taxable year and a schedule showing the computation of the apportionment of the \$50,000 amount among members of the affiliated group. Each such member of the group shall attach to its income tax return a copy of the statement containing the apportionment schedule which is attached to the common parent's return. However, if the due date (including extensions of time) of the return of any member of the group is before June 15, 1963, the required statement may be filed by any such member on or before such date with the district director with whom the return was filed.

(2) *Estimate of used section 38 property to be placed in service.* (i) For purposes of subparagraph (1) of this paragraph, if the taxable year of a member of the affiliated group (within which falls the last day of the common parent's taxable year) ends later than the 30th day preceding the date on which the common parent's income tax return for such year is due (including extensions of time), such member shall use (if the total cost of used section 38 property actually placed in service during its taxable year is not known), as the cost of used section 38 property placed in service by it during its taxable year, an estimate of the cost of such property to be placed in service by it during such year. Such estimate shall be made on the basis of the facts and circumstances known as of the time of the estimate. Any such estimate shall also be used in determining the total cost of used section 38 property placed in service by all members of the affiliated group for their taxable years ending with, or within which falls, the last day of such taxable year of the common parent.

(ii) If an estimate is used by any member of an affiliated group pursuant to subdivision (i) of this subparagraph, each member may later file an original or amended return in which the apportionment of the \$50,000 amount is based upon the cost of used section 38 property actually placed in service by all members of the affiliated group during their taxable years which end with, or within which falls, the last day of the common parent's taxable year. Such amended apportionment shall be made only if the common parent, and each member of the group whose limitation would be changed, file original or amended returns which reflect the amended apportionment based upon the cost of the used section 38 property actually placed in service by the group. In such case, new statements (reflecting the amended apportionment) shall be attached to the original or amended return of the common parent and of each such member pursuant to the requirements in subparagraph (1) (iii) of this paragraph.

(3) *Short taxable year.* If (i) the return of a corporation is for a short period, (ii) such corporation is a member of an affiliated group as of the last day

of such period, and (iii) the last day of the taxable year of the common parent of the group does not end with or within such short period, then such corporation's taxable year shall, for purposes of this paragraph, be considered as ending with the last day of the common parent's taxable year within which falls such short period. Such corporation will thus be considered to be a member of the affiliated group as of the last day of the common parent's taxable year and may be apportioned part of the \$50,000 amount under subparagraph (1) (ii) of this paragraph. However, if such corporation's income tax return is due (including extensions of time) before the income tax return of the common parent is filed, then such corporation shall be considered to have placed no used section 38 property in service and no part of the \$50,000 amount shall be apportioned to such corporation unless such corporation files (on or after the date the common parent files its return) an amended return reflecting the cost of used section 38 property placed in service by it during its short period and such cost is taken into account by the common parent in apportioning the \$50,000 amount.

(4) *Two or more common parents.* If a corporation during its taxable year is a member of two or more affiliated groups as of the last day of the taxable year of the common parent of each such group, such corporation shall be considered to be a member of only the affiliated group whose common parent's taxable year ends earliest in such corporation's taxable year.

(5) *Nonresident foreign corporation.* (i) A foreign corporation not engaged in trade or business within the United States (hereinafter referred to in this subparagraph as a "nonresident foreign corporation") which is not a common parent need not file the statement required by subparagraph (1) (iii) of this paragraph.

(ii) A nonresident foreign corporation which is a common parent of an affiliated group shall be considered to have a taxable year ending December 31.

(iii) If a nonresident foreign corporation is a common parent of an affiliated group, the statement required by subparagraph (1) (ii) (or (2) (ii)) of this paragraph shall be filed with the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C. The statement required by subparagraph (1) (iii) shall be due on or before the 75th day after the end of its taxable year (as determined under subdivision (ii) of this subparagraph), or on or before June 15, 1963, whichever is later. For purposes of subparagraph (2) of this paragraph, this statement shall be considered the return of such corporation.

(6) *Definition of affiliated group.* For purposes of this section, an affiliated group means one defined in section 1504(a), except that (i) the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1504(a), and (ii) all corporations shall be treated as includible corporations (without any exclusion under section

1504(b)). Thus, a foreign corporation or a corporation exempt from taxation under section 501 may be a member of an affiliated group for purposes of this section even though under section 1504(b) neither corporation would be an includible corporation.

(7) *Affiliated group filing a consolidated return.* For the purpose of apportioning the \$50,000 amount in the case of members of an affiliated group which join in filing a consolidated return, all such members shall be treated as though they were a single member. Thus, in determining the limitation on the cost of used section 38 property which may be taken into account by the group filing the consolidated return, the apportionment provided in subparagraph (1) (ii) of this paragraph shall be made by using the aggregate cost of such property placed in service by all members of the group filing the consolidated return. If all members of the affiliated group join in filing a consolidated return, the group may select the items to be taken into account to the extent of an aggregate cost of \$50,000; if some members of the affiliated group do not join in filing the consolidated return, then the members of the group which join in filing the consolidated return may select the items to be taken into account to the extent of the amount apportioned to such members under subparagraph (1) (ii) of this paragraph.

(8) *Examples.* This paragraph may be illustrated by the following examples:

*Example (1).* (i) P, a domestic corporation, files an income tax return for its taxable year ending June 30, 1963, during which year it places in service used section 38 property with a cost of \$100,000. On June 30, 1963, P owns 51 percent of the outstanding stock of S, also a domestic corporation. S files a separate income tax return on the basis of a fiscal year ending July 31, 1963, during which year it places in service used section 38 property with a cost of \$150,000. The membership of the affiliated group is ascertained as of the close of June 30, 1963, the last day of the taxable year of the common parent, P. On that day the affiliated group consists of P and S.

(ii) The cost of used section 38 property taken into account by P for its taxable year ending June 30, 1963, may not exceed \$20,000, that is, an amount which bears the same ratio to \$50,000 as the cost of used section 38 property placed in service by P for its taxable year (\$100,000) bears to the total cost of used section 38 property placed in service by all members of the affiliated group (P and S) for their taxable years containing June 30, 1963 (\$250,000). Similarly, the cost of used section 38 property taken into account by S for its taxable year ending July 31, 1963, may not exceed \$30,000.

*Example (2).* (i) P, a domestic corporation, files an income tax return for its taxable year ending December 31, 1962, during which year it places in service used section 38 property costing \$100,000. On December 31, 1962, P owns all the outstanding stock of S, a domestic corporation which files a separate income tax return for the fiscal year ending September 30, 1963. P receives no extension of time for filing its return due March 15, 1963. Since the taxable year of S within which falls December 31, 1962 (the last day of P's taxable year) ends later than February 14, 1963 (the 30th day preceding the date on which P's return is due), S estimates the cost of used section 38 property which will be placed in service during its year. On the basis of the facts and

circumstances known as of the time of the estimate, S estimates that it will place in service during such year used section 38 property costing \$150,000.

(ii) The cost of used section 38 property taken into account by P and S for their respective taxable years may not exceed \$20,000  $\left(\frac{\$100,000}{\$250,000} \times \$50,000\right)$  and \$30,000  $\left(\frac{\$150,000}{\$250,000} \times \$50,000\right)$ , respectively. If S actually places

in service during its taxable year used section 38 property costing more or less than \$150,000, its income tax return for the year ending September 30, 1963, may reflect an amended apportionment of the \$50,000 limitation based upon the cost of used section 38 property actually placed in service by the group, provided that P files an amended return to reflect the amended apportionment. For example, if S places in service used section 38 property costing \$200,000, the cost of used section 38 property taken into account by P and S for their respective taxable years could not exceed \$16,667  $\left(\frac{\$100,000}{\$300,000} \times \$50,000\right)$  and \$33,333  $\left(\frac{\$200,000}{\$300,000} \times \$50,000\right)$ , respectively, under an amended apportionment.

#### § 1.48-4 Election of lessor of new section 38 property to treat lessee as purchaser.

(a) *In general.* Under section 48(d), a lessor of property may elect to treat the lessee of such property as having purchased such property for purposes of the credit allowed by section 38 if the following conditions are satisfied:

(1) The property must be "section 38 property" in the hands of the lessor; that is, it must be property with respect to which depreciation (or amortization in lieu of depreciation) is allowable to the lessor, it must have a useful life of 4 years or more in his hands, and in every other respect it must meet the requirements of § 1.48-1. Thus, for example, property leased by a municipality to a taxpayer for use in what is commonly known as an "industrial park" is not eligible for the election since, under paragraph (k) of § 1.48-1, property used by a governmental unit is not section 38 property. In addition, property used by the lessee predominantly outside the United States is not eligible for the election since, under paragraph (g) of § 1.48-1, such property is not section 38 property.

(2) The property must be "new section 38 property" (within the meaning of § 1.48-2) in the hands of the lessor; that is, either (i) construction, reconstruction, or erection of the property must be completed by the lessor after December 31, 1961, or (ii) the property must be acquired by the lessor after December 31, 1961, and the original use of such property must commence with the lessor and after such date. In the case of construction, reconstruction, or erection of property which is commenced by the lessor before January 1, 1962, and completed after December 31, 1961, only that portion of the construction, etc., attributable to the period after December 31, 1961, is new section 38 property. See paragraph (b) of this section for the application of the rules relating to "original use" in the case of leased property.

(3) The property would constitute "new section 38 property" to the lessee if such lessee had actually purchased the property. Thus, the election is not available if the lessee is not the original user of the property. See paragraph (b) of this section for the application of the rules relating to "original use" in the case of leased property. See paragraph (d) of this section for the determination of the estimated useful life of leased property in the hands of the lessee.

(4) A statement of election to treat the lessee as a purchaser has been filed in the manner and within the time provided in paragraph (f) or (g) of this section.

(5) The lessor is not a person referred to in section 46(d), that is, a mutual savings bank, cooperative bank, or domestic building and loan association to which section 593 applies; a regulated investment company or real estate investment trust subject to taxation under subchapter M, chapter 1 of the Code; or a cooperative organization described in section 1381(a).

(6) The lessor and lessee do not join in filing a consolidated income tax return for a period which includes the date on which possession of the property is transferred to the lessee.

The election may be made on a property-by-property basis or a general election may be made with respect to each taxable year of a particular lessee. If the conditions of this paragraph have been met, the lessee shall be treated as though he were the actual owner of the property for purposes of the credit allowed by section 38. Thus, the lessee shall be entitled to the credit allowed by section 38 with respect to such property for the taxable year in which he places such property in service, and the lessor shall not be entitled to a credit allowed by section 38 with respect to such property. Moreover, if the leased property is disposed of by the lessee, or if it otherwise ceases to be section 38 property in his hands, the property will be subject to the provisions of section 47 (relating to early dispositions, etc.).

(b) *Original use.* For purposes of this section only, the lessor and the lessee may both be considered as the original users of an item of leased property. The determination of whether the lessor qualifies as the original user of leased property shall be made under paragraph (b)(7) of § 1.48-2. The determination of whether the lessee qualifies as the original user of leased property shall be made, under paragraph (b)(7) of § 1.48-2, as if the lessee actually purchased the property. Thus, the lessee would not be considered the original user of the property if it has been previously used by the lessor or another person, or if it is reconstructed, rebuilt, or reconditioned property. However, the lessee would be considered the original user if he is the first person to use the property for its intended function. Thus, the fact that the lessor may have, for example, tested, stored, or attempted to lease the property to other persons will not preclude the lessee from being considered the original user.

(c) *Basis of leased property.* (1) If a valid election is made under this section, the amount of qualified investment under section 46(c) with respect to the leased property shall be determined by reference to the basis of such property in the hands of the lessee. Unless subparagraph (2) of this paragraph applies, the basis of the property in the hands of the lessee shall be the basis of the property in the hands of the lessor.

(2) If the property was constructed by the lessor (or by a corporation which controls or is controlled by the lessor within the meaning of section 368(c)), the basis of the property in the hands of the lessee shall be an amount equal to the fair market value of such property on the date possession is transferred to the lessee. However, in no case shall the basis of property in the hands of the lessee be an amount in excess of the fair market value properly attributable to construction after December 31, 1961. The term "constructed" shall be given its commonly accepted meaning, that is, to build, manufacture, or erect something which did not theretofore exist. Thus, reconstruction, rebuilding, or reconditioning does not constitute "construction". However, it is not necessary that the materials used in construction be new in use.

(d) *Estimated useful life of leased property.* The estimated useful life to the lessee of property subject to the election shall be deemed to be the estimated useful life in the hands of the lessor, regardless of the term of the lease. The lessor shall determine the estimated useful life of each leased property on an individual basis even though multiple asset accounts (including guideline class accounts described in Revenue Procedure 62-21) are used.

(e) *Lessor itself a lessee.* If the lessor of property is itself a lessee who is treated, under this section, as having purchased such property, and such sublessor makes a valid election under this section to treat the sublessee as a purchaser, then the basis and estimated useful life of such property in the hands of the sublessee shall be the basis and estimated useful life of the property in the hands of the sublessor as determined under paragraphs (c) and (d) of this section. Thus, if A constructs property and leases it to B, who in turn subleases the property to C (who is the first person to use the property for its intended function), and if both A and B make valid elections under this section, the basis of the property to C is equal to its fair market value on the date on which possession is transferred from A to B, and its estimated useful life to C is the estimated useful life in the hands of B.

(f) *Property-by-property election.* (1) *Manner of making election.* The election of a lessor with respect to a particular property (or properties) shall be made by filing a statement with the lessee, signed by the lessor and including the written consent of the lessee, containing the following information:

(i) The name, address, and taxpayer account number of the lessor and the lessee;

(ii) The district director's office with which the income tax returns of the lessor and the lessee are filed;

(iii) A description of each property with respect to which the election is being made;

(iv) The date on which possession of the property (or properties) is transferred to the lessee;

(v) The estimated useful life of the property (or properties) in the hands of the lessor (in terms of years rather than useful life category);

(vi) If the lessor (or a corporation which controls or is controlled by the lessor within the meaning of section 368(c)) constructed the property, the fair market value of the property as of the date possession of the property is transferred to the lessee, and in any other case, the basis of the property to the lessor; and

(vii) If the lessor is itself a lessee, the name, address, and taxpayer account number of the original lessor, and the district director's office with which the income tax return of such original lessor is filed.

(2) *Time for making election.* The statement referred to in subparagraph (1) of this paragraph shall be filed with the lessee on or before the 60th day after possession of the property is transferred to the lessee, or on or before May 15, 1963, whichever is later.

(3) *Election is irrevocable.* An election under this paragraph shall be irrevocable as of the time the statement referred to in subparagraph (1) of this paragraph is filed with the lessee.

(g) *General election.*—(1) *In general.* In lieu of making elections on a property-by-property basis in the manner and time prescribed in paragraph (f) of this section, a lessor may, with respect to a particular taxable year of a particular lessee, make a general election to treat such lessee as having purchased all properties possession of which is transferred under lease by the lessor to the lessee during such taxable year of the lessee. An election under this paragraph may be made only with respect to taxable years of a lessee ending after March 31, 1963, and only with respect to properties possession of which is transferred under lease to such lessee after such date.

(2) *Manner and time for making general election.* The general election of a lessor with respect to a taxable year of a lessee shall be made by filing a statement with the lessee, signed by the lessor and including the written consent of the lessee, on or before the 60th day after the first transfer under lease (during such year) to the lessee of possession of property eligible for the general election under subparagraph (1) of this paragraph. Such statement of general election shall contain:

(i) The name, address, and taxpayer account number of the lessor and the lessee;

(ii) The taxable year of the lessee with respect to which such general election is made;

(iii) The district director's office with which the income tax returns of the lessor and the lessee are filed;

(iv) If the lessor is itself a lessee, the name, address, and taxpayer account number of the original lessor, and the district director's office with which the income tax return of such original lessor is filed.

(3) *Election is irrevocable.* A general election under this paragraph shall be irrevocable as of the time the statement referred to in subparagraph (2) of this paragraph is filed with the lessee and shall be binding on the lessor and the lessee for the entire taxable year of the lessee with respect to which such general election is made.

(4) *Information requirement.* If a lessor, with respect to a taxable year of a lessee, makes a general election under this paragraph, such lessor shall provide such lessee, on or before the 60th day after the last day of the lessee's taxable year, with a statement containing the information required by paragraph (f) (1) (iii), (iv), (v) and (vi) of this section with respect to all properties possession of which is transferred under lease by the lessor to the lessee during such taxable year.

(h) *Signature.* The statement referred to in paragraph (f) (1) or (g) (2) of this section shall not be valid unless signed by both the lessor and the lessee. The signature of the lessee shall constitute the consent of the lessee to the election. The statement shall be signed by the taxpayer or a duly authorized agent of the taxpayer. For purposes of this section, a facsimile signature may be used in lieu of a signature manually executed and, if used, shall be as binding as a signature manually executed.

(i) [Reserved]

(j) *Record requirements.* The lessor and the lessee shall keep as a part of their records the statement referred to in paragraph (f) (1), or the statements referred to in paragraphs (g) (2) and (g) (4), of this section. The lessor shall attach to his income tax return a summary statement of all property leased during his taxable year with respect to which an election is made. Such summary statement shall contain the following information: (1) The name, address, and taxpayer account number of the lessor; and (2) in numerical account number order, each lessee's account number, name, and address, the estimated useful life of the property, and the basis or fair market value of the property, whichever is applicable.

(k) *Adjustment of rental deductions—(1) In general.* If a lessor makes a valid election under this section, section 48(g) and § 1.48-7 (relating to adjustments to basis of property) shall not apply to the lessor with respect to property subject to the election. Thus, the lessor is not required to reduce under section 48(g) (1) the basis of property with respect to which an election is made. However, if such an election is made the deductions otherwise allowable under section 162 to the lessee for amounts paid or accrued to the lessor under the lease shall be adjusted in the manner provided in this paragraph.

(2) *Decrease in rental deduction.* (i) The total of all deductions otherwise allowable under section 162 to the lessee for amounts paid or accrued to the

lessor under the lease with respect to the leased property shall be decreased by an amount equal to the credit earned on the leased property. The "credit earned" on the leased property is determined by multiplying the qualified investment (as defined in section 46(c)) with respect to such property by 7 percent. Thus, the credit earned (and the decrease in deductions) is determined without regard to the limitation based on tax which, under section 46(a) (2), may limit the amount of the credit the lessee may take into account in any one year.

(ii) For each taxable year any part of which falls within a period beginning with the month in which the leased property is placed in service by the lessee and ending with the close of the estimated useful life of such property (as determined under paragraph (d) of this section), the lessee shall decrease the deduction otherwise allowable under section 162 for each such taxable year with respect to such property. The decrease for each such taxable year shall be equal to (a) the credit earned, divided by (b) the estimated useful life of the property (expressed in months), multiplied by (c) the number of calendar months in which the leased property was held by the lessee during such taxable year. Thus, if leased property with a basis of \$27,000 in the hands of a calendar-year lessee, and with an estimated useful life of 10 years, is placed in service by the lessee on July 15, 1963, the lessee must decrease his section 162 deduction with respect to the leased property for the taxable year 1963 by \$94.50 (\$1,890 credit earned, divided by 120, multiplied by 6).

(iii) To the extent that a required decrease is not taken into account for any taxable year because the deduction otherwise allowable under section 162 for such taxable year with respect to the leased property is less than the required decrease for such taxable year, then the balance of the required decrease not taken into account for such taxable year shall decrease the amount otherwise allowable as a deduction under section 162 with respect to such property for the next succeeding taxable year (or years) for which a deduction is allowable with respect to such property. Thus, if the required decrease with respect to leased property is \$200 for 1963 but the lessee's deduction otherwise allowable under section 162 for such taxable year with respect to such property is only \$50, the balance of \$150 must be applied in the succeeding taxable year (or years) to decrease the deduction otherwise allowable to the lessee with respect to the leased property for such succeeding taxable year (or years).

(iv) (a) If the leased property is disposed of or otherwise ceases to be section 38 property with respect to the lessee (other than by reason of death or a transaction to which section 381(a) applies) prior to the close of the estimated useful life of the leased property, then for the taxable year of such disposition or cessation the lessee shall decrease his deduction otherwise allowable under section 162 for such taxable year with respect to such property by an amount determined under (b) of this subdivision.

The excess, if any, of the amount determined under (b) of this subdivision over the deduction otherwise allowable under section 162 with respect to such property for such taxable year of disposition or cessation shall be included in gross income.

(b) The amount of the adjustment under (a) of this subdivision shall be an amount equal to the excess, if any, of the credit earned with respect to the leased property (minus an amount equal to any increase in tax plus any adjustments to carrybacks and carryovers with respect to the leased property under section 47(a)) over the sum of the decreases made under subdivisions (ii) and (iii) of this subparagraph with respect to such property.

(v) See paragraph (b) of § 1.48-7 for reduction of basis in the case of an actual purchase of leased property by a lessee who has been treated as a purchaser of such property under this section.

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

*Example (1).* X Corporation is engaged in the business of manufacturing and leasing new and reconstructed equipment which in its hands has an estimated useful life of 12 years. After December 31, 1961, X Corporation constructs machine No. 1 at a cost of \$20,000 and reconstructs machine No. 2 at a cost of \$5,000. On February 15, 1964, Y Corporation, a calendar-year taxpayer, leases both machines from X Corporation and places them in service. The fair market value of machine No. 1 on the date on which possession is transferred to Y is \$25,200. Machine No. 1 would qualify as new section 38 property in Y's hands if it had been purchased by Y. If X elects to treat Y as the purchaser of machine No. 1, such machine will have a basis of \$25,200 in Y's hands and an estimated useful life falling within the 8 years or more useful life category for purposes of determining Y's qualified investment. Y's credit earned with respect to the property is \$1,764 (7 percent of \$25,200). Y's deduction attributable to the leased property for 1964 will be decreased by \$134.75 (credit earned of \$1,764, divided by 144, multiplied by 11). The election is not available with respect to machine No. 2 since a reconstructed machine would not constitute new section 38 property if Y had purchased it. In such case, while X cannot make the election to treat Y as a purchaser, X would be entitled to a credit under section 38 based on its expenditure of \$5,000 as an investment in new section 38 property, since such amount represents cost of reconstruction after December 31, 1961.

*Example (2).* Assume the same facts as in example (1) except that on February 14, 1973, Y terminates the lease on machine No. 1 and returns such machine to X, and that in 1973 Y Corporation's deduction otherwise allowable under section 162 with respect to machine No. 1 is \$475. Assuming that Y has decreased its deductions otherwise allowable under section 162 with respect to machine No. 1 by \$1,335.25 (\$134.75 for 1964, \$147 for each of the 8 succeeding years, and \$24.50 for the first 2 months of 1973) for periods up to the time the lease is terminated, under paragraph (k) (2) (iv) of this section, Y must decrease its 1973 deduction attributable to machine No. 1 by an additional \$428.75 (excess of credit earned, \$1,764, over the sum of prior decreases, \$1,335.25). If the rent paid in 1973 with respect to machine No. 1 was only \$200 (after a decrease of \$24.50 in 1973), Y would include \$228.75 (\$428.75 minus \$200) in gross income for 1973.

