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FEDERAL REGISTER

VOLUME 29 NUMBER 91

Washington, Friday, May 8, 1964

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A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1964, and specifies how they are affected.

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FEDERAL REGISTER

Area Code 202 Phone 963-3261

Published daily, Tuesday through Saturday (no publication on Sundays, Mondays, or on the day after an official Federal holiday), by the Office of the Federal Register, National Archives and Records Service, General Services Administration (mail address National Archives Building, Washington, D.C. 20408), pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

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Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 733—POLITICAL ACTIVITIES OF FEDERAL EMPLOYEES

Subpart C—Privileged Localities

MONTGOMERY COUNTY, MARYLAND

Section 733.301 is amended to grant an exception from the prohibitions of section 9 of the Hatch Political Activities Act to employee residents of Montgomery County, Maryland. Section 733.301(b) is amended by the addition of "Montgomery County (April 30, 1964)" under the heading "In Maryland".

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

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

[F.R. Doc. 64-4621; Filed, May 7, 1964; 8:47 a.m.]

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. H]

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

Underwriting of Public Authority Bonds

§ 208.109 Underwriting of public Authority bonds payable from rents under lease with governmental entity having general taxing powers.

(a) The Board of Governers has been asked whether securities of a public Authority that are to be paid from rents payable under a lease of the Authority's facilities to a governmental entity that possesses general powers of taxation, including property taxation, constitute "general obligations" within the meaning of section 5136 of the United States Revised Statutes (12 U.S.C. 24). In cases where this question can be answered in the affirmative, member State banks of the Federal Reserve System may lawfully underwrite and deal in such securities, and invest therein without limitation on amount, as far as Federal banking law is concerned.

(b) The Board understands that the issuing Authorities usually have no taxing powers and that their obligations are not, under pertinent State constitutional and statutory provisions as interpreted by the courts, "debts" of the lessee—that is, the governmental entity with general powers of taxation. However, whether a security constitutes a "debt" for purposes of State law is not determinative as to whether it is a "general obligation" within the meaning of section 5136, a Federal statute. (See § 208.105, 28 F.R. 9840.)

(c) During recent Hearings before the Committee on Banking and Currency of the House of Representatives, published under the title "Increased Flexibility for Financial Institutions—1963", the Board expressed its understanding of the meaning of the phrase "general obligations of any State or of any political subdivision thereof" as used in section 5136.

(d) As the House Committee was informed, the Board understands that phrase to include "only obligations that are supported by an unconditional promise to pay, directly or indirectly, an aggregate amount which (together with any other funds available for the purpose) will suffice to discharge, when due, all interest on and principal of such obligations, which promise (1) is made by a Governmental entity that possesses general powers of taxation, including property taxation, and (2) pledges or otherwise commits the full faith and credit of said promisor; said term does not include obligations not so supported that are to be repaid only from specified sources such as the income from designated facilities or the proceeds of designated taxes." (Hearings, p. 1018.)

(e) A major requirement of the foregoing definition is that a "general obligation" must be supported by general powers of taxation, including property taxation. The Board recognizes, however, that such support by general powers of taxation may be indirect as well as direct.

(f) If a State (or other governmental entity having general powers of taxation) agrees unconditionally to pay to an Authority rentals that will be sufficient and will be used, in all events, to cover required payments of interest and principal on the relevant securities when due, the securities, in the opinion of the Board, are indirectly supported by general taxing powers, and, accordingly, constitute "general obligations" within the meaning of R.S. 5136. On the other hand, if the lease does not contain an unconditional promise of the State to provide sums sufficient, in all events, to cover required payments of interest and principal on the bonds of the lessor Authority as they become due, the securities cannot be considered "general obligations".

(g) The status of a particular issue of such lease-supported bonds thus depends upon the terms of the lease involved. Where the lease is for a term of years not less than the maximum maturity of the relevant bond issue, and the State unconditionally promises to pay rentals sufficient to cover all payments on the bonds as they become due, the bonds ordinarily will qualify as "general obligations". Where the promise of the State is to pay a fixed dollar rental, the securities will not qualify as "general obligations" unless the lease provides that rental payments in amounts sufficient to service the bonds cannot be expended by the authority for any other purpose than the payment of principal and interest thereon.

(h) This interpretation is intended to indicate the circumstances in which securities issued by public Authorities without taxing powers constitute "general obligations" that are eligible for underwriting by member banks, under R.S. 5136. The status of any particular issue can only be determined through examination of all revelant laws and contracts, in order to ascertain the actual legal and financial arrangements.

(12 U.S.C. 248(i). Interprets 12 U.S.C. 24 and 335)

Dated at Washington, D.C., this 30th day of April, 1964.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 64-4598; Filed, May 7, 1964; 8:45 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

SUBCHAPTER E—AIRSPACE [NEW]

[Airspace Docket No. 63-SO-48]

PART 73—SPECIAL USE AIRSPACE [NEW]

Valparaiso, Fla.; Correction

On April 1, 1964, F.R. Doc. 64-3126 was published in the FEDERAL REGISTER (29 F.R. 4670) and in part altered R-2915 Valparaiso, Fla., by dividing it into two parts, R-2915A and R-2915B.

In Item 1c R-2915B was incorrectly cited as R-2615B. Corrective action is taken herein.

Since this change is editorial in nature and imposes no additional burden on any person, compliance with section 4 of the Administrative Procedure Act is unnecessary and the effective date as initially adopted may be retained.

In consideration of the foregoing, effective immediately, F.R. Doc. 64-3126 (29 F.R. 4670) is altered as follows: In the caption of Item 1c "R-2615B" is deleted and "R-2915B" is substituted therefor.

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

Issued in Washington, D.C., on April 29, 1964.

LEE E. WARREN,
Director, Air Traffic Service.

[F.R. Doc. 64-4599; Filed, May 7, 1964; 8:45 a.m.]

[Airspace Docket No. 64-SO-6]

PART 73—SPECIAL USE AIRSPACE [NEW]

Alteration of Restricted Area

The purpose of this amendment to § 73.29 of the Federal Aviation Regulations is to reduce the designated altitudes of the Avon Park West, Fla., Restricted Area R-2901C from "Surface to flight level 400" to "Surface to flight level 240."

The Department of the Air Force has advised the Federal Aviation Agency that their activities in R-2901C can be conducted below flight level 240. Accordingly, action is taken herein to change the designated altitudes of R-2901C to "Surface to flight level 240."

Since this amendment reduces a burden on the public, compliance with notice, public procedure and effective date requirements of section 4 of the Administrative Procedure Act is unnecessary and it may be made effective upon publication.

In consideration of the foreging, the following action is taken: In § 73.29 (29 F.R. 1245), R-2901C Avon Park West, Fla., "Designated altitudes. Surface to flight level 400." is deleted and "Designated altitudes. Surface to flight level 240." is substituted therefor.

This amendment shall become effective upon the date of publication in the FEDERAL REGISTER.

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

Issued in Washington, D.C., on April 29, 1964.

LEE E. WARREN,
Director, Air Traffic Service.

[F.R. Doc. 64-4600; Filed, May 7, 1964; 8:45 a.m.]

[Airspace Docket No. 64-SO-9]

PART 73—SPECIAL USE AIRSPACE [NEW]

Alteration of Restricted Area

The purpose of this amendment to § 73.60 of the Federal Aviation Regulations is to designate the Fort Jackson, S.C., Restricted Area R-6001 as a joint use area with the Jacksonville ARTC Center as controlling agency. This action would result in more efficient utilization of the airspace within R-6001 and has Department of Army concurrence.

Since this amendment reduces a burden on the public, compliance with the notice, public procedure and effective date requirements of section 4 of the Administrative Procedure Act is unnecessary and it may be made effective on publication.

In consideration of the foregoing, the following action is taken: In the text § 73.60 (29 F.R. 1275), R-6001 Fort Jackson, S.C., "Using agency. Commanding General, Fort Jackson, S.C." is deleted and "Controlling agency. Federal Aviation Agency, Jacksonville ARTC Center. Using agency. Commanding General, Fort Jackson, S.C." is substituted therefor.

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

This amendment shall become effective upon the date of publication in the FEDERAL REGISTER.

Issued in Washington, D.C., on April 29, 1964.

LEE E. WARREN,
Director, Air Traffic Service.

[F.R. Doc. 64-4601; Filed May 7, 1964; 8:46 a.m.]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER C—DRUGS

PART 146a—CERTIFICATION OF PENICILLIN AND PENICILLIN-CONTAINING DRUGS

Sterility Test Methods and Procedures; Correction

In F.R. Document 64-3043, appearing in the issue for Saturday, March 28, 1964, at page 4119, the amendatory language in amendments numbered 64a, 65a, 66a, 68a, and 70a should be corrected to read: "a. By changing paragraph (d)(3) (i) and (ii) to read:".

Dated: May 1, 1964.

JOHN L. HARVEY,
Deputy Commissioner of Food and Drugs.

[F.R. Doc. 64-4628; Filed, May 7, 1964; 8:48 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T. D. 6731]

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

Miscellaneous Amendments

On March 28, 1963, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) to conform the regulations to certain provisions of section 2 of the Revenue Act of 1962 (76 Stat. 962), relating to credit for investment in certain depreciable property, was published in the FEDERAL REGISTER (28 F.R. 3028). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, and after taking into account certain pertinent amendments made by the Revenue Act of 1964 (78 Stat. 19), the amendment of the regulations as proposed is hereby adopted, subject to the changes set forth below. Sections 1.46, 1.46-1, 1.48, and 1.48-4 of the regulations supersede §§ 16.1, 16.1-1, 16.2, and 16.2-1 of Treasury Decision 6619 (26 CFR Part 16), approved November 15, 1962 (27 F.R. 11401).

PARAGRAPH 1. Section 1.46, as set forth in the notice of proposed rule making, is changed by revising subsection (a)(3) of section 46 and by revising the historical note.

PAR. 2. Section 1.46-1, as set forth in the notice of proposed rule making, is changed by revising paragraph (c), and by revising paragraph (f)(2)(i), by adding a new subdivision (iv) to paragraph (f)(2), by revising paragraph (f)(3)(iii), by revising paragraph (f)(6), by revising paragraph (f)(7)(iii), and by revising examples (1) and (4) of paragraph (f)(8).

PAR. 3. Section 1.46-2, as set forth in the notice of proposed rule making, is changed by revising paragraph (g) exclusive of the examples, and by adding to such section a new paragraph (h).

PAR. 4. Section 1.46-3, as set forth in the notice of proposed rule making, is changed by revising subparagraph (1) of paragraph (c), and by revising paragraphs (d) and (e).

PAR. 5. Section 1.46-4, as set forth in the notice of proposed rule making, is changed by revising subparagraphs (2) and (3) of paragraph (b), and by revising subparagraphs (2) and (3) of paragraph (c).

PAR. 6. Section 1.48, as set forth in the notice of proposed rule making, is changed by revising subsections (a)(1) and (d), and by striking out subsection (g), of section 48, and by revising the historical note.

PAR. 7. Section 1.48-1, as set forth in the notice of proposed rule making, is changed by revising paragraphs (a), (b), (e), (f), (g)(2)(ii), (h)(1)(ii), (j), and (k).

PAR. 8. Section 1.48-2, as set forth in the notice of proposed rule making, is changed by revising paragraph (b).

PAR. 9. Section 1.48-3, as set forth in the notice of proposed rule making, is changed by striking out subdivision (iii) of subparagraph (4) of paragraph (c), by revising subparagraph (1)(iii) of paragraph (e), by adding a new subdivision (iv) to paragraph (e)(1), and by revising subparagraphs (2)(ii), (5)(i) and (iii) of paragraph (e).

PAR. 10. Section 1.48-4, as set forth in the notice of proposed rule making, is revised.

PAR. 11. Section 1.48-7, as set forth in the notice of proposed rule making, is changed by revising subparagraph (1) of paragraph (a), and paragraph (b).

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

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

Approved: May 5, 1964.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

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, and after taking into account certain pertinent amendments made by the Revenue Act of 1964 (78 Stat. 19), such regulations are amended as set forth below. Sections 1.46, 1.46–1, 1.48, and 1.48–4 of the regulations supersede §§ 16.1, 16.1–1, 16.2, and 16.2–1 of Treasury Decision 6619 (26 CFR Part 16), approved November 15, 1962 (27 F.R. 11401).

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 or new section 38 property to treat lessee as purchaser.
1.48–5 Electing small business corporations.
1.48–6 Estates and trusts.
1.48–7 Adjustment to basis.

AUTHORITY: The provisions of these §§ 1.38; 1.39; 1.46 to 1.46–4; 1.47, 1.47–1; 1.48 to 1.48–7; issued under sec. 7805 of the Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805.

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

(C) 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	33⅓
6 years or more but less than 8 years	66⅔
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 ⅓ 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 prop-

erty 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); as amended by sec. 201(d)(4), Rev. Act 1964 (78 Stat. 32)]

§ 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 imposed with respect to taxable years beginning before January 1, 1964, and the 6-percent additional tax imposed by section 1562(b) with respect to taxable years ending after December 31, 1963), 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 before January 1, 1965),

(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:

Liability for tax		
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 the common parent may select, provided that the common parent, and each such member of the group less than 100 percent of the stock of which is owned in the aggregate by other members of the group on such last day, 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 member for which a consent is required 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 member of the affiliated group on such last day (including those members in which other members own 100 percent of the stock) 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 July 15, 1964, the required statement (or statements) shall be considered timely filed if filed on or before July 15, 1964, with the district director with whom the common parent files its return. Each member of the affiliated group on the last day of the taxable year of the common parent shall keep as a part of its records a copy of the consent of the common parent (or a copy of the statement containing all the required consents).

(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.

(iv) If a member of the affiliated group (including the common parent) makes its income tax return on the basis of a 52-53-week taxable year, the principles of section 441(f)(2)(A)(ii) and paragraph (b)(1) of § 1.441–2 apply in determining the last day of such a taxable year.

(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 July 15, 1964, 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 affiliated group (including each member which joins in filing the consolidated return) shall be treated as a separate corporation for purposes of equally apportioning the $25,000 amount under subparagraph (2)(iii) of this paragraph. In such case, the limitation based on amount of tax for 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, executed by the common parent, to the apportionment plan is required for the group filing the consolidated return. If any member of the affiliated group which joins in the filing of the consolidated return is an organization to which section 593 applies or a cooperative organization described in section 1381(a), see paragraph (a)(2)(ii) of § 1.1502–51.

(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, D.C., 20225, on or before the 75th day after the end of its taxable year (as determined under subdivision (ii) of this subparagraph) or July 15, 1964, 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 consents 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 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 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 paragraphs (a) through (f) 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

(i) 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 undersection 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:

(a) *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	
	175,000	
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

(b) *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	
	200,000	
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

(c) *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	
	210,000	
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

(d) *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	
	220,000	
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

(ii) 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 subsequent 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:

(a) *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	
	210,000	
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

(b) *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	
	230,000	
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

(c) *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	
	255,000	
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

(d) *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	
	270,000	
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 $\left(\frac{200{,}000 \times 181}{365}\right)$. Therefore, the total investment credit carrybacks to the taxable year ending June 30, 1962, may not exceed $34,178 ($99,178 less $65,000).

(h) *Electing small business corporation.* An unused credit of a corporation which arises in an unused credit year for which the corporation is not an electing small business corporation (as defined in section 1371(b)) and which is a carryback or carryover to a taxable year for which the corporation is an electing small business corporation shall not be added to the amount allowable as a credit under section 38 to the shareholders of such corporation for any taxable year. However, a taxable year for which the corporation is an electing small business

corporation shall be counted as a taxable year for purposes of determining the taxable years to which such unused credit may be carried.

§ 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 apportionment 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 33⅓ percent if the estimated useful life of the property is 4 years or more but less than 6 years; 66⅔ 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	33⅓	$20,000
B	90,000	100	90,000
C	150,000	66⅔	100,000
D	30,000	33⅓	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) with respect to property placed in service before January 1, 1964, 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. However, for purposes of determining qualified investment, the basis of new section 38 property constructed, reconstructed, or erected by the taxpayer shall not include any depreciation sustained with respect to any other property used in the construction, reconstruction, or erection of such new section 38 property. (See paragraph (b)(4) of § 1.48–1.)

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, the unit of production method, or the retirement 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 (or machines) 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.

(iii) Equipment is acquired for a specifically assigned function and is operational but is undergoing testing to eliminate any defects. However, fruit-bearing trees and vines shall not be considered in a condition or state of readiness and availability for a specifically assigned function until they have reached an income-producing stage. Moreover, materials and parts acquired to be used in the construction of an item of equipment shall not be considered in a condition or state of readiness and availability for a specifically assigned function.

(3) Notwithstanding subparagraph (1) of this paragraph, property with respect to which an election is made under § 1.48–4 to treat the lessee as having purchased such property shall be considered placed in service by the lessor in the taxable year in which possession is transferred to such lessee.

(4) (i) 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.

(ii) Notwithstanding subdivision (i) of this subparagraph, if, for the first taxable year in which property is placed in service by the taxpayer, the property qualifies as section 38 property but the basis of the property does not reflect its full cost for the reason that the total amount to be paid or incurred by the taxpayer for the property is indeterminate, a credit shall be allowed to the taxpayer for such first taxable year with respect to so much of the cost as is reflected in the basis of the property as of the close of such year, and an additional credit shall be allowed to the taxpayer for any subsequent taxable year with respect to the additional cost paid or incurred during such year and reflected in the basis of the property as of the close of such year. The estimated useful life used in computing each additional credit with respect to the property shall be the same as the estimated useful life used in computing the credit for the first taxable year in which the property was placed in service by the taxpayer. Assume, for example, that in 1964 X Corporation, a utility company which makes its return on the basis of a calendar year, enters into an agreement with Y Corporation, a builder, to construct certain utility facilities for a housing development built by Y. Assume further that part of the funds for the construction of the utility facilities is advanced by Y under a contract providing that X will repay the advances over a 10-year period in accordance with an agreed formula, after which no further amounts will be repayable by X even though the full amount advanced by Y has not been repaid. Assuming that the utility facilities are placed in service in 1964 and qualify as section 38 property, X is allowed a credit for 1964 with respect to its basis in the utility facilities at the close of 1964. For each succeeding taxable year X is allowed an additional credit with respect to the increase in the basis of the utility facilities resulting from the repayments to Y during such year.

(e) *Estimated useful life*—(1) *In general.* With respect to assets placed in service by the taxpayer during any taxable year, for the purpose of computing qualified investment the estimated useful lives assigned to all assets which fall within a particular guideline class (within the meaning of Revenue Procedure 62–21) may be determined, at the taxpayer's option, under either subparagraph (2) or (3) of this paragraph. Thus, the taxpayer may assign estimated useful lives to all the assets falling in one guideline class in accordance with subparagraph (2) of this paragraph, and may assign estimated useful lives to all the assets falling within another guideline class in accordance with subparagraph (3) of this paragraph. See subparagraphs (4) and (5) of this paragraph for determination of estimated useful lives of assets not subject to subparagraph (2) or (3) of this paragraph.

(2) *Class life system.* The taxpayer may assign to each asset falling within a guideline class, which is placed in service during the taxable year, the class life of the taxpayer for the guideline class for such year as determined under section 4, Part II of Revenue Procedure 62–21. The preceding sentence may be applied to the assets falling within a guideline class irrespective of whether the taxpayer uses single asset accounts or multiple asset accounts in computing depreciation with respect to such assets and irrespective of whether the taxpayer chooses to have his depreciation allowance with respect to such assets examined under the rules provided in Revenue Procedure 62–21.

(3) *Individual useful life system.* (i) The taxpayer may assign an individual estimated useful life to each asset falling within a guideline class which is placed in service during the taxable year. With respect to the assets falling within the guideline class which are placed in single asset accounts for purposes of computing depreciation, the estimated useful life used for each asset for that purpose shall be used in determining qualified investment. With respect to the assets falling within the guideline class which are placed in multiple asset accounts (including a guideline class account described in Revenue Procedure 62–21) for which a group, classified, or composite rate is used in computing depreciation (or in single asset accounts for which an average life rate is used), the determination of estimated useful life for each asset in the account shall be made individually on the best estimate obtainable on the basis of all the facts and circumstances. The individual estimated useful lives used for all the assets placed in a multiple asset account, when viewed together, must be consistent with the group, classified, or composite rate used for the account for purposes of computing depreciation.

(ii) In determining the individual estimated useful lives of assets similar in kind contained in a multiple asset account (or in single asset accounts for which an average life rate is used), the taxpayer may assign to each of such assets the average useful life of such assets used for purposes of computing depreciation, 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 for 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 for 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.

(4) *Useful life of property subject to amortization.* 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.

(5) *Useful life of property subject to certain methods of depreciation.* If a taxpayer is using a method of depreciation, such as the unit of production or retirement method, which does not measure the useful life of the property in terms of years, he must estimate such useful life in years in order to compute his qualified investment.

(6) *Record requirements.* The taxpayer shall maintain sufficient records to determine whether section 47 (relating to certain dispositions, etc., of section 38 property) applies with respect to any asset.

(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 prop-

erty 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 acount 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
Partnership MR					
Icemaker	8	$1,000	$700	100	$700
Soda fountain	6	600	300	66⅔	200
Sole proprietorship					
Machine	4	300		33⅓	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 ⅗ 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 for a taxable year beginning before January 1, 1964, a regulated investment company or a real estate investment trust may compute depreciation deductions with respect to section 38 property placed in service before January 1, 1964, 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 which makes its return on the basis of the calendar year, places in service on January 1, 1964, section 38 property with a basis of $30,000 and an estimated useful life of 6 years. Corporation X's investment company taxable income under section 852(b)(2) is $10,000 after taking into account a deduction for dividends paid of $90,000.

(ii) Under this paragraph, corporation X's qualified investment for the taxable year 1964 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 1964, the $25,000 amount specified in section 46(a)(2) (A) and (B) is reduced to $2,500.

(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 for a taxable year beginning before January 1, 1964, a cooperative may compute depreciation deductions with respect to section 38 property placed in service before January 1, 1964, 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) Cooperative X, an organization described in section 1381(a) which makes its return on the basis of the calendar year, places in service on January 1, 1964, section 38 property with a basis of $30,000 and an estimated useful life of 6 years. Cooperative X's taxable income 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), and deductions of $10,000 allowed under section 522(b)(1)(B).

(ii) Under this paragraph, cooperative X's qualified investment for the taxable year 1964 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)). For 1964, the $25,000 amount specified in section 46(a)(2) (A) and (B) is reduced to $2,500.

§ 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—

(i) 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

(ii) Constitutes a research or storage facility used in connection with any of the activities referred to in clause (i), or

(C) Elevators and escalators, but only if—

(i) The construction, reconstruction, or erection of the elevator or escalator is completed by the taxpayer after June 30, 1963, or

(ii) The elevator or escalator is acquired after June 30, 1963, and the original use of such elevator or escalator commences with the taxpayer and commences after such date. 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) Except as provided in paragraph (2), the fair market value of such property, or

(2) If such property is leased by a corporation which is a member of an affiliated group (within the meaning of section 46(a)(5)) to another corporation which is a member of the same affiliated group, 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.

(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) [Deleted]

(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); as amended by sec. 203(a)(1) and (3)(A), (b), and (c), Rev. Act 1964 (78 Stat. 33, 34)]

§ 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, (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 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 is a research or storage facility used in connection with any of the foregoing activities, or (iii) an elevator or escalator which satisfies the conditions of section 48(a)(1)(C). 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. A deduction for depreciation is allowable if the property is of a character subject to the allowance for depreciation under section 167 and the basis (or cost) of the property is recovered through a method of depreciation, including, for example, the unit of production method and the retirement method as well as methods of depreciation which measure the life of the property in terms of years. 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 (or years). 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).

(3) If the cost of property is not recovered through a method of depreciation but through a deduction of the full cost in one taxable year, for purposes of subparagraph (1) of this paragraph a deduction for depreciation with respect to such property is not allowable to the taxpayer. However, if an adjustment with respect to the income tax return for such taxable year requires the cost of such property to be recovered through a method of depreciation, a deduction for depreciation will be considered as allowable to the taxpayer.

(4) If depreciation sustained on property is not an allowable deduction for the taxable year but is added to the basis of property being constructed, reconstructed, or erected by the taxpayer, for purposes of subparagraph (1) of this paragraph a deduction for depreciation shall be treated as allowable for the taxable year with respect to the property on which depreciation is sustained. Thus, if $1,000 of depreciation sustained with respect to property no. 1, which is placed in service in 1964 by taxpayer A, is not allowable to A as a deduction for 1964 but is added to the basis of property being constructed by A (property no. 2), for purposes of subparagraph (1) of this paragraph a deduction for depreciation shall be treated as allowable to A for 1964 with respect to property no. 1. However, the $1,000 amount is not included in the basis of property no. 2 for purposes of determining A's qualified investment with respect to property no. 2. See paragraph (c)(1) of § 1.46–3.

(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 prop-

erty 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 includes any such structure constructed by, or for, a lessee even if such structure must be removed, or ownership of such structure reverts to the lessor, at the termination of the lease. 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 (whether in, on, or adjacent to the building) 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. However, the term "structural components" does not include machinery the sole justification for the installation of which is the fact that such machinery is required to meet temperature or humidity requirements which are essential for the operation of other machinery or the processing of materials or foodstuffs. Machinery may meet the "sole justification" test provided by the preceding sentence even though it incidentally provides for the comfort of employees, or serves, to an insubstantial degree, areas where such temperature or humidity requirements are not essential. For example, an air conditioning and humidification system installed in a textile plant in order to maintain the temperature or humidity within a narrow optimum range which is critical in processing particular types of yarn or cloth is not included within the term "structural components". For special rules with respect to an elevator or escalator, the construction, reconstruction, or erection of which is completed by the taxpayer after June 30, 1963, or which is acquired after June 30, 1963, and the original use of which commences with the taxpayer and commences after such date, see section 48(a)(1)(C) and the regulations thereunder.

(f) *Intangible property.* Intangible property, such as patents, copyrights, and subscription lists, does not qualify as section 38 property. The cost of intangible property, in the case of a patent or copyright, includes all costs of purchasing or producing the item patented or copyrighted. Thus, in the case of a motion picture or television film or tape, the cost of the intangible property includes manuscript and screenplay costs, the cost of wardrobe and set design, the salaries of cameramen, actors, directors, etc., and all other costs properly includible in the basis of such film or tape. In the case of a book, the cost of the intangible property includes all costs of producing the original copyrighted manuscript, including the cost of illustration, research, and clerical and stenographic help. However, if tangible depreciable property is used in the production of such intangible property, see paragraph (b)(4) of this section.

(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 taxpayer 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.

(iii) 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 (or, in the case of leased property, would be 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 State 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 swimmnig 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. However, property which is used in furnishing, to the management of a lodging facility or its tenants, electrical energy, water, sewage disposal services, gas, telephone service, or other similar services 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, telephone station and switchboard equipment, 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 predominantly in connection with the furnishing of lodging. Examples of nonlodging 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), and (2) property leased to the organization. Thus, for example, a data processing or copying machine which is leased to an organization exempt from tax would 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), and (2) property leased to any such governmental unit. Thus, for example, a data processing or copying machine which is leased to any such governmental unit would 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 contruction, 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. The question of whether property is reconditioned or rebuilt property is a question of fact. Property will not be treated as reconditioned or rebuilt merely because it contains some used parts.

If the cost of reconstruction may properly either be capitalized and recovered through depreciation or charged against the depreciation reserve, such cost may be taken into account as the basis of new section 38 property even though it it charged against the depreciation reserve.

(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 ar-

rangement, such property in the hands of the purchaser-lessor is not used section 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 corpora-

tion, 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.

(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
Partnership XYZ		
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
Partner X		
Property No. 5	6 years	30,000
Partner Y		
Property No. 6	10 years	60,000
Partner Z		
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	66⅔	10,000
5	6 years	30,000	66⅔	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	66⅔	5,333
7	4 years	36,000	33⅓	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 retain as a part of its records a copy of the statement containing the apportionment schedule which is attached to the common parent's return. If the due date (including extensions of time) of the common parent's return is before July 15, 1964, the required statement may be filed on or before such date with the district director with whom the return was filed.

(iv) If a member of the affiliated group (including the common parent) makes its income tax return on the basis of a 52–53-week taxable year, the principles of section 441(f)(2)(A)(ii) and paragraph (b)(1) of § 1.441–2 apply in determining the last day of such a taxable year.

(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, a new statement (reflecting the amended apportionment) shall be attached to the original or amended return of the common parent and a copy of such statement shall be retained by 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 retain as a part of its records a copy of 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)(iii) (or (2)(ii)) of this paragraph shall be filed with the Director, International Operations Division, Internal Revenue Service, Washington, D.C., 20225. 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 July 15, 1964, 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. For purposes of this subparagraph, if the lessor is an estate or trust, depreciation (or amortization in lieu of depreciation) will be considered allowable to the estate or trust even if it is apportioned to the beneficiaries or other persons.

(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. 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) In the case of property possession of which is transferred by a lessor to a lessee before February 26, 1964, 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 such 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) *General rule.* 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 as determined under subparagraph (2), or (3) of this paragraph, whichever is applicable.

(2) *Property transferred before February 26, 1964.* (i) In the case of leased

property possession of which is transferred to the lessee before February 26, 1964, unless subdivision (ii) of this subparagraph 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.

(ii) 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. 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.

(3) *Property transferred after February 25, 1964.* (i) In the case of leased property possession of which is transferred to the lessee after February 25, 1964, unless subdivision (ii) of this subparagraph applies, 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.

(ii) If the property is leased by a corporation which is a member of an affiliated group (within the meaning of paragraph (f)(5) of § 1.46–1) to another corporation which is a member of the same affiliated group on the date possession of the property is transferred to the lessee, the basis of the property in the hands of the lessee shall be the basis of the property in the hands of the lessor.

(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 for purposes of computing depreciation, 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. However, in the case of assets similar in kind contained in a multiple asset account, the lessor shall assign to each of such assets the average useful life of such assets used in computing depreciation. Thus, for example, if during a taxable year a lessor leases 10 similar trucks with an average estimated useful life for depreciation purposes of 7 years, based on an estimated range of 6 to 8 years, he must assign a useful life of 7 years to each of the 10 trucks.

(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 selection 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 determined under paragraphs (c) and (d) of this section as if the original lessor had leased the property directly to the sublessee on the date possession of the property is transferred to the sublessee. Thus, for example, if on March 1, 1964, corporation X leases property to corporation Y, which in turn subleases the property to individual A (who is the first person to use the property for its intended function), and if both X and Y make valid elections under this section, the basis of the property to A is equal to its fair market value on the date on which possession is transferred from Y to A (regardless of whether X and Y are members of the same affiliated group), and its estimated useful life to A is the estimated useful life in the hands of X.

(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 category of the property (or properties) in the hands of the lessor, that is, 4 years or more but less than 6 years, 6 years or more but less than 8 years, or 8 years or more; except that, in the case of property possession of which is transferred to the lessee before January 1, 1964, the lessor may, at his option, use the estimated useful life of the property (or properties) in the hands of the lessor expressed in terms of years;

(vi) The basis of the leased property in the hands of the lessee (or sublessee) as determined under paragraph (c) of this section; 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 July 15, 1964, 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, or on or before July 15, 1964, whichever is later. 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, or on or before July 15, 1964, whichever is later, with a statement (or statements) 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. However, if the due date of the return (including extensions of time) is before July 15, 1964, the summary statement may be filed on or before such date with the district director with whom the return has been filed. 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 category of the property (or, if applicable, the estimated useful life expressed in years), and the basis or fair market value of the property, whichever is applicable.

(k) *Adjustment of rental deductions*—(1) *In general.* The rules of this paragraph apply only to section 38 property placed in service before January 1, 1964, and with respect to any such property only for taxable years of a lessee beginning before January 1, 1964. If a lessor makes a valid election under this section with respect to property placed in service by the lessee before January 1, 1964, section 48(g) and § 1.48–7 (relating to adjustments to basis of property) shall not apply to the lessor with respect to such property. Thus, the lessor is not required to reduce under section 48(g)(1) the basis of such property. 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. For special adjustment for taxable years beginning after December 31, 1963, see section 203(a)(2)(B) of the Revenue Act of 1964 (78 Stat. 33).

(2) *Decrease in rental deduction.* (i) The deductions otherwise allowable under section 162 to the lessee for amounts paid or accrued to the lessor under the lease with respect to leased property placed in service before January 1, 1964, shall be decreased under subdivision (ii) or (iii) of this subparagraph, whichever is applicable, by an amount determined by reference 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) If, in the case of property placed in service before January 1, 1964, the lessor, under paragraph (f)(1)(v) of this section, supplies the lessee with the useful life of such property expressed in years, then for each taxable year beginning before January 1, 1964, 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) If, in the case of property placed in service before January 1, 1964, the lessor, under paragraph (f)(1)(v) of this section, supplies the lessee with the useful life category of such property, then for each taxable year beginning before January 1, 1964, during a period equal to the shortest life of the useful life category used by the lessee in computing qualified investment under section 46(c) with respect to the leased property, the lessee shall decrease the deduction otherwise allowable under section 162 for such taxable year with respect to such property. The decrease for each such taxable year shall be equal to the credit earned divided by such shortest life, that is, 4, 6, or 8. Such decreases shall begin with the taxable year during which the lessee places the property in service. Thus, if leased property with a basis of $30,000 to the lessee, and an estimated useful life falling within the 4 years or more but less than 6 years useful life category, is placed in service by the lessee within the lessee's taxable year ending December 31, 1962, the lessee must decrease his section 162 deduction with respect to the leased property for each of the taxable years 1962 and 1963 by $175 ($700 credit earned divided by 4).

(iv) To the extent that a required decrease, under subdivision (ii) or (iii) of this subparagraph, is not taken into account for any taxable year beginning before January 1, 1964, 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) beginning before January 1, 1964, if any, for which a deduction is allowable with respect to such property. Thus, if the required decrease with respect to leased property is $200 for 1962 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 1963 to decrease the deduction otherwise allowable to the lessee with respect to the leased property for such taxable year.

(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 (in a taxable year of such lessee beginning before January 1, 1964) who has been treated as a purchaser of such property under this section.

(3) *Increase in rental deduction.* If, in any taxable year of a lessee beginning before January 1, 1964, section 47 applies (because of an early disposition, etc., of the leased property) to property which is subject to a valid election under this section, and if as a result of the application of section 47 the lessee's tax for the taxable year is increased or a credit carryback or carryover is adjusted, then an appropriate increase in the lessee's deduction otherwise allowable under section 162 for such taxable year with respect to the leased property shall be made.

(l) *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, 1962, 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, under paragraph (c)(2)(ii) of this section such machine will have a basis of $25,200 in Y's hands. Under paragraph (f)(1)(v) of this section, X supplies Y with an estimated useful life of 12 years (expressed in years rather than useful life category) with respect to machine no. 1 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). Under paragraph (k)(2)(ii) of this section, Y's deduction attributable to the leased property for 1962 will be decreased by $134.75 (credit earned of $1,764, divided by 144, multiplied by 11), and for 1963 such deduction will be decreased by $147 ($1,764, divided by 144, multiplied by 12). 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 under paragraph (f)(1)(v) of this section, X supplies Y with an estimated useful life category of 8 years or more (rather than an estimated useful life expressed in years) with respect to machine no. 1 for purposes of determining Y's qualified investment. Under paragraph (k)(2)(iii) of this section, Y's deduction attributable to the leased property will be decreased by $220.50 (credit earned of $1,764, divided by 8) for each of its taxable years 1962 and 1963.

§ 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 taxable 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. (1) 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.

(2) 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)	33⅓	$6,000
$9,000 (new)	100	9,000
$7,200 (used)	66⅔	4,800
$3,600 (used)	100	3,600
Total		23,400

SHAREHOLDER B

$12,000 (new)	33⅓	$4,000
$6,000 (new)	100	6,000
$4,800 (used)	66⅔	3,200
$2,400 (used)	100	2,400
Total		15,600

SHAREHOLDER C

$30,000 (new)	33⅓	$10,000
$15,000 (new)	100	15,000
$12,000 (used)	66⅔	8,000
$6,000 (used)	100	6,000
Total		39,000

§ 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. 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 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 appor-

tioned 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. (1) 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.

(2) 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	$12,000
XYZ Trust ($\frac{\$10,000}{20,000}$)	30,000	15,000	12,000	6,000
Beneficiary A ($\frac{\$6,000}{20,000}$)	18,000	9,000	7,200	3,600
Beneficiary B ($\frac{\$4,000}{20,000}$)	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)	33⅓	$10,000
$15,000 (new)	100	15,000
$12,000 (used)	66⅔	8,000
$6,000 (used)	100	6,000
Total		39,000

Beneficiary A

$18,000 (new)	33⅓	$6,000
$9,000 (new)	100	9,000
$7,200 (used)	66⅔	4,800
$8,600 (used)	100	3,600
		23,400
$10,000 (new)	100	10,000
Total		33,400

Beneficiary B

$12,000 (new)	33⅓	$4,000
$6,000 (new)	100	6,000
$4,800 (used)	66⅔	3,200
$2,400 (used)	100	2,400
Total		15,600

(4) 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: (i) $25,000, multiplied by (ii) $39,000 (qualified investment apportioned to the trust), divided by (iii) $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 "section 38 property" placed in service before January 1, 1964, 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 such 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 placed in service before January 1, 1964, 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. Section 48(g)(1) and this section do not apply to section 38 property placed in service after December 31, 1963. For increase in basis of property to which this section applies, see section 203(a)(2)(A) of the Revenue Act of 1964 (78 Stat. 33).

(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—4 to 6 years	Used—6 to 8 years	Used—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	33⅓	$600
$7,200	66⅔	4,800
$6,000	100	6,000
		11,400

SHAREHOLDER B

$1,200	33⅓	$400
$4,800	66⅔	3,200
$4,000	100	4,000
		7,600

SHAREHOLDER C

$3,000	33⅓	$1,000
$12,000	66⅔	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). (i) 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, the $12,000 cost of used section 38 property within the 6 to 8 years 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	66⅔	8,000
4 to 6 years	1,000	33⅓	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 by X Corporation was taken into account by share-

holders 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 $1,890 (7 percent of $27,000 qualified investment).

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

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	66⅔	8,000
3	1,500	33⅓	500
4	1,500	33⅓	500
			19,000

PARTNER B

1	$6,000	100	$6,000
2	7,200	66⅔	4,800
3	900	33⅓	300
4	900	33⅓	300
			11,400

PARTNER C

1	$4,000	100	$4,000
2	4,800	66⅔	3,200
3	600	33⅓	200
4	600	33⅓	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:

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	**Share of cost**		
Asset No. 1	$10,000	100	10,000
Asset No. 2	12,000	66⅔	8,000
Asset No. 3	1,500	33⅓	500
Asset No. 4	500	33⅓	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	5,953

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 placed in service before January 1, 1964, 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 (in a taxable year of the lessee beginning before January 1, 1964) 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 January 1, 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 February 1, 1962. 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). For the taxable year 1962 Y Corporation decreases, under paragraph (k)(2)(ii) of § 1.48-4, its deductions otherwise allowable under section 162 for amounts paid to X Corporation under the lease with respect to such property by $96.25 ($840 multiplied by 11/96). On January 1, 1963, Y Corporation actually purchases such property from X Corporation for $9,000.

(ii) As of January 1, 1963, Y Corporation must reduce the basis of the property by $743.75 ($840 minus $96.25). Thus, for purposes of determining a reasonable allowance for depreciation under section 167 with respect to such property for the taxable year 1963, its adjusted basis is $8,256.25 ($9,000 minus $743.75).

[F.R. Doc. 64-4647; Filed, May 7, 1964; 8:50 a.m.]

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[T.D. 6730]

PART 301—PROCEDURE AND ADMINISTRATION

Periods of Limitations and Interest

In order to conform the Regulations on Procedure and Administration (26 CFR Part 301) to the amendments made to the Internal Revenue Code of 1954 by the Federal-Aid Highway Act of 1961 (75 Stat. 122), the Trade Expansion Act of 1962 (76 Stat. 872), the Revenue Act of 1962 (76 Stat. 960), and the Act of October 23, 1962 (Public Law 87-858, 76 Stat. 1134), the regulations are amended as follows:

PARAGRAPH 1. Section 301.6501(c) is amended by revising subsection (c)(6) of section 6501 and the historical note to read as follows:

§ 301.6501(c) Statutory provisions; limitations on assessment and collection; exceptions.

Sec. 6501. *Limitations on assessment and collection.* * * *

(c) *Exceptions.* * * *

(6) *Tax resulting from certain distributions or from termination as life insurance company.* In the case of any tax imposed under section 802(a) by reason of section 802(b)(3) on account of a termination of the taxpayer as an insurance company or as a life insurance company to which section 815(d)(2)(A) applies, or on account of a distribution by the taxpayer to which section 815(d)(2)(B) applies, such tax may be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) for the taxable year for which the taxpayer ceases to be an insurance company, the second taxable year for which the taxpayer is not a life insurance company, or the taxable year in which the distribution is actually made, as the case may be.

[Sec. 6501(c) as amended by sec. 3(g), Life Insurance Company Income Tax Act 1959 (73 Stat. 140); sec. 3(b)(4), Act of Oct. 23, 1962 (Pub. Law 87-858, 76 Stat. 1137)]

PAR. 2. Section 301.6501(h) is amended by revising subsection (h) of section 6501 and the historical note to read as follows:

§ 301.6501(h) Statutory provisions; limitations on assessment and collection; net operating loss carrybacks.

Sec. 6501. *Limitations on assessment and collection.* * * *

(h) *Net operating loss carrybacks.* In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss which results in such carryback may be assessed, or within 18 months after the date on which the taxpayer files in accordance with section 172(b)(3) a copy of the certification (with respect to such taxable year) issued under section 317 of the Trade Expansion Act of 1962, whichever is later.

[Sec. 6501(h) as added by sec. 81(b), Technical Amendments Act 1958 (72 Stat. 1663); and as amended by sec. 317(c), Trade Expansion Act 1962 (76 Stat. 890)]

PAR. 3. Section 301.6501(h)-1 is amended to read as follows:

§ 301.6501(h)-1 Net operating loss carrybacks.

In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss which results in such carryback may be assessed, or within 18 months after the date on which the taxpayer files in accordance with section 172(b)(3) a copy of the certification (with respect to such taxable year) issued under section 317 of the Trade Expansion Act of 1962, whichever is later.

PAR. 4. Section 301.6501(j), as amended by Treasury Decision 6555, approved March 9, 1961, is redesignated § 301.6501(k), subsection (j) of section 6501 is redesignated subsection (k), and the historical note is revised. The amended provisions read as follows:

§ 301.6501(k) Statutory provisions; limitations on assessment and collection; joint income return after separate return.

Sec. 6501. *Limitations on assessment and collection.* * * *

(k) *Joint income return after separate return.* For period of limitations for assessment and collection in the case of a joint income return filed after separate returns have been filed, see section 6013(b)(3) and (4).