**§ 1.48-5 Electing small business corporations.**

(a) *In general.* (1) In the case of an electing small business corporation (as defined in section 1371(b)), the basis of "new section 38 property" and the cost of "used section 38 property" placed in service during the taxable year shall be apportioned pro rata among the persons who are shareholders of such corporation on the last day of such corporation's taxable year. Section 38 property shall not (by reason of such apportionment) lose its character as new section 38 property or used section 38 property, as the case may be. The estimated useful life of such property in the hands of a shareholder shall be deemed to be the estimated useful life of such property in the hands of the electing small business corporation. The bases of all new section 38 properties which have a useful life falling within a particular useful life category shall be aggregated; likewise, the cost of all used section 38 properties which have a useful life falling within a particular useful life category shall be aggregated. The total bases of new section 38 properties within each useful life category and the total cost of used section 38 properties within each useful life category shall be apportioned separately. The useful life categories are: (i) 4 years or more but less than 6 years; (ii) 6 years or more but less than 8 years; and (iii) 8 years or more. There shall be apportioned to each person who is a shareholder of the electing small business corporation on the last day of the taxable year of such corporation, for his taxable year in which or with which the taxable year of such corporation ends, his pro rata share of the total bases of new section 38 properties within each useful life category, and his pro rata share of the total cost of used section 38 properties within each useful life category. In determining who are shareholders of an electing small business corporation on the last day of its taxable year, the rules of paragraph (d) (1) of § 1.1371-1 and of paragraph (a) (2) of § 1.1373-1 shall apply.

(2) The total cost of used section 38 property that may be apportioned by an electing small business corporation to its shareholders for any taxable year of such corporation shall not exceed \$50,000. If the total cost of used section 38 property placed in service during the taxable year by the electing small business corporation exceeds \$50,000 such corporation must select, under paragraph (c) (4) of § 1.48-3, the used section 38 property the cost of which is to be apportioned to its shareholders.

(3) A shareholder to whom the basis (or cost) of section 38 property is apportioned shall, for purposes of the credit allowed by section 38, be treated as the taxpayer with respect to such property. Thus, the total cost of used section 38 property apportioned to him by the electing small business corporation must be taken into account as cost of used section 38 property in determining whether the \$50,000 limitation on the cost of used section 38 property which may be taken into account by the shareholder in computing qualified investment for any tax-

able year is exceeded. If a shareholder takes into account in determining his qualified investment any portion of the basis (or cost) of section 38 property placed in service by an electing small business corporation and if such property subsequently is disposed of or otherwise ceases to be section 38 property in the hands of the corporation, such shareholder shall be subject to the provisions of section 47.

(b) *Summary statement.* An electing small business corporation shall attach to its return a statement showing the apportionment to each shareholder of the total bases of new, and the total cost of used, section 38 properties within each useful life category.

(c) *Example.* This section may be illustrated by the following example:

*Example.* (i) X Corporation, an electing small business corporation which makes its return on the basis of the calendar year, acquires and places in service on June 1,

1962, three new assets which qualify as new section 38 property and three used assets which qualify as used section 38 property. The basis of each new, and the cost of each used, section 38 property and the estimated useful life of each property are as follows:

Asset No.	Basis (or cost)	Estimated useful life
1 (new)	\$30,000	4 years.
2 (new)	30,000	4 years.
3 (new)	30,000	8 years.
4 (used)	12,000	6 years.
5 (used)	12,000	6 years.
6 (used)	12,000	8 years.

On December 31, 1962, X Corporation has 10 shares of stock outstanding which are owned as follows: A owns 3 shares, B owns 2 shares, and C owns 5 shares.

(ii) Under this section, the total bases of the new, and the total cost of the used, section 38 properties are apportioned to the shareholders of X Corporation as follows:

Useful life category	New—4 to 6 years	New—8 years or more	Used—6 to 8 years	Used—8 years or more
Total bases or total cost	\$60,000	\$30,000	\$24,000	\$12,000
Shareholder A (3/10)	18,000	9,000	7,200	3,600
Shareholder B (2/10)	12,000	6,000	4,800	2,400
Shareholder C (5/10)	30,000	15,000	12,000	6,000

Assume that shareholders A, B and C did not place in service during their taxable years in which falls December 31, 1962 (the last day of X Corporation's taxable year) any section 38 property and that such shareholders did not own any interests in other electing small business corporations, partnerships, estates, or trusts. Under section 46(c), the qualified investment of shareholder A is \$23,400, of shareholder B is \$15,600, and of shareholder C is \$39,000, computed as follows:

**SHAREHOLDER A**

Basis (or cost)	Applicable percentage	Qualified investment
\$18,000 (new)	33%	\$6,000
\$9,000 (new)	100	9,000
\$7,200 (used)	66%	4,800
\$3,600 (used)	100	3,600
Total		23,400

**SHAREHOLDER B**

Basis (or cost)	Applicable percentage	Qualified investment
\$12,000 (new)	33%	\$4,000
\$6,000 (new)	100	6,000
\$4,800 (used)	66%	3,200
\$2,400 (used)	100	2,400
Total		15,600

**SHAREHOLDER C**

Basis (or cost)	Applicable percentage	Qualified investment
\$30,000 (new)	33%	\$10,000
\$15,000 (new)	100	15,000
\$12,000 (used)	66%	8,000
\$6,000 (used)	100	6,000
Total		39,000

Section 38 property shall not (by reason of such apportionment) lose its character as new section 38 property or used section 38 property, as the case may be. The estimated useful life of such property in the hands of a beneficiary shall be deemed to be the estimated useful life of such property in the hands of the estate or trust. The bases of all new section 38 properties which have a useful life falling within a particular useful life category shall be aggregated; likewise, the cost of all used section 38 properties which have a useful life falling within a particular useful life category shall be aggregated. The total bases of new section 38 properties within each useful life category and the total cost of used section 38 properties within each useful life category shall be apportioned separately. The useful life categories are: (i) 4 years or more but less than 6 years; (ii) 6 years or more but less than 8 years; and (iii) 8 years or more. There shall be apportioned to the estate or trust for its taxable year, and to each beneficiary of such estate or trust for his taxable year in which or with which the taxable year of such estate or trust ends, his share (as determined under paragraph (b) of this section) of the total bases of new section 38 properties within each useful life category, and his share of the total cost of used section 38 properties within each useful life category.

(2) The total cost of used section 38 property that may be apportioned among an estate or trust and its beneficiaries for any taxable year of such estate or trust shall not exceed \$50,000. If the total cost of used section 38 property placed in service during the taxable year by the estate or trust exceeds \$50,000, such estate or trust must select, under paragraph (c) (4) of § 1.48-3, the used section 38 property the cost of which is

**§ 1.48-6 Estates and trusts.**

(a) *In general.* (1) In the case of an estate or trust, the basis of "new section 38 property" and the cost of "used section 38 property" placed in service during the taxable year shall be apportioned among the estate or trust and its beneficiaries on the basis of the income of such estate or trust allocable to each.

to be apportioned among such estate or trust and its beneficiaries.

(3) A beneficiary to whom the basis (or cost) of section 38 property is apportioned shall, for purposes of the credit allowed by section 38, be treated as the taxpayer with respect to such property. Thus, the total cost of used section 38 property apportioned to him by the estate or trust must be taken into account as cost of used section 38 property in determining whether the \$50,000 limitation on the cost of used property which may be taken into account by the beneficiary in computing qualified investment for any taxable year is exceeded. If a beneficiary takes into account in determining his qualified investment any portion of the basis (or cost) of section 38 property placed in service by an estate or trust and if such property subsequently is disposed of or otherwise ceases to be section 38 property in the hands of the estate or trust, such beneficiary shall be subject to the provisions of section 47.

(4) For purposes of this section, the term "beneficiary" includes heir, legatee, and devisee.

(b) *Share.* A trust's, estate's, or beneficiary's share of the total bases of new section 38 properties, and the total cost of used section 38 properties, within a useful life category shall be—

(1) The total bases of new (or the total cost of used) section 38 properties which have a useful life falling within such useful life category placed in service in the taxable year of the estate or trust, multiplied by

(2) The amount of income allocable to such estate or trust or to such beneficiary for such taxable year, divided by

(3) The sum of the amounts of income allocable to such estate or trust and all its beneficiaries taken into account under subparagraph (2) of this paragraph.

(c) *Limitation based on amount of tax.* Under section 48(f) (3), in the case of an estate or trust the \$25,000 amount specified in section 46(a) (2) (A) and (B), relating to limitation based on amount of tax, shall be reduced for the taxable year to—

(1) \$25,000, multiplied by

(2) The qualified investment with respect to the total bases of new section 38 properties plus the qualified investment with respect to the total cost of used section 38 properties, apportioned to such estate or trust under paragraph (a) of this section, divided by

(3) The qualified investment with respect to the total bases of all new section 38 properties plus the qualified investment with respect to the total cost of all used section 38 properties, apportioned among such estate or trust and its beneficiaries.

For purposes of subparagraph (3) of this paragraph, cost of used section 38 property shall not be considered as apportioned to any beneficiary to the extent that such cost is not taken into account by such beneficiary in computing qualified investment in used section 38 property.

(d) *Summary statement.* An estate or trust shall attach to its return a statement showing the apportionment to such estate or trust and to each beneficiary of the total bases of new, and the total cost of used, section 38 properties within each useful life category.

(e) *Example.* This section may be illustrated by the following example:

*Example.* (i) XYZ Trust, which makes its return on the basis of the calendar year, acquires and places in service on June 1, 1962, three new assets which qualify as new section 38 property and three used assets which qualify as used section 38 property. The basis of the new, and the cost of the used, section 38 property and the estimated useful life of each property are as follows:

Asset No.	Basis (or cost)	Estimated useful life
1 (new)-----	\$30,000	4 years.
2 (new)-----	30,000	4 years.
3 (new)-----	30,000	8 years.
4 (used)-----	12,000	6 years.
5 (used)-----	12,000	6 years.
6 (used)-----	12,000	8 years.

For the taxable year 1962 the income of XYZ Trust is \$20,000 which is allocable as follows: \$10,000 to XYZ Trust, \$6,000 to beneficiary A, and \$4,000 to beneficiary B. Beneficiaries A and B make their returns on the basis of a calendar year.

(ii) Under this section, the total bases of the new, and the total cost of the used, section 38 properties are apportioned to XYZ Trust and its beneficiaries as follows:

Useful life category	New—4 to 6 years	New—8 years or more	Used—6 to 8 years	Used—8 years or more
Total bases or total cost-----	\$60,000	\$30,000	\$24,000	\$12,000
XYZ Trust $\left( \begin{matrix} \$10,000 \\ 20,000 \end{matrix} \right)$ -----	30,000	15,000	12,000	6,000
Beneficiary A $\left( \begin{matrix} \$6,000 \\ 20,000 \end{matrix} \right)$ -----	18,000	9,000	7,200	3,600
Beneficiary B $\left( \begin{matrix} \$4,000 \\ 20,000 \end{matrix} \right)$ -----	12,000	6,000	4,800	2,400

Assume that beneficiary A placed in service during his taxable year 1962 new section 38 property with a basis of \$10,000 and an estimated useful life of 8 years. Also, assume that beneficiary B did not place in service during his taxable year 1962 any section 38 property and that beneficiaries A and B did not own any interests in other trusts, estates, partnerships, or electing small business corporations. Under section 46(c), the qualified investment of XYZ Trust is \$39,000, of beneficiary A is \$33,400, and of beneficiary B is \$15,600, computed as follows:

XYZ TRUST

Basis (or cost)	Applicable percentage	Qualified investment
\$30,000 (new)-----	33%	\$10,000
\$15,000 (new)-----	100	15,000
\$12,000 (used)-----	66%	8,000
\$6,000 (used)-----	100	6,000
Total-----		39,000

BENEFICIARY A

Basis (or cost)	Applicable percentage	Qualified investment
\$18,000 (new)-----	33%	\$6,000
\$9,000 (new)-----	100	9,000
\$7,200 (used)-----	66%	4,800
\$3,600 (used)-----	100	3,600
		23,400
\$10,000 (new)-----	100	10,000
Total-----		33,400

BENEFICIARY B

Basis (or cost)	Applicable percentage	Qualified investment
\$12,000 (new)-----	33%	\$4,000
\$6,000 (new)-----	100	6,000
\$4,800 (used)-----	66%	3,200
\$2,400 (used)-----	100	2,400
Total-----		15,600

(iii) In the case of XYZ Trust, the \$25,000 amount specified in section 46(a) (2) (A) and (B) is reduced to \$12,500, computed as follows: (a) \$25,000, multiplied by (b) \$39,000 (qualified investment apportioned to the trust), divided by (c) \$78,000 (total qualified investment apportioned among such trust (\$39,000), beneficiary A (\$23,400), and beneficiary B (\$15,600)).

§ 1.48-7 Adjustment to basis.

(a) *Reduction of basis; general.*—(1) *In general.* Under section 48(g) (1), the basis of any "section 38 property" shall be reduced by an amount equal to 7 percent of the "qualified investment" with respect to such property. The reduction in basis shall be made as of the time the property is placed in service by the taxpayer. The basis of such property must be reduced by 7 percent of the qualified investment even though the limitation based on amount of tax under section 46(a) (2) reduces the amount of the credit allowed by section 38 for the taxable year in which the property is placed in service. The reduction in basis of section 38 property shall be taken into account for all purposes of subtitle A of the Code, except in computing (or recomputing in the case of early dispositions, etc.) the qualified investment with respect to such property. Thus, such reduction in basis is taken into account in determining a reasonable allowance for depreciation under section 167, except that the additional amount allowed under section 179 (relating to additional first-year depreciation allowance for small business) with respect to the cost of certain property is determined without regard to such reduction in basis.

(2) *Special rules.* For purposes of applying subparagraph (1) of this paragraph—

(i) If, under § 1.48-4, the lessor of new section 38 property makes a valid election to treat the lessee as having purchased such property for purposes of the credit allowed by section 38, the basis of such property shall not be reduced.

(ii) If property is used section 38 property and if the cost, or any part thereof, of such property is not, because of the application of the \$50,000 limitation on the cost of used section 38 property, taken into account in computing

qualified investment (see paragraph (c) of § 1.48-3) by the person who placed such property in service or by a person to whom the cost of such property was apportioned, no reduction shall be made to the basis of such property to the extent such cost, or any part thereof, is not so taken into account.

(iii) In the case of used section 38 property within a particular useful life category the cost of which is apportioned by an electing small business corporation, estate, or trust, if any part of such cost is not taken into account in computing qualified investment (because of the \$50,000 limitation) by a shareholder or beneficiary, the electing small business corporation, estate, or trust shall choose, to the extent such cost is not so taken into account, the item (or items) of used section 38 property, within such useful life category, with respect to which no reduction in basis shall be made.

(iv) The basis of section 38 property, which is disposed of or otherwise ceases to be section 38 property in the taxable year in which it is placed in service (except where section 47(b) or 46(c) (4) applies), shall not be reduced. See paragraph (a) (2) of § 1.46-3.

(3) *Examples.* This paragraph may be illustrated by the following examples:

*Example (1).* (i) X Corporation, which makes its return on the basis of the calendar year, acquires and places in service on January 2, 1962, an item of new section 38 property with a basis of \$10,000 and a useful life of 10 years. The amount of qualified investment with respect to such asset is \$10,000 (\$10,000 basis multiplied by 100 percent applicable percentage). For the taxable year 1962, X Corporation is allowed under section 38 a credit of \$700 (7 percent of \$10,000) against its liability for tax of \$1,000.

(ii) Under section 48(g)(1), the basis of the property is reduced to \$9,300 (\$10,000 minus \$700). Thus, for purposes of determining a reasonable allowance for depreciation under section 167 with respect to such property for the taxable year 1962, its adjusted basis is \$9,300.

*Example (2).* (i) The facts are the same as in example (1) except that for the taxable year 1962 X Corporation's liability for tax under section 46(a)(3) is \$500. Therefore, the credit allowed by section 38 against X Corporation's liability for tax for 1962 is limited to \$500 and the excess of \$200 (\$700 credit earned minus \$500 limitation) is an investment credit carryover.

(ii) The result is the same as in example (1), that is, under section 48(g)(1), the basis of the property is reduced to \$9,300 (\$10,000 minus \$700).

*Example (3).* (i) The facts are the same as in example (1) except that the property is, for purposes of depreciation, placed in a multiple asset account. On January 1, 1962, the cost or other basis of the property in such account amounted to \$50,000 and no other additions or retirements were reflected in such account during 1962.

(ii) Under section 48(g)(1), since the basis of the property is reduced to \$9,300 (\$10,000 minus \$700), the cost or other basis of the property in the multiple asset account is increased to \$59,300 (\$50,000 plus \$9,300) for purposes of computing depreciation under section 167.

*Example (4).* (i) The facts are the same as in example (1) except that X Corporation makes a valid election under paragraph (a) of § 1.179-4 to claim an additional first-year depreciation allowance with respect to the entire cost of the property.

(ii) Under section 48(g)(1), the basis of the property is reduced to \$9,300 (\$10,000 minus \$700). In addition, \$2,000 (20 percent of \$10,000) is allowed as an additional first-year depreciation allowance. Thus, for purposes of determining a reasonable allowance for depreciation under section 167 (in addition to the \$2,000 computed under section 179) for the taxable year 1962 with respect to such property, its adjusted basis is \$7,300 (\$9,300 minus \$2,000).

*Example (5).* (i) X Corporation acquires and places in service on January 1, 1962, used assets Nos. 1, 2, and 3. Each asset has a cost of \$25,000 and a useful life of 10 years. Such used assets qualify as used section 38 property. X Corporation selects the \$25,000 cost of used asset No. 1 and the \$25,000 cost of used asset No. 2 to be taken into account in computing qualified investment.

(ii) Under section 48(g)(1), the basis of asset No. 1 is reduced to \$23,250, that is, basis of \$25,000 minus \$1,750 (7 percent of \$25,000 qualified investment). Likewise, the basis of asset No. 2 is reduced to \$23,250. The basis of asset No. 3 is not reduced.

*Example (6).* (i) X Corporation acquires and places in service on January 1, 1962, used assets Nos. 1, 2, and 3 which qualify as used section 38 property. Each asset has a cost of \$20,000 and a useful life of 10 years. X Corporation selects the \$20,000 cost of used asset No. 1, the \$20,000 cost of used asset No. 2, and \$10,000 of the cost of used asset No. 3 to be taken into account in computing qualified investment.

(ii) Under section 48(g)(1), the basis of asset No. 1 is reduced to \$18,600, that is, basis of \$20,000 minus \$1,400 (7 percent of \$20,000 qualified investment). Likewise, the basis of asset No. 2 is reduced to \$18,600. The basis of asset No. 3 is reduced to \$19,300, that is basis of \$20,000 minus \$700 (7 percent of \$10,000 qualified investment).

*Example (7).* (i) X Corporation, an electing small business corporation which makes its return on the basis of the calendar year, acquires and places in service on January 1, 1962, five used assets which qualify as used section 38 property. The cost of each used section 38 property and the estimated useful life of each property are as follows:

Asset No.	Cost	Estimated useful life
1-----	\$20,000	8 years.
2-----	24,000	6 years.
3-----	3,000	4 years.
4-----	6,000	4 years.
5-----	3,000	4 years.

On December 31, 1962, X Corporation has 10 shares of stock outstanding which are owned as follows: A owns 3 shares, B owns 2 shares, and C owns 5 shares. All the shareholders make their returns on the basis of a calendar year. X Corporation selects the \$20,000 cost of asset No. 1, the \$24,000 cost of asset No. 2, the \$3,000 cost of asset No. 3, and \$3,000 of the cost of asset No. 4 to be apportioned to its shareholders. Under § 1.48-5, the total cost of the used section 38 property selected is apportioned to the shareholders of X Corporation as follows:

Useful life category	Used—	Used—	Used—
	4 to 6 years	6 to 8 years	8 years or more
Total cost-----	\$6,000	\$24,000	\$20,000
Shareholder A (3/10)----	1,800	7,200	6,000
Shareholder B (2/10)----	1,200	4,800	4,000
Shareholder C (5/10)----	3,000	12,000	10,000

Assume that shareholders A, B, and C did not place in service during their taxable years ending December 31, 1962, any section

38 property and that such shareholders did not own any interests in other electing small business corporations, partnerships, estates, or trusts. Under section 46(c)(1)(B) each shareholder computes his qualified investment as follows:

SHAREHOLDER A		
Cost	Applicable percentage	Qualified investment
\$1,800-----	33 1/3%	\$600
\$7,200-----	66 2/3%	4,800
\$6,000-----	100	6,000
		11,400

SHAREHOLDER B		
Cost	Applicable percentage	Qualified investment
\$1,200-----	33 1/3%	\$400
\$4,800-----	66 2/3%	3,200
\$4,000-----	100	4,000
		7,600

SHAREHOLDER C		
Cost	Applicable percentage	Qualified investment
\$3,000-----	33 1/3%	\$1,000
\$12,000-----	66 2/3%	8,000
\$10,000-----	100	10,000
		19,000

(ii) Under section 48(g)(1), the basis of each asset (except asset No. 5) is reduced by 7 percent of the qualified investment with respect to such asset, as follows:

Asset No.	Basis before reduction	Qualified investment	Basis after reduction
1-----	\$20,000	Minus 7% of \$20,000----	\$18,600
2-----	24,000	Minus 7% of \$16,000----	22,880
3-----	3,000	Minus 7% of \$1,000----	2,930
4-----	6,000	Minus 7% of \$1,000----	5,930

The basis of asset No. 5 is not reduced.

*Example (8).* (1) The facts are the same as in example (7) except that shareholder C acquired and placed in service on June 1, 1962, in his individual proprietorship, used asset No. 6 with a cost of \$27,000 and an estimated useful life of 10 years. In computing his qualified investment, shareholder C selects the \$27,000 cost of asset No. 6, the \$10,000 cost of used section 38 property within the 8 years or more useful life category apportioned to him by X Corporation, and \$1,000 of the cost of used section 38 property within the 4 to 6 years useful life category apportioned to him by X Corporation. Under section 46(c)(1)(B), he computes his qualified investment as follows:

Proprietorship	Cost	Applicable percentage	Qualified investment
Asset No. 6-----	\$27,000	100	\$27,000
Apportioned by X Corporation:			
8 years or more-----	10,000	100	10,000
6 to 8 years-----	12,000	66 2/3%	8,000
4 to 6 years-----	1,000	33 1/3%	333
			45,333

(ii) Since only \$4000 of the \$6000 cost of used section 38 property in the 4 to 6 years useful life category apportioned to X Corporation was taken into account by shareholders A, B, and C in computing their qualified investment, only \$4000 of the bases of the assets in such category is subject to

reduction. Under subparagraph (2)(iii) of this paragraph, X must choose an item of property in such category, \$2000 of the basis of which will not be subject to the reduction. Therefore, X Corporation chooses to reduce the basis of asset No. 4 by 7 percent of qualified investment with respect to only \$1,000 of the cost of such asset (in lieu of the \$3000 previously selected). The bases of assets Nos. 1, 2, and 3 are reduced by 7 percent of the qualified investment with respect to each such asset. The basis of each asset is reduced as follows:

Asset No.	Basis before reduction	Qualified investment	Basis after reduction
1-----	\$20,000	Minus 7% of \$20,000	\$18,600
2-----	24,000	Minus 7% of \$16,000	22,880
3-----	3,000	Minus 7% of \$1,000	2,930
4-----	6,000	Minus 7% of \$333	5,977

The basis of asset No. 5 is not reduced.