[Sec. 6501(h) as redesignated by sec. 81(b), Technical Amendments Act 1958 (72 Stat. 1663); sec. 3(c), Act of Sept. 14, 1960 (Pub. Law 86-780, 74 Stat. 1013); sec. 2(e)(1), Revenue Act 1962 (76 Stat. 971)]

PAR. 5. Immediately after § 301.6501(i)-1 there are inserted the following new sections:

§ 301.6501(j) Statutory provisions; limitations on assessment and collection; investment credit carrybacks.

Sec. 6501. *Limitations on assessment and collection.* * * *

(j) *Investment credit carrybacks.* In the case of a deficiency attributable to the application to the taxpayer of an investment credit carryback, such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused investment credit which results in such carryback may be assessed.

[Sec. 6501(j) as added by sec. 2(e)(1), Revenue Act 1962 (76 Stat. 971)]

§ 301.6501(j)-1 Investment credit carryback; taxable years ending after December 31, 1961.

With respect to taxable years ending after December 31, 1961, a deficiency attributable to the application to the taxpayer of an investment credit carryback may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused investment credit which results in such carryback may be assessed.

PAR. 6. Section 301.6511(d) is amended by revising subsection (d)(2)(A) of section 6511 and the historical note, and by adding a new paragraph (4) to section 6511(d). The amended provisions read as follows:

§ 301.6511(d) Statutory provisions; limitations on credit or refund; special rules applicable to income taxes.

Sec. 6511. *Limitations on credit or refund.* * * *

(d) *Special rules applicable to income taxes.* * * *

(2) *Special period of limitation with respect to net operating loss carrybacks*—(A) *Period of limitation.* If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 40th month (or the 39th month in the case of a corporation) following the end of the taxable year of the net operating loss which results in such carryback, or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later; except that—

(i) With respect to an overpayment attributable to a net operating loss carryback to any year on account of a certification issued to the taxpayer under section 317 of the Trade Expansion Act of 1962, the period shall not expire before the expiration of the sixth month following the month in which such certification is issued to the taxpayer, and

(ii) With respect to an overpayment attributable to the creation of, or an increase in, a net operating loss carryback as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a)(1)(A)), the period shall not expire before September 1, 1959, or the expiration of the twelfth month following the month in which the agreement or order for the elimination of such excessive profits becomes final, whichever is the later.

In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

* * * * *

(4) *Special period of limitation with respect to investment credit carrybacks*—(A) *Period of limitation.* If the claim for credit or refund relates to an overpayment attributable to an investment credit carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 40th month (or 39th month, in the case of a corporation) following the end of the taxable year of the unused investment credit which results in such carryback, or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

(B) *Applicable rules.* If the allowance of a credit or refund of an overpayment of tax attributable to an investment credit carryback is otherwise prevented by the operation of any law or rule of law other than section 7122, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. In the case of any such claim for credit or refund, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall not be conclusive with respect to the investment credit, and the effect of such credit, to the extent that such credit is affected by a carryback which was not in issue in such proceeding.

[Sec. 6511(d) as amended by sec. 82(d), Technical Amendments Act 1958 (72 Stat. 1663); sec. 1(a), Act of Sept. 16, 1959 (Pub. Law 86-280, 73 Stat. 563); sec. 317(d), Trade Expansion Act 1962 (76 Stat. 891); sec. 2(e)(2), Revenue Act 1962 (76 Stat. 971)]

PAR. 7. Section 301.6511(d)-2 is amended by revising subparagraph (1) of paragraph (a) to read as follows:

§ 301.6511(d)-2 Overpayment of income tax on account of net operating loss carryback.

(a) *Special period of limitation.* (1) If the claim for credit or refund relates to an overpayment of income tax attributable to a net operating loss carryback, provided in section 172(b), then in lieu of the 3-year period from the time the return was filed in which the claim may be filed or credit or refund allowed, as prescribed in section 6511 (a) or (b), the period shall be whichever of the following 2 periods expires later:

(i) The period which ends with the expiration of the fifteenth day of the fortieth month (or thirty-ninth month, in the case of a corporation) following the end of the taxable year of the net operating loss which resulted in the carryback; or

(ii) The period which ends with the expiration of the period prescribed in section 6511(c) within which a claim for credit or refund may be filed with respect to the taxable year of the net operating loss which resulted in the carryback;

except that—

(*a*) With respect to an overpayment attributable to a net operating loss carryback to any year on account of a certification issued to the taxpayer under section 317 of the Trade Expansion Act of 1962, the period shall not expire before the expiration of the sixth month following the month in which such certification is issued to the taxpayer, and

(*b*) With respect to an overpayment attributable to the creation of, or an increase in, a net operating loss carryback as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a)(1)(A)), the period shall not expire before September 1, 1959, or the expiration of the twelfth month following the month in which the agreement or order for the elimination of such excessive profits becomes final, whichever is the later.

* * * * *

PAR. 8. Immediately after § 301.6511(d)-3 there is inserted the following new section:

§ 301.6511(d)-4 Overpayment of income tax on account of investment credit carryback.

(a) *Special period of limitation.* (1) If the claim for credit or refund relates to an overpayment of income tax attributable to an investment credit carryback, provided in section 46(b), then in lieu of the 3-year period from the time the return was filed in which the claim may be filed or credit or refund allowed, as prescribed in section 6511 (a) or (b), the period shall be whichever of the following 2 periods expires later:

(i) The period which ends with the expiration of the fifteenth day of the fortieth month (or thirty-ninth month, in the case of a corporation) following the end of the taxable year of the unused investment credit which resulted in the carryback; or

(ii) The period which ends with the expiration of the period prescribed in section 6511(c) within which a claim for credit or refund may be filed with respect to the taxable year of the unused investment credit which resulted in the carryback.

(2) In the case of a claim for credit or refund involving an investment credit carryback described in subparagraph (1) of this paragraph, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in section 6511 (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the carryback. If the claim involves an overpayment based not only on an investment credit carryback described in subparagraph (1) of this paragraph but based also on other items, the credit or refund cannot exceed the sum of the following:

(i) The amount of the overpayment which is attributable to the investment credit carryback, and

(ii) The balance of such overpayment up to a limit of the portion, if any, of the tax paid within the period provided in section 6511 (b)(2) or (c), or within the period provided in any other applicable provision of law.

(3) If the claim involves an overpayment based not only on an investment credit carryback described in subparagraph (1) of this paragraph but based also on other items, and if the claim with respect to any items is barred by the expiration of any applicable period of limitation, the portion of the overpayment attributable to the items not so barred shall be determined by treating the allowance of such items as the first adjustment to be made in computing such overpayment. If a claim for credit or refund is not filed, and if credit or refund is not allowed, within the period prescribed in this paragraph, then credit or refund may be allowed or made only if claim therefor is filed, or if such credit or refund is allowed, within the period prescribed in section 6511 (a), (b), or (c), whichever is applicable, subject to the provisions thereof limiting the amount of credit or refund in the case of a claim filed, or if no claim was filed, in case of credit or refund allowed, within such applicable period. For the limitations on the allowance of interest for an overpayment where credit or refund is subject to the provisions of this section, see section 6611(f).

(b) *Barred overpayments.* If the allowance of a credit or refund of an overpayment of tax attributable to an investment credit carryback is otherwise prevented by the operation of any law or rule of law (other than section 7122, relating to compromises), such credit or refund may be allowed or made under the provisions of section 6511(d)(4)(B) if a claim therefor is filed within the period provided by section 6511(d)(4)(A) and paragraph (a) of this section for filing a claim for credit or refund of an overpayment attributable to a carryback. In the case of a claim for credit or refund of an overpayment attributable to a carryback, the determination of any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall not be conclusive with respect to the investment credit, and the effect of such credit, to the extent that such credit is affected by a carryback which was not in issue in such proceeding.

PAR. 9. Section 301.6601 is amended by revising subsections (c)(2) and (e) of section 6601 and the historical note to read as follows:

§ 301.6601 Statutory provisions; interest on underpayment, nonpayment, or extensions of time for payment, of tax.

Sec. 6601. *Interest on underpayment, nonpayment, or extensions of time for payment, of tax.* * * *

(c) *Last date prescribed for payment.* * * *

(2) *Installment payments.* In the case of an election under section 6152 (a) or 6156 (a) to pay the tax in installments—

(A) The date prescribed for payment of each installment of the tax shown on the return shall be determined under section 6152(b) or 6156(b), as the case may be, and

(B) The last date prescribed for payment of the first installment shall be deemed the last date prescribed for payment of any portion of the tax not shown on the return.

* * * * *

(e) *Income tax reduced by carryback—*(1) *Net operating loss carryback.* If the amount of any tax imposed by subtitle A is reduced by reason of a carryback of a net operating loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the net operating loss arises.

(2) *Investment credit carryback.* If the credit allowed by section 38 for any taxable year is increased by reason of an investment credit carryback, such increase shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the investment credit carryback arises.

* * * * *

[Sec. 6601 as amended by secs. 66(c), 83(a)(1), 84(a), Technical Amendments Act 1958 (72 Stat. 1658, 1663, 1664); sec. 206 (e), Small Business Tax Revision Act 1958 (72 Stat. 1685); sec. 203(c)(2), Federal-Aid Highway Act 1961 (75 Stat. 126); sec. 2(e)(3), Revenue Act 1962 (76 Stat. 972)]

PAR. 10. Section 301.6601-1, as amended by Treasury Decision 6585, approved December 21, 1961, is further amended by revising paragraphs (c)(2) (i) and (e) to read as follows:

§ 301.6601-1 Interest on underpayments.

* * * * *

(c) *Last date prescribed for payment.* * * *

(2)(i) If a tax or portion thereof is payable in installments in accordance with an election made under section 6152(a) or 6156(a), the last date prescribed for payment of any installment of such tax or portion thereof shall be determined under the provisions of section 6152(b) or 6156(b), as the case may be, and interest shall run on any unpaid

installment from such last date to the date on which payment is received. However, in the event installment privileges are terminated for failure to pay an installment when due as provided by section 6152(d) and the time for the payment of any remaining installment is accelerated by the issuance of a notice and demand therefor, interest shall run on such unpaid installment from the date of the notice and demand to the date on which payment is received. But see section 6601(f)(4).

* * * * *

(e) *Income tax reduced by carryback.* (1) The carryback of a net operating loss or an investment credit shall not affect the computation of interest on any income tax for the period commencing with the last date prescribed for the payment of such tax and ending with the last day of the taxable year in which the loss or credit arises. For example, if the carryback of a net operating loss or an investment credit to a prior taxable period eliminates or reduces a deficiency in income tax for that period, the full amount of the deficiency will nevertheless bear interest at the rate of 6 percent per annum from the last date prescribed for payment of such tax until the last day of the taxable year in which the loss or credit arose. Interest will continue to run beyond such last day on any portion of the deficiency which is not eliminated by the carryback.

(2) Where an extension of time for payment of income tax has been granted under section 6164 to a corporation expecting a net operating loss carryback, interest is payable at the rate of 6 percent per annum on the amount of such unpaid tax from the last date prescribed for payment thereof without regard to such extension.

(3) Where there has been an allowance of an overpayment attributable to a net operating loss carryback or an investment credit carryback and all or part of such allowance is later determined to be excessive, interest shall be computed on the excessive amount from the last day of the year in which the net operating loss or investment credit arose until the date on which the repayment of such excessive amount is received.

* * * * *

PAR. 11. Section 301.6611 is amended by revising subsection (f) of section 6611 and the historical note to read as follows:

§ 301.6611 Statutory provisions; interest on overpayments.

Sec. 6611. *Interest on overpayments.* * * *

(f) *Refund of income tax caused by carryback*—(1) *Net operating loss carryback.* For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a carryback of a net operating loss, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such net operating loss arises.

(2) *Investment credit carryback.* For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from an investment credit carryback, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such investment credit carryback arises.

* * * * *

[Sec. 6611 as amended by secs. 42(b), 83 (b), (c), Technical Amendments Act 1958 (72 Stat. 1640, 1664); sec. 2(e)(4), Revenue Act 1962 (76 Stat. 972)]

PAR. 12. Section 301.6611–1, as amended by Treasury Decision 6585, approved December 21, 1961, is further amended by revising paragraph (e) to read as follows:

§ 301.6611–1 Interest on overpayments.

* * * * *

(e) *Refund of income tax caused by carryback.* If any overpayment of tax imposed by subtitle A of the Code results from the carryback of a net operating loss or an investment credit, such overpayment, for purposes of this section, shall be deemed not to have been made prior to the end of the taxable year in which the loss or credit arises.

* * * * *

Because this Treasury decision makes only technical changes, 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.

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

MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

Approved: May 5, 1964.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

[F.R. Doc. 64–4648; Filed, May 7, 1964; 8:50 a.m.]

Title 29—LABOR

Chapter XIII—Bureau of Labor Standards, Department of Labor

PART 1501—SAFETY AND HEALTH REGULATIONS FOR SHIP REPAIRING

PART 1502—SAFETY AND HEALTH REGULATIONS FOR SHIPBUILDING

PART 1503—SAFETY AND HEALTH REGULATIONS FOR SHIPBREAKING

Fire Prevention; Correction

In the documents revising 29 CFR Parts 1501 and 1502 and establishing 29 CFR Part 1503 published in the FEDERAL REGISTER on March 27, 1964 (29 F.R. 4001, 4027 and 4051), the following correction is hereby made in matter concerning fire prevention:

The word "enclosed" in the second sentence of 29 CFR 1501.32(g), 1502.32 (g), and 1503.32(a)(4) is changed to read "confined".

Because this change involves only a minor correction in language, and results in relief from the stringency of the regulations, notice of proposed rule making, public participation in its adoption, and additional delay in effective date are found to be unnecessary. Accordingly, good cause is found to and I do hereby make the change effective on April 26, 1964, the effective date of the regulation changed.

Signed at Washington, D.C., this 4th day of May 1964.

W. WILLARD WIRTZ,
Secretary of Labor.

[F.R. Doc. 64–4622; Filed, May 7, 1964; 8:47 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

MISCELLANEOUS AMENDMENTS TO CHAPTER

The regulations of the Post Office Department are amended as follows:

PART 43—MAIL DEPOSIT AND COLLECTION

I. In § 43.6 subparagraph (1) of paragraph (h), as amended by 28 F.R. 11506, is further amended to show that all inquiries from prospective manufactures of mailing chutes and receiving boxes shall be referred to the Director, Delivery Services Branch, Bureau of Operations. As so amended, subparagraph (1) reads as follows:

§ 43.6 Mail chutes and receiving boxes.

* * * * *

(h) *Mailing chute and receiving box manufactures.* (1) A firm interested in the manufacture of mailing chutes or mailing chute receiving boxes must submit to the Director, Delivery Services Branch, Bureau of Operations, specifications, drawings, and a full size working model of the chute and receiving box. The chute section should be at least 5 feet in length and must contain a mail slot. This section is to be attached to the receiving box. If the specifications, drawings, and model are found satisfactory, the Director, Delivery Services Branch, Bureau of Operations will request the firm to submit a $10,000 bond as specified in paragraph (f)(3) of this section. After the bond is examined and approved, he will authorize installation of not more than three mailing chutes and receiving boxes for a 90-day actual service condition test. If no unsatisfactory condition is disclosed during the test period, the Director, Delivery Services Branch, Bureau of Operations, will give the concern final approval for the manufacture of this equipment. The company's name and address will then be added to the list of authorized manufacturers of mailing chutes and receiving boxes.

* * * * *

NOTE: The corresponding Postal Manual section is 153.681.

PART 151—CUSTOMS

II. In 151.5 *Treatment at delivery office*, paragraph (d), as amended by 28 F.R. 4252, is further amended by revising that part of subparagraph (4) which precedes subdivision (i) to show the exemptions regarding customs and or internal revenue taxes for packages addressed to persons entitled to tourist

exemptions. As so revised, that part of subparagraph (4) reads as follows:

§ 151.5 Treatment at delivery office.

* * * * *

(d) *Delivery of dutiable mail.* * * *

(4) A package containing items purchased by the addressee while traveling abroad is usually entitled to free entry under his personal tourist exemption. Articles ordinarily liable for internal-revenue taxes by reason of their importation are free of such taxes if they are free of duty under a tourist exemption. The following conditions apply to packages of this nature assessed with duty and/or revenue tax (hereinafter referred to simply as duty) received at delivery offices:

* * * * *

NOTE: The corresponding Postal Manual section is 261.544.

PART 162—IDEMNITY CLAIMS AND PAYMENTS

III. In § 162.2 *Indemnity payments* delete paragraph (c)(4); and redesignate subparagraph (4) of paragraph (a) as subparagraph (5) and insert a new subparagraph (4) to read as follows:

§ 162.2 Indemnity payments.

(a) *Registered postal union articles.* * * *

(4) *Australia.* Indemnity may be paid in any amount claimed not exceeding $8.17 for loss (contents and wrapper), regardless of value; and, on the basis of actual value, irrespective of country responsible, for rifling of an article in a registered packet, but not exceeding $8.17. If United States responsibility, payment may also be made for damage, but not exceeding $8.17.

* * * * *

NOTE: The corresponding Postal Manual sections are 272.21 d and e.

PART 168—DIRECTORY OF INTERNATIONAL MAIL

IV. In § 168.5 *Individual country regulations* make the following changes:

A. In country "Argentina" under Parcel Post, add the following paragraph to the item *Observations:*

Used clothing addressed to individuals is limited to 22 pounds per parcel. Each parcel containing used clothing must have enclosed a notarized and legalized statement from a dry-cleaning or disinfecting establishment that the clothing has been thoroughly cleaned or disinfected. After the statement has been notarized, the notarization must be certified by the county clerk or other competent official. The statement must then be sent to an Argentine consulate accompanied by a fee of $7.40 for legalization. After the consulate returns the legalized statement, it must be enclosed in the parcel with the clothing. The wrapper of the parcel must be marked "Legalized disinfection certificate enclosed."

B. In country "Bahamas," delete the item *Prohibitions* under Postal Union mail; and under Parcel Post, amend the first paragraph of the item *Insurance* to read as follows:

Insurance. The following insurance fees and limits of indemnity apply:

Limit of indemnity:	Fee, cents
Not over $10	20
From $10.01 to $25	25
From $25.01 to $50	35
From $50.01 to $100	55
From $100.01 to $165	60

C. In country "Bulgaria," under Parcel Post, amend the item *Prohibitions and import restrictions* to read as follows:

Prohibitions and import restrictions. The articles prohibited in the postal union mail and are prohibited as parcel post.

Gift shipments mailed by commercial firms.

Medicines not approved by the Bulgarian Ministry of Health.

Import licenses are required for all commercial parcels, and for gift parcels if the customs duty thereon exceeds 100 leva.

Used clothing must be accompanied by a certificate of disinfection. A notarized statement by a laundry or dry cleaner attesting that the clothing has been cleaned should meet the requirements of the Bulgarian Government.

D. Delete the country "Labuan" and the accompanying data. North Borneo includes Labuan and is now a part of "Malaysia Federation of".

E. Delete the country "Persian Gulf Ports" and the accompanying data and insert in proper alphabetical order the countries "Bahrein", "Muscat", "Qatar (Including Doha and Umm Said)" and "Trucial States (Including Abu Dhabi, Dubai and Sharjah)", with the following accompanying data thereunder.

Postal Union Mail

Surface rates, classifications, weight limits and dimensions. See § 168.1.

Air rates. (See § 168.1 for classifications, weight limits and dimensions.)

Letters, 25 cents per half ounce.

Single post cards, 11 cents each.

Aerogrammes, 11 cents each.

Other articles, 50 cents first 2 ounces; 30 cents each additional 2 ounces or fraction.

Small packets. Accepted.

Letter packages containing dutiable merchandise. Accepted. See § 112.1(e) of this chapter. Perishable biological material accepted. See § 111.3(b)(5) of this chapter.

Registration. Fee, 60 cents. Maximum indemnity, $8.17.

Special delivery. No service.

Money orders. Yes. See § 61.2 of this chapter.

Prohibitions. Articles prohibited or restricted as parcel post are prohibited or restricted in the postal union mail.

Parcel Post

Surface parcel rates. Two pounds or less, 90 cents; each additional pound or fraction, 35 cents.

Air parcel rates. Four ounces or less, $1.54; each additional pound or fraction, 65 cents

Weight limit: 22 pounds.
Sealing: Insured parcels must, and ordinary parcels may be sealed.
Group shipments: No.
Registration: No.
Insurance: Yes.
Postal forms required:
1 Form 2922.
2 Form 2966.
1 Form 2972.

Dimensions. Length, 3½ feet; length and girth combined, 6 feet.

Special handling. Available. See § 168.4.

Insurance. The following insurance fees and limits of indemnity apply:

Limit of indemnity:	Fee, cents
Not over $10	20
From $10.01 to $25	25
From $25.01 to $50	35
From $50.01 to $100	55

Print on the wrapper, near the "Insured" endorsement and number, the amount for which the parcel is insured. This indication shall be shown in United States currency, in figures and in letters spelled out in full, in the following form:

INSURED VALUE

$76.75

SEVENTY-SIX DOLLARS AND SEVENTY-FIVE CENTS

Parcels containing coins, bullion, precious stones, and any article of gold, silver, or platinum must be insured. Parcels containing jewelry must not have a value exceeding $100.

The final decision on all questions of compensation rests with the country in whose service the loss, rifling, or damage took place.

For general information in insurance, see Part 133 of this chapter.

Prohibitions. Arms and parts thereof. Cultivated, imitation, artificial, or bleached pearls.

Coins and gold ingots exceeding £5 ($14) in value, except coins declared to be intended as ornaments. Silver ingots or partially worked silver exceeding £20 ($56) in value.

Carbon paper, oilskins, and similar goods are subject to the conditions applicable to such articles for Great Britain.

(R.S. 161, as amended; 5 U.S.C. 22, 39 U.S.C. 501, 505)

LOUIS J. DOYLE,
General Counsel.