(iii) The basis of asset No. 6, in the hands of shareholder C, is reduced to \$25,110, that is, basis of \$27,000 minus \$1890 (7 percent of \$27,000 qualified investment).

Asset No.	Estimated useful life	Cost	Partner's share of cost		
			A (50%)	B (30%)	C (20%)
1-----	8 years	\$20,000	\$10,000	\$6,000	\$4,000
2-----	6 years	24,000	12,000	7,200	4,800
3-----	4 years	3,000	1,500	900	600
4-----	4 years	3,000	1,500	900	600

Each partner makes his return on the basis of the calendar year. Assume that partners A, B, and C did not place in service during their taxable years ending December 31, 1962, any section 38 property and that such partners did not own any interests in other partnerships, estates, trusts, or electing small business corporations. Under section 46(c), each partner computes his qualified investment as follows:

PARTNER A			
Asset No.	Share of cost	Applicable percentage	Qualified investment
1-----	\$10,000	100	\$10,000
2-----	12,000	66 $\frac{2}{3}$	8,000
3-----	1,500	33 $\frac{1}{3}$	500
4-----	1,500	33 $\frac{1}{3}$	500
			19,000

PARTNER B			
Asset No.	Share of cost	Applicable percentage	Qualified investment
1-----	\$6,000	100	\$6,000
2-----	7,200	66 $\frac{2}{3}$	4,800
3-----	900	33 $\frac{1}{3}$	300
4-----	900	33 $\frac{1}{3}$	300
			11,400

PARTNER C			
Asset No.	Share of cost	Applicable percentage	Qualified investment
1-----	\$4,000	100	\$4,000
2-----	4,800	66 $\frac{2}{3}$	3,200
3-----	600	33 $\frac{1}{3}$	200
4-----	600	33 $\frac{1}{3}$	200
			7,600

(ii) Under section 48(g)(1), the basis of each asset selected by the partnership is reduced by 7 percent of the qualified investment with respect to such asset, as follows:

*Example (9).* (i) ABC Partnership, which makes its return on the basis of the calendar year, acquires and places in service on January 1, 1962, five used assets which qualify as used section 38 property. The cost of each used section 38 property and the estimated useful life of each property are as follows:

Asset No.	Cost	Estimated useful life
1-----	\$20,000	8 years.
2-----	24,000	6 years.
3-----	3,000	4 years.
4-----	6,000	4 years.
5-----	3,000	4 years.

Partners A, B, and C share the profits and the losses of partnership ABC in the ratio of 50 percent, 30 percent, and 20 percent, respectively. ABC Partnership selects the \$20,000 cost of asset No. 1, the \$24,000 cost of asset No. 2, the \$3,000 cost of asset No. 3, and \$3,000 of the cost of asset No. 4, to be taken into account by its members in computing qualified investment. Under paragraph (f)(2) of § 1.46-3, each partner's share of the cost of the partnership used section 38 property to be taken into account in computing qualified investment is as follows:

Asset No.	Estimated useful life	Cost	Partner's share of cost		
			A (50%)	B (30%)	C (20%)
1-----	8 years	\$20,000	\$10,000	\$6,000	\$4,000
2-----	6 years	24,000	12,000	7,200	4,800
3-----	4 years	3,000	1,500	900	600
4-----	4 years	3,000	1,500	900	600

Asset No.	Basis before reduction	Qualified investment	Basis after reduction
1-----	\$20,000	Minus 7% of \$20,000	\$18,600
2-----	24,000	Minus 7% of \$16,000	22,880
3-----	3,000	Minus 7% of \$1,000	2,930
4-----	6,000	Minus 7% of \$1,000	5,930

The basis of asset No. 5 is not reduced.

*Example (10).* (i) The facts are the same as in example (9) except that partner A acquired and placed in service on June 1, 1962, in his individual proprietorship, used asset No. 6 with a cost of \$26,000 and an estimated useful life of 10 years. Partner A selects the \$26,000 cost of asset No. 6, his \$10,000 share of the cost of asset No. 1, his \$12,000 share of the cost of asset No. 2, his \$1,500 share of the cost of asset No. 3, and \$500 of his share of the cost of asset No. 4, to be taken into account in computing his qualified investment. Under section 46(c), he computes his qualified investment as follows:

Proprietorship property	Cost	Applicable percentage	Qualified investment
Asset No. 6-----	\$26,000	100	\$26,000
Partnership property			
Asset No. 1-----	\$10,000	100	10,000
Asset No. 2-----	12,000	66 $\frac{2}{3}$	8,000
Asset No. 3-----	1,500	33 $\frac{1}{3}$	500
Asset No. 4-----	500	33 $\frac{1}{3}$	167
			44,667

(ii) Under section 48(g)(1), the basis of each asset selected by the partnership is reduced by 7 percent of the qualified investment with respect to such asset as follows:

Asset No.	Basis before reduction	Qualified investment	Basis after reduction
1-----	\$20,000	Minus 7% of \$20,000	\$18,600
2-----	24,000	Minus 7% of \$16,000	22,880
3-----	3,000	Minus 7% of \$1,000	2,930
4-----	6,000	Minus 7% of \$667	5,933

The basis of asset No. 5 is not reduced.

(iii) The basis of asset No. 6, in the hands of partner A, is reduced to \$24,180, that is, basis of \$26,000 minus \$1,820 (7 percent of \$26,000 qualified investment).

(b) *Reduction of basis; purchase of leased property by lessee treated as purchaser*—(1) If a lessor of property makes a valid election under § 1.48-4 to treat the lessee as having purchased such property for purposes of the credit allowed by section 38 and if such lessee at a later date actually purchases such property, the basis of such property shall be reduced, as of the time of the actual purchase, by an amount equal to the excess of—

(i) The credit earned (as defined in paragraph (k)(2)(i) of § 1.48-4) with respect to such property, over

(ii) The sum of the amounts by which the lessee-purchaser has decreased, under paragraph (k)(2) of § 1.48-4, his deductions otherwise allowable under section 162 for amounts paid or accrued to the lessor-vendor under the lease with respect to such property.

(2) The operation of this paragraph may be illustrated by the following example:

*Example.* (i) X Corporation acquires on December 31, 1962, an item of new section 38 property with a basis of \$12,000 and with a useful life of 8 years. Y Corporation, which makes its return on the basis of a calendar year, leases such property from X Corporation and places it in service on January 1, 1963. Under § 1.48-4, X Corporation makes a valid election to treat Y Corporation as having purchased such property for purposes of the credit allowed by section 38. Under paragraph (k)(2)(i) of § 1.48-4, the amount of the credit earned with respect to such property is \$840 (7 percent of \$12,000). In the taxable years 1963 and 1964 Y Corporation decreases its deductions otherwise allowable under section 162 for amounts paid to X Corporation under the lease with respect to such property by \$105 (\$840 multiplied by 1 $\frac{1}{6}$ ) for each year. On January 1, 1965, Y Corporation actually purchases such property from X Corporation for \$9,000.

(ii) As of January 1, 1965, Y Corporation must reduce the basis of the property by \$630 (\$840 minus \$210). Thus, for purposes of determining a reasonable allowance for depreciation under section 167 with respect to such property for the taxable year 1965, its adjusted basis is \$8,370 (\$9,000 minus \$630).

[F.R. Doc. 63-3154; Filed, Mar. 27, 1963; 8:45 a.m.]

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

[ 25 CFR Part 221 ]

**FLATHEAD INDIAN IRRIGATION PROJECT, MONTANA**

**Operation and Maintenance Charges**

*Basis and purpose.* Pursuant to section 4(a) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 238), and authority contained in the Acts of Congress approved August 1, 1914 (38 Stat. 583), May 18, 1916 (39 Stat. 142), and March 7, 1928 (45 Stat. 210), and by virtue of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs (Order No. 2508; 14 F.R. 258), and by virtue of the authority delegated by the Commissioner of Indian Affairs to the Area Director (Bureau Order No. 551, Amendment No. 1; 16 F.R. 5454-7), notice is hereby given of the intention to modify §§ 221.16 and 221.17 of Title 25, Code of Federal Regulations, dealing with the irrigable lands of the Flathead Indian Irrigation Project, Montana, that are not subject to the jurisdiction of the several irrigation districts. The purpose of the amendment is to establish the assessment rate for nondistrict lands of the Flathead Indian Irrigation Project for 1963 and thereafter until further notice.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment to the Area Director, Bureau of Indian Affairs, 804 North 29th Street, Billings, Montana, within thirty days of the date of publication of this notice in the FEDERAL REGISTER.

Section 221.16 is amended to read as follows:

**§ 221.16 Charges, Jocko Division.**

(a) An annual minimum charge of \$3.00 per acre, for the season of 1963 and thereafter until further notice, shall be made against all assessable irrigable land in the Jocko Division that is not included in an Irrigation District organization, regardless of whether water is used.

(b) The minimum charge when paid shall be credited on the delivery of the pro rata per acre share of the available water up to one and one-half acre feet per acre for the entire assessable area of the farm unit, allotment, or tract. Additional water, if available, will be delivered at the rate of two dollars (\$2.00) per acre foot or fraction thereof.

Section 221.17 is amended to read as follows:

**§ 221.17 Charges, Mission Valley and Camas Divisions.**

(a) (1) An annual minimum charge of \$3.36 per acre, for the season of 1963 and thereafter until further notice, shall be made against all assessable irrigable land in the Mission Valley Division that is not included in an Irrigation District

organization regardless of whether water is used.

(2) The minimum charge when paid shall be credited on the delivery of the pro rata per acre share of the available water up to one and one-half acre feet per acre for the entire assessable area of the farm unit, allotment, or tract. Additional water, if available, will be delivered at the rate of two dollars and twenty-four cents (\$2.24) per acre foot or fraction thereof.

(b) (1) An annual minimum charge of \$3.70 per acre, for the season of 1963 and thereafter until further notice, shall be made against all assessable irrigable land in the Camas Division that is not included in an Irrigation District organization regardless of whether water is used.

(2) The minimum charge when paid shall be credited on the delivery of the pro rata per acre share of the available water up to one and one-half acre feet per acre for the entire assessable area of the farm unit, allotment, or tract. Additional water, if available, will be delivered at the rate of two dollars and forty-seven cents (\$2.47) per acre foot or fraction thereof.

NED O. THOMPSON,  
*Acting Area Director.*

[F.R. Doc. 63-3235; Filed, Mar. 27, 1963; 8:47 a.m.]

**National Park Service**

[ 36 CFR Part 7 ]

**GRAND TETON NATIONAL PARK, WYOMING**

**Fishing**

Notice is hereby given that pursuant to the authority contained in section 3 of of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 3), 245 DM-1 (27 F.R. 6395), National Park Service Order No. 14 (19 F.R. 8824), Regional Director, Midwest Region Order No. 3 (21 F.R. 1494), as amended, it is proposed to amend Title 36 CFR 7.22 as set forth below. The purpose of this amendment is to adjust the open season in which fishing will be permitted, to close certain waters and to amend existing regulations in regard to the use of live bait.

It is the policy of the Department of the Interior whenever practicable to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment to the Superintendent, Grand Teton National Park, Moose, Wyoming, within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

FRED C. FAGERGREN,  
*Superintendent,*  
*Grand Teton National Park.*

Paragraph (b) of § 7.22 is amended in its entirety to read as follows:

**§ 7.22 Grand Teton National Park.**

\* \* \* \* \*

(b) *Fishing.* (1) Open seasons: Fishing shall be permitted as follows:

(i) Jackson Lake from January 1 through September 20 and from November 15 through December 31.

(ii) Except as is specified in subparagraph (2) of this paragraph, all other lakes within the park and that portion of the Snake River proper within the park are open to fishing from April 1 through October 31 and the Snake River proper is open throughout the calendar year for whitefish fishing.

(iii) Except as is specified in subparagraph (2) of this paragraph, all other streams within the park are open from June 1 through October 31.

(2) Closed waters: The following waters shall be closed to fishing at all times: The Snake River for a distance of 150 feet below the downstream face of Jackson Lake Dam; Swan Lake; Hedrick's Pond; Christian Ponds; and Cottonwood Creek from the outlet of Jenny Lake to the Saddle Horse Concession Bridge.

**(3) Creel limits:**

(i) Jackson Lake, the limit of catch per person per day or in possession shall be 6 game fish, or 10 pounds and 1 fish (whichever is reached first). All other open waters, 12 game fish, or 10 pounds and 1 fish. The limit of whitefish shall be 25 per day with a possession limit of 3 days' catch.

(4) Bait: The use or possession of fish eggs or fish for bait is prohibited in all waters, except that it shall be permissible to use and have in possession dead, nongame fish for use as bait on or along the shores of Jackson Lake. Authorized marina bait dealers at Jackson Lake may retain live bait fish in containers provided that the live bait fish have been taken only from Jackson Lake or the waters draining into Jackson Lake and that such fish are dead when sold.

(5) Fishing from any bridge or boat dock in the park is prohibited.

(6) During any period of emergency, or to prevent overuse by fishermen, the superintendent may close to fishing all or any part of such open waters for such periods of time as may seem necessary, provided that notice thereof shall be given by the posting of appropriate signs or markers.

[F.R. Doc. 63-3236; Filed, Mar. 27, 1963; 8:47 a.m.]

**DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

**Food and Drug Administration**

[ 21 CFR Part 121 ]

**FOOD ADDITIVE**

**Menadione; Denial of Petition**

In the FEDERAL REGISTER of June 3, 1961 (26 F.R. 4950), notice was given of the filing of a petition (FAP 433) by E. R. Squibb & Sons, Division of Olin Mathieson Chemical Corporation, Georges Road, New Brunswick, New Jersey, proposing the issuance of a regulation providing for the safe use of menadione in prenatal vitamin supplements.

After extensive study of the petition, including consideration of all available

data by a group of experts selected from a panel named by the American Academy of Pediatrics to advise the Commissioner of Food and Drugs, it is concluded that the petition did not establish the safety of menadione for this use.

*Therefore, It is ordered,* Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1)(B), 72 Stat. 1786; 21 U.S.C. 348(c)(1)(B)) and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625):

1. That the petition be denied and that no food additive regulation authorizing the use of menadione in prenatal supplements or any other food product be issued.

2. That the extension of the effective date of the food additives amendment for the use of menadione as a dietary supplement, with a limit of 1 milligram per day, as published in the FEDERAL REGISTER of December 29, 1962 (27 F.R. 12896), be hereby revoked.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

*Effective date.* This order shall be effective on the date of its publication in the FEDERAL REGISTER.

Dated: March 22, 1963.

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

[F.R. Doc. 63-3253; Filed, Mar. 27, 1963;  
8:50 a.m.]

## DEPARTMENT OF LABOR

Office of the Secretary

[ 29 CFR Parts 602, 603 ]

[Administrative Order 573]

### INDUSTRY COMMITTEES FOR VARIOUS INDUSTRIES IN PUERTO RICO

#### Appointment To Investigate Conditions and Recommend Minimum Wages; Notice of Hearings

Pursuant to section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and 29 CFR Part 511, I hereby appoint Industry Committee No. 63-A for the leather, leather goods, and related products in-

dustry in Puerto Rico, and Industry Committee No. 63-B for the fabric and leather glove industry in Puerto Rico.

The definitions of the industries for which industry committees are appointed by this order are set forth below.

The leather, leather goods, and related products industry in Puerto Rico is defined as: The curing, tanning, or other processing of hides, skins, leather, or furs, and the manufacture of products therefrom; the manufacture from artificial leather, fabric, plastics, paper or paperboard, or similar materials of trunks, suitcases, brief cases, wallets, billfolds, coin purses, card cases, key cases, cigarette cases, watch straps, pouches, tie cases, toilet kits, checkbook covers, sport and athletic gloves and mittens, belts (except fabric belts), and like articles; and the manufacture of baseballs, softballs, footballs, and basketballs covered with leather, artificial leather, fabric, plastics, or similar materials: *Provided, however,* That the industry shall not include any product or activity included in the button, jewelry, and lapidary work industry (29 CFR Part 616), the needlework and fabricated textile products industry (29 CFR Part 612), the shoe and related products industry (29 CFR Part 601), or the fabric and leather glove industry (29 CFR Part 603), as defined in the wage orders for those industries in Puerto Rico, or the rubber products industry, as defined in Administrative Order No. 569 (27 F.R. 12062).

The fabric and leather glove industry in Puerto Rico is defined as: The manufacture of dress, semidress, and work gloves and mittens from woven or knit fabric, leather, or synthetic material, or these materials in combination with any other material: *Provided, however,* That the industry shall not include the manufacture of knit or crocheted gloves and mittens, sport and athletic gloves and mittens, or rubber or molded plastic gloves and mittens.

Pursuant to section 8 of the Fair Labor Standards Act of 1938 (29 U.S.C. 208), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and 29 CFR Part 511, I hereby:

(a) Convene each of the above-appointed industry committees:

(b) Refer to each of these industry committees the following: (1) The question of the minimum rate or rates of wages to be fixed for the industry with which it is concerned for employees who are engaged in commerce or in the production of goods for commerce, and (2) the question of the minimum rate or rates of wages to be fixed for any employees covered by the Act by reason of the Fair Labor Standards Amendments of 1961;

(c) Give notice of the hearing to be held by each of them at the times and places indicated below. Each industry committee shall investigate conditions in its industry, and each industry committee, or any authorized subcommittee thereof, shall hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under the aforementioned Act.

Industry Committee No. 63-A shall meet in executive session to commence its investigation at 10:00 a.m. on May 6, 1963, in the office of the Wage and Hour and Public Contracts Divisions, United States Department of Labor, seventh floor, Condominio San Alberto Building, 1200 Ponce de Leon Avenue, Santurce, Puerto Rico, and shall commence its hearing at 1:30 p.m. on the same date at the same place. Following this hearing Industry Committee No. 63-B shall meet at the same place at the times designated by the committee chairman to conduct its investigation and to hold its hearing.

Each industry committee shall recommend to the Administrator of the Wage and Hour and Public Contracts Divisions of this Department the highest minimum wage rates (in the case of question (1) referred to the committee, not exceeding the minimum wage rate prescribed in paragraph (1) of section 6(a) of the Act, and in the case of question (2) referred to the committee, not exceeding the minimum wage rate prescribed in section 6(b) of the Act, and in no case less than the currently effective rate) which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry and will not give any industry in Puerto Rico a competitive advantage over any industry in the United States outside of Puerto Rico, the Virgin Islands, and American Samoa.

Whenever any industry committee finds that a higher minimum wage may be determined for employees engaged in certain activities or in the manufacture of certain products in an industry than may be determined for other employees in that industry, the committee shall recommend such reasonable classifications within that industry as it determines to be necessary for the purpose of fixing for each classification the highest minimum wage rate that can be determined for it under the principles set forth herein which will not give a competitive advantage to any group in the industry. No classification shall be made, however, and no minimum wage rate shall be fixed solely on a regional basis or on the basis of age or sex. In determining whether there should be classifications within an industry, in making such classifications, and in determining the minimum wage rates for such classifications, each industry committee shall consider, among other relevant factors, the following: (1) Competitive conditions as affected by transportation, living, and production costs; (2) wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and (3) wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

The Administrator shall prepare an economic report for each industry committee containing such data as he is able to assemble pertinent to the matters referred to them. Copies of such reports may be obtained at the national and Puerto Rican offices of the United

States Department of Labor as soon as they are completed and prior to the hearings. Each industry committee shall take official notice of the facts stated in the economic reports to the extent that they are not refuted at the hearings.

The procedure of industry committees shall be governed by 29 CFR Part 511. As a prerequisite to participation in the hearings, interested persons shall file prehearing statements containing the data specified in 29 CFR 511.8 not later than April 26, 1963.

Signed at Washington, D.C., this 22d day of March 1963.

W. WILLARD WIRTZ,  
Secretary of Labor.

[F.R. Doc. 63-3274; Filed, Mar. 27, 1963;  
8:54 a.m.]

## FEDERAL AVIATION AGENCY

[14 CFR Part 71 [New]]

[Airspace Docket No. 62-AL-21]

### CONTROL ZONE, CONTROL AREA EXTENSION, AND TRANSITION AREA

#### Proposed Alteration, Revocation, and Designation

Pursuant to the authority delegated to me by the Administrator (14 CFR 11.65), notice is hereby given that the Federal Aviation Agency is considering amendments to Part 71 [New] of the Federal Aviation Regulations, the substance of which is stated below.

The following controlled airspace is presently designated in the Gustavus, Alaska, terminal area:

1. The Gustavus control zone is designated within a 5-mile radius of Gustavus Airport (latitude 58°25'35" N., longitude 135°42'50" W.).

2. The Gustavus control area extension is designated within 22 miles southwest and 19 miles northeast of the 145° and 325° True bearings from the Gustavus radio range extending from 16 miles northwest to 48 miles southeast of the radio range.

To implement the provisions of CAR Amendments 60-21/60-29 in the Gustavus terminal area the Federal Aviation Agency has under consideration the following airspace actions:

1. Alter the Gustavus control zone by redesignating it to comprise the area within a 5-mile radius of Gustavus Airport (latitude 58°25'35" N., longitude 135°42'50" W.) and 2 miles on each side of the Gustavus radio range northwest course extending from the 5-mile radius zone to 8 miles northwest of the radio range.

2. Revoke the Gustavus control area extension and designate the Gustavus transition area as that airspace extending upward from 700 feet above the surface within an 8-mile radius of Sisters Island, Alaska, VOR, and that airspace extending upward from 1,200 feet above the surface within 22 miles southwest and 19 miles northeast of the

145° and 325° True bearings from the Gustavus radio range extending from 16 miles northwest to 48 miles southeast of the radio range.

3. The floors of the airways that traverse the transition area proposed herein would automatically coincide with the floor of the transition area.

The actions proposed herein would raise the floor of controlled airspace from 700 feet above the surface beyond the immediate vicinity of the Gustavus Airport to 1,200 feet. Thus, controlled airspace would be released in the outer portions of the terminal area for other uses while retaining protection for the prescribed holding, arrival and departure procedures within the Gustavus terminal area. The controlled airspace southeast of Gustavus extending upward from 700 feet above the surface would provide protection for aircraft executing approach procedures at the Sisters Island VOR prior to proceeding under VFR conditions to Juneau, Alaska. Slight revisions of portions of the prescribed procedures would be effected concurrently with the action proposed herein to minimize the extent of controlled airspace required with the lower floors. These actions are designed to avoid adverse effect upon either aircraft performance or present landing minimums.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Assistant Administrator, Alaskan Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, P.O. Box 440, Anchorage, Alaska. 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 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 A-103, 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 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 March 22, 1963.