[F.R. Doc. 64-4626; Filed, May 7, 1964; 8:48 a.m.]

Title 41—PUBLIC CONTRACTS

Chapter 50—Division of Public Contracts, Department of Labor

PART 50–204—SAFETY AND HEALTH STANDARDS FOR FEDERAL SUPPLY CONTRACTS

Radiation; AEC Contractors Operating AEC Plants and Facilities

Amendments to 41 CFR Part 50–204 establishing radiation safety and health standards became effective on February 28, 1964 (29 F.R. 1437). Their application was, however, withheld as to contractors with the Atomic Energy Commission operating plants and facilities owned by the Commission pending further consideration of whether any special provision should be made in the regulations for such plants. The only parties that have expressed interest in this matter have recently notified the Department that adoption of the proposed special provision for such contractors published in the FEDERAL REGISTER on November 8, 1963 (28 F.R. 11935) would be a satisfactory final disposition of the matter.

Accordingly, pursuant to authority in sections 1 and 4 of the Walsh-Healey Public Contracts Act (41 U.S.C. 35 and 38), and section 7(d) of the Administrative Procedure Act (5 U.S.C. 1006), I hereby amend 41 CFR 50–204.320, effective immediately, by changing the heading of the section, using the present heading and text as the heading and text of paragraph (a), and adding a new paragraph (b) to read as follows:

§ 50–204.320 AEC licensees: AEC contractors operating AEC plants and facilities.

* * * * *

(b) *AEC contractors operating AEC plants and facilities.* Any employer who possesses or uses source material, by-product material, special nuclear material, or other radiation sources under a contract with the Atomic Energy Commission for the operation of AEC plants and facilities and in accordance with the standards, procedures, and other requirements for radiation protection established by the Commission for such contract pursuant to the Atomic Energy Act of 1954 as amended (42 U.S.C. 2011 et seq.), shall be deemed to be in compliance with the requirements of this part with respect to such possession and use.

(Secs. 1, 4, 49 Stat. 2036, 2038; 41 U.S.C. 35, 38; Sec. 7, 60 Stat. 241; 5 U.S.C. 1006)

Signed at Washington, D.C., this 4th day of May 1964.

W. WILLARD WIRTZ,
Secretary of Labor.

[F.R. Doc. 64–4623; Filed, May 7, 1964; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF LABOR

Wage and Hour Division

[29 CFR Part 657]

[Administrative Order No. 581]

TOBACCO INDUSTRY IN PUERTO RICO

Review Committee; Appointment, Convention, and Notice of Hearing

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 paragraph (C) of Proviso (1) of section 6(c) of the aforementioned Act, I hereby appoint Review Committee 8 for the tobacco industry in Puerto Rico (as defined in 29 CFR 657.1), to recommend the minimum wage rate or rates to be paid under paragraph (C) of Proviso (1) of subsection 6(c) of the aforementioned Act in lieu of those provided under paragraph (B) of Proviso (1) to employees in the industry.

Pursuant to sections 6 and 8 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206, 208), and Reorganization Plan No. 6 of 1950, I hereby:

(1) Convene the review committee appointed above;

(2) Refer to it the question of the minimum rate or rates of wages to be fixed for the tobacco industry in Puerto Rico.

(3) Give notice of the hearing to be held by the review committee at the time and place indicated below. The Committee shall investigate conditions in the industry, and the 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. The committee shall recommend to the Administrator the highest minimum wage rate or rates 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.

Review Committee 8 shall meet in executive session to commerce its investigation at 10:00 a.m. on May 25, 1964, 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.

If the review committee finds that a higher minimum wage may be determined for employees engaged in certain activities or in the manufacture of certain products in the industry than may be determined for other employees in it, the committee shall recommend such reasonable classifications within the 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 the industry, in making such classifications, and in determining the minimum wage rates for such classifications, the review 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 the committee containing such data as he is able to assemble pertinent to the matters referred to it. Copies of the report may be obtained at the National and Puerto Rican Offices of the United States Department of Labor as soon as it is completed and prior to the hearing. The committee will take official notice of the facts stated in the economic report to the extent they are not refuted by evidence received at the hearing.

The precedure for the review committee shall be governed by Parts 511 and 512 of Title 29, Code of Federal Regulations (28 F.R. 5644, June 8, 1963).

As a prerequisite to participation in the hearing of Review Committee 8, interested persons shall file prehearing statements containing the data specified in 29 CFR 511.8 not later than May 21, 1964.

Signed at Washington, D.C., this 5th day of May 1964.

W. WILLARD WIRTZ,
Secretary of Labor.

[F.R. Doc. 64–4624; Filed, May 7, 1964; 8:48 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

YAKIMA PUBLIC DOMAIN ALLOTMENTS

Transfer of Land Records to Portland Area Office

MAY 4, 1964.

In accordance with 25 CFR Part 120 and pursuant to authority delegated by Amendment No. 49 to Secretarial Order 2508 (26 F.R. 11395), notice is hereby given that all source title documents and land records pertaining to the Yakima Public Domain Allotments in the State of Washington, have been transferred from the City of Washington, D.C., to the Portland Area Office, Bureau of Indian Affairs, 1002 Northeast Holliday Street, Portland, Oregon.

Effective May 1, 1964, the Portland Area Office will be the office for the maintenance of records for these trust and restricted lands.

JOHN O. CROW,
Acting Commissioner.

[F.R. Doc. 64-4606; Filed, May 7, 1964; 8:46 a.m.]

Bureau of Mines

CERTAIN ASSISTANT DIRECTORS

Redelegation of Authority

The following redelegation is a portion of the Bureau of Mines Manual and the numbering system is that of the Manual.

[Bureau of Mines Release No. 800]

PART 205—GENERAL DELEGATIONS

SEC. 205.5.8 *Leases.* By Secretary's Order No. 2509, Amendment 25, July 11, 1957, the Director may, within the continental limits of the United States and outside the District of Columbia, lease space in buildings that is to be used wholly or predominantly for the special purposes of the Bureau and will not be generally suitable for the use of other agencies, or that is required for use incidental to and in conjunction with space that will be used for such special purposes, or that is to be acquired under a lease involving no rental or nominal consideration of $1.00 each year. The Director may, in the Territories and possessions of the United States, lease space in buildings either for the general purposes or for the special purposes of the Bureau. The authority is redelegated to the Assistant Director—Administration.

SEC. 205.10.1 *Quarters.* The authority with respect to quarters for employee housing under one's jurisdiction is redelegated to the Assistant Director—Administration and the Assistant Director—Helium to:

A. Require employees to occupy Government quarters, in accordance with 5 U.S.C. 75a-1 and 424 DM 3.2.

B. Fix rates for quarters, and for utilities, subsistence, furnishings, and services provided in connection with quarters, in accordance with 424 DM.

C. Make the determinations contemplated by paragraphs 2b and 2c of Bureau of the Budget Circular A-18, Revised, October 18, 1957, and by footnote number 4, page 6, of such circular. This authority must be exercised in accordance with 424 DM and current instructions on budget preparation. This authority may not be redelegated.

D. Make the determination as to when furnished rather than unfurnished quarters shall be provided in the United States, or when unfurnished rather than furnished quarters shall be provided outside the United States, in accordance with 424 DM. Such officials are also authorized to determine when furnishings may be provided in non-Government housekeeping quarters located in Alaska, Hawaii, and in specific areas outside of the United States, in accordance with Bureau of the Budget Circular A-15, Revised. This authority may not be redelegated.

SEC. 205.10.2 *Abandonment or destruction.* Authority is redelegated to the Assistant Director—Administration to abandon, destroy, or donate to public bodies, real property with no commercial value, or real property the estimated cost of continued care and handling of which would exceed the estimated proceeds from its sales, as authorized by and in full compliance with Chapter VII, Title 2, Regulations of the General Services Administration.

SEC. 205.11.1 *Formally advertised contracts.* The authority to enter into formally advertised contracts for supplies, equipment, and nonpersonal services (including construction) is redelegated to the Assistant Director—Administration and Headquarters Chief, Division of Procurement and Property Management; to all other Assistant Directors, and Chiefs, Eastern and Western Administrative Offices, in amounts not to exceed $100,000 for any one contract. The authority delegated herein shall be exercised in accordance with the applicable limitations in the Federal Property and Administrative Services Act of 1949, as amended, and in accordance with applicable policies, procedures, and controls prescribed by the General Services Administration, the Department of the Interior, and the Bureau of Mines.

SEC. 205.11.4 *Negotiated contracts.* The authority to enter into negotiated contracts under sections 302(c) (1) through (10) and (13) through (15) of the Federal Property and Administrative Services Act of 1949, as amended, provided that any one contract negotiated under section 302(c)(1) shall not exceed $25,000, is redelegated to the Assistant Director—Administration and Headquarters Chief, Division of Procurement and Property Management.

The authority to enter into negotiated contracts under sections 302(c) (1) through (5), (10), (13), and (14) of the Federal Property and Administrative Services Act of 1949, as amended, in amounts not to exceed $100,000 for any one contract except that any one contract negotiated under section 302(c)(1) shall not exceed $25,000, is redelegated within the provisions of 205 BM 11.4 to the Assistant Director—Health and Safety, Assistant Director—Helium, Assistant Director—Mineral Resource Development, Assistant Director—Minerals Research, Chief, Eastern Administrative Office and Chief, Western Administrative Office. The authority delegated herein shall be exercised in accordance with the Federal Property and Administrative Services Act of 1949, as amended, and in accordance with applicable policies, procedures, and controls prescribed by the General Services Administration, the Department of the Interior, and the Bureau of Mines.

SEC. 205.25.1 *Land Acquisition; reimbursement for moving.* The Director is authorized to exercise the authority of the Secretary of the Interior under section 1 of the Act of May 29, 1958 (72 Stat. 152), relating to reimbursement of owners and tenants of lands acquired for Department programs for expenses and other losses and damages incurred by them in the process, and as a direct result of such moving of themselves, their families, and their possessions, as is occasioned by such acquisition (Secretary's Order No. 2840, dated April 28, 1959, 34 F.R. 3615). This authority is redelegated to the Assistant Director—Administration.

MARLING J. ANKENY,
Director, Bureau of Mines.

[F.R. Doc. 64-4607; Filed, May 7, 1964; 8:46 a.m.]

DEPARTMENT OF COMMERCE

Bureau of International Commerce

[Case 326]

IRVING BETHEIL ET AL.

Order Denying Export Privileges

In the matter of Irving Betheil, International American Forwarding Corporation, 38 Pearl Street, New York, New York; Sylvan L. Hart, a/k/a Sylvan L. Hayuth, d/b/a Sela Electronics Company, 545 West End Avenue, New York, New York; Fred R. Gluckman, 140 Riverside Drive, New York, New York; Case No. 326; respondents.

The above respondents were, on February 6, 1964, charged by the Director, Investigations Division, Office of Export

Control, Bureau of International Commerce, with violations of the Export Control Act of 1949, as amended, and regulations thereunder. The respondents were served with the charging letter. The respondent Hart has failed to file an answer or to respond to the charges and he is held to be in default. The respondents Betheil, International American Forwarding Corporation, and Gluckman have filed answers.

Prior to the issuance of the charging letter, an order temporarily denying export privileges was issued against the respondents Hart and Gluckman, on December 31, 1963 (29 F.R. 56, January 3, 1964). On February 26, 1964, said temporary order was extended until the completion of administrative compliance proceedings (29 F.R. 2914, March 3, 1964).

The respondent Betheil is president of International American Forwarding Corporation (International). It is charged that Betheil acting individually and for International, on February 13, 1963, as freight forwarder for a foreign firm, and on June 14, 1963, as forwarding agent for Sela Electronics Company, exported from the United States to Austria oscilloscopes and other electronic equipment. As to the February 13, 1963 exportation it is alleged that these respondents falsely described the commodities and gave an incorrect classification number, thereby representing that the commodities were exportable under General License. As to the June 14, 1963 exportation it is alleged that they exported the commodities without applying for or obtaining the required validated export license and that they failed to produce the records of this export transaction when requested to do so by proper authorities. It is further charged that these respondents on January 8, 1964, acting as freight forwarder for a Brazilian firm, exported sundry commodities falsely describing them as agricultural equipment and grossly understating their value.

There are three charges against Gluckman in which it is alleged that he acted individually and for respondent Sela Electronics Company. It is alleged that on June 28, 1963, July 7, 1963 and July 12, 1963, he exported from the United States to Austria by parcel post various quantities of electronic tubes and diodes without applying for and obtaining validated licenses authorizing the exportations and without presenting to the Postmaster at New York City validated licenses and Shipper's Export Declarations covering the exportations of said commodities.

There are three charges against Hart wherein it is alleged that he acted individually and for Sela Electronics Company. It is alleged that on February 1, 1963, April 8, 1963 and April 23, 1963, he exported via parcel post from the United States to Austria electronic tubes, diodes and other strategic items without applying for and obtaining validated licenses authorizing the exportations and without presenting to the Postmaster at New York City validated licenses and Shipper's Export Declarations covering the exportations of said commodities.

It is charged that the respondents violated certain specific sections of the U.S. Export Regulations.

In accordance with the provisions of § 382.10 of the Export Regulations, with agreement of the Director, Investigations Division, the respondents Betheil and International, and also Gluckman, have submitted to the Compliance Commissioner proposals for a consent order substantially in the form hereinafter set forth. In the consent proposals, said respondents have admitted, for the purpose of these compliance proceedings, the allegations in the charging letter.

The Compliance Commissioner has reviewed the facts in the case and the consent proposals. He has approved the proposals and has submitted his recommendation to the undersigned Director, Office of Export Control, that the consent proposals be accepted. He has also recommended that sanctions as hereinafter set forth be imposed against Hart, d/b/a Sela Electronics Company. After reviewing and considering the record in the case and the Compliance Commissioner's recommendations, I hereby make the following findings of fact:

1. The respondent International American Forwarding Corporation (International) is engaged in the freight forwarding business and has a place of business in New York City, the respondent Irving Betheil is president of said Corporation and is the individual responsible for its operations and management. The respondent Sylvan L. Hart, also known as Sylvan L. Hayuth, is an electronic engineer and owns and operates the firm known as Sela Electronics Company (Sela) in New York City. The respondent Fred R. Gluckman is a resident of New York City.

2. On February 13, 1963, Betheil acting individually and for respondent International, as freight forwarder for a foreign company, exported from the United States to Austria, three oscilloscopes which required validated export licenses from the Office of Export Control, Department of Commerce, for such exportation. Said respondents falsely described the oscilloscopes on the Shipper's Export Declaration and falsely described them under an incorrect classification number, thereby representing that said commodities were exportable from the United States to Austria under General License GRO.

3. On June 14, 1963, Betheil acting individually and for respondent International, as forwarding agent for the respondent Hart, d/b/a Sela, exported from the United States to Austria, two oscilloscopes with accessories and a signal generator. Said commodities required validated export licenses from the Office of Export Control, Department of Commerce, for said exportation. Said respondents did not apply for or obtain the necessary validated licenses before making the exportation. The respondents failed to produce the records concerning this export transaction when requested to do so by an authorized agent of the Bureau of International Commerce, Department of Commerce.

4. On January 8, 1964, Betheil acting individually and for respondent International, as freight forwarder for a Brazilian company, exported from the United States to Brazil a shipment of sundry commodities, all of non-strategic nature, having an aggregate value of $95,000, falsely describing them on Shipper's Export Declaration as agricultural equipment and falsely certifying the value as $1,500.

5. On June 28, 1963, July 7, 1963, and July 12, 1963 the respondent Gluckman, acting individually and for the respondent Hart, d/b/a Sela, exported from the United States to Austria by parcel post, a total of 180 electronic tubes and diodes. Said commodities required validated export licenses from the Office of Export Control for exportation and said respondent did not apply for or obtain the required export licenses. Said respondent made the exportations without presenting to the Postmaster at New York City, the place of exportations, validated export licenses or duly executed Shipper's Export Declarations covering said commodities, as required by the Export Regulations.

6. On February 1, 1963, April 8, 1963 and April 23, 1963 the respondent Hart acting individually and for his firm Sela, exported from the United States to Austria, by parcel post, six electronic tubes and diodes, and a quantity of strategic material in semifabricated form. Said commodities required validated export licenses from the Office of Export Control for exportation and said respondent did not apply for or obtain the required export licenses. Said respondent made the exportations without presenting to the Postmaster at New York City, the place of exportations, validated export licenses or duly executed Shipper's Export Declarations covering said commodities, as required by the Export Regulations.

From the foregoing I have concluded that the respondents Betheil and International caused false representations to be made to, and material facts to be concealed from, the U.S. Department of Commerce and the U.S. Collector of Customs in connection with the preparation and use of export control documents in effecting the exportation of commodities from the United States; exported from the United States to Austria certain commodities subject to the U.S. Export Regulations without having obtained from the Department of Commerce the validated export license required to authorize such exportations; failed to produce and make available records, which said respondents were required to keep when requested to do so by an authorized agent of the Bureau of International Commerce, all in violation of §§ 370.2, 372.3, 381.2, 381.3(b), 381.4, 381.5, 381.6 and 381.11 of the U.S. Export Regulations. I have further concluded that the respondents Gluckman and Hart exported commodities from the United States to Austria without having presented to the Postmaster at New York City, the place of mailing, validated licenses which were required for said exportations together with related duly executed Shipper's Export Declarations covering said commodities, all in violation of §§ 370.2(b), 371.10, 372.3, 379.1

(b), 381.2 and 381.4 of the U.S. Export Regulations.

Now after considering the record in the case, the proposals for consent orders, and the recommendations of the Compliance Commissioner, and being of the view that this order is calculated to achieve effective enforcement of the law and the purposes thereof: *It is hereby ordered,*

I. All outstanding validated export licenses in which respondents Irving Bethell or International American Forwarding Corporation appear or participate in any manner or capacity are hereby revoked and shall be returned forthwith to the Bureau of International Commerce for cancellation. Such validated export licenses as may be outstanding in which respondents Sylvan L. Hart, also known as Sylvan L. Hayuth, doing business as Sela Electronics Company, or Fred R. Gluckman appear or participate in any manner or capacity and which have heretofore been revoked shall be returned to said Bureau for cancellation.

II. Except as qualified in Part IV hereof, the respondents Irving Bethell and International American Forwarding Corporation, for a period of 54 months from the effective date of this order, the respondent Fred R. Gluckman for a period of 30 months from the effective date of this order, and the respondent Sylvan L. Hart, also known as Sylvan L. Hayuth, doing business as Sela Electronics Company, for the duration of expert controls, are hereby denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or which are otherwise subject to the Export Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction either in the United States or abroad shall include participation: (a) As a party or as a representative of a party to any validated export license application; (b) in the preparation or filing of any export license application or reexportation authorization, or document to be submitted therewith; (c) in the obtaining or using of any validated or general export license or other export control documents; (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data; (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. Such denial of export privileges shall extend not only to the respondents, but also to their successors or assigns, officers, partners, representatives, agents, and employees, and also to any person, firm, corporation, or other business organization with which they now or hereafter may be related by affiliation, ownership, control position of responsibility, or other connection in the conduct of trade or services connected therewith.

IV. (a) Six months after the effective date of this order, without further order of the Bureau of International Commerce, the respondents Irving Bethell, International American Forwarding Corporation, and Fred R. Gluckman shall have their export privileges restored to them conditionally and thereafter for the remainder of the respective denial periods the said respondents shall be on probation. However, no validated licenses which have been revoked under this order or under the temporary denial order of December 31, 1963 shall thereby be restored. The conditions of such restoration are that the respondents shall fully comply with all requirements of the Export Control Act of 1949, as amended, and all regulations, licenses and orders issued thereunder.

(b) Two years after the effective date hereof the respondent Sylvan L. Hart, also known as Sylvan L. Hayuth, doing business as Sela Electronics Company, may apply to have the effective denial of his export privileges held in abeyance while he remains on probation. Such application shall be supported by evidence showing compliance with the terms of this order and such disclosure of details of his activities during said two years as may be necessary to determine his compliance with this order. The application will be considered on its merits and in the light of conditions and policies existing at that time. His export privileges may be restored under such terms and conditions as appear to be appropriate.

V. Upon a finding by the Director, Office of Export Control, or such other official as may be exercising the duties now exercised by him, that the respondents Bethell, International American Forwarding Corporation or Gluckman have knowingly failed to comply with the requirements and conditions of this order or with the conditions of probation, said official at any time, with or without prior notice to said respondent, by supplemental order, may revoke the probation of said respondent, revoke all outstanding validated export licenses to which any of said respondents may be a party, and deny all export privileges, for a period up to 48 months as to Bethell and International American Forwarding Corporation, and for a period up to 24 months as to Gluckman. Such order shall not preclude the Bureau of International Commerce from taking further action for any violation as shall be warranted. Any person affected by a supplemental order revoking without notice his probation, may file objections and request that such order be set aside, and may request an oral hearing, as provided in § 382.16 of the Export Regulations, but pending such further proceedings, the order of revocation shall remain in effect.

VI. During the time when any respondent or other person within the scope of this order is prohibited from engaging in any activity within the scope of Part II hereof, no person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Bureau of International Commerce, shall do any of the following acts, directly or indirectly, in any manner or capacity, on behalf of or in any association with any respondent or other person denied export privileges within the scope of this order, or whereby any such respondent or such other person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, shipper's export declaration, bill of lading, or other export control document relating to any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States, by, to, or for any such respondent or other person denied export privileges within the scope of this order; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

This order shall become effective on May 1, 1964.

FORREST D. HOCKERSMITH,
Director,
Office of Export Control.

[F.R. Doc. 64-4631; Filed, May 7, 1964; 8:49 a.m.]

Office of the Secretary

GEORGE L. WILSON

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the past six months:

A. Deletions: No change.
B. Additions: No change.

This statement is made as of April 20, 1964.

GEORGE L. WILSON.

APRIL 20, 1964.

[F.R. Doc. 64-4632; Filed, May 7, 1964; 8:49 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

BUCKMAN LABORATORIES, INC.

Notice of Filing of Petition Regarding Food Additives

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 1368) has been filed by Buckman Laboratories, Inc., 1256 North McLean, Memphis, Tennessee, 38108, proposing that § 121.2505 *Slimicides* be amended as follows:

1. By inserting alphabetically in the list of slime-control substances in paragraph (c) the new item "2-Bromo-4'-hydroxyacetophenone."

2. By inserting alphabetically in the list of adjuvant substances in paragraph (d) the new items "Butylene oxide" and "Monomethyl ethers of mono-, di-, and tripropylene glycol."

Dated: May 1, 1964.

MALCOLM R. STEPHENS,
Assistant Commissioner for Regulations.

[F.R. Doc. 64-4629; Filed, May 7, 1964; 8:49 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 13777; Order 20758, Corrected] [1]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Agreement Relating to Specific Commodity Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 28th day of April 1964.

There has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, an agreement between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Traffic Conference 1 of the International Air Transport Association (IATA), and adopted pursuant to the provisions of Resolution 590 (Commodity Rates Board).

This agreement, adopted pursuant to unprotested notices to the carriers and promulgated in IATA memoranda, extends the effectiveness of certain existing specific commodity rates as set forth in the attachment hereto.[2]

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, does not find the subject agreement to be adverse to the public interest or in violation of the Act, provided that approval thereof is conditioned as hereinafter ordered.

Accordingly, it is ordered: That Agreement C.A.B. 17666, R-2, be and hereby is approved, provided that such approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publication.

Any air carrier party to the agreement, or any interested person, may, within 15 days from the date of service of this order, submit statements in writing containing reasons deemed appropriate, together with supporting data, in support of or in opposition to the Board's action herein. An original and nineteen copies of the statements should be filed with the Board's Docket Section. The Board may, upon consideration of any such statements filed, modify or rescind its action herein by subsequent order.

[1] To correct conference and docket numbers.
[2] Filed as part of the original document.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 64-4633; Filed, May 7, 1964; 8:49 a.m.]

[Docket 14792]

NORTH CENTRAL RENEWAL OF CERTAIN SEGMENT

Notice of Prehearing Conference

Renewal North Central's Segment 12.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on June 2, 1964, at 10 a.m., e.d.s.t., in Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Leslie G. Donahue.

Dated at Washington, D.C., May 6, 1964.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 64-4634; Filed, May 7, 1964; 8:50 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 15323-15325; FCC 64R-248]

INTEGRATED COMMUNICATIONS SYSTEMS, INC., OF MASSACHUSETTS ET AL.

Memorandum Opinion and Order Amending Issues

In re applications of Integrated Communication Systems, Inc. of Massachusetts, Boston, Massachusetts, Docket No. 15323, File No. BPCT-3167; United Artists Broadcasting, Inc., Boston, Massachusetts, Docket No. 15324, File No. BPCT-3169; WGBH Educational Foundation, Boston, Massachusetts, Docket No. 15325, File No. BPCT-3277; for construction permits for new television broadcast stations.

1. United Artists Broadcasting, Inc. (United Artists) petitions the Review Board to enlarge issues in this proceeding.[1] Petitioner seeks the addition of the following issues with respect to the application of Integrated Communication Systems, Inc. of Massachusetts (Integrated):

(a) To determine whether the applicant, in view of its proposal as to staff, is qualified to operate its station in the manner proposed in its application.

(b) To determine whether the program proposals of the applicant are feasible for a UHF television station without network affiliation in the Boston market; whether there is a reasonable prospect that the program proposals can be effectuated; and, in light of evidence adduced with respect to the foregoing, whether the applicant is qualified to operate its station in the manner proposed in its application.

2. This proceeding involves mutually exclusive applications for a new UHF television broadcast station in Boston, Massachusetts. United Artists challenges the adequacy of the staff proposed by Integrated. To support its contention, petitioner points out that Integrated contemplates a weekly schedule totalling 45½ hours, of which 45 percent, or more than 20 hours, is to be local live programming. United Artists asserts that Integrated proposes local live programs on each day of the week with six such programs on Mondays through Fridays and also on Sundays, and five live programs on Saturdays. In order to maintain this schedule, petitioner indicates that a staff of thirteen employees is designated by Integrated, including five management personnel. According to United Artists, the remaining eight staff members are to work in the engineering, business, commercial and program departments; however, it is noted by petitioner, no allocation of these staff members is provided by Integrated in its application. In light of personnel requirements and viewed most favorably to Integrated, United Artists contends that no more than four staff members can be considered as available for the program department which is primarily responsible for the heavy work load imposed by over 20 hours of local live programming per week. Petitioner notes that none of Integrated's principals have television broadcast experience and that Integrated's proposed percentage of live broadcasts exceeds that shown in the renewal applications of all but one television station out of 491 stations surveyed in Veterans Broadcasting Company, Inc., Docket No. 14367 et al. (Six Nations Rebuttal Exhibit No. 1). United Artists also challenges the feasibility of the program proposals advanced by Integrated in light of the following considerations: (1) Integrated has applied for a UHF channel in a market with three VHF network affiliates; (2) Integrated has proposed programming which would be extraordinarily ambitious, even for a profitable VHF station; (3) Integrated's operating budget is based on an inadequate staff proposal; and (4) operating revenues are proposed to cover substantial long-term debt retirement. Petitioner urges that adequate exploration of the feasibility of Integrated's proposal cannot be made under the standard comparative issues or the standard financial qualifications and Evansville issues; therefore, the requested issues are necessary to develop an adequate record and to enable the Commission to evaluate the problems inherent in the introduction of a UHF station in an all-VHF market.

3. Integrated, in opposing the motion to enlarge issues, attempts to distinguish

[1] The pleadings before the Review Board include: (1) Motion to enlarge issues, filed Mar. 2, 1964, by United Artists Broadcasting, Inc.; (2) Opposition, filed Apr. 8, 1964, by Integrated Communication Systems, Inc. of Massachusetts; (3) Response, filed Apr. 8, 1964, by the Broadcast Bureau; and (4) Reply to opposition, filed Apr. 20, 1964, by petitioner.

its position from that of TVue Associates, Inc., FCC 64R–56, 1 RR 2d 1013 (1964), where the Review Board added an adequacy of staff issue to the proceeding. Integrated points out that TVue's application proposed a 71-hour telecast week with more than 31 hours, or 44 percent of total air time, devoted to live programming and with a staff of only nine full-time employees and additional help being provided as needed. In contrast to TVue, Integrated asserts that the demands upon its staff of thirteen full-time employees from approximately 20 hours of local live programming would be substantially less. Integrated also contends that considerations of unusual programming proposals, the extensive use of automation and personnel requirements are not present here as in the TVue proceeding. After a review of several cases (all of which related to standard broadcast operation), Integrated alleges that the petitioner has failed to produce facts to demonstrate that its staffing proposals are insufficient and has not cited a single decision of the Commission in support of its requested enlargement. In answer to the issue raised concerning the feasibility of its proposals, Integrated argues that the existence or lack of network affiliation has no effect on its ability to effectuate its proposed programming since there is nothing novel about the proposals. Integrated concludes that the question of feasibility seems to resemble a sufficiency of funds issue which should be addressed to the hearing examiner and, in any event, petitioner can explore these matters under the standard comparative and designated issues.

4. The Broadcast Bureau supports the requested addition of an adequacy of staff issue and points to the amount of local live programming and the size of the staff proposed by Integrated. The Bureau also notes that there is no breakdown of staff functions and concludes that an unresolved question exists as to whether staff proposals have been adequately appraised in view of the degree of live programming anticipated by Integrated. In regard to the second issue requested by United Artists, the Bureau asserts that the issue of feasibility is basically the same issue sought by WEBR, Inc. in Ultravision Broadcasting Company, FCC 64R–192, released April 10, 1964, wherein the Review Board certified the question whether an issue such as that proposed by United Artists should be added. The views that prompted the Bureau's support of the Ultravision certification apply here where another UHF applicant is confronted by a three VHF station market. In its reply to Integrated's opposition, United Artists asserts that Integrated has declined to provide any further information regarding the functions to be performed by staff members and has not shown how a four-man program department can produce substantial live programming. United Artists again denies that it is requesting an Evansville issue and asserts that these matters cannot be explored under the designated issues.

5. An applicant is normally required to present the Commission with a program proposal which is reasonably capable of effectuation. Birney Imes, Jr. (WMOX), 27 FCC 225, 17 RR 419 (1959). A proposal to devote 45 percent or approximately 20 hours, of weekly broadcast time to local live programming must demonstrate the availability of a staff sufficient to effectuate such programming. While such a question cannot be decided only on the basis of the number of employees and broadcast hours involved TVue Associates, Inc., FCC 64R–56, 1 RR 2d 1013 (1964), it is essential to such a determination that the number of personnel be specified and a reasonable allocation of functions and personnel be provided. We cannot determine here on the basis of Integrated's application and opposition the number of full-time employees who will be utilized in the development and presentation of a comprehensive programming proposal. As the Bureau notes, whether or not the petitioner is accurate regarding the number of personnel available for Integrated's program department, an unresolved question does exist concerning the adequacy of the staff proposals when viewed in terms of local live programming. For these reasons, we deem it necessary to require further inquiry into Integrated's staff proposals, and the motion to enlarge issues will be granted to that extent. With respect to petitioner's attempt to question the feasibility of Integrated's program proposals, the Board has had occasion to consider similar requests. See Ultravision Broadcasting Company, FCC 64R–192, released April 10, 1964; and Cleveland Telecasting Corp., FCC 64R–220, released April 21, 1964. In these cases and in this proceeding, the Board has been asked to determine the feasibility of program proposals advanced by a UHF applicant with regard to its introduction into a three VHF station market. Since the considerations involved in such an issue go beyond present Commission policy with respect to financial qualifications and since the Board was impressed by the potential impact on UHF development, the question was certified to the Commission. The question of feasibility raised by petitioner's second requested issue will therefore be certified also.

Accordingly, it is ordered, This 1st day of May 1964, that the Motion to Enlarge Issues, filed March 2, 1964, by United Artists Broadcasting, Inc. is granted to the extent indicated herein; and

It is further ordered, That the issues in this proceeding are enlarged by the addition of the following issue: To determine whether Integrated Communication Systems, Inc. of Massachusetts, in view of its proposal as to staff, is qualified to operate its station in the manner proposed in its application, and Issue (b) requested by petitioner is hereby certified to the Commission for its determination.

Released: May 5, 1964.

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

[F.R. Doc. 64–4638; Filed, May 7, 1964; 8:50 a.m.]

[Dockets 15440, 15441; FCC 64M–383]

CONTEMPORARY RADIO, INC. (WAYL) AND HUBBARD BROADCASTING, INC.

Order Scheduling Hearing

In re applications of Contemporary Radio, Inc. (WAYL), Minneapolis, Minnesota, Docket No. 15440, File No. BPH–4142; Hubbard Broadcasting, Inc., Minneapolis, Minnesota, Docket No. 15441, File No. BPH–4167; for construction permits.

It is ordered, This 4th day of May 1964, that Jay A. Kyle will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on July 8, 1964, in Washington, D.C.: *And, it is further ordered,* That a prehearing conference in the proceeding will be convened by the presiding officer at 9:00 a.m., June 5, 1964.

Released: May 5, 1964.

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

[F.R. Doc. 64–4636; Filed, May 7, 1964; 8:50 a.m.]

[Docket Nos. 15442, 15443; FCC 64M–384]

DUBUQUE BROADCASTING CO. AND TELEGRAPH HERALD

Order Scheduling Hearing

In re applications of Dubuque Broadcasting Company, Dubuque, Iowa, Docket No. 15442, File No. BPH–3920; Telegraph-Herald, Dubuque, Iowa, Docket No. 15443, File No. BPH–4288; for construction permits.

It is ordered, This 4th day of May 1964, that Thomas H. Donahue will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on July 8, 1964, in Washington, D.C.: *And, it is further ordered,* That a prehearing conference in the proceeding will be convened by the presiding officer at 9:00 a.m., June 5, 1964.

Released: May 5, 1964.

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

[F.R. Doc. 64–4637; Filed, May 7, 1964; 8:50 a.m.]

[Docket Nos. 15358 etc.; FCC 64–371]

LOMPOC VALLEY CABLE TV

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Lompoc Valley Cable TV, for operational fixed stations in the Business Radio Service, Docket No. 15358, File No. 30779–IB–53X; Lompoc Valley Cable TV, Inc., for operational fixed stations in the Business Radio Service, Docket No. 15433, File No. 29978–IB–24X; Lompoc Valley Cable TV, Inc., for operational fixed stations in the Business Radio Service, File No. 29979–IB–24X.

1. The Commission has before it for consideration: (a) Its opinion in Lompoc Valley Cable TV, FCC 64–170, ordering a hearing in Docket No. 15358; (b) two additional applications (File Nos. 29978–IB–24X and 29979–IB–24X) filed by Lompoc Valley Cable TV relating to the microwave relay system proposal designated for hearing in the cited case; (c) a "Petition to Deny, or, in the Alternative, to Consolidate" filed March 23, 1964, by Mili Acquistapace, James H. Ranger, Burns Rick, Marion A. Smith and Ed J. Zuchelli, d/b as Central Coast Television, permittee of Station KCOY–TV, Channel 12, Santa Maria, California, directed against (b) above; and (d) footnote 1 of a "Motion to Enlarge Issues" filed April 1, 1964, in Docket No. 15358, by Lompoc Valley Cable TV.

2. In its cited opinion, the Commission set aside an earlier grant to Lompoc Valley Cable TV and designated for hearing its application (File No. 30779–IB–53X) for authority to construct a microwave relay system in the Business Radio Service to serve a CATV at Vandenburg Village and Mission Hills, California. However, two other applications filed by Lompoc Valley in the same area were not considered in the cited opinion. One of these (File No. 29979–IB–24X) is now moot since it proposed a transfer of the permit which was later set aside. However, it appears that the other application (File No. 29978–IB–24X) concerns the same system and should be consolidated into the same hearing. In a pleading filed in Docket No. 15358, Lompoc Valley Cable TV states that it "has no objection to such consolidation".

Accordingly, it is ordered, That insofar as it relates to Lompoc Valley Cable TV's transfer application (File No. 29979–IB–24X), Central Coast Television's "Petition to Deny, or, in the Alternative, to Consolidate" is dismissed as moot.

It is further ordered, That the application (File No. 29979–IB–24X) of Lompoc Valley Cable TV is dismissed as moot.

It is further ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the application (File No. 29978–IB–24X) of Lompoc Valley Cable TV is designated for hearing and consolidated into the pending proceeding in Docket No. 15358 upon the issues already ordered in that proceeding.

It is further ordered, That the "Petition to Deny, or, in the Alternative, to Consolidate" filed by Central Coast Television on March 23, 1964, is granted to the extent indicated above.

Adopted: April 29, 1964.

Released: May 5, 1964.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 64–4639; Filed, May 7, 1964; 8:50 a.m.]

[1] Commissioners Lee and Ford absent.

[Docket Nos. 15438, 15439; FCC 64M–381]

MARINE BROADCASTING CORP. AND ONSLOW BROADCASTING CO.

Order Scheduling Hearing

In re applications of Marine Broadcasting Corporation, Jacksonville, North Carolina, Docket No. 15438, File No. BPH–4190; Onslow Broadcasting Company, Jacksonville, North Carolina, Docket No. 15439, File No. BPH–4281; for construction permits.

It is ordered, This 4th day of May 1964, that Sol Schildhause will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on July 7, 1964, in Washington, D.C.: *And, it is further ordered,* That a prehearing conference in the proceeding will be convened by the presiding officer at 9:00 a.m., June 4, 1964.

Released: May 5, 1964.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 64–4640; Filed, May 7, 1964; 8:51 a.m.]

[Docket Nos. 15436, 15437; FCC 64M–380]

SKYLARK CORP. AND KINGSTON BROADCASTERS, INC.

Order Scheduling Hearing

In re applications of Skylark Corporation, Kingston, New York, Docket No. 15436, File No. BPH–4256; Kingston Broadcasters, Inc., Kingston, New York, Docket No. 15437, File No. BPH–4357; for construction permits.

It is ordered, This 4th day of May 1964, that H. Gifford Irion will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on July 7, 1964, in Washington, D.C.: *And, it is further ordered,* That a prehearing conference in the proceeding will be convened by the presiding officer at 9:00 a.m., June 4, 1964.

Released: May 5, 1964.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 64–4641; Filed, May 7, 1964; 8:51 a.m.]

[Docket Nos. 15449, 15450; FCC 64–387]

SPRINGFIELD TELECASTING CO. AND MIDWEST TELEVISION INC.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Springfield Telecasting Co., Springfield, Illinois, Docket No. 15449, File No. BPCT–2838; Midwest Television, Inc., Springfield, Illinois, Docket No. 15450, File No. BPCT–2846; for construction permits for new television broadcast stations.

1. The Commission has before it for consideration: (a) The applications of Springfield Telecasting Co. (Springfield), filed December 22, 1960, and Midwest Television, Inc. (Midwest), filed February 7, 1961, each requesting a construction permit for a new television broadcast station to operate on Channel 26, Springfield, Illinois; (b) "Petition to Deny", filed March 13, 1961, by Plains Television Corporation (Plains), against (a), above; (c) "Opposition to Petition to Deny", filed April 28, 1961, by Midwest against (b), above;[1] (d) Reply, filed May 22, 1961, by Plains, to (c), above; (e) "Further Petition to Deny",[2] filed November 26, 1963, by Plains, against the application (BPCT–2838) of Springfield, as amended; (f) Opposition, filed December 6, 1963, by Springfield, against (e), above; and (g) Reply, filed December 26, 1963, by Plains, to (f), above. On January 3, 1964, Springfield filed a pleading captioned "Response to Reply to Opposition", directed against (g), above, and simultaneously filed a "Motion to Accept Pleading", which requests the Commission to consider the "Response". On January 16, 1964, Plains filed a "Statement" opposing Springfield's "Motion". Since Springfield's "Response" was filed in violation of the provisions of § 1.45 of the Commission's rules limiting pleadings which may be filed in a proceeding, its "Motion" will be denied, and the pleadings filed in connection therewith will be dismissed.

2. Springfield Telecasting Co., a corporation, is the successor to Richard S. Cole, trading as Springfield Telecasting Company, the application having been originally filed by Mr. Cole as an individual. Midwest is the licensee of Television Broadcast Station WCIA, Channel 3, Champaign, Illinois, Television Broadcast Station WMBD–TV, Channel 31, Peoria, Illinois, and Radio Station WMBD, Peoria, Illinois, as well as Radio Stations KFMB(AM) and KFMB–FM, and Television Broadcast Station KFMB–TV, Channel 8, all in San Diego, California. The principal stockholders of Midwest have various other broadcast interests which are discussed in succeeding paragraphs hereof. The petitioner, Plains Television Corporation, is the licensee of Television Broadcast Stations WICS, Channel 20, Springfield, Illinois; WCHU, Channel 33, Champaign, Illinois; and WICD, Channel 24, Danville, Illinois.

[1] All of the parties, at various times, requested and were granted extensions of time within which to file pleadings.

[2] On Apr. 28, 1961, Springfield filed an answer to (a), above, and Plains filed its reply thereto on May 8, 1961. Springfield thereupon filed, on June 29, 1961, a reply to the Plains reply. On Oct. 8, 1963, Springfield filed a major amendment to its application, the effect of which was to present an entirely new proposal, rendering these footnoted pleadings, for the most part, moot. Petitioner's "Further Petition to Deny" is, in substance, a new Petition to Deny, directed against the "new" application. Accordingly, except to the extent that parts of these three pleadings may be incorporated by reference, they will not be considered.

3. The Springfield and Midwest applications are mutually exclusive and a hearing will, therefore, be required. Thus, the only question raised by the Plains petition concerns the issues to be specified. No challenge has been offered to Plains' standing as a party in interest in this proceeding, and it is evident that Plains has such standing under the provisions of section 309(e) of the Communications Act, and we so find (Federal Communications Commission v. Sanders Brothers Radio Station, 309 U.S. 470). Plains makes a threefold attack on the Springfield application. First, Plains questions the qualifications of Springfield on the basis of an alleged undisclosed interest of the now-defunct Electron Corporation in the Springfield application, as originally filed, and the alleged hidden role of Electron in the preparation of the original Springfield application.[3] Plains alleges that, notwithstanding the fact that Electron is not connected in any manner with the "new" Springfield application, there remains the question of whether Springfield, in filing the original application, was less than candid with the Commission in failing to disclose Electron's role in the preparation of the application. Plains further challenges the qualifications of Springfield on the basis that Springfield, an Ohio corporation, has not shown that it is authorized to do business in the State of Illinois. Finally, Plains alleges that Springfield's programming proposal represents a gross overcommercialization.

4. The fact that Springfield may have purchased a "package programming deal" from Electron, does not, in our view, raise a question as to Springfield's qualifications to be a broadcast licensee. The allegations of Plains with respect to an undisclosed interest of Electron in the Springfield application are, at best, speculative and unsupported by any facts. The Commission has considered Plains' arguments on this account and finds no merit in them. With respect to whether Springfield is authorized to do business in the State of Illinois, it is clear that Springfield has not made such a showing and an issue with respect thereto will be specified. Finally, with respect to the alleged overcommercialization, no specific issue appears warranted since the programming proposals of the applicants will, in any event, be explored under standard comparative issue "6(c)" herein.