CLIFFORD P. BURTON,  
Chief, Airspace Utilization Division.

[F.R. Doc. 63-3225; Filed, Mar. 27, 1963;  
8:46 a.m.]

[14 CFR Part 71 [New]]

[Airspace Docket No. 62-CE-80]

### TRANSITION AREA AND CONTROL AREA EXTENSION

#### Proposed Designation and Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 11.65), notice is hereby given that the Federal Aviation Agency is considering amendments to Part 71 [New] of the Federal Aviation Regulations, the substance of which is stated below.

To implement the provisions of Amendments 60-21 (26 F.R. 570) and 60-29 (27 F.R. 4012) to the Civil Air Regulations, Part 60, Air Traffic Rules in the Centralia terminal area, the Federal Aviation Agency has under consideration the revocation of the Belleville, Ill., control area extension and the designation of a transition area at Centralia, Ill.

The proposed Centralia transition area would be designated to comprise that airspace extending upward from 700 feet above the surface within a 4-mile radius of the Centralia Municipal Airport (latitude 38°30'40" N., longitude 89°05'35" W.), and within 2 miles either side of the Centralia VOR 031° True radial extending from the 4-mile radius area to the VOR; within a 4-mile radius of the Mount Vernon, Ill., Municipal Airport (latitude 38°19'15" N., longitude 88°51'40" W.), and within 2 miles either side of the 044° True bearing from the airport extending from the 4-mile radius area to 8 miles northeast of the airport; and the airspace extending upward from 1,200 feet above the surface bounded by a line beginning at the north boundary of V-446 extending south along longitude 88°35'00" W. to latitude 38°12'00" N. thence west along latitude 38°12'00" N. to, and counterclockwise along, the arc of a 40-mile radius circle centered on Scott AFB, Belleville, Ill. (latitude 38°32'29" N., longitude 89°51'56" W.) to, and clockwise along, the arc of a 13-mile radius circle centered on the Centralia VOR to, and counterclockwise along, the arc of the 40-mile radius circle centered on Scott AFB to the north edge of V-446, thence east along the north boundary of V-446 to the point of the beginning.

The portions of the proposed transition area with a floor of 700 feet above the surface would provide protection for aircraft executing prescribed instrument approach and departure procedures at the Centralia and Mount Vernon Municipal Airports. The portion with a floor of 1,200 feet above the surface would provide protection for aircraft executing prescribed holding procedures, and the higher altitude procedure turn portions of the instrument arrival procedures prescribed at the aforementioned airports. Airspace protection for aircraft executing instrument procedures in the Centralia terminal area is currently provided by the Belleville, Ill., control area extension which is designated within a 40-mile radius of Scott AFB (latitude 38°32'32" N., longitude 89°51'30" W.). The designation of the transition area proposed herein, together with the air-

space actions proposed in Airspace Docket No. 62-CE-68, would permit revocation of the Belleville, Ill., control area extension. The floors of the airways which traverse the transition area proposed herein would automatically coincide with the floor of the transition area.

Certain minor revisions to prescribed instrument procedures would accompany the actions proposed herein, but operational complexities would not be introduced nor would aircraft performance characteristics or established landing minimums be adversely affected. Specifics relating to the changes to procedures and minimum flight rule altitudes that would be required may be examined by contacting the Chief, Airspace Utilization Branch, Air Traffic Division, Central Region, Federal Aviation Agency, 4825 Troost Avenue, Kansas City 10, Mo.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Assistant Administrator, Central Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 4825 Troost Avenue, Kansas City 10, Mo. 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 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 A-103, 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 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 March 22, 1963.

CLIFFORD P. BURTON,  
Chief, Airspace Utilization Division.

[F.R. Doc. 63-3226; Filed, Mar. 27, 1963;  
8:46 a.m.]

### [ 14 CFR Part 71 [New] ]

[Airspace Docket No. 63-SW-7]

## CONTROL ZONE AND TRANSITION AREA

### Proposed Alteration and Redesignation

Pursuant to the authority delegated to me by the Administrator (14 CFR 11.65),

notice is hereby given that the Federal Aviation Agency is considering amendments to Part 71 [New] of the Federal Aviation Regulations, the substance of which is stated below.

The following controlled airspace is designated in the Las Vegas, N. Mex., terminal area:

1. The Las Vegas control zone is designated within a 5-mile radius of the Las Vegas Municipal Airport.

2. The Las Vegas transition area is designated as that airspace extending upward from 1,200 feet above the surface within 12 miles southeast and 8 miles northwest of the Las Vegas VORTAC 035° and 215° True radials extending from 20 miles northeast to 14 miles southwest of the VORTAC, excluding the airspace within Federal airways.

To implement the provisions of CAR Amendments 60-21/60-29 in the Las Vegas terminal area, the Federal Aviation Agency has under consideration the following airspace actions:

1. Redesignate the Las Vegas control zone to comprise that airspace within a 5-mile radius of the Las Vegas Municipal Airport (latitude 35°39'25" N., longitude 105°08'35" W.) and within 2 miles on each side of the Las Vegas VORTAC 215° True radial extending from the 5-mile radius zone to 8 miles southwest of the VORTAC.

2. Redesignate the Las Vegas transition area to extend upward from 700 feet above the surface within an 8-mile radius of the Las Vegas Municipal Airport; within 2 miles on each side of the Las Vegas radio range southwest course extending from the 8-mile radius area to 8 miles southwest of the radio range; and that airspace extending upward from 1,200 feet above the surface within 10 miles southeast and 7 miles northwest of the Las Vegas VORTAC 035° and 215° True radials extending from 23 miles northeast to 14 miles southwest of the VORTAC.

3. The floors of the airways that traverse the proposed transition area would automatically coincide with the floor of the transition area.

The proposed alteration of the Las Vegas control zone and transition area would provide protection for aircraft executing prescribed holding, arrival, departure and missed approach procedures at the Las Vegas Municipal Airport.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Assistant Administrator, Southwest Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, P.O. Box 1689, Fort Worth 1, Tex. 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 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 A-103, 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 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 March 21, 1963.

CLIFFORD P. BURTON,  
Chief, Airspace Utilization Division.

[F.R. Doc. 63-3224; Filed, Mar. 27, 1963;  
8:46 a.m.]

### [ 14 CFR Part 71 [New] ]

[Airspace Docket No. 63-SW-14]

## CONTROL ZONE, TRANSITION AREA AND CONTROL AREA EXTENSION

### Proposed Alteration, Designation, and Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 11.65), notice is hereby given that the Federal Aviation Agency is considering amendments to Part 71 [New] of the Federal Aviation Regulations, the substance of which is stated below.

The following controlled airspace is designated in the Tucumcari, N. Mex., terminal area:

1. The Tucumcari control zone is designated within a 5-mile radius of Tucumcari Municipal Airport (latitude 35°10'50" N., longitude 103°30'15" W.).

2. The Tucumcari control area extension is designated within 11 miles north and 8 miles south of the Tucumcari VOR 267° and 087° True radials extending from 7 miles east to 24 miles west of the VOR.

To implement the provisions of CAR Amendments 60-21/60-29 in the Tucumcari terminal area, the Federal Aviation Agency has under consideration the following airspace actions:

1. Redesignate the Tucumcari control zone to comprise that airspace within a 5-mile radius of the Tucumcari Municipal Airport (latitude 35°10'50" N., longitude 103°36'15" W.); within 2 miles on each side of the Tucumcari VOR 033° True radial extending from the 5-mile radius zone to 8 miles northeast of the VOR; and within 2 miles on each side of the Tucumcari VOR 078° True radial extending from the 5-mile radius zone to 8 miles east of the VOR.

2. Revoke the Tucumcari control area extension and designate the Tucumcari transition area. The proposed transition area would extend upward from 700 feet above the surface within a 7-mile radius of the Tucumcari Municipal Airport; and would include that airspace extending upward from 1,200 feet above the surface within 10 miles north and 7

miles south of the Tucumcari VOR 267° and 087° True radials extending from 23 miles west to 12 miles east of the VOR; and within 8 miles northwest and 5 miles southeast of the Tucumcari VOR 033° True radial extending from the VOR to 12 miles northeast.

The proposed alteration of the Tucumcari control zone would provide protection for aircraft executing prescribed arrival and departure procedures at the Tucumcari Municipal Airport. The proposed transition area would raise the floor of controlled airspace beyond a 7-mile radius of the Tucumcari Municipal Airport from 700 feet to 1,200 feet and, as a result, would make such airspace available for other uses, yet sufficient controlled airspace would be retained to provide adequate protection to aircraft executing prescribed holding, arrival and departure procedures within the Tucumcari terminal area. The additional controlled airspace east and northeast of the Tucumcari VOR would provide protection for aircraft executing prescribed holding and missed approach procedures. Certain minor revisions to prescribed instrument procedures would be effected in conjunction with the actions proposed

herein, but operational complexity would not be increased nor would aircraft performance or present landing minimums be adversely affected. The floors of the airways that traverse the transition area proposed herein would automatically coincide with the floor of the transition area.

Specific and detailed changes to procedures and minimum instrument flight rules altitudes that would be required may be examined by contacting the Chief, Airspace Utilization Branch, Air Traffic Division, Southwest Region, P.O. Box 1689, Fort Worth 1, Tex.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Assistant Administrator, Southwest Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, P.O. Box 1689, Fort Worth 1, Tex. 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 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 A-103, 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 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 March 21, 1963.

CLIFFORD P. BURTON,  
Chief, Airspace Utilization Division.

[F.R. Doc. 63-3223; Filed, Mar. 27, 1963;  
8:45 a.m.]

# Notices

## DEPARTMENT OF THE INTERIOR

Bureau of Land Management

MONTANA

### Notice of Proposed Withdrawal and Reservation of Lands

MARCH 20, 1963.

The United States Department of Agriculture has filed an application, Serial Number Montana 056834, for the withdrawal of the lands described below, from administration under the Taylor Grazing Act. This land, conveyed to the United States under a private exchange, has not been opened to entry under the public land laws. Minerals in the lands were not reconveyed.

The applicant desires that the land be added to the Gallatin National Forest to promote the efficient management of lands and national resource conservation. The land is within the exterior boundaries of the Gallatin National Forest and when added to that forest will be open to the forms of application permitted on national forest lands.

For a period of thirty days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 1245 North 29th Street, Billings, Montana.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

PRINCIPAL MERIDIAN, MONTANA

T. 4 S., R. 2 E.,  
All of Sections 29, 31, and 33.

The area described contains 1917.32 acres.

R. PAUL RIGTRUP,  
Manager, Land Office.

[F.R. Doc. 63-3233; Filed, Mar. 27, 1963;  
8:47 a.m.]

MONTANA

### Notice of Proposed Withdrawal and Reservation of Lands

MARCH 20, 1963.

The United States Department of Agriculture has filed an application, Serial Number Montana 056835 for the withdrawal of the lands described below. These lands together with minerals were conveyed to the United States pursuant to section 8 of the Taylor Grazing Act and have not been opened to entry under the public land laws.

The applicant desires that the land be added to the Flathead National Forest

to promote the efficient management of lands and national resource conservation. The land is within the exterior boundaries of the Flathead National Forest and when added to that forest the surface of said lands will be open to the forms of application permitted on national forest lands.

For a period of thirty days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 1245 North 29th Street, Billings, Montana.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

PRINCIPAL MERIDIAN, MONTANA

T. 27 N., R. 23 W.,  
Sec. 6, Lots 7, 8, S $\frac{1}{2}$ NE $\frac{1}{4}$ .  
T. 27 N., R. 24 W.,  
Sec. 2, Lots 1, 2, 3, and 4.

The areas described aggregate 282.52 acres.

R. PAUL RIGTRUP,  
Manager, Land Office.

[F.R. Doc. 63-3234; Filed, Mar. 27, 1963;  
8:47 a.m.]

[Wyoming 0244107]

WYOMING

### Order Providing for Opening of Public Lands

MARCH 22, 1963.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934 (48 Stat. 1269) as amended by the Act of June 26, 1936 (49 Stat. 1976; 43 U.S.C. 315g), as amended, the following lands have been conveyed to the United States:

SIXTH PRINCIPAL MERIDIAN

T. 13 N., R. 115 W.,  
Sec. 2: W $\frac{1}{2}$ SW $\frac{1}{4}$ ;  
Sec. 3: E $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
Sec. 10: E $\frac{1}{2}$ NE $\frac{1}{4}$ ;  
Sec. 11: W $\frac{1}{2}$ NW $\frac{1}{4}$ ;  
Sec. 26: E $\frac{1}{2}$ SW $\frac{1}{4}$ .

Containing 400 acres.

2. The lands are located 12 to 15 miles south of Lyman in Uinta County, Wyoming, in a vicinity which is dependent economically on the livestock industry. Topographically, the lands are level to gently undulating, supporting sagebrush-grass cover of fair to good livestock carrying capacity. The only water present is a small perennial stream, Cottonwood Creek, adjacent to the Wasatch National Forest. The highest and best use of this semiarid land is grazing.

3. Pursuant to the authority delegated to me by section 1.5(b), Part I, Bureau Order No. 684, dated August 28, 1961 (26 F.R. 8216), of the Associate Director, Bureau of Land Management, the lands described in paragraph 1 hereof will be, at 10 a.m. on May 1, 1963, restored to the operation of the public land laws and are opened to filing of applications thereunder subject to any valid existing rights, the provisions of any existing withdrawals, and the requirements of applicable laws, rules and regulations.

4. In the exchange referred to in paragraph 1, the United States did not acquire any mineral rights to any of the described land.

5. Inquiries concerning the land should be addressed to the Manager, Land Office, Bureau of Land Management, P.O. Box 929, Cheyenne, Wyoming.

ED PIERSON,  
State Director.

[F.R. Doc. 63-3243; Filed, Mar. 27, 1963;  
8:48 a.m.]

MONTANA

### Notice of Proposed Withdrawal and Reservation of Lands

MARCH 21, 1963.

The United States Department of Agriculture has filed an application, Serial Number Montana 056836 for the withdrawal of the lands described below, from all forms of appropriation under the public land laws, except the mineral laws.

The applicant desires that the land be added to the Lewis and Clark National Forest to promote the efficient management of lands and national resource conservation. The land adjoins the Lewis and Clark National Forest and when added to that forest will be open to the forms of application permitted on national forest lands.

For a period of thirty days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 1245 North 29th Street, Billings, Montana.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

PRINCIPAL MERIDIAN, MONTANA.

T. 11 N., R. 19 E.,  
Sec. 34, NW $\frac{1}{4}$ NW $\frac{1}{4}$ .

The area described contains 40 acres.

R. PAUL RIGTRUP,  
Manager, Land Office.

[F.R. Doc. 63-3244; Filed, Mar. 27, 1963;  
8:49 a.m.]

# FEDERAL COMMUNICATIONS COMMISSION

[List No. 47; FCC 63-278]

## STANDARD BROADCAST APPLICATIONS READY AND AVAILABLE FOR PROCESSING

MARCH 22, 1963.

Notice is hereby given, pursuant to § 1.354(c) of the Commission rules, that on April 30, 1963, the standard broadcast applications listed below will be considered as ready and available for processing. Pursuant to §§ 1.106(b)(1) and 1.361(c) of the Commission rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on April 29, 1963, which involves a conflict necessitating a hearing with an application on this list, must comply with the interim criteria governing acceptance of standard broadcast applications set forth in the note to § 1.354 of the Commission rules and be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C., by whichever date is earlier: (a) The close of business on April 29, 1963, or (b) the earlier effective cut-off date which a listed application or any other conflicting application may have by virtue of conflicts necessitating a hearing with applications appearing on previous lists.

The attention of any party in interest desiring to file pleadings concerning any pending standard broadcast application pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.359(i) of the Commission rules for provisions governing the time of filing and other requirements relating to such pleadings.

Adopted: March 20, 1963.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,  
*Acting Secretary.*

*Applications from the top of the processing line*

- BP-15511 KLOO, Corvallis, Oreg.  
Willamette Valley Radio, Inc.  
Has: 1340 kc, 250 w, U.  
Req: 1340 kc, 250 w, 1 kw-LS, U.
- BP-15512 New, Lenoir City, Tenn.  
Alvin B. Corum, Jr.  
Req: 1360 kc, 1 kw, Day.
- BP-15513 WGTV, Georgetown, S.C.  
Georgetown Broadcasting Co.  
Has: 1400 kc, 250 w, U.  
Req: 1400 kc, 250 w, 1 kw-LS, U.
- BP-15514 KUXL, Golden Valley, Minn.  
C. J. Lanphier, Inc.  
Has: 1570 kc, 500 w, Day.  
Req: 1570 kc, 1 kw, Day.
- BP-15515 New, Moss Point, Miss.  
Coastal Cities Broadcasting Co., Inc.  
Req: 1460 kc, 1 kw, DA, Day.
- BP-15517 New, Hickory, N.C.  
Piedmont Broadcasting Co., Inc.  
Req: 1000 kc, 1 kw, Day.
- BP-15518 WGAT, Gate City, Va.  
Rogers-McGuire Broadcasting Corp.  
Has: 1050 kc, 250 w, U.  
Req: 1050 kc, 1 kw, U.

- BP-15519 WVCG, Coral Gables, Fla.  
Peninsular Broadcasting Corp.  
Has: 1070 kc, 1 kw, Day.  
Req: 1080 kc, 500 w, 10 kw-LS, DA-2, U.
- BP-15520 New, Mt. Vernon, Ill.  
King City Broadcasting Co., Inc.  
Req: 1480 kc, 500 w, DA, Day.
- BP-15521 New, Attalla, Ala.  
Metropolitan Gadsden Broadcasting Corp.  
Req: 1240 kc, 250 w, U.
- BP-15522 WHAI, Greenfield, Mass.  
Haigis Broadcasting Corp.  
Has: 1240 kc, 250 w, U.  
Req: 1240 kc, 250 w, 1 kw-LS, U.
- BP-15523 New, Tucumcari, N. Mex.  
Norman W. Hennig.  
Req: 1330 kc, 1 kw, Day.
- BP-15524 New, Cocoa, Fla.  
Blue Crystal Broadcasting Corp.  
Req: 1510 kc, 250 w, Day.
- BP-15525 WDRG, Hartford, Conn.  
Buckley-Jaeger Broadcasting Corp. of Connecticut.  
Has: 1360 kc, 5 kw, DA-1, U.  
Req: 1360 kc, 5 kw, DA-N, U.
- BP-15526 New, Carlisle, Pa.  
James B. Holder.  
Req: 1000 kc, 1 kw, Day.
- BP-15528 New, Corinth, Miss.  
The Progressive Broadcasting Co.  
Req: 1350 kc, 1 kw, Day.
- BP-15529 KLMR, Lamar, Colo.  
KLMR, Inc.  
Has: 920 kc, 500 w, 1 kw-LS, DA-N, U.  
Req: 920 kc, 500 w, 5 kw-LS, DA-N, U.
- BP-15530 New, Shallotte, N.C.  
Shallotte Broadcasting Co.  
Req: 1410 kc, 500 w, Day.
- BP-15531 KROC, Rochester, Minn.  
Southern Minnesota Broadcasting Co.  
Has: 1340 kc, 250 w, 1 kw-LS, DA-D, U.  
Req: 1340 kc, 250 w, 1 kw-LS, U.
- BP-15532 New, Cadiz, Ky.  
Barkley Lake Broadcasting Co., Inc.  
Req: 1110 kc, 1 kw, Day.
- BP-15533 New, Slidell, La.  
Bill Garrett Chevrolet, Inc.  
Req: 1560 kc, 1 kw, Day.
- BP-15540 WQIK, Jacksonville, Fla.  
Rowland Broadcasting Co., Inc.  
Has: 1280 kc, 5 kw, Day.  
Req: 1280 kc, 5 kw, DA-N, U.
- BP-15541 KBUC, Corona, Calif.  
Radion Broadcasting, Inc.  
Has: 1370 kc, 500 w, 1 kw-LS, DA-N, U.  
Req: 1370 kc, 500 w, 5 kw-LS, DA-2, U.
- BP-15542 WNEL, Caguas, P.R.  
Atlantic Broadcasting Corp.  
Has: 1430 kc, 500 w, 1 kw-LS, U.  
Req: 1430 kc, 500 w, 5 kw-LS, U.
- BP-15543 KQEN, Roseburg, Oreg.  
Pacific Western Broadcasters, Inc.  
Has: 1240 kc, 250 w, U.  
Req: 1240 kc, 250 w, 1 kw-LS, U.
- BP-15550 KNOW, Austin, Tex.  
Pioneer Broadcasting Co.  
Has: 1490 kc, 250 w, U.  
Req: 1490 kc, 250 w, 1 kw-LS, U.
- BP-15556 WROB, West Point, Miss.  
Bob McRaney Enterprises, Inc.  
Has: 1450 kc, 250 w, U.  
Req: 1450 kc, 250 w, 1 kw-LS, U.
- BP-15566 KOKL, Okmulgee, Okla.  
Okmulgee Broadcasting Corp.  
Has: 1240 kc, 250 w, U.  
Req: 1240 kc, 250 w, 1 kw-LS, U.
- BP-15574 WHAR, Clarksburg, W. Va.  
Harrison Corp.  
Has: 1340 kc, 250 w, U.  
Req: 1340 kc, 250 w, 1 kw-LS, U.
- BP-15577 WHHV, Hillsville, Va.  
Carroll Broadcasting Co.  
Has: 1400 kc, 250 w, U.  
Req: 1400 kc, 250 w, 1 kw-LS, U.
- BP-15579 WSVN, Valdese, N.C.  
Burke County Broadcasting Co.  
Has: 1490 kc, 250 w, U.  
Req: 1490 kc, 250 w, 1 kw-LS, U.
- BP-15581 KTRF, Thief River Falls, Minn.  
KTRF Radio Corp.  
Has: 1230 kc, 250 w, U.  
Req: 1230 kc, 250 w, 1 kw-LS, U.
- BP-15582 WEBQ, Harrisburg, Ill.  
First Trust Association  
Has: 1240 kc, 250 w, U.  
Req: 1240 kc, 250 w, 1 kw-LS, U.
- BP-15584 WRKT, Cocoa Beach, Fla.  
C. Sweet Smith, Jr.  
Has: 1300 kc, 500 w, U.  
Req: 1300 kc, 1 kw, 5 kw-LS, DA-2, U.
- BP-15603 KLWW, Cedar Rapids, Iowa.  
Black Hawk Broadcasting Co.  
Has: 1450 kc, 250 w, U.  
Req: 1450 kc, 250 w, 1 kw-LS, U.
- BP-15611 KOWL, Bijou, Calif.  
Tahoe Broadcasters, Inc.  
Has: 1490 kc, 250 w, U.  
Req: 1490 kc, 250 w, 1 kw-LS, U.
- BP-15617 KFTM, Fort Morgan, Colo.  
Morgan County Broadcasting Co.  
Has: 1400 kc, 250 w, U.  
Req: 1400 kc, 250 w, 1 kw-LS, U.
- BP-15627 KPGE, Page, Ariz.  
Wendell W. Motter.  
Has: 1340 kc, 250 w, U.  
Req: 1340 kc, 250 w, 1 kw-LS, U.
- BP-15628 KVRH, Salida, Colo.  
William J. Murphy.  
Has: 1340 kc, 250 w, S.H.  
Req: 1340 kc, 250 w, 1 kw-LS, S.H.
- BP-15650 WCBY, Cheboygan, Mich.  
Straits Broadcasting Co.  
Has: 1240 kc, 250 w, U.  
Req: 1240 kc, 250 w, 1 kw-LS, U.
- BP-15651 KWKC, Abilene, Tex.  
Citizens Broadcasting Co.  
Has: 1340 kc, 250 w, U.  
Req: 1340 kc, 250 w, 1 kw-LS, U.
- BMP-10504 WSDR, Sterling, Ill.  
Blackhawk Broadcasting Co.  
Has Lic: 1240 kc, 100 w, U.  
Has CP: 1240 kc, 100 w, 500 w-LS, U.  
Req MP: 1240 kc, 250 w, 500 w-LS, U.
- BP-15652 KKIT, Taos, N. Mex.  
Art Capitol Broadcasting Co.  
Has: 1340 kc, 250 w, U.  
Req: 1340 kc, 250 w, 1 kw-LS, U.
- BP-15659 KHAS, Hastings, Nebr.  
The Nebraska Broadcasting Co.  
Has: 1230 kc, 250 w, U.  
Req: 1230 kc, 250 w, 1 kw-LS, U.
- BP-15680 KTBC, Austin, Tex.  
The LBJ Co.  
Has: 590 kc, 1 kw, 5 kw-LS, DA-N, U.  
Req: Change antenna-transmitter location and DA system.
- BP-15682 WCLD, Cleveland, Miss.  
Radio Cleveland, Inc.  
Has: 1490 kc, 250 w, U.  
Req: 1490 kc, 250 w, 1 kw-LS, U.
- BP-15688 New, Safford, Ariz.  
Carleton W. Morris.  
Req: 1480 kc, 1 kw, U.
- BP-15689 New, Winslow, Ariz.  
Carleton W. Morris.  
Req: 1010 kc, 500 w, 1 kw-LS, DA-2, U.
- BP-15690 KDGO, Durango, Colo.  
Basin Broadcasting Co.  
Has: 1240 kc, 250 w, U.  
Req: 1240 kc, 250 w, 1 kw-LS, U.
- BP-15713 KCOG, Centerville, Iowa.  
Hope Co., Inc.  
Has: 1400 kc, 100 w, U.  
Req: 1400 kc, 100 w, 500 w-LS, U.