5. Petitioner alleges that a grant of the Midwest application would be inconsistent with § 73.636 of the Commission's rules with regard to "duopoly" and a concentration of control. Petitioner states that, operating as proposed, the predicted Grade A contour of the proposed station would be almost wholly encompassed by the existing Grade B contour of Station WCIA. Within this overlap area, it is alleged, there are approximately 73,648 people, representing about half of the population of the Springfield metropolitan area. Midwest concedes that there will be overlap of the Station WCIA Grade B contour with the predicted Grade A contour of the proposed station, but disputes the extent of the overlap. Midwest further concedes that there will be overlap of the predicted Grade A contour of the proposed station with the existing Grade B contour of Station WMBD–TV. Under the circumstances, it is clear that an issue with regard to "duopoly" is warranted and such an issue will, accordingly, be specified.

6. Petitioner asserts that the ownership interests of Midwest and its stockholders in central Illinois already constitute a concentration of control which is inconsistent with the public interest and that a grant of the application would, therefore, intensify the alleged concentration. The ownership interests of Midwest and its stockholders are, indeed, extensive and complex. The applicant itself is licensee of three television broadcast stations (WCIA, WMBD–TV and KFMB–TV) and three radio stations (WMBD, KFMB, and KFMB–FM). Since Radio Stations KFMB and KFMB–FM and Television Broadcast Station KFMB–TV are located in California, they do not enter into the "concentration of control" picture in central Illinois. Helen M. Stevick and her daughter, Marajen S. Chenigo, own 20 percent of the stock of Midwest; they also own all of the stock of Champaign News-Gazette, Inc., licensee of Radio Stations WDWS and WDWS–FM, Champaign, Illinois. Lindsay-Schaub Newspapers, Inc., owns 20 percent of the stock of Midwest; the family of F. W. Schaub owns more than 90 percent of the stock of HCS Company, a holding company which controls Lindsay-Schaub Newspapers, Inc. The Schaub family also owns more than 40 percent of the stock of Illinois Broadcasting Company, licensee of Radio Stations WSOY and WSOY–FM, Decatur, Illinois; WSEI–FM, Effingham, Illinois; and WVLN and WVLN–FM, Olney, Illinois. Illinois Broadcasting Company formerly owned the 20 percent of the stock of Midwest which is now owned by Lindsay-Schaub Newspapers, Inc. The family of Frank M. Lindsay owns more than 25 percent of the stock of Lindsay-Schaub Newspapers, Inc., as well as more than 25 percent of the stock of Illinois Broadcasting Company. The Lindsay family also owns 19 percent of Quincy Newspapers, Inc., which, in turn, controls Quincy Broadcasting Company, licensee of Radio Stations WGEM and WGEM–FM and Television Broadcast Station WGEM–TV, all in Quincy, Illinois. Furthermore, Midwest is also the licensee of UHF Television Broadcast Translator Station W71AE, LaSalle, Illinois, which rebroadcasts, on Channel 71, the programs of Midwest's Station WMBD–TV. Thus, Midwest and its stockholders, directly or indirectly, have substantial interests in three television broadcast stations, one television broadcast translator station, five standard broadcast stations and five FM stations, all in the same general area of central Illinois. It is significant that two of the three television broadcast stations (WCIA and WGEM–TV) are VHF stations with substantial coverage areas.[4] Moreover, we believe that the interests of Midwest and its stockholders in other means of mass communication are also significant. We think that these facts clearly show that an issue with respect to concentration of control is warranted and that the multiple ownership interests of Midwest and its stockholders in the mass media should be examined within the framework of the issue to be specified to determine whether a grant of the Midwest application would be consistent with § 73.636 of the Commission's rules.

7. Petitioner charges that Midwest proposes a satellite operation in Springfield which will duplicate substantially all of the programming of Station WCIA, giving rise to the operation of a UHF satellite within the Grade B contour of a VHF station. Petitioner argues that, in view of the fact that Station WCIA now places a Grade B signal into Springfield itself and that Springfield presently has a local station (petitioner's Station WICS), there is no need for a satellite operation such as that which Midwest proposes. Since no area not now within the Grade B contour of an existing station will receive coverage from the proposed station, Plains reasons, the type of operation which Midwest proposes is not warranted. The effect of such an operation, petitioner urges, would be merely to increase the Station WCIA signal in the area as a "bonus" to advertisers. Midwest, however, denies that it proposes a satellite operation, pointing out that it proposes to maintain a studio and staff in Springfield and will originate programs locally, although it is true that the proposed station will carry a substantial portion of the programming of Station WCIA. The question thus raised as to whether there is a need for the type of operation proposed by Midwest is one which involves the basic programming proposal of Midwest. We find, therefore, that a separate issue with respect thereto is warranted and will be specified.

8. Midwest, in its "Opposition" to the Plains petition, asserts that the petitioner has failed to make the showing required by section 309(d) of the Communications Act that a grant of the application would be prima facie inconsistent with the public interest. We think that the petitioner has made the requisite showing and the preceeding paragraphs amply support this conclusion. Furthermore, since an evidentiary hearing is required in any event, the Commission will have an opportunity to consider all of the relevant and material questions raised by the petitioner

[3] The original application contained a programming proposal, admittedly prepared by Electron, which was identical to those submitted by three other applicants in three other cities, in all of which Electron was the equipment supplier. Electron also provided unusually favorable terms of payment for the equipment. It is on the basis of these facts that Plains questions whether Electron had an undisclosed interest in the Springfield application.

[4] In its Memorandum Opinion and Order (FCC 62–708, 23 RR 941, released July 9, 1962) granting Midwest's application for its translator station in LaSalle, Illinois, the Commission said: "We recognize that because the applicant is the licensee of WCIA, Channel 3, Champaign, a station serving a very large area, it does occupy a dominant competitive position in the State of Illinois outside of the Chicago area."

without imposing any additional burden upon the applicants.

9. It appears that each of the applicants herein proposes to locate its main studio outside the corporate limits of the City of Springfield. Midwest has requested a waiver of § 73.613 of the Commission's rules; Springfield has not. Issues will, therefore, be specified to determine whether a grant of either of the applications would be consistent with § 73.613 of the Commission's rules and, if not, whether circumstances exist which would warrant a waiver of said section.

10. In view of the foregoing, except as indicated above, the Commission finds that Springfield Telecasting Co. is financially, technically, and otherwise qualified to construct, own and operate the proposed television broadcast station; and that, except as indicated above, Midwest Television, Inc., is legally, financially, technically and otherwise qualified to construct, own and operate the proposed television station. Upon due consideration of the above-captioned applications, the Commission finds that, pursuant to section 309(e) of the Communications Act of 1934, as amended, a hearing is necessary and that the said applications must be designated for hearing in a consolidated proceeding on the issues set forth below:

It is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications of Springfield Telecasting Co. and Midwest Television, Inc., are designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Springfield Telecasting Co. is authorized to do business in the State of Illinois.

2. To determine whether a grant of the application of Midwest Television, Inc., would be consistent with the provisions of § 73.636 of the Commission's rules with regard to "duopoly" and concentration of control.

3. To determine whether a grant of the application of Springfield Telecasting Co. would be consistent with the provisions of § 73.613 of the Commission's rules and, if not, whether circumstances exist which would warrant waiver of said section.

4. To determine whether a grant of the application of Midwest Television, Inc., would be consistent with the provisions of § 73.613 of the Commission's rules and, if not, whether circumstances exist which would warrant waiver of said section.

5. To determine the efforts made by Midwest Television, Inc., to ascertain the needs and interests of the area proposed to be served and the manner in which the applicant will meet such needs and interests.

6. To determine, on a comparative basis, which of the operations proposed in the above-captioned applications would better serve the public interest, convenience and necessity in light of the significant differences between the applicants as to:

(a) The background and experience of each, bearing on its ability to own and operate the proposed television broadcast station.

(b) The proposals of each with respect to the management and operation of the proposed television broadcast stations.

(c) The programming services proposed in each of the above-captioned applications.

7. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the instant applications should be granted.

It is further ordered, That the "Motion to Accept Pleading" filed herein by Springfield Telecasting Co. is denied; the "Response to Reply to Opposition" filed herein by Springfield Telecasting Co. is, accordingly, dismissed; the "Statement" filed January 16, 1964, herein by Midwest Television, Inc., is dismissed; and the Petitions to Deny filed herein by Plains Television Corporation are granted insofar as they request that the applications be designated for hearing.

It is further ordered, That Plains Television Corporation is made a party to the proceeding; and

It is further ordered, That the issues in the above-captioned proceeding may be enlarged by the Examiner, upon his own motion or upon petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue:

To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

It is further ordered, That, to avail themselves of the opportunity to be heard, Springfield Telecasting Co., Midwest Television, Inc., and Plains Television Corporation, pursuant to § 1.221 (c) of the Commission's rules, in person or by attorney, shall, within twenty (20) days of the mailing of the Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date set for the hearing and present evidence on the issues specified in this Order.

It is further ordered, That the applicants and the party respondent herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594(a) of the Commission's rules, give notice of the hearing either individually, or, if feasible, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: April 29, 1964.

Released: May 4, 1964.

FEDERAL COMMUNICATIONS COMMISSION,[5]

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-4642; Filed, May 7, 1964; 8:51 a.m.]

[5] Commissioner Lee absent.

[Docket Nos. 15326-15328; FCC 64M-379]

SPRINGFIELD TELEVISION BROADCASTING CORP. ET AL.

Order Continuing Hearing

In re applications of Springfield Television Broadcasting Corporation, Toledo, Ohio, Docket No. 15326, File No. BPCT-3157; D. H. Overmyer, Toledo, Ohio, Docket No. 15327, File No. BPCT-3173; Producers, Inc., Toledo, Ohio, Docket No. 15328, File No. BPCT-3178; for construction permits for new television broadcast stations.

The Hearing Examiner having under consideration the joint petition for extension of procedural dates and continuance of hearing filed in the above-entitled proceeding on April 30, 1964;

It appearing, that the said petition requests extension of time for exchange of exhibits to be offered in evidence in the presentation of the direct affirmative cases from May 11, 1964, to May 18, 1964, and that the hearing presently scheduled to commence on May 20, 1964 be continued to May 25, 1964;

It further appearing, that all parties have consented to immediate consideration and grant of the said petition;

It is ordered, This 1st day of May 1964 that the said petition is granted and that the time for exchange of exhibits is extended from May 11, 1964 to May 18, 1964;

It is further ordered, That the hearing herein presently scheduled for May 20, 1964, is continued to May 25, 1964, commencing at 10:00 a.m. in the offices of the Commission at Washington, D.C.

Released: May 4, 1964.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-4643; Filed, May 7, 1964; 8:51 a.m.]

[Docket Nos. 15434, FCC 64-379]

WENY, INC. AND ELMIRA HEIGHTS-HORSEHEADS BROADCASTING CO.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of WENY, Inc., Elmira, New York, requests: 94.3 mc; #232, 700 w horizontal, 700 w vertical; 564 ft., Docket No. 15434, File No. BPH-4259; Frank P. Saia, Emmagene Swezey Saia, and Anthony P. Saia, d/b as Elmira Heights-Horseheads Broadcasting Company, Elmira, New York, requests: 94.3 mc; #232; 950 w; 502 ft., Docket No. 15435, File No. BPH-4261; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 29th day of April 1964;

The Commission having under consideration the above-captioned and described applications;

It appearing, that the above-captioned applications are mutually exclusive in that operation by the applicants as proposed would result in mutually destructive interference; and

It further appearing, that the areas for which the applicants propose to provide FM broadcast service are significantly different in size and that for purposes of comparison, the areas and populations within the respective 1 mv/m contours together with the availability of other FM service (at least 1 mv/m) within such areas will be considered in the hearing ordered below for the purpose of determining whether a comparative preference should accrue to either applicant; and

It further appearing that, upon due consideration of the above-captioned applications, the Commission finds that pursuant to section 309(e) of the Communications Act of 1934, as amended, a hearing is necessary; that each of the applicants is legally, financially, technically and otherwise qualified to construct, own and operate the FM broadcast facilities proposed;

It is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the above captioned applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the area and population within each of the proposed 1 mv/m contours and the availability of other FM service (at least 1 mv/m) to such areas and populations.

2. To determine, on a comparative basis, which of the proposals would better serve the public interest, convenience and necessity in the light of the evidence adduced pursuant to the foregoing issue and the record made with respect to the significant differences between the applicants as to:

(a) The background and experience of each, bearing on its ability to own and operate the FM broadcast station as proposed.

(b) The proposals of each with respect to the management and operation of the FM broadcast station as proposed.

(c) The programming services proposed in each of the above-captioned applications.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues which of the applications should be granted.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

It is further ordered, That the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the applications will be effectuated.

Released: May 4, 1964.

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

[F.R. Doc. 64-4644; Filed, May 7, 1964; 8:51 a.m.]

[Docket Nos. 15434, 15435; FCC 64M-382]

WENY, INC. AND ELMIRA HEIGHTS-HORSEHEADS BROADCASTING CO.

Order Scheduling Hearing

In re applications of WENY, Inc., Elmira, New York, Docket No. 15434, File No. BPH-4259; Frank P. Saia, Emmagene Swezey Saia, and Anthony P. Saia, d/b as Elmira Heights-Horseheads Broadcasting Company, Elmira, New York, Docket No. 15435, File No. BPH-4261; for construction permits.

It is ordered, This 4th day of May 1964, that Millard F. French will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on July 13, 1964, in Washington, D.C.: *And, it is further ordered*, That a prehearing conference in the proceeding will be convened by the presiding officer at 9:00 a.m., June 9, 1964.

Released: May 5, 1964.

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

[F.R. Doc. 64-4645; Filed, May 7, 1964; 8:51 a.m.]

FEDERAL POWER COMMISSION

[Docket No. CP64-177]

CITY OF WETMORE, KANSAS

Notice of Application and Date of Hearing

MAY 1, 1964.

Take notice that on February 10, 1964, the city of Wetmore, Kansas (Applicant), a municipal corporation, filed an application, pursuant to section 7(a) of the Natural Gas Act, for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver to Applicant its natural gas requirements for resale and distribution in the community of Wetmore, Kansas, all as more fully set forth in the application, which is on file with the Commission and open for public inspection.

Applicant estimates its annual and peak day requirements for the first three years of operation as follows: (volumes Mcf at 14.73 psia)

Year	Peak day	Annual
1st	271	24,250
2d	351	31,300
3d	442	39,900

Applicant states that Michigan Wisconsin's main transmission line running from southwest to northeast Kansas is situated approximately 3¾ miles west of Wetmore at its nearest point.

Applicant proposes to construct and operate a natural gas distribution system in Wetmore. It is proposed by Applicant that Michigan Wisconsin on the basis of its "10-cent formula" shall construct a 4-inch lateral line from a point on its main transmission line in Kansas to a metering station to be located approximately 1.25 miles west of its main pipeline, where, it is proposed, deliveries of gas to Wetmore will take place.

Applicant estimates that the cost of constructing the proposed distribution system and the Wetmore portion of lateral line will be $90,000.

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 June 8, 1964, at 10:00 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 said application.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before May 29, 1964.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 64-4602; Filed, May 7, 1964; 8:46 a.m.]

[Docket No. RP64-37]

KANSAS-COLORADO UTILITIES INC.

Notice of Proposed Changes in Rates and Charges

MAY 1, 1964.

Take notice that on April 28, 1964, Kansas-Colorado Utilities, Inc., filed proposed changes in its FPC Gas Tariff, Original Volume No. 1, under the provisions of section 4(e) of the Natural Gas Act, to become effective on June 1, 1964. The newly proposed changes reflect increased rates and charges in Rate Schedules F-1 and G-1. The total proposed increase in rates and charges amount to approximately $166,600, based on sales during the twelve month period ending December 31, 1963.

Protests, petitions to intervene, or notices of intervention may be filed with the Federal Power Commission, Wash-

[1] Commissioners Ford, Lee, and Loevinger absent.

ington, D.C., 20426, pursuant to the Commission's rules of practice and procedure, on or before May 21, 1964.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 64-4603; Filed, May 7, 1964; 8:46 a.m.]

[Project No. 2434]

KODIAK ELECTRIC ASSOCIATION, INC., TERROR LAKE PROJECT

Notice of Land Withdrawal; Alaska

MAY 4, 1964.

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 hereinafter described, insofar as title thereto remains in the United States, are included in Project No. 2434 for which completed application for preliminary permit was filed February 20, 1964, by the Kodiak Electric Association, Inc. Under said section 24 these lands are, from above filing date, reserved from entry, location or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress.

SEWARD MERIDIAN

The following unsurveyed land is described, according to Bureau of Land Management Protraction Diagrams dated September 19, 1960, and as delimited on project map Exhibit H and I (FPC No. 2434-2) filed with the Commission February 20, 1964:

T. 28 S., R. 22 W.,
Sec. 20, NE¼SW¼, Fractional NE¼, E½ NW¼, N½SE¼, SW¼SE¼;
Sec. 29, W½, NE¼, E½SW¼, W½SE¼;
Sec. 32, W½NE¼, E½NW¼, E½SW¼, NW¼SE¼.
T. 29 S., R. 22 W.,
Sec. 6, W½W½.
T. 29 S., R. 23 W.,
Sec. 1, SE¼NE¼, E½SE¼;
Sec. 10, SE¼SE¼;
Sec. 11, S½SW¼;
Sec. 12, NE¼, SE¼SW¼, N½SE¼, SW¼ SE¼;
Sec. 13, W½NE¼, NE¼NW¼, S½NW¼, N½SW¼, NW¼SE¼;
Sec. 14, W½, N½SE¼, SW¼SE¼;
Sec. 15, NE¼NE¼, S½NE¼, SE¼NW¼, S½;
Sec. 16, S½SW¼, SW¼SE¼, E½SE¼;
Sec. 19, NE¼, N½SE¼, SE¼SE¼;
Sec. 20, N½, SW¼, W½SE¼, SE¼SE¼;
Sec. 21, NE¼NE¼, W½NE¼, NW¼;
Sec. 22, NW¼NE¼, N½NW¼;
Sec. 29, N½NE¼, SW¼NE¼, W½;
Sec. 30, E½NE¼, SE¼;
Sec. 31, NE¼, E½NW¼, S½;
Sec. 32, W½NW¼.
T. 30 S., R. 23 W.,
Sec. 6, NW¼NE¼, NW¼, N½SW¼, SW¼ SW¼.
T. 30 S., R. 24 W.,
Sec. 1, NE¼SE¼, S½SE¼;
Sec. 12, N½NE¼.

The area of United States land reserved pursuant to the filing of this application is approximately 6,020 acres of which approximately 3,125 acres are within the Kodiak National Wildlife Refuge.

Copies of project map Exhibit H and I (FPC No. 2434-2) are being transmitted to Geological Survey, Bureau of Land Management, and Fish and Wildlife Service.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 64-4604; Filed, May 7, 1964; 8:46 a.m.]

[Docket No. E-7163]

PUBLIC SERVICE COMPANY OF INDIANA, INC.

Order Initiating Investigation and Hearing

MAY 1, 1964.

Public Service Company of Indiana, Inc. (PSCI), a corporation organized under the laws of the State of Indiana, having its principal business office at Plainfield, Indiana, in prior orders of this Commission has been found to be a "public utility" within the meaning of that term as used in the Federal Power Act.[1]

From information presently available to the Commission it appears that PSCI owns and operates interconnected electric production and transmission facilities in the State of Indiana, which facilities also are interconnected with electric facilities of Louisville Gas & Electric Company in Kentucky and The Cincinnati Gas & Electric Company in Ohio. PSCI is also interconnected in Indiana with Indianapolis Power & Light Company, Northern Indiana Public Service Company, Southern Indiana Gas & Electric Co., and Indiana & Michigan Electric Company, all of whom own facilities which in turn are interconnected with electric utilities or facilities located outside of the State of Indiana. It also appears that PSCI regularly delivers to and receives electric power and energy from each of these utility systems. In addition, the PSCI system is interconnected with and sells power to a number of municipal and cooperatively-owned electric systems.

RATE SCHEDULES FILED WITH THE COMMISSION

During the years 1942 to 1947, PSCI submitted to the Federal Power Commission contracts and rate schedules providing service to eleven municipalities in Indiana: Bainbridge, Covington, Ladoga, Middletown, Montezuma, Paragon, Pendleton, Rockville, Tipton, Veedersburg and Etna Green.[2] In submitting these contracts and schedules, PSCI sent a covering letter in each instance which stated that the schedules were "enclosed for [FPC's] information" and took the place of earlier schedules which had been "heretofore sent you at your request and * * * designated by you as [rate schedules.]" The Secretary of the Commission in each instance sent a letter to PSCI acknowledging receipt of the letter, contract and rate schedule from PSCI, stating that the rate schedule and contract had been designated as a PSCI Rate Schedule, and further stating the F.P.C. Number assigned to the rate schedule and contract.

These rate schedules for service to these eleven municipalities in Indiana are currently designated in the files of this Commisison as follows:

PSCI Rate Schedule FPC No.:	*Purchaser*
27	Town of Middletown.
29	Town of Rockville.
30	Town of Veedersburg.
31	City of Tipton.
33	Town of Montezuma.
34	Town of Bainbridge.
36	Town of Paragon.
37	Town of Etna Green.[3]
38	Town of Ladoga.
40	Town of Pendleton.
41	City of Covington.

By the terms of these rate schedules, 60 cycle, alternating current was supplied to these municipalities for their own use and for resale to their customers.

INTERCONNECTION AGREEMENTS

PSCI also has a number of interconnection agreements on file with this Commission as rate schedules.

PSCI Rate Schedule FPC No. 35-A (including Supplement Nos. 1, 2, 3, and 4) is an interconnection agreement between PSCI and Indiana & Michigan Electric Company. The agreement by its terms states that the companies have been interconnected at numerous points and have interchanged electric power and energy for many years, and that such interchanges have resulted in mutual advantages and benefits to the parties and their consumers, such as: conservation of materials, economies in cost, and improvement to the continuity and quality of service. The agreement states that the parties desire to increase these benefits. Accordingly, the parties agree therein to continue the interconnections, maintain their systems in continuous synchronous operation, render mutual emergency and standby assistance, coordinate spinning and standby reserve capacity, coordinate maintenance schedules, and interchange economy energy and diversity capacity and energy. The agreement sets up a planning committee to coordinate the planning, expansion and development of the companies' gen-

[1] Indiana & Michigan Electric Co. and Public Service Co. of Indiana, Inc., 9 FPC 617, 619 (1950); Public Service Co. of Indiana, Inc., 10 FPC 1096, 1098 (1951); Public Service Co. of Indiana, Inc. and Madison Light and Power Co., 10 FPC 1206, 1207 (1951); Indiana & Michigan Electric Co. and Public Service Co. of Indiana, Inc., 10 FPC 1315, 1316 (1951). Section 201(e) states: the term "public utility" when used in this Part or in the Part next following means any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part.

[2] Section 205(c) provides:

Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission, within such time and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications and services.

[3] Etna Green reports, however, that it is currently served by Northern Indiana Public Service Co.

eration and transmission systems in order to secure maximum mutual savings in investment and operating costs. The agreement also sets up an operating committee to fully coordinate the operations of the respective generation and transmission systems in order to secure the maximum mutual savings possible in operating costs.

Indiana & Michigan Electric Company is one of six operating subsidiaries of the American Electric Power System, which operates in seven states. Indiana & Michigan Electric Company operates in the States of Indiana and Michigan and regularly exchanges electric energy with companies in Ohio and Illinois.

Exhibit A of Rate Schedule 35–A contains a certificate of concurrence by PSCI in a four-party interconnection agreement between PSCI, Indiana & Michigan Electric Company, The Cincinnati Gas & Electric Company, and Louisville Gas & Electric Company. The four-party interconnection agreement is designated Exhibit A of Rate Schedule FPC No. 14–A filed by Indiana & Michigan Electric Company. It recognizes that the four companies together embrace a geographical area of operations in Indiana, Kentucky, and Ohio and are interconnected at various points in Indiana and at the Indiana-Ohio and Indiana-Kentucky borders. This four-party agreement states that numerous bi-party agreements exist between the companies having particular interconnections; that the four systems have operated in continuous synchronism for a number of years resulting in many advantages and benefits to themselves and their consumers, such as savings in capital and operating costs and improved continuity and quality of service; and that in order to continue the benefits from such coordinated operation of their respective interconnected systems, it is necessary to set up an operating committee for the four systems. This operating committee is to coordinate the operations of all four systems and the terms and conditions of the bi-party agreements. The operating committee is then established by the agreement.

PSCI Rate Schedule FPC No. 35–B is an interconnection agreement between Indiana & Michigan Electric Company, PSCI and Northern Indiana Public Service Company. The provisions of this agreement are similar to Rate Schedule No. 35–A.

PSCI Rate Schedule FPC No. 48 (including Exhibits I–VIII, and Supplement Nos. 1–4) is an interconnection agreement between PSCI and Indianapolis Power and Light Company, which is interconnected in turn with Indiana & Michigan Electric Company. This agreement is similar to Rate Schedule FPC Nos. 35–A and 35–B, and specifically seeks to realize, through interconnections, mutual benefits from firm power sales and purchases, emergency assistance, economy exchange, coordination of maintenance schedules of generating and transmission facilities, and seasonal diversities.

PSCI Rate Schedule FPC No. 46 is an interconnection agreement between PSCI and Louisville Gas and Electric Company, which owns and operates generation, transmission, and distribution facilities in Indiana and Kentucky. The interconnection point between the two parties is at Paddy's Run on the Indiana-Kentucky border. The parties agree to operate in parallel and to render emergency energy to each other. The agreement states "that in continuously interconnected operation of their respective systems energy being received by one party from another portion of its system or from another interconnected company, or energy being delivered by one party to another portion of its system or to another interconnected company, may flow by existing parallel lines over the transmission facilities of the other party as a natural result of the interconnected network of transmission lines", and the parties agree to permit such energy transfers over their respective transmission facilities. The agreement sets up an operating committee which is to meet "in order to obtain the greatest mutual benefits from the interconnection." The operating committee is to arrange for the following classes of interchange transactions: firm capacity and energy, emergency energy, economy energy, and unintentional energy.

PSCI Rate Schedule FPC No. 32 contains a certificate of concurrence by PSCI in the four-party interconnection agreement above-mentioned and in Cincinnati Gas and Electric Co. (CG&E) Rate Schedule FPC No. 10, which is an agreement between CG&E and PSCI.

This CG&E-PSCI agreement provides for maintenance of the interconnections between the two systems at the Ohio-Indiana border, for the coordination of the two systems, for the interchange of electric energy including emergency energy, and the sale of firm and surplus capacity by CG&E to PSCI. The agreement also sets up an operating and engineering committee to coordinate planning, expansion, and development of their respective generation and transmission systems to maximize savings in investment and operating costs and to arrange for emergency, economy, and diversity exchange of energy between the systems. The agreement further provides for operating reserve capacity to be carried by the party who can do so most cheaply.

PSCI's Annual Report to Stockholders

The Annual Report of PSCI for 1963 to its stockholders indicates that PSCI is engaged in a power pooling program which has enabled it to defer completing construction of a large generating unit until 1968, thereby allowing the building of a larger unit at that date than would have been practical at the time of the Report. The Annual Report states that "[t]he larger unit size will result both in lower capital costs per kilowatt of capacity and in lower operating cost due to increased efficiency. Without such pooling arrangements, additional capacity would be required at an earlier date". The Annual Report further states that "substantial progress has been made toward the formation of a regional power pool in which the Company will participate. The establishment of such a pooling arrangement is expected to achieve important financial and operating advantages for the participating companies by permitting the construction of larger generating units at lower capital costs per kilowatt; by lowering required reserve generating capacity margins; by realizing the lower operating costs of larger, more efficient generating units; and by taking maximum advantage of savings available through short-term exchanges of economy power."

F.P.C. Form Nos. 1 and 12

In addition to filing the Interconnection Agreements and its Annual Report, PSCI files annually with the Federal Power Commission certain information on FPC Form Nos. 1 and 12. This information shows that in the year 1962 PSCI received 290,635,000 kwh from and delivered 4,566,000 kwh to Cincinnati Gas & Electric Company; received 43,459,000 kwh from and delivered 128,703,000 kwh to Louisville Gas & Electric Company; received 108,364,000 kwh from and delivered 11,188,000 kwh to Southern Indiana Gas and Electric Company; and received 213,298,000 kwh from and delivered 528,568,200 kwh to Indiana & Michigan Electric Company.

It also appears that in the year 1962 the PSCI system, in addition to making the interchanges above, delivered 887,033,766 kwh to 31 Rural Electric Member Cooperatives, 358,113,076 kwh to 47 municipalities,[4] and 17,095,000 kwh to Southern Indiana Gas and Electric Company for which no rate schedules are on file with this Commission, except the rate schedules for the eleven municipalities listed above. For those eleven municipalities no subsequent filings have been made since 1947.

The information supplied by PSCI in its Form Nos. 1 and 12 also shows that in the year 1962 PSCI's net generation was 6,513,500,600 kwh and its net energy for load, 6,431,416,047 kwh. At the time of PSCI's system peak the combined net demand on PSCI's generating plants was 1,196,300 kilowatts; its system peak load, 1,171,400 kilowatts; and its system peak load responsibility, 1,185,300 kilowatts. PSCI's net assured system capacity for 1962 was reported as 1,467,000 kilowatts.

The foregoing circumstances indicate that whether or not PSCI's generating capacity is greater than its Indiana load, PSCI's total operations, including all of its wholesale sales, may be in interstate commerce.

Correspondence and Court Proceedings

On December 11, 1963, the Secretary of the Federal Power Commission sent a letter to PSCI,[5] stating that PSCI during the years 1942 to 1947 had filed with the Federal Power Commission rate schedules providing service to the municipalities of Bainbridge, Covington, Ladoga, Middleton, Montezuma, Paragon, Pendleton, Rockville, Tipton, Veedersburg and Etna Green; that PSCI had made no submittals of any rate schedules that superseded, supplemented, cancelled or otherwise changed any provisions of rate

[4] These municipalities and cooperatives are included in Exhibit A attached hereto.

[5] As we made clear in the minutes of our meeting of Feb. 6, 1964, the Staff had the authority to prepare and the Secretary to sign and mail this letter.

schedules applicable to service to these eleven municipalities; that according to the 1962 Form No. 1 Annual Report, filed by PSCI with the Federal Power Commission, wholesale electric service was provided to many other municipal and cooperative purchasers for which no rate schedules were on file with this Commission; and that PSCI was interchanging energy with other utilities. The letter concluded by suggesting that PSCI complete all appropriate rate schedule filings within a period of 30 days in the manner provided in Part 35 of the Federal Power Commission's regulations under the Federal Power Act.

On January 10, 1964, PSCI responded to the Commission Secretary's letter of December 11, 1963, and refused to recognize the jurisdiction of the Federal Power Commission over the rates and contracts to the municipal and cooperative purchasers. PSCI asserted that it operates solely within Indiana, and produces all of the energy furnished to its customers, and that therefore these sales were wholly contracts for the sale of electric energy in intrastate commerce subject to jurisdiction by the Public Service Commission of Indiana. The letter further stated, "we feel that this matter should be straightened out in the federal courts."

On that same day, January 10, 1964, PSCI filed a complaint in the United States District Court, Southern District of Indiana, Indianapolis Division, seeking a declaratory judgment and an injunction against the Federal Power Commission. Public Service Company of Indiana, Inc., v. Federal Power Commission, et al. Case No. IP 64–C–10. The Court over the objection of the Commission subsequently entered an order enjoining the Federal Power Commission and its agents "from taking any further action against [PSCI] because of the failure of [PSCI] to comply with the aforesaid letter of December 11, 1963".

In its findings of fact and conclusions of law filed with its injunction, the Court made clear that the basis for its action was its conclusion that the Commission could not lawfully authorize its Secretary or its staff to send the December 11, 1963 letter to PSCI, and that therefore any Commission action against PSCI because of the failure of PSCI to comply with the letter should be enjoined pending further order of the Court.

The Court also concluded, however, that PSCI "has not made a prima facie case for an injunction pending the litigation concerning the right of the Federal Power Commission to assume jurisdiction and determine such jurisdiction."[6]

The Commission finds: In view of the foregoing circumstances, it is necessary and appropriate for the purposes of carrying out the provisions of the Federal Power Act, and particularly, but not in limitation of the foregoing, sections 201, 205 and 206 thereof (16 U.S.C. 824, 824d, 824e) that an investigation and hearing be initiated pursuant to sections 301, 307, 308 and 309 (16 U.S.C. 825, and 825f–h) to determine whether the sales at wholesale to the purchasers referred to in Exhibit A, attached hereto and made a part of this order, are sales at wholesale in interstate commerce subject to the jurisdiction of this Commission under the provisions of the Federal Power Act for which PSCI must file appropriate rate schedules in the manner provided in Part 35 of the Commission's regulations under the Act.

The Commission orders:

(A) At a time and place and before a hearing examiner to be specified, a public hearing shall be held to find and determine:

(1) whether the sales by Public Service Company of Indiana, Inc. to the purchasers listed in Exhibit A attached hereto are sales at wholesale in interstate commerce, subject to the provisions of sections 201, 205 and 206 of the Federal Power Act and Part 35 of the Commission's regulations thereunder;

(2) whether Public Service Company of Indiana, Inc. should be ordered to file rate schedules for service to the purchasers listed in Exhibit A attached hereto in accordance with the provisions and requirements of section 205 of the Act and Part 35 of the Commission regulations thereunder;

(3) whether other orders or other actions may be necessary and appropriate to bring about compliance with the Federal Power Act and the Commission's regulations thereunder.

(B) In order that the foregoing issues may be properly determined, an investigation is hereby initiated and Public Service Company of Indiana, Inc., is hereby directed pursuant to the provisions of section 301(b) of the Federal Power Act to grant to authorized members of the staff of the Federal Power Commission during regular business hours free access to its property and access to and the right to inspect and examine all of its accounts, records, and memoranda.

(C) Petitions to intervene and notices of intervention shall be filed on or before June 15, 1964, in accordance with the Commission's rules of practice and procedure.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

EXHIBIT A

SOUTHERN INDIANA GAS AND ELECTRIC COMPANY

Municipalities

Advance.
Bargersville.
Bainbridge.
Brooklyn.
Centerville.
Clayton.
Coatesville.
Covington.
Crawfordsville.
Crothersville.
Darlington.
Dublin.
Dunreith.
Edinburg.
Etna Green.
Flora.
Frankfort.
Greendale.
Greenfield.
Hagerstown.
Jamestown.
Knightstown.
Ladoga.
Lebanon.
Lewisville.
Linton.
Logansport.
Middletown.
Montezuma.
New Ross.
Paoli.
Paragon.
Pendleton.
Peru.
Pittsboro.
Rising Sun.
Rockville.
Rushville.
Scottsburg.
South Whitley.
Spiceland.
Straughn.
Thorntown.
Tipton.
Veedersburg.
Vevay.
Waynetown.
Williamsport.

Rural Electric Membership Corporations

Bartholomew County
Boone County.
Carroll County.
Clark County.
Daviess-Martin County.
Decatur County.
Dubois County.
Fayette-Union County.
Fulton County.
Hancock County.
Harrison County.
Hendricks County.
Henry County.
Huntington County.
Jackson County.
Johnson County.
Knox County.
Kosciusko County.
Miami-Cass County.
Morgan County.
Orange County.
Parke County.
Rush County.
Shelby County.
Southeastern Indiana.
Sullivan County.
Tipmont.
Wabash County.
Warren County.
Wayne County.
Utilities District of Western Indiana.

[F.R. Doc. 64–4605; Filed, May 7, 1964; 8:46 a.m.]

[6] The Commission has filed an appeal to the United States Court of Appeals for the Seventh Circuit from the injunction order. Public Service Co. of Indiana, Inc., plaintiff-appellee, v. Federal Power Commission et al., defendants-appellant, Case No. 14612.

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority 30–I, Amdt. 3]

BOSTON REGIONAL AREA

Delegation of Authority To Conduct Program Activities

Pursuant to the authority delegated to the Regional Director by the Delegation of Authority No. 30 (Revision 8), as amended, 28 F.R. 3228, 7204, 8179 and 29 F.R. 4842 and 5489, Delegation of Authority No. 30–I as amended, 28 F.R. 4932, 8230 and Amendment 2 dated March 11, 1964, is hereby amended by:

1. Deleting Items I.J. 1. and 2. and substituting the following in lieu thereof:

1. To (a) purchase all office supplies and expendable equipment, including all desk-top items and rent regular office equipment; (b) contract for repair and maintenance of equipment and furnishings in an amount not to exceed $50 in any one instance; (c) contract for services required in setting up and dismantling, and moving SBA exhibits.

2. In connection with the establishment of Disaster Loan Offices, to (a) obligate Small Business Administration to reimburse General Services Administration for rental of office space; (b) rent office equipment; (c) rent motor vehicles commercially when not available from General Services Administration; (d) procure (without dollar limitation) emergency supplies and materials.

2. Adding the following Subitem (d) to Item I.K.7.

(d) Purchase printing from the General Services Administration where

centralized reproduction facilities have been established by GSA.

Effective date. April 27, 1964.

THOMAS J. NOONAN,
Regional Director,
Boston Regional Office.

[F.R. Doc. 64-4608; Filed, May 7, 1964; 8:46 a.m.]

[Delegation of Authority 30-II, Amdt. 3]

NEW YORK REGIONAL AREA

Delegation of Authority To Conduct Program Activities

Pursuant to the authority delegated to the Regional Director by the Delegation of Authority No. 30 (Revision 8), as amended, 28 F.R. 3228, 7204, 8179 and 29 F.R. 4842 and 5489, Delegation of Authority No. 30-II as amended, 28 F.R. 4687, 9036 and Amendment 2 dated March 11, 1964, is hereby amended by:

1. Deleting Items I.J. 1. and 2. and substituting the following in lieu thereof:

1. To (a) purchase all office supplies and expendable equipment, including all desk-top items and rent regular office equipment; (b) contract for repair and maintenance of equipment and furnishings in an amount not to exceed $50 in any one instance; (c) contract for services required in setting up and dismantling, and moving SBA exhibits.

2. In connection with the establishment of Disaster Loan Offices, to (a) obligate Small Business Administration to reimburse General Services Administration for rental of office space; (b) rent office equipment; (c) rent motor vehicles commercially when not available from General Services Administration; (d) procure (without dollar limitation) emergency supplies and materials.

2. Adding the following Subitem (d) to Item I.K.7.

(d) Purchase printing from the General Services Administration where centralized reproduction facilities have been established by GSA.

Effective date. April 13, 1964.

CHARLES H. KRIGER,
Regional Director,
New York Regional Office.

[F.R. Doc. 64-4609; Filed, May 7, 1964; 8:46 a.m.]

[Delegation of Authority 30-VI, Amdt. 3]

CLEVELAND REGIONAL OFFICE

Delegation of Authority To Conduct Program Activities

Pursuant to the authority delegated to the Regional Director by the Delegation of Authority No. 30 (Revision 8), as amended, 28 F.R. 3228, 7204, 8179 and 29 F.R. 4842 and 5489, Delegation of Authority No. 30-VI as amended, 28 F.R. 4933, 8179 and Amendment 2 dated March 11, 1964, is hereby amended by:

1. Deleting Items I.J. 1. and 2. and substituting the following in lieu thereof:

1. To (a) purchase all office supplies and expendable equipment, including all desk-top items and rent regular office equipment; (b) contract for repair and maintenance of equipment and furnishings in an amount not to exceed $50 in any one instance; (c) contract for services required in setting up and dismantling, and moving SBA exhibits.

2. In connection with the establishment of Disaster Loan Offices, to (a) obligate Small Business Administration to reimburse General Services Administration for rental of office space; (b) rent office equipment; (c) rent motor vehicles commercially when not available from General Services Administration; (d) procure (without dollar limitation) emergency supplies and materials.

2. Adding the following Subitem (d) to Item I.K.7.

(d) Purchase printing from the General Services Administration where centralized reproduction facilities have been established by GSA.

Effective date. April 13, 1964.

JAMES G. GARWICK,
Regional Director,
Cleveland Regional Office.

F.R. Doc. 64-4610; Filed, May 7, 1964; 8:46 a.m.]

[Delegation of Authority 30-XV, Amdt. 3]

DETROIT REGIONAL OFFICE

Delegation of Authority To Conduct Program Activities

Pursuant to the authority delegated to the Regional Director by the Delegation of Authority No. 30 (Revision 8), as amended, 28 F.R. 3228, 7204, 8179 and 29 F.R. 4842 and 5489, Delegation of Authority No. 30-XV as amended, 28 F.R. 4689, 8180 and Amendment 2 dated March 11, 1964, is hereby amended by:

1. Deleting Items I.J. 1. and 2. and substituting the following in lieu thereof:

1. To (a) purchase all office supplies and expendable equipment, including all desk-top items and rent regular office equipment; (b) contract for repair and maintenance of equipment and furnishings in an amount not to exceed $50 in any one instance; (c) contract for services required in setting up and dismantling, and moving SBA exhibits.

2. In connection with the establishment of Disaster Loan Offices, to (a) obligate Small Business Administration to reimburse General Services Administration for rental of office space; (b) rent office equipment; (c) rent motor vehicles commercially when not available from General Services Administration; (d) procure (without dollar limitation) emergency supplies and materials.

2. Adding the following Subitem (d) to Item I.K. 7.

(d) Purchase printing from the General Services Administration where centralized reproduction facilities have been established by GSA.

Effective date. April 13, 1964.

ROBERT F. PHILLIPS,
Regional Director,
Detroit Regional Office.

[F.R. Doc. 64-4611; Filed, May 7, 1964; 8:47 a.m.]

[Delegation of Authority 30-XIV, Amdt. 3]

LOS ANGELES REGIONAL OFFICE

Delegation of Authority To Conduct Program Activities

Pursuant to the authority delegated to the Regional Director by this Delegation of Authority No. 30 (Revision 8), as amended, 28 F.R. 3228, 7204, 8179 and 29 F.R. 4842 and 5489, Delegation of Authority No. 30-XIV as amended, 28 F.R. 4953, 8180 and Amendment 2 dated March 11, 1964, is hereby amended by:

1. Deleting Items I.J. 1. and 2. and substituting the following in lieu thereof:

1. To (a) purchase all office supplies and expendable equipment, including all desk-top items and rent regular office equipment; (b) contract for repair and maintenance of equipment and furnishings in an amount not to exceed $50 in any one instance; (c) contract for services required in setting up and dismantling, and moving SBA exhibits.

2. In connection with the establishment of Disaster Loan Offices, to (a) obligate Small Business Administration to reimburse General Services Administration for rental of office space; (b) rent office equipment; (c) rent motor vehicles commercially when not available from General Services Administration; (d) procure (without dollar limitation) emergency supplies and materials.

2. Adding the following Subitem (d) to Item I.K. 7.

(d) Purchase printing from the General Services Administration where centralized reproduction facilities have been established by GSA.

Effective date. April 13, 1964.

ALVIN P. MEYERS,
Regional Director,
Los Angeles Regional Office.

[F.R. Doc. 64-4612; Filed, May 7, 1964; 8:47 a.m.]