[F.R. Doc. 63-3272; Filed, Mar. 27, 1963; 8:54 a.m.]

NOTICES

[List CTV-1]

CANADIAN TELEVISION ASSIGNMENTS  
List of Changes, Additions, and Corrections

MARCH 18, 1963.

List of changes, additions, and corrections in Canadian television assignments compiled from details supplied by the Department of Transport of Canada, pursuant to section 3 of the Canadian-U.S. Television Agreement (TIAS-2594) on or before March 11, 1963. This list is supplementary to the recapitulative list issued by the Commission on May 21, 1963.

		Effective radiated power (kw)	Direc-tivity	Antenna			Offset
				Height above ground	Height above msl	Height above terrain	
Channel 2 (54-60 mc)							
CHRS-TV-2	Radio Saguenay Ltée. (new assignment)	Chicoutimi, Quebec N. 71°02'34", W. 48°26'09"	0.04 V 0.02 A	} Om.	Feet 60	Feet 335	Feet 60 (+)
Channel 3 (60-66 mc)							
CFCK-TV	Skeena Broadcasters, Ltd. (new assignment)	Terrace, British Columbia N. 54°31'04", W. 128°28'15"	4.10 V 2.10 A	} Om.	70	3,390	1,783 (-)
CBWFT	Canadian B/Cing Corp.	Winnipeg, Manitoba N. 49°46'15", W. 97°30'35"	59.00 V 35.20 A		} Om.	923	1,708
CFCL-TV-1	Radiocon Ltd., J. Conrad Lavigne Enterprises, Ltd., Conblain Limited and Conren Limited (new assignment)	Kapuskasing, Ontario N. 49°22'23", W. 82°24'09"	0.088 V 0.044 A	} D.A.		195	945
CBFT-2	Canadian B/Cing Corp.	Mont Laurier, Quebec N. 46°33'37", W. 75°42'20"	5.54 V 2.80 A		} D.A.	400	1,398
CFQC-TV-1	A. A. Murphy and Sons, Ltd. (new assignment)	Stranraer, Saskatchewan N. 51°40'45", W. 108°30'35"	6.80 V 3.60 A	} D.A.		520	3,160
Channel 4 (66-72 mc)							
CHSJ-TV	New Brunswick B/Cing, Co., Ltd.	St. John, New Brunswick N. 45°28'40", W. 66°13'55"	100.00 V 50.00 A	} Om.	82	1,542	1,200 (+)
Channel 6 (82-88 mc)							
CFTK-TV-1	Skeena Broadcasters, Ltd. (new assignment)	Prince Rupert, British Columbia N. 54°17'05", W. 130°18'50"	0.48 V 0.25 A	} Om.	70	2,390	1,870 (+)
CBWT	Canadian B/Cing Corp.	Winnipeg, Manitoba N. 49°46'15", W. 97°30'35"	100.00 V 50.00 A		} Om.	1,020	1,805
CBLT	do	Toronto, Ontario N. 43°43'50", W. 79°19'39"	100.00 V 50.00 A	} Om.		966	1,401
CJPM-TV	John Murdock representing a company to be incorporated (new assignment)	Chicoutimi, Quebec N. 48°24'27", W. 71°05'08"	61.00 V 36.50 A		} D.A.	190	740
CKCK-TV-2	Transcanada Communications, Ltd. (new assignment)	Willow Bunch, Saskatchewan N. 49°20'58", W. 105°38'08"	9.00 V 4.50 A	} D.A.		636	3,486
CKOS-TV-3	Yorktown Television Co., Ltd.	Wynyard, Saskatchewan N. 51°42'30", W. 104°17'55"	0.67 V 0.34 A		} Dm.	514	2,539
Channel 7 (174-180 mc)							
CKBI-TV-2	Central B/Cings Co., Ltd. (new assignment)	North Battleford Saskatchewan N. 52°49'44", W. 108°19'47"	0.315 V 0.167 A	} D.A.	392	2,167	444 No.
Channel 8 (180-186 mc)							
CKOS-TV-1	Yorkton Television Co., Ltd.	Dauphin, Manitoba N. 51°28'17", W. 100°43'16"	23.00 V 11.60 A	} D.A.	540	3,267	1,076 No.
CBWAT	Canadian B/Cing Corp.	Kenora, Ontario N. 49°46'13", W. 94°30'15"	9.30 V 5.50 A		} D.A.	185	1,245
Channel 9 (186-192 mc)							
CKX-TV-2	Western Manitoba Broadcasters Ltd. (new assignment)	Melita, Manitoba N. 49°16'50", W. 100°59'12"	0.188 V 0.094 A	} Om.	211	1,686	212 (+)
CFTO-CFTO-TV	Baton-Aldred-Rogers B/Cing Ltd.	Toronto, Ontario N. 43°46'48", W. 79°15'34"	325.00 V 162.00 A		} Om.	871	1,421
CKRS-TV-1	Radio Saguenay Ltée. (new assignment)	Port Alfred, Quebec N. 48°19'20", W. 70°49'48"	0.019 V 0.0095 A	} D.A.		80	605
CHAB-TV-1	CHAB, Ltd. (new assignment)	Regina, Saskatchewan N. 50°28'58", W. 104°30'20"	140.00 V 75.00 A		} D.A.	697.5	2,654
Channel 10 (192-198 mc)							
CKBI-TV-1	Central Broadcasting Co., Ltd. (new assignment)	Alticane, Saskatchewan N. 52°51'30", W. 107°40'00"	0.34 V 0.17 A	} D.A.	162.5	2,662.5	590 (+)
Channel 11 (198-204 mc)							
CKX-TV-1	Western Manitoba Broadcasters, Ltd. (new assignment)	Foxwarren, Manitoba N. 50°31'14", W. 101°04'23"	6.64 V 3.48 A	} Om.	261	2,031	270 No.
Channel 12 (204-210 mc)							
CHEX-TV	Kawartha B/Cing Co., Ltd.	Peterborough, Ontario N. 44°19'45", W. 78°18'03"	139.00 V 83.4 A	} D.A.	753	1,553	772 (+)
CBFST-1	Canadian B/Cing Corp. (new assignment)	Timiskaming, Ontario N. 46°38'28", W. 79°04'24"	7.08 V 3.54 A		} D.A.	525	1,825
CKCK-TV-1	Transcanada Communications, Ltd. (new assignment)	Colgate, Saskatchewan N. 49°26'16", W. 103°47'53"	15.10 V 7.50 A	} D.A.		538	2,463
Channel 13 (210-216 mc)							
CKTM-TV	Television St. Maurice, Inc.	Three Rivers, Quebec N. 46°29'27", W. 72°39'00"	162.50 V 81.20 A	} D.A.	1,040	1,615	1,323 (-)

FEDERAL COMMUNICATIONS COMMISSION,  
BEN F. WAPLE,  
Acting Secretary.

[SEAL]

**DEPARTMENT OF THE TREASURY**

Office of the Secretary

[Dept. Circ. 570, 1962 Rev. Supp. No. 24]

**GUARANTEE INSURANCE CO.**

**Surety Company Acceptable on Federal Bonds**

MARCH 25, 1963.

A Certificate of Authority has been issued by the Secretary of the Treasury to the following company, under the Act of Congress approved July 30, 1947, 6 U.S.C., secs. 6-13, as an acceptable surety on Federal bonds.

An underwriting limitation of \$493,000.00 has been established for the company. Further details as to the extent and localities with respect to which the company is acceptable as surety on Federal bonds will appear in the next revision of Department Circular 570, to be issued as of June 1, 1963. Copies of the circular, when issued, may be obtained from the Treasury Department, Bureau of Accounts, Surety Bonds Branch, Washington 25, D.C.

*State in Which Incorporated, Name of Company and Location of Principal Executive Office*

CALIFORNIA

Guarantee Insurance Co., New York, N.Y.

[SEAL] JOHN K. CARLOCK,  
Fiscal Assistant Secretary.

[F.R. Doc. 63-3275; Filed, Mar. 27, 1963; 8:54 a.m.]

[Dept. Circ. 570, 1962 Rev. Supp. No. 25]

**MANHATTAN FIRE AND MARINE INSURANCE CO.**

**Surety Company Acceptable on Federal Bonds**

MARCH 25, 1963.

A Certificate of Authority has been issued by the Secretary of the Treasury to the following company under the Act of Congress approved July 30, 1947, 6 U.S.C., secs. 6-13, as an acceptable surety on Federal bonds.

An underwriting limitation of \$1,471,000.00 has been established for the company. Further details as to the extent and localities with respect to which the company is acceptable as surety on Federal bonds will appear in the text revision of Department Circular 570, to be issued as of June 1, 1963. Copies of the circular, when issued, may be obtained from the Treasury Department, Bureau of Accounts, Surety Bonds Branch, Washington 25, D.C.

*State in Which Incorporated, Name of Company and Location of principal Executive Office*

NEW YORK

The Manhattan Fire and Marine Insurance Co., New York, N.Y.

[SEAL] JOHN K. CARLOCK,  
Fiscal Assistant Secretary.

[F.R. Doc. 63-3276; Filed, Mar. 27, 1963; 8:54 a.m.]

No. 61—6

**DEPARTMENT OF AGRICULTURE**

Agricultural Marketing Service

**DEPARTMENT OF AGRICULTURE OF STATE OF NEVADA**

**Authorization for Inspection of Livestock**

The Department of Agriculture of the State of Nevada, pursuant to the provisions of section 317 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 217a), has filed a written application with the Secretary of Agriculture of the United States for authority to act as an official livestock inspection agency with respect to livestock originating in, or shipped from, the State of Nevada. It is found that the applicant is a Department of the State of Nevada; branding or marking of livestock as a means of establishing ownership prevails by custom or statute in such State; no other application of a similar nature has been filed with the United States Department of Agriculture; and that it is necessary to authorize the Department of Agriculture of the State of Nevada to charge and collect a reasonable and nondiscriminatory fee at posted stockyards which are subject to the provisions of the Act for the inspection of brands, marks, and other identifying characteristics of livestock originating in, or shipped from, the State of Nevada for the purpose of determining the ownership of such livestock.

Therefore, after consideration of such application and pursuant to the provisions of section 317 of the Packers and Stockyards Act, 1921, as amended, the following authorization is granted to become effective upon publication in the FEDERAL REGISTER:

*Authorization.* The Department of Agriculture of the State of Nevada is hereby authorized with respect to livestock originating in or shipped from the State of Nevada, to charge and collect, at those stockyards posted under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), at which the said Department of Agriculture of the State of Nevada may register as a market agency to perform such inspection, reasonable and non-discriminatory fees for the inspection of brands, marks and other identifying characteristics of livestock for the purpose of determining the ownership of such livestock. Such charges as are authorized to be made under this authority shall be collected by the market agency or person receiving and disbursing the funds received from the sale of livestock with respect to the inspection of which such charge is made, and shall be paid by it to said Department of Agriculture of the State of Nevada. Such inspection charges and collection of fees shall be subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 217a), and the regulations issued thereunder.

This authorization is issued in lieu of an authorization for the inspection

of livestock heretofore issued to the Nevada State Cattle Association. Officials of the Department of Agriculture of the State of Nevada and the Nevada State Cattle Association have informed the United States Department of Agriculture that the Department of Agriculture of the State of Nevada is the proper agency to perform brand inspections with respect to Nevada livestock and are in agreement that the authorization set forth above should be issued.

Done at Washington, D.C., this 19th day of March 1963.

DONALD A. CAMPBELL,  
Director, Packers and Stockyards Division, Agricultural Marketing Service.

[F.R. Doc. 63-3239; Filed, Mar. 27, 1963; 8:48 a.m.]

**DEPARTMENT OF JUSTICE**

Office of Alien Property

**PRZEDSTAWICIELSTWO WYDAWNICTW**

**Notice of Intention To Return Vested Property**

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., Property, and Location*

Przedstawicielstwo Wydawnictw, Polskich (PWP), Hipoteczna 2, Warsaw, Poland. \$16,512.23 in the Treasury of the United States. Claim No. 5736. Vesting Order No. 4033.

Executed at Washington, D.C., on March 21, 1963.

For the Attorney General.

[SEAL] PAUL V. MYRON,  
Deputy Director,  
Office of Alien Property.

[F.R. Doc. 63-3238; Filed, Mar. 27, 1963; 8:47 a.m.]

**DEPARTMENT OF COMMERCE**

Maritime Administration

**CHIEF OF OFFICE OF GOVERNMENT AID**

**Redelegation of Authorities**

SECTION 1. *Redelegation of authorities.* 1.01 Department Order No. 117 and other Department Orders and issuances on specific matters, establish the authority of the Maritime Administrator and give him the authority to redelegate such authorities and to prescribe necessary limitations, restrictions, and conditions on the exercise of such authority.

1.02 The authorities set forth in section 2 of this order are redelegated by the Maritime Administrator to the Chief, Office of Government Aid.

1.03 The Chief, Office of Government Aid may, in his discretion, redelegate his authorities to subordinate personnel of his office, such redelegations to be issued in accordance with Administrator's Order No. 151. The Chief, Office of Government Aid, retains the full responsibility for actions taken by his subordinates under any authority he may have redelegated to them.

SEC. 2. *Specific authorities redelegated to the Chief, Office of Government Aid.*  
2.01 Authority to approve or disapprove requests from subsidized operators for permission under the operating-differential subsidy agreements to make the following types of voyages, subject to the limitations set forth in subsection 2.01 3 of this order:

1. Subsidized voyages:

(1) Voyages on the outward leg of which is carried a full cargo of any bulk commodity, subject to the provisions of Article II-38 of the Operating-Differential Subsidy Agreement.

(2) Voyages on which the operator omits calls at a port(s) or area(s) designated in its operating-differential subsidy agreement.

(3) Voyages on which the operator calls at a port(s) not designated in his operating-differential subsidy agreement, provided such deviation(s) will not adversely affect thirdparty interests under section 605(c) of the Act, and provided further, that the total excess time (steaming and port time less 3½ days) required by the total approved deviations on this voyage will be disallowed for the payment of subsidy, except the time lost or consumed by the vessel that is determined to be time that would have been lost or consumed even had there been no deviation.

(4) Voyages in one subsidized service by a ship assigned by contract to another subsidized service of the same operator where the operating-differential subsidy agreement does not authorize such transfer without prior approval, provided, that upon completion of the authorized voyage(s) the ship shall reenter subsidized operations in the service to which assigned by the subsidy agreement except in those cases where the ship is placed in lay-up or is returned to lay-up upon the termination of the approved voyage(s), provided further, that the voyage shall be subject to an adjustment in subsidy payments due to a difference, if any, in the subsidy rates applicable to the subsidized service in which the ship was temporarily operated.

(5) Voyages on which it is necessary to utilize alternate ports within a reasonable geographical range of the ports authorized in the subsidy agreement.

2. Nonsubsidized voyages:

(1) Voyages within the maximum or voyages required to meet the minimum sailings specified in the operating-differential subsidy agreement with any ship not listed in the agreement but owned by or chartered to the subsidized operator.

(2) Voyages in excess of the maximum sailings specified in the operating-differential subsidy agreement as to a specific service.

(3) Voyages for which an application has been filed pursuant to General Order 80 with any ship owned or chartered by a subsidized operator or related company or with any ship owned by a subsidized operator or related company and chartered to others and employed as follows:

(a) Under charter to the Military Sea Transportation Service.

(b) In a service on which the charterer has maintained a regularly established service with privately owned ships for not less than six months at not less than a monthly frequency with no major deviation from the previously established sailing pattern. Further, the charterer must adhere to the policy of the Maritime Subsidy Board with respect to established applicable Conference rates as outlined in Circular Letter No. 3-62 dated February 2, 1962, addressed to all subsidized operators.

(c) In competition with any other U.S.-flag operator, in accordance with Article II-16 of the Operating-Differential Subsidy Agreement.

(d) In the carriage of bulk cargoes.

(e) In an unsubsidized service of an operator by a ship assigned to a subsidized service of the same operator.

3. Exercise of the authority set forth in subsections 2.01 1 and 2.01 2, shall be governed by the policies of the Secretary of Commerce, and the Maritime Administrator, and in addition, shall be subject to the following specific conditions:

(1) If in the opinion of the Chief, Office of Government Aid, the proposed voyage or deviation would probably have a seriously adverse effect on another U.S.-flag operator(s) the applicant shall request and furnish the written consent of said other operator(s). If, in the opinion of the Chief, Office of Government Aid, such consent is unreasonably withheld, it will not be required. If, in the opinion of the Chief, Office of Government Aid, the employment of a subsidized ship on other than its assigned service, or a deviation on a subsidized voyage will adversely affect the subsidized service, such employment shall not be permitted.

(2) When a subsidized ship is authorized to make a voyage without subsidy, the ship shall go off subsidy immediately upon commencement of preparation for the proposed voyage and shall continue in an unsubsidized status until it is again employed in the subsidized service of the operator, except in those cases where the ship is placed in lay-up or is returned to lay-up upon termination of the approved non-subsidized voyage.

(3) Where a subsidized ship is authorized to make a voyage in other than its assigned service the operator shall agree to comply with the Maritime Administration's requirements with respect to inventories and surveys; otherwise, the operator shall agree to accept the Maritime Administration's determination with respect to the consumption of stores, supplies and equipment and amount of repair expense chargeable to subsidized operations or as expense

chargeable to the voyage made under the authority granted.

(4) The financial results (including overhead, depreciation, interest, and all proper charges) of voyages made in other than the operator's subsidized service with subsidized or non-subsidized ships shall not be included in net earnings from subsidized operations; and the "capital necessarily employed" attributable to the ship(s) performing such operations shall also be excluded from subsidized operations.

(5) The financial results (including overhead, depreciation, interest, and all proper charges) of non-subsidized voyages made by non-subsidized ships in the operator's subsidized service shall be included in net earnings from subsidized operations, and the "capital necessarily employed" attributable to the ship(s) performing such operations shall be taken into account as capital necessarily employed in subsidized operations for the period of such voyages; provided, however, the results:

(a) Shall be included in the subsidized operations for recapture and reserve fund purposes if the voyage is partially within the subsidized service and 50 percent or more of the total gross voyage revenue is derived from carrying cargo between ports within the subsidized service and

(b) Shall be excluded from the subsidized operations for recapture and reserve fund purposes if the voyage is partially within the subsidized service and less than 50 percent of the total gross voyage revenue is derived from carrying cargo between ports within the subsidized service.

(6) Approvals or extensions of charters granted under subsection 2.01 2 shall be for such period, not exceeding six months, as in the opinion of the Chief, Office of Government Aid is deemed justified, provided the criteria of General Order 80 are met. The Chief, Office of Government Aid in his discretion, may waive or modify section 281.15(b) of General Order 80.

(7) The charterer of a ship under subsection 2.01 2 shall not sub-charter such ship without the prior written or telegraphic approval of the Maritime Administration.

(8) Items in subsections 2.01 2 (3), (a), (c), and (d) hereof are subject to the concurrence of the Chief, Office of Ship Operations.

(9) No subsidy shall be payable for any voyage made under subsection 2.01 2 hereof.

2.02 Authority to approve or disapprove sailing schedules of a subsidized operator and voyages eligible for subsidy pursuant to the provisions of an operating-differential subsidy agreement.

2.03 Authority to approve the rental of office space and procurement of supplies, equipment, services and facilities by subsidized operators, from other than independent suppliers, under Article II-10(c) of Operating-Differential Subsidy Agreements.

2.04 Authority to approve, after award of an operating-differential subsidy agreement, the granting of exemptions to subsidized operators, pursuant

to section 803 of the Merchant Marine Act, 1936, as amended.

2.05 Authority to approve or disapprove, pursuant to the provisions of Article II-18(c) of Standard Part II of Operating-Differential Subsidy Agreements, agreements or modifications to such agreements to which a subsidized operator is a party, provided that no action hereunder shall be taken with respect to agreements or modifications to such agreements which create relationships such as eliminate or tend to eliminate or diminish, materially, the extent of foreign-flag competition encountered by the subsidized operator, prior to final action thereon by the Maritime Subsidy Board.

2.06 Authority to approve or disapprove, consistent with established policy, applications relating to acquisition or disposition of assets or the undertaking of any new activity not connected with shipping, under Article II-27(b), (2) and (3), respectively, of the Operating-Differential Subsidy Agreements.

2.07 Authority to sign letters to subsidized operators acknowledging notices of payment of salaries in excess of \$25,000 per annum, under Article II-12 of Operating-Differential Subsidy Agreements and approve notices in writing in a lesser period than the 30-day stipulation of this Article.

2.08 Authority to approve, with the concurrence of the Comptroller, all actions pertaining to the establishment and maintenance of statutory capital reserve funds and special reserve funds of subsidized operators, when such actions require the prior approval of the Maritime Administration; including but not limited to making of voluntary deposits in and withdrawals from, such funds; transfers from the special reserve funds to the capital reserve funds; investments of such funds; and the establishment of common stock trusts and the trustees thereof.

2.09 Authority to approve or disapprove requests that letters or other communications be accepted as "timely notice" of the operators' intention to apply for reimbursement of their general funds by withdrawals from the capital reserve fund for disbursements made or liabilities incurred in connection with new construction, reconstruction or reconditioning of subsidized ships.

2.10 Authority to approve the disallowance, for reserve fund and recapture accounting purposes, of any cost incurred by a subsidized operator, which cost is not an item of expense otherwise eligible for operating-differential subsidy, determined to be clearly improvident, excessive or unnecessary or to have resulted from uneconomical or inefficient operations.

2.11 Authority to approve the disallowance, for reserve fund and recapture accounting purposes, of subsidized operators' subsistence costs which are in excess of the fair and reasonable costs established by the Maritime Subsidy Board and are determined to be clearly improvident, unnecessary or excessive or to have resulted from uneconomical or inefficient operations.

2.12 Authority to process, in coordination with the Office of Ship Operations, applications for charter received by the Office of Ship Operations involving an operator receiving subsidy or other form of Government aid and/or involving a subsidized service, and to concur in or indicate non-concurrence in the consummation and execution of any such charter agreement.

2.13 Authority to administer the national defense recapture provisions included in all construction-differential subsidy contracts and sales contracts executed under Title V and Title VII, Merchant Marine Act, 1936, as amended, and contracts for all such national defense allowances under Title V as to vessels constructed for owners' account. This authority includes, within the standards set forth in the recapture clause, the conduct of negotiations with operators, fixing monetary value to be recovered, and advising the Office of the Comptroller of the amount subject to recovery for the use by an operator of a national defense item(s) available at the time of execution of the contract or subsequently made available by a change in American Bureau of Shipping rules.

2.14 Authority to approve, with the concurrence of the Comptroller, the establishment of construction reserve funds under section 511, Merchant Marine Act, 1936, as amended; the making of deposits in, and withdrawals from, such funds; and extensions of time for committing such funds within the statutory limitations.

2.15 Authority to approve final determinations of (a) actual charter hire earned on trade-in ships under use agreements and of net trade-in allowances for such ships after adjustment for charter hire and (b) the fair and reasonable value of "excluded items" removed from trade-in ships; and authorize amendments to trade-in contracts to reflect these adjustments.

2.16 Authority to approve all actions, including recommendations, correspondence, or legal documents pertaining to Title XI loan and/or mortgage insurance matters originating subsequent to, and within the framework of, approval of the application by the Maritime Administrator, except the following actions which shall be reserved to the Maritime Administrator: Approvals and denials of insurance, declarations of default due to non-payment of principal and/or interest and/or insurance premiums, release of ships involving waivers of default, deferments and advances of payments, changes of mortgagor, and the establishment of new or revised policies and regulations under the program; and those matters delegated to the Deputy Maritime Administrator pursuant to the provisions of subsection 2.01 1 of Administrator's Order No. 51.

2.17 Authority to receive and process charter applications filed pursuant to section 714, Merchant Marine Act, 1936, as amended; prepare recommendations, pursuant to the provisions of Administrator's Order No. 161, with respect to the approval or disapproval of such applications; and determine the terms of such charter agreements.

2.18 Authority to settle matters, other than claims arising from contracts supervised, by agreement with the debtor or claimant, in an amount not to exceed \$50,000; and to execute releases incident to such settlements.

2.19 Authority to sub-allot to appropriate officials sums of money against which obligations may be made pursuant to prime allotments made by the Budget Officer including the administrative certification of public vouchers incident thereto.

2.20 Authority to exercise all functions and take all actions necessary to direct and carry out the functions assigned to the Office of Government Aid, subject to clearance of the appropriate office, division, or official, in accordance with functional assignments as established in the Manual of Orders.

Dated: March 22, 1963.

DONALD W. ALEXANDER,  
Maritime Administrator,  
Chairman, Maritime Subsidy Board.

[F.R. Doc. 63-3241; Filed, Mar. 27, 1963; 8:48 a.m.]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ALLIED CHEMICAL CORP. ET AL.

### Notice of Filing of Petition Regarding Food Additive Polyethylene

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 1058) has been filed by Allied Chemical Corporation, Eastman Chemical Products, Inc., and Union Carbide Plastics Corporation, in care of Counsel for petitioners Jerome H. Heckman, Esq., 1712 N Street NW., Washington 6, D.C., proposed amendment of § 121.2510 *Polyethylene* to provide for the safe use of polyethylene as a blending resin for use in packaging materials, containers, and equipment that contact food.

Dated: March 22, 1963.

J. K. KIRK,  
Assistant Commissioner  
of Food and Drugs.

[F.R. Doc. 63-3219; Filed, Mar. 27, 1963; 8:45 a.m.]

## CIVIL AERONAUTICS BOARD

[Docket No. 9093 etc.]

SERVICE TO SPOKANE

### Notice of Hearing

Notice is hereby given, pursuant to provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled proceeding is assigned to be held on April 16, 1963, at 10:00 a.m., local time, in the U.S. District Courtroom, Spokane, Washington, before the undersigned Examiner.

Dated at Washington, D.C., March 25, 1963.

[SEAL] THOMAS L. WRENN,  
Associate Chief Examiner.

[F.R. Doc. 63-3257; Filed, Mar. 27, 1963;  
8:51 a.m.]

**FEDERAL MARITIME COMMISSION**  
**AMERICAN UNION TRANSPORT, INC.,**  
**AND MAINE FORWARDING AND**  
**SHIPPING CO., INC.**

**Notice of Agreement Filed for**  
**Approval**

Notice is hereby given that the following agreement has been filed with the Federal Maritime Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended. All parties involved were registered under our former General Order 72, have applied for licenses pursuant to section 44 of the Shipping Act, 1916, and are therefore eligible to operate as independent ocean freight forwarders.

Agreement No. 9185 between American Union Transport, Inc. of New York and Maine Forwarding & Shipping Co., Inc. of New Orleans, is a non-exclusive, cooperative working arrangement under which the parties may perform freight forwarder services for each other. Forwarding fees and ocean brokerage are to be divided as agreed on each transaction.

Interested persons may inspect this agreement and obtain copies thereof at the Bureau of Domestic Regulation, Federal Maritime Commission, Washington, D.C., or at the Commission's field offices at:

45 Broadway,  
New York 4, N.Y.

Room 333, Federal Office Building South,  
600 South Street,  
New Orleans 12, La.

Mail address: P.O. Box 30550, Lafayette Station,  
New Orleans 30, La.

180 New Montgomery Street,  
San Francisco, Calif.

They may submit to the Secretary, Federal Maritime Commission, Washington, D.C., within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and its approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: March 25, 1963.

By order of the Federal Maritime Commission.

THOMAS LISI,  
Secretary.

[F.R. Doc. 63-3260; Filed, Mar. 27, 1963;  
8:51 a.m.]

**ARNCAM SHIPPING CO., INC., AND**  
**AL. G. WICHTERICH & CO.**

**Notice of Agreements Filed for**  
**Approval**

Notice is hereby given that the following agreement has been filed with

the Federal Maritime Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended. All parties involved were registered under our former General Order 72, have applied for licenses pursuant to section 44 of the Shipping Act, 1916, and are therefore eligible to operate as independent ocean freight forwarders.

No. FF-37 between Arncam Shipping Co., Inc., New York, and Al. G. Wichterich & Co., New Orleans, is a nonexclusive, cooperative working arrangement under which the parties may perform freight forwarder functions for each other, dividing freight forwarding fees and ocean brokerage as agreed on each shipment.

Interested persons may inspect this agreement and obtain copies thereof at the Bureau of Domestic Regulation, Federal Maritime Commission, Washington, D.C., or at the Commission's field offices at:

45 Broadway,  
New York 4, N.Y.

Room 333, Federal Office Building South,  
600 South Street,  
New Orleans 12, La.

Mail address: P.O. Box 30550, Lafayette Station,  
New Orleans 30, La.

180 New Montgomery Street,  
San Francisco, Calif.

They may submit to the Secretary, Federal Maritime Commission, Washington, D.C., within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: March 25, 1963.

By order of the Federal Maritime Commission.

THOMAS LISI,  
Secretary.

[F.R. Doc. 63-3261; Filed, Mar. 27, 1963;  
8:51 a.m.]

**FRONTIER FREIGHT FORWARDERS,**  
**INC., AND TRANSOCEANIC SHIP-**  
**PING CO.**

**Notice of Agreement Filed for**  
**Approval**

Notice is hereby given that the following agreement has been filed with the Federal Maritime Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended. All parties involved were registered under our former General Order 72, have applied for licenses pursuant to section 44 of the Shipping Act, 1916, and are therefore eligible to operate as independent ocean freight forwarders.

No. FF-30 between Frontier Freight Forwarders, Inc., Miami, Fla., and Transoceanic Shipping Co., New Orleans, La.

Agreement No. FF-30 is a nonexclusive, cooperative working arrangement under which the parties may perform freight forwarding functions for each other, dividing freight forwarding fees and ocean brokerage as agreed on each shipment.

Interested persons may inspect this agreement and obtain copies thereof at the Bureau of Domestic Regulation, Federal Maritime Commission, Washington, D.C., or at the Commission's field offices at:

45 Broadway,  
New York 4, N.Y.

Room 333, Federal Office Building South,  
600 South Street,  
New Orleans 12, La.

Mail address: P.O. Box 30550, Lafayette Station,  
New Orleans 30, La.

180 New Montgomery Street,  
San Francisco, Calif.

They may submit to the Secretary, Federal Maritime Commission, Washington, D.C., within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and its approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: March 25, 1963.

By order of the Federal Maritime Commission.

THOMAS LISI,  
Secretary.

[F.R. Doc. 63-3262; Filed, Mar. 27, 1963;  
8:52 a.m.]

**HAVANA STEAMSHIP CONFERENCE**  
**AND GULF AND SOUTH ATLANTIC**  
**HAVANA STEAMSHIP CONFERENCE**

**Notice of Filing of Agreement for**  
**Approval**

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement 5080-2, between the Havana Steamship Conference (4189, as amended) and the Gulf and South Atlantic Havana Steamship Conference (4188, as amended) modifies the basic agreement (5080), approved April 9, 1936, covering an arrangement for joint action of the member lines with respect to freighting agreements between Cuban Merchants and member lines of the Conferences in the trade from the Atlantic and Gulf ports of the United States to Cuban ports. The purpose of the modification is to add a provision for the Conferences to retain the right of independent action in regard to any matter arising out of, relating to, or connected with Agreement 5080, as amended.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., or may inspect copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington 25, D.C., within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with

request for hearing should such hearing be desired.

Dated: March 25, 1963.

By order of the Federal Maritime Commission.

THOMAS LISI,  
Secretary.

[F.R. Doc. 63-3263; Filed, Mar. 27, 1963; 8:52 a.m.]

**IINO KAIUN KAISHA, LTD., AND KAWASAKI KISEN KAISHA, LTD.**

**Notice of Filing of Agreement for Approval**

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement 8990-1, between Iino Kaiun Kaisha, Ltd., and Kawasaki Kisen Kaisha, Ltd. modifies cooperative working Agreement 8990 to add scheduling of sailings in the trade between ports of the United States, ports in East Canada and ports in the Bermuda Islands to those covered by the basic agreement, and for the mutual establishment and maintenance of rates, charges and practices for that part of the trade not governed by published Conference tariffs.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., or may inspect a copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington 25, D.C., within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: March 25, 1963.

By order of the Federal Maritime Commission.

THOMAS LISI,  
Secretary.

[F.R. Doc. 63-3264; Filed, Mar. 27, 1963; 8:52 a.m.]

**KANSAS CITY SOUTHERN RAILWAY CO. ET AL.**

**Notice of Agreement Filed for Approval**

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 75 Stat. 763; 46 U.S.C. 814):

Agreement No. 9175, between the Kansas City Southern Railway Company (Railway), the Port Arthur Canal and Dock Company (Port Arthur) and Cargill, Inc. (Cargill), provides for the ten-year lease of certain grain terminal facilities at Port Arthur, Texas, at an annual

rental of \$117,000, with an option to renew the lease for an additional five years. The facility will be operated as a public grain elevator subject to a limitation that only 10 percent of the grain handled in any one lease year may be handled into Port Arthur by barge and subsequently shipped therefrom by barge or other vessel. The Railway shall be favored in the rail routing of grain which is subject to control by Cargill.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Domestic Regulation, Federal Maritime Commission, Washington, D.C., and may submit within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: March 25, 1963.

By order of the Federal Maritime Commission.

THOMAS LISI,  
Secretary.

[F.R. Doc. 63-3265; Filed, Mar. 27, 1963; 8:52 a.m.]

**LORETZ & CO. ET AL.**

**Notice of Agreements Filed for Approval**

Notice is hereby given that the following agreements have been filed with the Federal Maritime Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended. All parties involved were registered under our former General Order 72, have applied for licenses pursuant to section 44 of the Shipping Act, 1916, and are therefore eligible to operate as independent ocean freight forwarders.

No. 9107 between Loretz & Company, Los Angeles (offices in San Francisco and Houston) and Wolf & Gerber, Inc., New York.

No. 9285 between Loretz & Company, Los Angeles (offices in San Francisco and Houston) and Karr, Ellis & Co., Inc., New York.

No. 9325 Geo. S. Bush & Co., Inc., Seattle and F. L. Kraemer & Co., New York.

The terms of the three agreements are identical. They are nonexclusive, cooperative working arrangements under which the parties may perform freight forwarder functions for each other, dividing forwarding fees and ocean freight brokerage as agreed on each transaction.

Interested persons may inspect these agreements and obtain copies thereof at the Bureau of Domestic Regulation, Federal Maritime Commission, Washington, D.C., or at the Commission's field offices at:

45 Broadway,  
New York 4, N.Y.

Room 333, Federal Office Building South,  
600 South Street,  
New Orleans 12, La.

Mail address: P.O. Box 30550, Lafayette Station, New Orleans 30, La.

180 New Montgomery Street,  
San Francisco, Calif.

They may submit to the Secretary, Federal Maritime Commission, Washington, D.C., within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreements for hearing should such hearing be desired.

Dated: March 25, 1963.

By order of the Federal Maritime Commission.

THOMAS LISI,  
Secretary.

[F.R. Doc. 63-3266; Filed, Mar. 27, 1963; 8:53 a.m.]

**NEDLLOYD LINE AND THE BLUE FUNNEL LINE**

**Notice of Filing of Agreement for Approval**

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement 9070, between Nedlloyd Line and the Blue Funnel Line, covers and is restricted to transportation of Asbestos in Bags under through bills of lading between ports of call of the Blue Funnel Line in Western Australia and ports of call of the Nedlloyd Line Gulf of Mexico Express and Nedlloyd Line Latin America and Caribbean Service with transshipment at the port of Singapore.

The agreement establishes a division of the revenue earned by the parties for such transportation, and provides for apportionment of the expenses of transshipment at Singapore. Each party indemnifies the other against damages resulting from loss, damage, delay or misdelivery of goods while in its possession or custody, and provision is made that any party to the agreement may terminate its participation therein upon thirty (30) days written notice to the others.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., or may inspect a copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington 25, D.C., within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: March 25, 1963.

By order of the Federal Maritime Commission.

THOMAS LISI,  
Secretary.

[F.R. Doc. 63-3267; Filed, Mar. 27, 1963; 8:53 a.m.]

## NEDLLOYD LINE AND CHINA NAVIGATION CO., LTD.

### Notice of Filing of Agreement for Approval

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement 9090, between Nedlloyd Line and China Navigation Co., Ltd., covers and is restricted to transportation of Asbestos in Bags under through bills of lading between ports of call of the China Navigation Co., Ltd., in Western Australia, and ports of call of the Nedlloyd Line Gulf of Mexico Express and Nedlloyd Line Latin America and Caribbean Service with transshipment at the port of Singapore.

The agreement establishes a division of the revenue earned by the parties for such transportation, and provides for apportionment of the expenses of transshipment at Singapore. Each party indemnifies the other against damages resulting from loss, damage, delay or misdelivery of goods while in its possession or custody, and provision is made that any party to the agreement may terminate its participation therein upon thirty (30) days written notice to the others.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., or may inspect a copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington 25, D.C., within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: March 25, 1963.

By order of the Federal Maritime Commission.

THOMAS LISI,  
Secretary.

[F.R. Doc. 63-3268; Filed, Mar. 27, 1963; 8:53 a.m.]

## SAMUEL SHAPIRO & CO., INC., ET AL.

### Notice of Agreements Filed for Approval

Notice is hereby given that the following agreements have been filed with the Federal Maritime Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended. All parties involved were registered under our former General Order 72, have applied for licenses pursuant to section 44 of the Shipping Act, 1916, and are therefore eligible to operate as independent ocean freight forwarders.

Samuel Shapiro & Co., Inc., Baltimore, Maryland has submitted two identical

agreements with the forwarders whose names are listed below.

W. J. Byrnes & Co. of New York, Inc., N.Y.----- No. FF-25  
Alltransport, Inc., New York----- No. FF-36

The agreements are nonexclusive, cooperative working agreements under which the parties will perform forwarding services for each other, dividing forwarding fees and ocean brokerage as agreed on each transaction.

Daniel F. Young, Inc., New York, N.Y., has filed an agreement with B. R. Anderson & Co., Seattle, Washington, No. FF-56, which is identical to those above, and is a nonexclusive, cooperative working agreement under which the parties will perform forwarding services for each other, dividing forwarding fees and ocean brokerage as agreed on each transaction.

Interested persons may inspect these agreements and obtain copies thereof at the Bureau of Domestic Regulation, Federal Maritime Commission, Washington, D.C., or at the Commission's field offices at:

45 Broadway,  
New York, N.Y.

Room 333, Federal Office Building, South, 600 South Street,  
New Orleans 12, La.  
Mail address: P.O. Box 30550, Lafayette Station, New Orleans 30, La.

180 New Montgomery Street,  
San Francisco, Calif.

They may submit to the Secretary, Federal Maritime Commission, Washington, D.C., within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreements and their approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: March 25, 1963.

By order of the Federal Maritime Commission.

THOMAS LISI,  
Secretary.

[F.R. Doc. 63-3269; Filed, Mar. 27, 1963; 8:53 a.m.]

## STONE FORWARDING CO., INC., ET AL.

### Notice of Agreements Filed for Approval

Notice is hereby given that the following agreements have been filed with the Federal Maritime Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended. All parties involved were registered under our former General Order 72, have applied for licenses pursuant to section 44 of the Shipping Act, 1916, and are therefore eligible to operate as independent ocean freight forwarders.

No. 9195 between Stone Forwarding Company, Inc., Offices in Galveston, Houston, Corpus Christi, and Dallas, Tex., and H. L. Ziegler, Inc., Houston, Tex.

No. FF-33 between H. S. Thielen, Inc., Lake Charles, La., and Jay International, Inc., Philadelphia, Pa.

No. FF-65 between Seaport Shipping Co. (Seattle), Seattle, and Dyson Shipping Company, Inc., New York.

The terms of the three agreements are identical. Each is a nonexclusive, cooperative working arrangement under which the parties may perform freight forwarder functions for each other, dividing freight forwarding fees and ocean brokerage as agreed on each transaction.

Interested persons may inspect these agreements and obtain copies thereof at the Bureau of Domestic Regulation, Federal Maritime Commission, Washington, D.C., or at the Commission's field offices at:

45 Broadway,  
New York 4, N.Y.

Room 333, Federal Office Building South, 600 South Street,  
New Orleans 12, La.  
Mail address: P.O. Box 30550, Lafayette Station, New Orleans 30, La.

180 New Montgomery Street,  
San Francisco, Calif.

They may submit to the Secretary, Federal Maritime Commission, Washington, D.C., within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreements and their approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: March 25, 1963.

By order of the Federal Maritime Commission.

THOMAS LISI,  
Secretary.

[F.R. Doc. 63-3270; Filed, Mar. 27, 1963; 8:53 a.m.]

## TRANSOCEANIC SHIPPING CO. AND J. T. STEEB & CO., INC.

### Notice of Agreement Filed for Approval

Notice is hereby given that the following agreement has been filed with the Federal Maritime Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended. All parties involved were registered under our former General Order 72, have applied for licenses pursuant to section 44 of the Shipping Act, 1916, and are therefore eligible to operate as independent ocean freight forwarders.

No. FF-29 between Transoceanic Shipping Company, New Orleans, La., and J. T. Steeb & Co., Inc., Portland, Oreg., is a nonexclusive, cooperative working arrangement under which the parties may perform freight forwarder functions for each other, the party performing the service will charge one-half of the forwarding fee with a minimum of \$7.50 per set of documents, plus \$3.50 for each set of Consular invoice, when required, and share one-half of the steamship brokerage. The other party agrees to pay for all telegraphic and teletype expenses plus telephone calls, postage and forms.

Interested persons may inspect this agreement and obtain copies thereof at

the Bureau of Domestic Regulation, Federal Maritime Commission, Washington, D.C., or at the Commission's field offices at:

45 Broadway,  
New York 4, N.Y.

Room 333, Federal Office Building South,  
600 South Street,  
New Orleans 12, La.  
Mail address: P.O. Box 30550, Lafayette Station,  
New Orleans 30, La.

180 New Montgomery Street,  
San Francisco, Calif.

They may submit to the Secretary, Federal Maritime Commission, Washington, D.C., within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and its approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: March 25, 1963.

By order of the Federal Maritime Commission.

THOMAS LISI,  
Secretary.

[F.R. Doc. 63-3271; Filed, Mar. 27, 1963;  
8:54 a.m.]

## FEDERAL POWER COMMISSION

[Project 2242]

### CARMEN-SMITH HYDROELECTRIC PROJECT, CITY OF EUGENE, OREGON

#### Notice of Land Withdrawal

Conformable to the provisions of section 24 of the Act of June 10, 1920 (41 Stat. 1063), as amended, notice is hereby given that the lands herein described, insofar as title thereto remains in the United States, are included in Project No. 2242 (Carmen-Smith Project) for which a completed application for license was filed March 4, 1953, by the City of Eugene, through the Eugene Water and Electric Board, P.O. Box 1112, Eugene, Oregon. The license for this project became effective on December 1, 1958. On February 26, 1960, the licensee filed an application for amendment of plans, which has been supplemented by the filing of map exhibits on July 10, 1961 (revised July 10, 1962), as required by Article 26 of the license. Under said section 24, these lands are, from the said dates of filing reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress.

#### WILLAMETTE MERIDIAN, OREGON

All portions of the following described subdivisions lying within the project area as depicted on revised K map exhibits, sheets 1 through 4, (FPC Nos. 2242-27 through 30), submitted to the Commission on July 10, 1961 (revised July 10, 1962):

- T. 16 S., R. 5 E.,
- Sec. 13: N $\frac{1}{2}$ NW $\frac{1}{4}$ ;
- Sec. 14: N $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ ;
- Sec. 15: NW $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$ ;
- Sec. 17: SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;
- Sec. 20: Lot 2.

- T. 14 S., R. 6 E.,
- Sec. 24: S $\frac{1}{2}$ SE $\frac{1}{4}$ , W $\frac{1}{2}$ SW $\frac{1}{4}$ ;
- Sec. 25: NW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ ;
- Sec. 36: W $\frac{1}{2}$ .
- T. 15 S., R. 6 E. (unsurveyed),
- Sec. 1: W $\frac{1}{2}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;
- Sec. 11: E $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ ;
- Sec. 12: NW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ ;
- Sec. 13: NW $\frac{1}{4}$ ;
- Sec. 14: NE $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ ;
- Sec. 23: E $\frac{1}{2}$ W $\frac{1}{2}$ ;
- Sec. 26: E $\frac{1}{2}$ W $\frac{1}{2}$ ;
- Sec. 35: E $\frac{1}{2}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ .

- T. 16 S., R. 6 E.,
- Sec. 2: Lots 13, 14, 18, 22, 23, 25, 26;
- Sec. 7: Lot 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;
- Sec. 8: SE $\frac{1}{4}$ NE $\frac{1}{4}$ ;
- Sec. 9: S $\frac{1}{2}$ NW $\frac{1}{4}$ ;
- Sec. 11: Lot 13.
- T. 14 S., R. 7 E.,
- Sec. 19: Lot 4, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ ;
- Sec. 20: SW $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ .

The area of United States lands reserved by the filing of the application for license for Project No. 2242, as amended, is approximately 575 acres, entirely within the Willamette National Forest. Approximately 302.96 acres have been previously reserved by Power Site Classification No. 164, Project No. 1068, or Project No. 2059.

Copies of the J and K project map exhibits (FPC Nos. 2242-1 and 2242-27 through 30) have been transmitted to the Bureau of Land Management, Geological Survey and Forest Service.

J. H. GUTRIDE,  
Secretary.

[F.R. Doc. 63-3227; Filed, Mar. 27, 1963;  
8:46 a.m.]

[Docket No. E-7084]

### COMMUNITY PUBLIC SERVICE CO.

#### Notice of Application

MARCH 21, 1963.

Take notice that on March 14, 1963, an application was filed with the Federal Power Commission pursuant to section 203 of the Federal Power Act by Community Public Service Company, a Delaware corporation (hereafter referred to as "Community Delaware"), for authorization to merge into a single corporation with Community Public Service Company, a Texas corporation (hereafter referred to as "Community Texas"), with Community Texas being the surviving corporation.

Community Delaware is a public utility incorporated under the laws of the State of Delaware and doing business in New Mexico and Texas, with its principal business office at Fort Worth, Texas. It owns and operates an electric utility system, generating, purchasing, distributing and selling electric energy in Texas and New Mexico. It also operates a gas transmission system, purchasing, distributing and selling natural gas in Texas and New Mexico.

Community Texas will be incorporated as a wholly owned subsidiary of Community Delaware for the sole purpose of furnishing a vehicle for transferring the corporate domicile of Community Delaware from Delaware to Texas. On the effective date of the merger, Com-

munity Texas will assume ownership and operation of all of the property and businesses of Community Delaware, acquire all of its assets, and assume all of its liabilities. By the terms of the proposed agreement and plan of merger, each share of common or preferred stock of Community Delaware outstanding on the effective day of the merger will be converted into an equivalent share of common or preferred stock of Community Texas. After the merger, each share of common or preferred stock of Community Delaware, until surrendered, shall be deemed for all corporate purposes to evidence ownership of an equivalent number of shares of Community Texas.

Dissenting stockholders shall receive a cash settlement for their stock in Community Delaware. There will be no other consideration for the merger, nor will any net proceeds or profits be realized. The merger will not change the operation of the facilities of Community Delaware.

Applicant states that it is desirable from both a corporate and an operating standpoint to have the corporate domicile in Texas, where approximately 80 percent of Applicant's plant is situated and approximately 85 percent of its gross revenues are received.

Any person desiring to be heard or to make any protest with reference to said application should on or before the 15th day of April 1963, 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.

JOSEPH H. GUTRIDE,  
Secretary.

[F.R. Doc. 63-3228; Filed, Mar. 27, 1963;  
8:46 a.m.]

[Docket No. CP63-242]

### EL PASO NATURAL GAS CO.

#### Notice of Application and Date of Hearing

MARCH 21, 1963.

Take notice that on February 27, 1963, El Paso Natural Gas Company ("El Paso"), a Delaware corporation, whose mailing address is Post Office Box 1492, El Paso 99, Texas, filed at Docket No. CP63-242 an application pursuant to section 7(b) of the Natural Gas Act, as amended, for permission and approval to abandon a mainline tap and appurtenances thereto situated on El Paso's 22" O.D. Northwest Division mainline in Caribou County, Idaho, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that the facilities which El Paso proposes to abandon were utilized for the sale and delivery of natural gas to Intermountain Gas Company ("Intermountain") for resale to irrigation consumers and that deliveries have been discontinued; however, the irrigation consumers continue to be served by Intermountain with natural

gas received from El Paso at another delivery point in the same general area.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on May 1, 1963, at 9:30 a.m., e.d.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however*, That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before April 19, 1963. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,  
Secretary.

[F.R. Doc. 63-3229; Filed, Mar. 27, 1963;  
8:46 a.m.]

[Docket No. CP63-56]

### HUMBLE GAS TRANSMISSION CO.

#### Notice of Application To Amend

MARCH 21, 1963.

Take notice that on February 6, 1963, Humble Gas Transmission Company (Applicant), 1700 Commerce Building, New Orleans 12, Louisiana, filed an application to amend<sup>1</sup> the Commission's order, issued January 29, 1963, in Docket No. CP63-56, to authorize a change in the original routing of approximately 4 miles of the pipeline authorized by said order, all as more fully set forth in the application on file with the Commission and open to public inspection.

The subject order issued to Applicant a certificate of public convenience and necessity authorizing, among other things, the construction and operation of approximately 8.7 miles of pipeline in St. Mary and St. Martin Parishes, Louisiana. Applicant states that it has encountered difficulties in acquiring the

<sup>1</sup> Said pleading was filed as an amendment to the original application; however, since it was filed subsequent to the issuance of the order granting a certificate of public convenience and necessity to Applicant in this docket, said pleading will be treated herein as an application to amend.

rights-of-way for a portion of the original pipeline location. Therefore, Applicant requests that the subject order be amended to authorize a relocation of approximately 4 miles of said line. As a result of the proposed relocation, Applicant will construct and operate an estimated total of 9.1 miles of 16-inch \$882,500 rather than \$857,100, as originally estimated.

Applicant states that, as a result of the subject proposal, the total cost of the proposed facilities is estimated to be \$882,500 rather than \$857,100, as originally estimated.

Protests, petitions to intervene or requests for hearing in this proceeding may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before April 17, 1963.

JOSEPH H. GUTRIDE,  
Secretary.

[F.R. Doc. 63-3230; Filed, Mar. 27, 1963;  
8:46 a.m.]

[Docket No. CP61-5]

### NORTHERN NATURAL GAS PIPELINE CO.

#### Notice of Application and Date of Hearing

MARCH 20, 1963.

Take notice that on July 12, 1960, as supplemented on August 23, 1860, and as amended on April 24, 1961, Pioneer Gas Gathering System, Inc. filed in Docket No. CP61-5 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of additional compressor facilities at its Huldale Compressor Station located in Schleicher County, Texas. The facilities will be used to receive up to approximately 38,000 Mcf per day of surplus residue gas from Sinclair Oil & Gas Company and Skelly Oil Company at the outlet of the Sinclair-Skelly Gas Products Plant No. 23. Plant No. 23 is located adjacent to Applicant's Huldale Station.

Temporary authorization to construct the proposed facilities was granted on October 6, 1960.

On June 30, 1961, the name of Pioneer was changed to Northern Natural Gas Pipeline Company and all of the outstanding securities were purchased by Northern Natural Gas Company. The name of Northern Natural Gas Pipeline Company was substituted for that of Pioneer as Applicant and temporary certificate holder in Docket No. CP61-5 by order of the Commission issued September 24, 1962. (See Docket No. G-11548).

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the National Gas Act, and the Com-

mission's rules of practice and procedure, a hearing will be held on April 23, 1963, at 9:30 a.m. e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however*, That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before April 9, 1963. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,  
Secretary.

[F.R. Doc. 63-3231; Filed, Mar. 27, 1963;  
8:47 a.m.]

[Docket Nos. RI63-381-RI63-389]

### SOUTHLAND ROYALTY CO. ET AL.

#### Order Providing for Hearings on and Suspension of Proposed Changes in Rates<sup>1</sup>

MARCH 21, 1963.

Southland Royalty Company, Docket No. RI63-381; James Davis, Jr. d/b/a Solar Oil Company, Docket No. RI63-382; Humble Oil & Refining Company, Docket No. RI63-383; A. A. Cameron, d/b/a Cameron Oil Company, Docket No. RI63-384; Sunray DX Oil Company, Docket No. RI63-385; Phillips Petroleum Company, Docket No. RI63-386; Pan American Petroleum Corporation (Operator), et al., Docket No. RI63-387; Lloyd M. Feland (Operator), et al., Docket No. RI63-388; General Crude Oil Company (Operator), et al., Docket No. RI63-389.

The above-named Respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. All of the sales are made at a pressure base of 14.65 psia with the exception of the sale made by Pan American Petroleum Corporation (Operator), et al. under its FPC Gas Rate Schedule No. 173 and the sale made by General Crude Oil Company (Operator), et al. under its FPC Gas Rate Schedule No. 9, which are made at a pressure base of 15.025 psia. The proposed changes, which constitute increased rates and charges, are designated as follows:

<sup>1</sup> This order does not provide for the consolidation for hearing or disposition of the several matters covered herein, nor should it be so construed.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI63-381	Southland Royalty Co., 1603 First National Bldg., Fort Worth 2, Tex.	19	1	West Texas Gathering Co. (Emperor Deep Field, Winkler County, Tex.) (R.R. District No. 8).	\$357	3-1-63	1-4-1-63	9-1-63	16.0	<sup>2</sup> 17.0	-----
RI63-382	James Davis, Jr., d/b/a Solar Oil Co., 1117 Union National Bldg., Wichita 2, Kans.	1	2	Northern Natural Gas Co. (Harper Ranch Pool, Clark County, Kans.).	1,400	2-25-63	1-3-23-63	8-28-63	<sup>3</sup> 14.0	<sup>2</sup> 15.0	-----
RI63-383	Humble Oil & Refining Co., P.O. Box 2180, Houston 1, Tex.	209	3	Arkansas Louisiana Gas Co. (Chickasha Field, Grady County, Okla.) (other Oklahoma area).	( <sup>4</sup> )	2-25-63	1-4-1-63	9-1-63	<sup>2</sup> 12.0	<sup>2</sup> 13.0	-----
	Humble Oil & Refining Co.	284	4	Arkansas Louisiana Gas Co. (Beaver Northwest Pool, Stephens County, Okla.) (other Oklahoma area).	40	2-25-63	1-4-1-63	9-1-63	<sup>2</sup> 12.0	<sup>2</sup> 13.0	-----
	do	285	3	Arkansas Louisiana Gas Co. (Beaver Northwest Pool, Grady County, et al., Okla.) (other Oklahoma area).	362	2-25-63	1-4-1-63	9-1-63	<sup>2</sup> 12.0	<sup>2</sup> 13.0	-----
	do	286	3	Arkansas Louisiana Gas Co. (Richland Pool, Stephens County, Okla.) (other Oklahoma area).	188	2-25-63	1-4-1-63	9-1-63	<sup>2</sup> 12.0	<sup>2</sup> 13.0	-----
	do	137	1	Natural Gas Pipeline Co. of America (Ramerina Southwest Field, Live Oak County, Tex.) (R.R. District No. 2).	8,300	2-25-63	1-4-1-63	9-1-63	14.5	<sup>2</sup> 15.5	-----
RI63-384	A. A. Cameron, d/b/a Cameron Oil Co., Petroleum Club Bldg., Oklahoma City, Okla.	1	2	Colorado Interstate Gas Co. (Mocane area, Beaver County, Okla.) (Oklahoma Panhandle area).	1,444	2-26-63	<sup>5</sup> 3-29-63	8-29-63	<sup>6</sup> 16.665	<sup>2</sup> 17.776	-----
RI63-385	Sunray DX Oil Co., Tulsa 2, Okla.	190	2	United Gas Pipe Line Co. (North La Ward Field, Jackson County, Tex.) (R.R. District No. 2).	5,611	2-26-63	1-3-31-63	8-31-63	14.1792	<sup>2</sup> 15.1920	-----
RI63-386	Phillips Petroleum Co., Bartlesville, Okla.	360	2	United Gas Pipe Line Co. (North La Ward Field, Jackson County, Tex.) (R.R. District No. 2).	6,836	2-28-63	1-3-31-63	8-31-63	14.1792	<sup>2</sup> 15.1920	-----
RI63-387	Pan American Petroleum Corp. (Operator), et al., P.O. Box 1410, Fort Worth 1, Tex.	31	19	Mississippi River Fuel Corp. (Woodlawn Field, Harrison County, Tex.) (R.R. District No. 6).	38,806	2-28-63	1-4-3-63	9-3-63	14.6392	<sup>2</sup> 15.1440	RI60-225
	Pan American Petroleum Corp. (Operator), et al. 500 Jefferson Bldg., P.O. Box 3092, Houston 1, Tex.	173	17	United Fuel Gas Co. (South Pecan Lake, et al. Fields, Cameron, et al. Parishes, La.).	165,254	2-25-63	1-4-1-63	9-1-63	<sup>8</sup> 21.2	<sup>2</sup> 21.2	RI62-356
RI63-388	Lloyd M. Feland (Operator), et al., 1119 Americana Bldg., Houston 2, Tex.	1	3	Tennessee Gas Transmission Co. (Tomball Southeast Field, Harris County, Tex.) (R.R. District No. 3).	1,396	2-28-63	<sup>5</sup> 3-31-63	8-31-63	13.49751	<sup>9</sup> 16.16947	-----
RI63-389	General Crude Oil Co., (Operator), et al., P.O. Box 2252, Houston 1, Tex.	9	14	United Fuel Gas Co. (Little Pecan Lake Field, Cameron Parish, La.).	4,744	2-28-63	1-4-1-63	9-1-63	<sup>10</sup> 21.2	<sup>2</sup> 21.6	RI62-356

<sup>1</sup> The stated effective date is the effective date requested by respondent.  
<sup>2</sup> Periodic rate increase.  
<sup>3</sup> Subject to a downward Btu adjustment for gas containing less than 1,000 Btu's per cubic foot.  
<sup>4</sup> No deliveries since October, 1961; however, deliveries are anticipated at a later date.  
<sup>5</sup> The stated effective date is the first day after expiration of the required statutory notice.

<sup>6</sup> Includes base rate of 15.0 cents per Mcf plus upward Btu adjustment for 1,111 Btu gas.  
<sup>7</sup> Includes base rate of 16.0 cents per Mcf plus upward Btu adjustment for 1,111 Btu gas.  
<sup>8</sup> Includes 1.5 cents per Mcf tax reimbursement.  
<sup>9</sup> Redetermined rate increase.  
<sup>10</sup> Includes 1.5 cents per Mcf tax reimbursement together with 0.5 cent reserve redetermination.

A. A. Cameron d/b/a Cameron Oil Company (Cameron) and Lloyd M. Feland (Operator), et al. (Feland) request that the Commission waive the 30-day notice requirement provided in section 4(d) of the Natural Gas Act and permit earlier effective dates for their proposed rate increases. Good cause has not been shown for the granting of Cameron's proposed June 1, 1962 effective date, and Feland's proposed March 10, 1963 effective date, and such requests are denied.

The proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's Statement of General Policy No. 61-1, as amended (18 CFR, Chapter I, Part 2, § 2.56).

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and

to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the proposed changes and that the above-designated supplements be suspended and the use thereof deferred as 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 the Regulations under the Natural Gas Act (18 CFR, Chapter I), public hearings shall be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in the above-designated supplements.

(B) Pending hearings and decisions thereon, the above-designated rate supplements are hereby suspended and the use thereof deferred until the date indicated in the above "Date Suspended

Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) 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 May 13, 1963.

By the Commission.

JOSEPH H. GUTRIDE,  
 Secretary.

[F.R. Doc. 63-3232; Filed, Mar. 27, 1963; 8:47 a.m.]

## HOUSING AND HOME FINANCE AGENCY

Office of the Administrator

REGIONAL DIRECTOR OF COMMUNITY FACILITIES, REGION VI (SAN FRANCISCO)

Redelegation of Authority Regarding Public Facility Loans Program and Accelerated Public Works Program

The Regional Director of Community Facilities, Region VI (San Francisco), is hereby authorized:

1. To enter into or amend or modify contracts involving public facility loans under section 202(a)-(d) of the Housing Amendments of 1955, as amended (42 U.S.C. 1492(a)-(d));

2. To enter into or amend or modify contracts involving grants-in-aid under section 202(e) of the Housing Amendments of 1955, as amended by section 5(b) of the Public Works Acceleration Act (42 U.S.C. 1492(e)).

This redelegation supersedes the redelegation effective October 31, 1962 (28 F.R. 293, 1-10-63).

(62 Stat. 1283 (1948), as amended by 64 Stat. 80 (1950), 12 U.S.C. 1701c; Acting Housing and Home Finance Administrator's delegation effective October 24, 1962 (27 F.R. 10598, October 31, 1962))

Effective as of the 28th day of March 1963.

[SEAL] J. G. MELVILLE,  
Regional Administrator,  
Region VI.

[F.R. Doc. 63-3277; Filed, Mar. 27, 1963; 8:54 a.m.]

## SECURITIES AND EXCHANGE COMMISSION

[File No. 70-4124]

CONSOLIDATED NATURAL GAS CO.

Notice of Filing of Declaration Regarding Proposal To Issue and Sell Debentures

MARCH 22, 1963.

Notice is hereby given that Consolidated Natural Gas Company ("Consolidated"), 30 Rockefeller Plaza, New York 20, New York, a registered holding company, has filed with this Commission a declaration, pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder, regarding a proposal to issue and sell \$35,000,000 principal amount of debentures.

All interested persons are referred to the declaration, on file at the office of the Commission, for a statement of the transactions therein proposed, which are summarized as follows:

Consolidated proposes to issue and sell, on or about April 30, 1963, pursuant to the competitive bidding requirements of Rule 50 under the Act, \$35,000,000 principal amount of -- percent Debentures Due April 1, 1988. The interest

rate on the debentures (which shall be a multiple of  $\frac{1}{8}$  of 1 percent) and the price, exclusive of accrued interest, to be paid to Consolidated (which will be not less than 99 percent nor more than 102 percent of the principal amount of the debentures) will be determined by the competitive bidding. The debentures will be the initial series to be issued under an Indenture, dated as of April 1, 1963, between Consolidated and the First National City Bank, New York, New York, as Trustee.

Of the proceeds from the sale of the debentures, \$10,000,000 will be used to pay outstanding short-term notes due banks which were issued to finance construction costs. The balance will be used to finance, in part, the 1963 construction program of Consolidated's subsidiary companies, presently estimated at \$78,000,000. Until required for such purpose, such proceeds will be invested in United States Treasury Bills and other readily marketable short-term securities.

The fees and expenses to be incurred in connection with the proposed transactions are estimated as follows:

Filing fee, Securities and Exchange Commission	\$3,605
Printing of registration statement, prospectus, indenture, definitive debentures, and other miscellaneous papers	45,000
Trustee's charges in connection with the authentication and issuance of definitive debentures	11,500
Legal fees of counsel for the trustee	2,000
Accountants' fees and expenses	4,500
Independent consulting geologists' fees and expenses	10,000
Federal original issue tax	38,500
Listing fee, New York Stock Exchange	4,200
Service charges—Con-Gas Service Corp.	25,000
Other miscellaneous expenses	2,695
Total estimated expenses	147,000

The fees and expenses of the independent counsel for the underwriters, to be paid by the purchasers of the debentures, are estimated at \$9,000.

The declaration states that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than April 12, 1963, request in writing that a hearing be held on such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed contemporaneously with the request. At any time after said date, the declaration, as filed or as amended, may be permitted to become effective

as provided in Rule 23 of the general rules and regulations promulgated under the Act; or the Commission may grant exemption from such rules and regulations as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DuBOIS,  
Secretary.

[F.R. Doc. 63-3245; Filed, Mar. 27, 1963; 8:49 a.m.]

[File No. 70-4116]

MIDDLE SOUTH UTILITIES INC., ET AL.

Notice of Proposed Change of Corporate Domicile of an Electric Utility Subsidiary Company by Merger and Solicitation of Proxies in Connection Therewith

MARCH 22, 1963.

Notice is hereby given that Middle South Utilities Inc. ("Middle South"), Two Broadway, New York 4, N.Y., a registered holding company and one of its electric utility subsidiary companies, Mississippi Power & Light Company, a Florida corporation ("Florida") and a newly organized Mississippi corporation, Mississippi Power & Light Company ("Mississippi"), Electric Building, Jackson 5, Mississippi, have filed with this Commission a joint application-declaration and an amendment thereto, pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating sections 6(a), 7, 9(a), 10, 12(c), 12(e), and 12(f) of the Act and Rules 42, 43, and 62 thereunder as applicable to the proposed transactions. All interested persons are referred to the joint application-declaration, as amended, on file in the office of the Commission for a statement of the transactions therein proposed which are summarized below.

Florida, organized under the laws of the State of Florida, is engaged in the business of supplying electric service in the State of Mississippi and all of the properties owned and operated by it are located in such State. Florida desires to change its corporate domicile from the State of Florida to the State of Mississippi. To effectuate such change Florida proposes to merge with Mississippi which was incorporated for such purpose on January 2, 1963 under the recently enacted Mississippi Business Corporation Act.

The authorized capital stock of Florida consists of 104,476 shares of preferred stock and 5,000,000 shares of common stock without nominal or par value. The preferred stock is divided into two series, i.e. 44,476 shares of 4.56 percent preferred stock, cumulative, \$100 par value, of which 43,893 are outstanding; and 60,000 shares of 4.36 percent preferred stock, cumulative, \$100 par value, of which 59,920 shares are outstanding. All of these outstanding shares of preferred stock are held by the public. Of the 5,000,000 authorized shares of common stock, 2,850,000 are outstanding and are held by Florida's parent, Middle South.

The authorized capital stock of Mississippi is identical with that of Florida

except for 10 shares of common stock, par value \$100 per share, that were issued to Mississippi's three incorporators.

On the effective date of the merger (1) the ten outstanding shares of Mississippi will be retired and cancelled; (2) the then outstanding shares of preferred and common stocks of Florida will be converted into the same number of shares of Mississippi with the same rights, preferences, privileges, restrictions and powers as the present preferred and common stock of Florida, except for the two differences, as noted above and (3) all of the indebtedness of Florida, including all of its outstanding mortgage bonds, will be assumed by and will become the obligations of Mississippi. Following the merger stockholders desiring to replace certificates formerly representing shares of Florida will, upon surrender thereof, be entitled to receive corresponding certificates of Mississippi.

The proposed merger requires the favorable vote of the holders of not less than a majority of (1) the total number of outstanding shares of preferred and common stock of Florida, regardless of class, (2) the total number of the outstanding shares of preferred stock of Florida, regardless of series, and (3) two-thirds of the outstanding shares of common stock of Mississippi. Under the laws of the State of Florida any stockholder of Florida may dissent to the proposed merger and upon complying with the applicable statutory requirements are entitled to receive the fair cash value of his stock. The filing states that it is the present intention of the holder of all of the outstanding shares of common stock of Florida (Middle South) and of Mississippi (the three incorporators) to vote such shares in favor of the merger.

Upon the effectiveness of the proposed merger, the separate corporate existence of Florida will cease and Mississippi will succeed to all of the properties, rights and obligations of Florida and will continue to operate such properties and to exercise such rights, subject to such obligations as are applicable to the business in which Florida is presently engaged. The present directors and officers of Florida will continue to hold corresponding positions in Mississippi and their terms of office will expire on the same date as that presently applicable.

The charter of Mississippi is deemed by Florida to be identical with its charter in all material respects except that (1) the charter of Mississippi provides that its corporate existence shall be limited to 99 years whereas Florida's charter provides for perpetual existence, and (2) Mississippi will not be authorized, as is Florida, to engage in the street railway, telegraph or telephone business. However, Florida is not now engaged, nor is it the present intention of Mississippi to engage, in such additional types of business. The filing states that there will be no variations of substance in the by-laws of Florida and Mississippi.

The outstanding debt securities of Florida, all of which are held by the public, consist of six series of First Mortgage Bonds, aggregating \$62,498,000 in principal amount, that were issued under

its Mortgage and Deed of Trust, dated as of September 1, 1944, to Irving Trust Company and Frederick G. Herbst (J. S. Austin, successor), as Trustees, as supplemented. The terms and provisions of Florida's First Mortgage Bonds which are to be assumed by Mississippi will remain unchanged. In this connection, Mississippi proposes to execute a sixth supplement to the foregoing indenture for the purpose of evidencing its succession to Florida and the assumption of Florida's covenants and conditions under the indenture.

Florida proposes to solicit proxies in favor of the proposed merger for use at a special meeting of stockholders, now scheduled to be held on April 22, 1963. Copies of the notice of meeting and proxy statement, form of proxy and management letter to be used in connection with the proposed solicitations, and a statement of the manner in which the solicitation is to be made, have been incorporated in and made a part of the present filing. In this connection, Florida has requested the Commission to permit its declaration regarding the proposed solicitation of proxies pursuant to Rule 62 under the Act to become effective not later than March 22, 1963, and that the application-declaration with respect to the remaining transactions be granted and permitted to become effective not later than April 25, 1963.

The indicated fees and expenses to be incurred in respect of the proposed transactions are estimated to aggregate \$10,000, consisting of \$2,100 for printing, \$5,500 of fees for recordation of articles of merger and supplemental indenture, \$1,000 for trustee's fees and \$1,400 for miscellaneous expenses. The fees and expenses of company counsel and auditors are to be supplied by amendment.

Florida and Mississippi have applied to the Public Service Commission of the State of Mississippi for the issuance of a certificate of public convenience and necessity approving the proposed merger. A copy of the order entered therein is to be supplied by amendment. It is represented that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than April 19, 1963, request in writing that a hearing be held in respect of such matters (other than the matters pertaining to the solicitation of proxies), stating the nature of his interest, the reasons for such request, and the issues of fact or law which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon applicants-declarants, at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed contemporaneously with the request. At any time after said date, the amended application-declaration (excepting the portion

thereon pertaining to the solicitation of proxies), as it will be further amended, may be granted and permitted to become effective in the manner provided by Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rule as provided by Rules 20(a) and 100 thereof, or take such other action as it may deem appropriate.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,  
Secretary.

[F.R. Doc. 63-3246; Filed, Mar. 27, 1963; 8:49 a.m.]

## SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Area 419; Amdt. 1]

### KENTUCKY, VIRGINIA, AND WEST VIRGINIA

#### Declaration of Disaster Area

Declaration of Disaster Area 419, dated March 13, 1963, is hereby amended as follows:

To include the Counties of Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, Washington, and Wise in the State of Virginia; and the Counties of Boone, Greenbrier, Kanawha, Lincoln, Logan, McDowell, Mingo, Raleigh, and Wyoming in the State of West Virginia.

Applications for disaster loans under Disaster Declaration No. 419 and this Amendment may be received by the additional offices below listed:

Small Business Administration Regional Office,  
Executive Office Building,  
Post Office Box 8565,  
1904 Byrd Avenue,  
Richmond 26, Va.

Small Business Administration Branch Office,  
United States Courthouse and Federal Building,  
500 Quarrier Street, Room 3000,  
Charleston, W. Va.

(Flood occurring on or about March 11, 1963.)

Dated: March 15, 1963.

C. R. LANMAN,  
Deputy Administrator.

[F.R. Doc. 63-3249; Filed, Mar. 27, 1963; 8:49 a.m.]

[Declaration of Disaster Area 418; Amdt. 1]

### TENNESSEE

#### Declaration of Disaster Area

Declaration of Disaster Area 418, dated March 12, 1963, is hereby amended as follows:

To include the County of Wilson in the State of Tennessee.

Applications for disaster loans under Disaster Declaration No. 418 and this Amendment may be received by the additional office below listed.

Small Business Administration Branch Office,  
Security Federal Savings and Loan Building,  
500 Union Street, Room 301,  
Nashville 3, Tenn.

(Flood occurring on or about March 11, 1963.)

Dated: March 18, 1963.

JOHN E. HORNE,  
Administrator.

[F.R. Doc. 63-3250; Filed, Mar. 27, 1963;  
8:49 a.m.]

[Declaration of Disaster Area 420]

### MISSISSIPPI

#### Declaration of Disaster Area

Whereas, it has been reported that during the month of March 1963, because of the effects of certain disasters, damage resulted to residences and business property located in Monroe County in the State of Mississippi;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the area affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such area constitute a catastrophe within the purview of the Small Business Act.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b) (1) of the Small Business Act may be received and considered by the Offices below indicated from persons or firms whose property, situated in the aforesaid County and areas adjacent thereto, suffered damage or destruction resulting from tornado and accompanying conditions occurring on or about March 11, 1963.

#### OFFICES

Small Business Administration Regional Office,  
90 Fairlie Street NW.,  
Atlanta 3, Ga.

Small Business Administration Branch Office,  
U.S. Post Office and Courthouse Building,  
Room 322,  
Capital and West Streets,  
Jackson 1, Miss.

2. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to September 30, 1963.

Dated: March 14, 1963.

JOHN E. HORNE,  
Administrator.

[F.R. Doc. 63-3251; Filed, Mar. 27, 1963;  
8:49 a.m.]

[Declaration of Disaster Area 421; Amdt. 1]

### ALABAMA AND TENNESSEE

#### Declaration of Disaster Area

Declaration of Disaster Area 421, dated March 15, 1963, is hereby amended as follows:

To include the County of Marion in the State of Tennessee.

Applications for disaster loans under Disaster Declaration No. 421 and this Amendment may be received by the additional office below listed.

Small Business Administration Branch Office,  
Security Federal Savings and Loan Building,

500 Union Street, Room 301,  
Nashville 3, Tenn.

(Tornado, rain and flood occurring on or about March 11 and 12, 1963.)

Dated: March 15, 1963.

C. R. LANMAN,  
Deputy Administrator.

[F.R. Doc. 63-3252; Filed, Mar. 27, 1963;  
8:50 a.m.]

## DEPARTMENT OF LABOR

### Wage and Hour Division

#### CERTIFICATES AUTHORIZING EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM RATES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), and Administrative Order No. 561 (27 F.R. 4001) the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. The effective and expiration dates, occupations, wage rates, number or proportion of learners, learning periods, and the principal product manufactured by the employer for certificates issued under general learner regulations (29 CFR 522.1 to 522.9) are as indicated below. Conditions provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.20 to 522.25, as amended).

The following learner certificates were issued authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

The Arrow Co., Jasper, Ala.; effective 3-10-63 to 3-9-64 (men's shirts).

The Arrow Co., Bremen, Ga.; effective 3-13-63 to 3-12-64 (men's shirts).

Bee & Gee Pants Manufacturing Co., Inc., 416-418 Main Street, Dickson City, Pa.; effective 3-14-63 to 3-13-64 (men's and boys' trousers).

Canton Manufacturing Corp., 307 South Second Avenue, Canton, Ill.; effective 3-4-63 to 3-3-64 (men's and boys' cotton wash pants).

Carolina Sportswear Co., Warrenton, N.C.; effective 3-6-63 to 3-5-64 (men's and boys' knitted sportswear—shirts).

Edgewood Casuals, Inc., East Second Avenue, Lexington, N.C.; effective 3-11-63 to 3-10-64 (men's sport shirts, dress shirts).

Finesilver Manufacturing Co., 816 Camaron Street, San Antonio, Tex.; effective 3-4-63 to 3-3-64 (men's and boys' work pants, shirts, and denim dungarees).

Greer Shirt Corp., P.O. Box 390, Greer, S.C.; effective 3-4-63 to 3-3-64 (men's and boys' sport shirts).

Herrin Apparel Co., Inc., 712 East Monroe Street, Herrin, Ill.; effective 3-8-63 to 3-7-64 (women's and misses' dresses).

Imperial Shirt Corp. (True Loom Division), Lafayette, Tenn.; effective 3-6-63 to 3-5-64 (men's sport shirts).

Indiana Sportswear Co., P.O. Box 252, Route 119, Indiana, Pa.; effective 3-6-63 to

3-5-64 (men's and boys' zipper, snap, and button outerwear jackets).

F. Jacobson & Sons, Inc., Tipton and O'Brien Streets, Seymour, Ind.; effective 3-6-63 to 3-5-64 (men's dress shirts).

Junior Form Lingerie Corp., Cairnbrook, Pa.; effective 3-4-63 to 3-3-64 (ladies', children's, and teens' pajamas).

Kentucky Pants Co., Glasgow-Bowling Green Road and 117 North Race Street, Glasgow, Ky.; effective 3-7-63 to 3-6-64 (men's work and casual pants).

H. D. Lee Co., Inc., 117 West 20th Street, Kansas City, Mo.; effective 3-7-63 to 3-6-64 (overalls, work pants, and work jackets).

Morganstern Pants Co., 404 Willis Street, Fredericksburg, Va.; effective 3-8-63 to 3-7-64 (men's trousers).

Oberman Manufacturing Co., Harrison, Ark.; effective 3-10-63 to 3-9-64 (men's and boys' pants).

Rainfair, Inc., Wynne, Ark.; effective 3-15-63 to 3-14-64 (men's dress trousers and walk shorts).

Reidbord Brothers Co., Lumber Street, Buckhannon, W. Va.; effective 3-7-63 to 3-6-64 (men's dress and work trousers).

Reidbord Brothers Co., Blairton, Washington Township, Westmoreland County, Pa.; effective 3-4-63 to 3-3-64 (boys' and men's trousers).

Somerville Manufacturing Co., Inc., Somerville, Tenn.; effective 3-10-63 to 3-9-64 (men's cotton and synthetic slacks).

Southland Manufacturing Co., Inc., Benson, N.C.; effective 3-4-63 to 3-3-64 (men's and boys' sport shirts).

Levi Strauss & Co., 501 Travis Street, Wichita Falls, Tex.; effective 3-11-63 to 3-10-64 (men's and boys' denim pants).

Bernard Walsh & Son, Inc., 600 Park Drive, Statesville, N.C.; effective 3-7-63 to 3-6-64 (men's and boys' knitted sport shirts).

Weaver Pants Co., Inc., 503 Polk Street, Corinth, Miss.; effective 3-4-63 to 3-3-64 (men's single pants).

The following learner certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

Anthracite Overall Manufacturing Co., Inc., 430 Penn Avenue, Scranton, Pa.; effective 3-10-63 to 3-9-64; 10 learners; learners may not be employed at special minimum wage rates in the production of separate skirts (men's work and dress pants, overalls, and jackets; ladies' slacks, shorts, and pedal pushers).

Connie Fashions, Inc., 10-20 North West Street, Shenandoah, Pa.; effective 3-8-63 to 3-7-64; 10 learners (women's dresses).

Dapper-Do Co., 5359 Dixie Highway, Bridgeport, Mich.; effective 3-6-63 to 3-5-64; 10 learners (infants' gowns, pajamas, etc.).

Dickson City Garment Corp., Bowman & Dewey Streets, Dickson City, Pa.; effective 3-11-63 to 3-10-64; 10 learners (children's dresses).

East Waterford Textiles, Inc., East Waterford, Pa.; effective 3-14-63 to 3-13-64; 10 learners (ladies' dresses).

Hill Co., Inc., Fort Smith, Ark.; effective 3-10-63 to 3-9-64; 10 learners (men's and boys' shirts and boys' pants).

Eileen Hope, Inc., 122 Juniper Street, Harrisburg, Pa.; effective 3-7-63 to 3-6-64; 10 learners (women's dresses).

Juniata Garment Co., 322 South Juniata Street, Mifflin, Pa.; effective 3-7-63 to 3-6-64; 10 learners (women's dresses).

Lake Butler Apparel Co., Lake Butler, Fla.; effective 3-12-63 to 3-11-64; 10 learners (men's and boys' dress slacks).

McLoughlin Manufacturing Corp., Peru, Ind.; effective 3-8-63 to 3-7-64; 10 learners (girls' and ladies' blouses, etc.).

Peerless Sportswear Manufacturing Co., R. 324 South Main Street, Wilkes-Barre, Pa.;

10 learners (women's and girls' slacks, shorts, and pedal pushers).

Shroyer Dress Co., Milton Branch, Rear 28 Prospect Avenue, Milton, Pa.; effective 3-12-63 to 3-11-64; 10 learners (women's and misses' dresses).

Shroyer Dress Co., 315 North Water Street, Selinsgrove, Pa.; effective 3-12-63 to 3-11-64; 10 learners (women's and misses' dresses).

Spruce Pine Manufacturing Co., 145 Oak Street, Spruce Pine, N.C.; effective 3-7-63 to 3-6-64; 10 learners (men's and boys' shirts).

The Watson-Scott Co., Thomasville, Ga.; effective 3-4-63 to 3-3-64; 10 learners (men's industrial uniforms, shirts, trousers, etc.).

The following learner certificates were issued for plant expansion purposes. The effective and expiration dates and the number of learners authorized are indicated.

The Arrow Co., Jasper, Ala.; effective 3-10-63 to 9-9-63; 150 learners (men's shirts).

Canton Manufacturing Corp., 307 South Second Avenue, Canton, Ill.; effective 3-4-63 to 9-3-63; 10 learners (men's and boys' cotton wash pants).

Petersburg Manufacturing Co., Petersburg, Tenn.; effective 3-6-63 to 9-5-63; 150 learners (men's and boys' unlined outerwear jackets).

Cigar Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.80 to 522.85, as amended).

La Primadora Cigar Corp., East Avenue at Turner Street, Clearwater, Fla.; effective 3-11-63 to 3-10-64; 10 percent of the total number of factory production workers for normal labor turnover purposes.

Glove Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.60 to 522.65, as amended).

Brookville Glove Manufacturing Co., Inc., 5-15 Western Avenue, Brookville, Pa.; effective 3-10-63 to 3-9-64; 10 learners for normal labor turnover purposes (cotton work gloves).

Regulations Applicable to the Employment of Learners (29 CFR 522.1 to 522.9, as amended).

Oglebay Glass Co., 414 Bond Street, Cumberland, Md.; effective 3-10-63 to 9-9-63; three learners for normal labor turnover purposes, in the occupation of glass cutter (stone wheel engraver) for a learning period of 240 hours at the rate of not less than \$1.05 an hour (manufacturer of cut glass).

The following learner certificates were issued in Puerto Rico to the companies hereinafter named. The effective and expiration dates, learner rates, occupations, learning periods, and the number or proportion of learners authorized to be employed, are as indicated.

Bra-Glo Manufacturing Co., Inc., Carolina, P.R.; effective 2-15-63 to 2-14-64; 20 learners for normal labor turnover purposes, in the occupations of: (1) Sewing machine operator for a learning period of 480 hours at the rates of 85 cents an hour for the first 320 hours and 95 cents an hour for the remaining 160 hours; and (2) final inspection of fully assembled garments for a learning period of 160 hours at the rate of 85 cents an hour (brassieres).

Bratex Corp., Road No. 701, Km. 0.3, P.O. Box 747, Salinas, P.R.; effective 2-15-63 to 2-14-64; 10 learners for normal labor turnover purposes, in the occupations of: (1) Sewing machine operator for a learning period of 480 hours at the rates of 85 cents an hour for the first 320 hours and 95 cents

an hour for the remaining 160 hours; and (2) final inspection of fully assembled garments for a learning period of 160 hours at the rate of 85 cents an hour (brassieres).

Debmar Corp., Canovanas, P.R.; effective 2-15-63 to 2-14-64; 19 learners for normal labor turnover purposes, in the occupations of: (1) Sewing machine operator for a learning period of 480 hours at the rates of 85 cents an hour for the first 320 hours and 95 cents an hour for the remaining 160 hours; and (2) final inspection of fully assembled garments for a learning period of 160 hours at the rate of 85 cents an hour (brassieres).

De Luxe Caribe, Inc., Florida, P.R.; effective 2-6-63 to 2-5-64; five learners for normal labor turnover purposes, in the occupations of: (1) Sewing machine operator for a learning period of 480 hours at the rates of 85 cents an hour for the first 320 hours and 95 cents an hour for the remaining 160 hours; and (2) final inspection of fully assembled garments for a learning period of 160 hours at the rate of 85 cents an hour (girdles and allied products).

De Luxe Caribe, Inc., Florida, P.R.; effective 2-6-63 to 8-5-63; 24 learners for plant expansion purposes, in the occupations of: (1) Sewing machine operator for a learning period of 480 hours at the rates of 85 cents an hour for the first 320 hours and 95 cents an hour for the remaining 160 hours; and (2) final inspection of fully assembled garments for a learning period of 160 hours at the rate of 85 cents an hour (girdles and allied products).

Playtex Caribe, Inc., Manati, P.R.; effective 2-25-63 to 8-24-63; 43 learners for plant expansion purposes, in the occupation of sewing machine operator for a learning period of 480 hours at the rates of 85 cents an hour for the first 320 hours and 95 cents an hour for the remaining 160 hours (brassieres).

Star Kist Caribe, Inc., P.O. Box 3698—Marina Station, Mayaguez, P.R.; effective 2-11-63 to 6-24-63; 50 learners for plant expansion purposes, in the occupation of tuna fish cleaner and packer for a learning period of 160 hours at the rates of 87 cents an hour for the first 80 hours and \$1.01 an hour for the remaining 80 hours (canned tuna fish and byproducts).

Tedros Corp., Carolina, P.R.; effective 2-15-63 to 2-14-64; 14 learners for normal labor turnover purposes, in the occupations of: (1) Sewing machine operator for a learning period of 480 hours at the rates of 85 cents an hour for the first 320 hours and 95 cents an hour for the remaining 160 hours; and (2) final inspection of fully assembled garments for a learning period of 160 hours at the rate of 85 cents an hour (brassieres).

Wilida, Inc., Road No. 11, Km. 67.0 Pueblo Norte, Juana Diaz, P.R.; effective 2-15-63 to 8-14-63; 15 learners for plant expansion purposes, in the occupation of sewing machine operator for a learning period of 480 hours at the rates of 78 cents an hour for the first 240 hours and 91 cents an hour for the remaining 240 hours (swim suits).

Wilida, Inc., Road No. 11, Km. 67.0 Pueblo Norte, Juana Diaz, P.R.; effective 2-15-63 to 2-14-64; 10 learners for normal labor turnover purposes, in the occupation of sewing machine operator for a learning period of 480 hours at the rates of 78 cents an hour for the first 240 hours and 91 cents an hour for the remaining 240 hours (swim suits).

Each learner certificate has been issued upon the representations of the employer which, among other things, were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. Any person aggrieved by the issuance of any of these certificates may

seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in 29 CFR Part 528.

Signed at Washington, D.C., this 18th day of March 1963.

ROBERT G. GRONEWALD,  
Authorized Representative  
of the Administrator.

[F.R. Doc. 63-3237; Filed, Mar. 27, 1963; 8:47 a.m.]

## INTERSTATE COMMERCE COMMISSION

### FOURTH SECTION APPLICATIONS FOR RELIEF

MARCH 25, 1963.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 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. 38230—*Commodity rates—Sea-land service.* Filed by Sea-Land Service, Inc. (No. 43), for itself and interested carriers. Rates on iron or steel articles, as described in the application, in mixed truckloads, loaded in highway trailers over the highways and loaded in container-ships to move via water, in intercoastal service, from Pittsburgh, Pa., to Los Angeles, Cal.

Grounds for relief—All-rail competition.

Tariff—Supplement 15 to Sea-Land Service, Inc., tariff I.C.C. 14.

FSA No. 38231—*Liquid fertilizers to Wyoming points.* Filed by Southwestern Freight Bureau, Agent (No. B-8369), for interested rail carriers. Rates on fertilizer solutions, in tank-car loads, from Brownfield, Kay, and Salton, Tex., to points in Wyoming on the C&NW and CB&Q railroads.

Grounds for relief—Market competition.

Tariff—Supplement 59 to Southwestern Freight Bureau tariff I.C.C. 4422.

FSA No. 38232—*Tin or terne plate to Florida points and New Orleans, La.* Filed by Traffic Executive Association—Eastern Railroads, Agent (E.R. No. 2662) for interested rail carriers. Rates on tin or terne plate, as described in the application, in carloads, from points in Maryland, Ohio, Pennsylvania, and West Virginia, to specified points in Florida, also New Orleans, La.

Grounds for relief—Market competition.

Tariff—Supplement 16 to Traffic Executive Association—Eastern Railroads, Agent, tariff I.C.C. C-282.

By the Commission.

[SEAL] HAROLD D. MCCOY,  
Secretary.

[F.R. Doc. 63-3240; Filed, Mar. 27, 1963; 8:48 a.m.]

## CUMULATIVE CODIFICATION GUIDE—MARCH

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