[Delegation of Authority 30-XI, Amdt. 3]

DENVER REGIONAL OFFICE

Delegation of Authority To Conduct Program Activities

Pursuant to the authority delegated to the Regional Director by the Delegation of Authority No. 30 (Revision 8), as amended, 28 F.R. 3228, 7204, 8179 and 29 F.R. 4842 and 5489, Delegation of Authority No. 30-XI as amended, 28 F.R. 5223, 8231 and Amendment 2 dated March 11, 1964, is hereby amended by:

1. Deleting Items I.J. 1. and 2. and substituting the following in lieu thereof:

1. To (a) purchase all office supplies and expendable equipment, including all desk-top items and rent regular office equipment; (b) contract for repair and maintenance of equipment and furnishings in an amount not to exceed $50 in any one instance; (c) contract for services required in setting up and dismantling, and moving SBA exhibits.

2. In connection with the establishment of Disaster Loan Offices, to (a) obligate Small Business Administration to reimburse General Services Administration for rental of office space; (b)

rent office equipment; (c) rent motor vehicles commercially when not available from General Services Administration; (d) procure (without dollar limitation) emergency supplies and materials.

2. Adding the following Subitem (d) to Item I.K. 7.

(d) Purchase printing from the General Services Administration where centralized reproduction facilities have been established by GSA.

Effective date. April 13, 1964.

GEORGE E. SAUNDERS,
Regional Director,
Denver Regional Office.

[F.R. Doc. 64-4627; Filed, May 7, 1964; 8:48 a.m.]

[Delegation of Authority 30-X, Disaster 2]

MANAGER, DISASTER FIELD OFFICE, SHREVEPORT, LA.

Delegation Relating to Financial Assistance Functions

I. Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30 (Revision 8), 28 F.R. 3228, there is hereby redelegated to the Manager of Shreveport Disaster Feld Office the following authority.

A. *Financial assistance.* 1. To approve and decline disaster loans in an amount not exceeding $50,000.

2. To execute loan authorizations for Washington and Regional Office approved loans and for disaster loans approved under delegated authority, said execution to read as follows:

Name_____,
Administrator.

By _____,
Manager, Disaster Field Office.

3. To cancel, reinstate, modify and amend authorization for disaster loans approved under delegated authority.

4. To disburse unsecured disaster loans.

5. To extend the disbursement period on disaster loan authorizations or undisbursed portions of disaster loans.

II. The authority delegated herein may not be redelegated.

III. All authority delegated herein may be exercised by any SBA employee designated as Acting Manager of the disaster field office.

Effective date. April 28, 1964.

JAMES R. WOODALL,
Acting Regional Director,
Dallas, Texas.

[F.R. Doc. 64-4613; Filed, May 7, 1964; 8:47 a.m.]

HOUSING AND HOME FINANCE AGENCY

Office of the Administrator

ACTING ASSISTANT COMMISSIONER FOR PROGRAM PLANNING

The officers appointed to the following listed positions in the Urban Renewal Administration, Housing and Home Finance Agency, are hereby designated to serve as Acting Assistant Commissioner for Program Planning, Urban Renewal Administration, during the absence of the Assistant Commissioner for Program Planning, with all the powers, functions, and duties delegated or assigned to the Assistant Commissioner for Program Planning, provided that no officer is authorized to serve as Acting Assistant Commissioner for Program Planning unless all other officers whose titles precede his in this designation are unable to act by reason of absence:

1. Director, Legislative Policy Branch.
2. Director, Program Data and Evaluation Branch.

This designation supersedes the designation effective July 22, 1963 (28 F.R. 8230, August 9, 1963).

(62 Stat. 1283 (1948), as amended by 64 Stat. 80 (1950); 12 U.S.C. 1701c; Housing and Home Finance Administrator's delegation published at 25 F.R. 9874, October 14, 1960, as amended at 28 F.R. 2933, March 23, 1963)

Effective as of the 30th day of March 1964.

WILLIAM L. SLAYTON,
Urban Renewal Commissioner.

[F.R. Doc. 64-4635; Filed, May 7, 1964; 8:50 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

CERTIFICATES AUTHORIZING EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM WAGES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), and Administrative Order No. 579 (28 F.R. 11524) the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the act. The effective and expiration dates, occupations, wage rates, number or proportion of learners and learning periods, for certificates issued under general learner regulations (29 CFR 522.1 to 522.9), and the principal product manufactured by the employer are as indicated below. Conditions provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.20 to 522.25, as amended).

The following learner certificates were issued authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

Aynor Manufacturing Co., Inc., Aynor, S.C.; effective 4-23-64 to 4-22-65 (ladies' and children's jamaicas, bermudas and short shorts).

Blue Bell, Inc., Columbia City, Ind.; effective 5-1-64 to 4-30-65 (men's and boys' dungarees).

Covington Industries, Inc., Opp, Ala.; effective 5-2-64 to 5-1-65 (men's coveralls).

Cowden Manufacturing Co., Springfield, Ky.; effective 5-1-64 to 4-30-65 (men's and boys' work pants).

Dee-Mure Brassiere Co., Inc., Hamlin, W. Va.; effective 4-22-64 to 4-21-65 (ladies' brassieres).

Dickson Manufacturing Co., Plant No. 2, 114 North Mulberry Street, Dickson, Tenn.; effective 4-21-64 to 4-20-65 (men's work shirts and jackets).

E and W Manufacturing Co., Ilimo, Mo.; effective 4-30-64 to 4-29-65 (men's and boys' dungarees and overalls, ladies' and girls' jeans).

Executive Service Co., Pickens, S.C.; effective 5-1-64 to 4-30-65 (men's dress shirts).

Flushing Shirt Manufacturing Co., Grantsville, Md.; effective 4-21-64 to 4-20-65 (men's uniform shirts).

Grifton Clothing Co., Highway 118 East, Grifton, N.C.; effective 4-24-64 to 4-23-65 (boys', girls' and men's outerwear jackets).

Hy-Grade Pants Co., Inc., 403 South Main Street, Taylor, Pa.; effective 4-23-64 to 4-22-65 (men's pants).

H. R. Kaminsky & Sons, Inc., Fitzgerald, Ga.; effective 4-23-64 to 4-22-65 (men's dress slacks).

Leco Manufacturing Corp., Mountain City, Tenn.; effective 4-22-64 to 4-21-65 (ladies' and children's nightwear).

Midland Manufacturing, Inc., Railroad Street, Olive Hill, Ky.; effective 4-27-64 to 4-26-65 (men's and boys' dungarees).

Monticello Manufacturing Co., a division of Kellwood Co., Monticello, Miss.; effective 4-24-64 to 4-23-65 (men's work trousers).

Robin Lee, Inc., Alma, Ga.; effective 4-24-64 to 4-23-65 (ladies', misses' and juniors' dresses).

J. H. Rutter-Rex Manufacturing Co., Inc., Franklinton, La.; effective 4-22-64 to 4-21-65 (men's cotton work pants).

Sherman Manufacturing Co., 1200 South Main Street, Darlington, S.C.; effective 4-29-64 to 4-28-65 (ladies' house dresses).

The Solomon Co., Leeds, Ala.; effective 4-21-64 to 4-20-65 (men's and boys' dress trousers).

Spartans Industries, Inc., Smithville, Tenn.; effective 4-26-64 to 4-25-65 (men's and boys' sport shirts).

Spring Hope Manufacturing Co., Inc., Spring Hope, N.C.; effective 4-25-64 to 4-24-65 (men's and boys' sport shirts).

Tower City Dress Co., Inc., 800 State Street, Utica, N.Y.; effective 4-24-64 to 4-23-65 (women's, misses' and juniors' dresses).

W. F. Apparel Co., Inc., 902 West Main Street, West Frankfort, Ill.; effective 4-23-64 to 4-22-65 (women's and misses' dresses).

Wentworth Manufacturing Co., 148 East Darlington Street, Florence, S.C.; effective 5-1-64 to 4-30-65 (ladies' dresses).

The following learner certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

Higrade Manufacturing Inc., 246 Oconee Street, Athens, Ga.; effective 4-27-64 to 4-26-65; 10 learners (men's work pants and shirts).

Eileen Hope, Inc., 122 Juniper Street, Harrisburg, Pa.; effective 4-27-64 to 4-26-65; 10 learners (women's dresses).

Jomax Garment Co., Inc., 252 West College Avenue, York, Pa.; effective 4-24-64 to 4-23-65; 10 learners (ladies' blouses and dresses).

Patty Sportswear, Inc., 210 North Main Avenue; Scranton, Pa.; effective 4-24-64 to 4-23-65; 10 learners (ladies' dresses).

Rose Manufacturing Co., Limestone, Tenn.; effective 4-20-64 to 4-19-65; 10 learners (ladies' blouses and dresses).

Steele Apparel Co., Steele, Mo.; effective 4-24-64 to 4-23-65; 10 learners (ladies' dresses).

The following learner certificates were issued for plant expansion purposes.

The effective and expiration dates and the number of learners authorized are indicated.

Gulf Sewing Industries, Inc., Citronelle, Ala.; effective 4-24-64 to 10-23-64; 20 learners (women's slacks).

Standard Romper, Inc., 321 Canco Road; Portland, Me.; effective 4-25-64 to 10-24-64; 10 learners (children's shirts).

Washington Garment Co., 2020 Main Street Extension, Washington, Pa.; effective 4-24-64 to 10-23-64; 80 learners. Learners may not be employed at special minimum wages in the production of skirts (ladies' pants and shorts).

Westmoreland Manufacturing Co., College Street, Westmoreland, Tenn.; effective 4-24-64 to 10-23-64; 60 learners (ladies' blouses).

Hosiery Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.40 to 522.43, as amended).

Elliott Hosiery Mills, Hickory, N.C.; effective 4-22-64 to 4-21-65; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's seamless hosiery).

Knit-Sox Knitting Mills, Inc., Hickory, N.C.; effective 4-27-64 to 4-26-65; 5 percent of the total number of factory production workers for normal labor turnover purposes (misses' and children's socks).

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.30 to 522.35, as amended).

Keystone Mills, Inc., 325 South Lancaster Street, Annville, Pa.; effective 5-14-64 to 5-13-65; 5 learners for normal labor turnover purposes (polo shirts and underwear).

Wolverine Knitting Mills, Inc., 120 North Jackson Street, Bay City, Mich.; effective 4-23-64 to 4-22-65; 5 percent of the total number of factory production workers for normal labor turnover purposes (women's and children's underwear and nightwear).

Regulations Applicable to the Employment of Learners (29 CFR 522.1 to 522.9, as amended).

Montgomery Sylvania Manufacturing Co., Inc., 22 East Houston Avenue, Montgomery, Pa.; effective 4-8-64 to 10-7-64; 10 percent of the total number of factory production workers for normal labor turnover purposes, in the occupation of sewing machine operator, for a learning period of 320 hours at the rate of not less than $1.10 an hour (skirts).

Vandalia Garment Co., 30-16 South Lindell, Vandalia, Mo.; effective 4-8-64 to 10-7-64; 10 percent of the total number of factory production workers for normal labor turnover purposes, in the occupations of sewing machine operator, final presser; each for a learning period of 320 hours; and pressing other than final pressing, for a learning period of 160 hours; each at the rate of not less than $1.10 an hour (skirts).

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 first day of May 1964.

ROBERT G. GRONEWALD,
Authorized Representative of the Administrator.

[F.R. Doc. 64-4625; Filed, May 7, 1964; 8:48 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

MAY 5, 1964.

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. 38998: *Liquefied chlorine gas from Memphis, Tenn.* Filed by O. W. South, Jr., agent (No. A4511), for interested rail carriers. Rates on liquefied chlorine gas, in tank car loads, from Memphis, Tenn., to Palatka, Fla.

Grounds for relief: Market competition.

Tariff: Supplement 171 to Southern Freight Association, agent, tariff I.C.C. S-116.

FSA No. 38999: *Liquid caustic soda from Memphis, Tenn.* Filed by O. W. South, Jr., agent (No. A4512), for and on behalf of Southern Railway Co. Rates on liquid caustic soda, in tank car loads, from Memphis, Tenn., to Danville, Va.

Grounds for relief: Market competition.

Tariff: Supplement 171 to Southern Freight Association, agent, tariff I.C.C. S-116.

FSA No. 39000: *Liquid caustic soda from Memphis, Tenn.* Filed by O. W. South, Jr., agent (No. A4513), for interested rail carriers. Rates on liquid caustic soda, in tank car loads from Memphis, Tenn., to Port Rayon, Tenn.

Grounds for relief: Market competition.

Tariff: Supplement 171 to Southern Freight Association, agent, tariff I.C.C. S-116.

FSA No. 39001: *Joint motor-rail rates—Southern Motor Carriers.* Filed by Southern Motor Carriers Rate Conference, agent (No. 88), for interested carriers. Rates on various commodities moving on class and commodity rates over joint routes of applicant rail and motor carriers, between points in southern territory, on the one hand, and points in middle Atlantic and New England territories, on the other.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 16 to Southern Motor Carriers Rate Conference, agent, tariff MF-I.C.C. 1272.

FSA No. 39002: *Iron or steel scrap to Calvert, Ky.* Filed by Traffic Executive Association-Eastern Railroads, agent (E.R. No. 2716), for interested rail carriers. Rates on scrap iron or steel, as described in the application, in carloads, from Beaver Falls, Pa., to Calvert, Ky.

Grounds for relief: Market competition.

Tariff: Supplement 49 to Traffic Executive Association-Eastern Railroads, agent, tariff I.C.C. C-334.

FSA No. 39003: *Liquid caustic soda to Cartersville, Ga.* Filed by Traffic Executive Association-Eastern Railroads, agent (E.R. No. 2717), for interested rail carriers. Rates on liquid caustic soda, in tank car loads, from specified points in Michigan, New Jersey, New York, Ohio and West Virginia, to Cartersville, Ga.

Grounds for relief: Market competition.

Tariffs: Supplements 133 and 49 to Traffic Executive Association-Eastern Railroads, agent, tariffs I.C.C. C-102 and C-334, respectively.

FSA No. 39004: *Joint motor-rail rates—Southern Motor Carriers.* Filed by Southern Motor Carriers Rate Conference, agent (No. 89), for interested carriers. Rates on various commodities moving on class and commodity rates over joint routes of applicant rail and motor carriers, between points in southern territory, on the one hand, and points in middle Atlantic and New England territories, on the other.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 16 to Southern Motor Carriers Rate Conference, agent, tariff MF-I.C.C. 1272.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 64-4619; Filed, May 7, 1964; 8:47 a.m.]

[Notice 980]

MOTOR CARRIER TRANSFER PROCEEDINGS

MAY 5, 1964.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 66814. By order of April 27, 1964, the Transfer Board approved the transfer to William T. Cantrell, Mendon, Ill., of Certificate in No. MC 123770 issued March 12, 1962, to Ralph N. Milbert, Quincy, Ill., authorizing the transportation of gravel, sand, and stone, over irregular routes, from La Grange and Ewing, Mo., to points in Adams County,

Ill. Robert T. Lawley, 308 Reisch Building, Springfield, Ill., attorney for applicants.

No. MC–FC 66821. By order of April 29, 1964, the Transfer Board approved the transfer to James W. Franko, Jr., Latrobe, Pa., of the operating rights issued by the Commission November 18, 1940, under Certificate in No. MC 65134, to James W. Franko, Latrobe, Pa., authorizing the transportation, over regular routes, of general commodities, excluding household goods, commodities in bulk, and other specified commodities, between Pittsburgh, Pa., and Youngwood, and Derry, Pa. Thomas R. Mahady, Mahady & Mahady, 317 Weldon Street, Latrobe, Pa., attorney for applicants.

No. MC–FC 66827. By order of April 29, 1964, the Transfer Board approved the transfer to Eldred Van and Storage Co., Inc., Terre Haute, Ind., of the operating rights issued by the Commission October 27, 1961, under Permit in No. MC 109470, to John William Eldred, doing business as Conrad Transfer & Storage Co., Terre Haute, Ind., as amended March 30, 1962 to show the name as John W. Eldred, doing business as Eldred Van & Storage Co., Terre Haute, Ind., authorizing the transportation, over irregular routes, of such merchandise, as is dealt in by mail-order houses and their stores, between Terre Haute, Ind., on the one hand, and, on the other, points in Illinois and Indiana within 50 miles of Terre Haute, Ind. Donald W. Smith, 511 Fidelity Building, Indianapolis, Ind., attorney for ap-applicants.

No. MC–FC 66835. By order of April 29, 1964, the Transfer Board approved the transfer to Philip R. Waldman, Secaucus, N.J., of the operating rights in Permit in No. MC 112748, issued December 16, 1959, to Thomas J. Brady, doing business as B. & P. Transportation, Wyckoff, N.J., authorizing the transportation, over irregular routes, of: Cloth piece goods, between Paterson, N.J., and New York, N.Y., Martin Werner, 2 West 45th St., New York 36, N.Y., attorney for applicants.

No. MC–FC 66841. By order of April 29, 1964, the Transfer Board approved the transfer to Ross Trucking Co. Inc., 328 Merrill Way, Smyrna, Del., of the operating rights in Permit in No. MC 38425, issued April 4, 1961, in the name of Irvin W. Zechman, Middleburg, Pa., as amended February 3, 1964, to show the name as C. Elmer Ross and N. Edith Ross, 328 Merrill Way, Smyrna, Del., authorizing the transportation, over irregular routes, of: Agricultural commodities, and similar goods, from Baltimore, Md., and points in York County, Pa., to specified points in Virginia, Pennsylvania, New York, New Jersey, West Virginia, and points in Maryland, Delaware, and the District of Columbia, and building materials, and farm supplies, from Baltimore, Md., to points in York County, Pa.

No. MC–FC 66847. By order of April 29, 1964, the Transfer Board approved the transfer to Robert M. Haff, Epping, N.H., of the operating rights in Certificate in No. MC 78077 issued June 23, 1949, to Roger J. Proulx, Epping, N.H., authorizing the transportation over irregular routes, of: Soft coal, lumber, brick, and scrap metal, between specified points in New Hampshire and Massachusetts. Andre J. Barbeau, 795 Elm Street, Manchester, N.H., attorney for applicants.

No. MC–FC 66849. By order of April 30, 1964, the Transfer Board approved the transfer to D. H. P., Inc., P.O. Box 83, Turnpike Station, Shrewsbury, Mass., those operating rights evidencing which a Certificate of Registration was authorized to be issued in the proceeding in No. MC 98074 (Sub-No. 1) under Section 206(a)(7) to Direct Motor Co., Inc., P.O. Box 83, Turnpike Stations, Shrewsbury, Mass., covering the transportation of the commodities specified in the pertinent Certificate issued by the Massachusetts Department of Public Utilities Nos. 723–A and No. 2948, authorizing operations within the State of Massachusetts.

No. MC–FC 66850. By order of April 30, 1964, the Transfer Board approved the transfer to Lambert's Express, Inc., Harrison, N.J., of Certificate in No. MC 29553 issued February 13, 1942, to Hayes Lambert, doing business as Lambert's Express, Plainfield, N.J., authorizing the transportation of general commodities, excluding household goods and commodities in bulk, over irregular routes, between New York, N.Y., on the one hand, and, on the other, points in that part of Middlesex County, N.J., north of the Raritan River, that part of Passaic County, N.J., south and east of U.S. Highway 202, that part of Bergen County, N.J., south of New Jersey Highway 4, and those in Union, Essex and Hudson Counties, N.J. Charles J. Williams, 1060 Broad Street, Newark 2, N.J., attorney representing transferee and A. Davis Millner, 1060 Broad Street, Newark 2, N.J., attorney representing transferor.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 64–4620; Filed, May 7, 1964; 8:47 a.m.]

CUMULATIVE CODIFICATION GUIDE—MAY

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during May.

Pages 6111–6144

PART II

FEDERAL REGISTER

VOLUME 29 NUMBER 91

Washington, Friday, May 8, 1963

Federal Aviation Agency

[14 CFR Part 125 [New]]

Proposed Revision of Regulations

FEDERAL AVIATION AGENCY

[14 CFR Parts 42, 125 [New]]

[Reg. Doc. No. 5033; Notice 64-23]

CERTIFICATION AND OPERATIONS OF SUPPLEMENTAL AIR CARRIERS, COMMERCIAL OPERATORS USING LARGE AIRCRAFT, AND CERTIFICATED ROUTE AIR CARRIERS ENGAGING IN CHARTER FLIGHTS OR OTHER SPECIAL SERVICES

Notice of Proposed Rule Making

The Federal Aviation Agency is considering a proposal to recodify present Part 42 of the Civil Air Regulations into Part 125 [New] of the Federal Aviation Regulations.

Interested persons are invited to participate in the proposed recodification by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. All communications received on or before June 30, 1964, will be considered by the Administrator before taking action on the proposed recodification. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

This proposal is a part of the program of the Federal Aviation Agency to recodify its regulatory material. The proposal conforms generally to the "Outline and Analysis" for the proposed recodification announced in Draft Release 61-25, published in the FEDERAL REGISTER on November 15, 1961 (26 F.R. 10698). However, the proposed new Part is numbered Part 125, instead of Part 127 as announced in the outline, and will include all of present Part 42 including the certification provisions which the original outline proposed to transfer to a separate part.

While SR 440 and certain sections of SRs 442, 442A, and 422B are included in proposed Part 125 [New] we cannot propose to rescind those provisions now since they also apply to operations conducted under Parts 40 and 41. Accordingly, these provisions will not be rescinded until Parts 40 and 41 are recodified.

The object of Part 125 [New] is to restate existing regulations, not to make new ones. The pertinent provisions have been freely reworded and rearranged, subject to every precaution against disturbing existing rights, privileges, duties, or functions. In addition, in cases where well established administrative practice or construction has established authoritative interpretations, the revised language reflects the interpretations.

Each proposed recodified section is followed by a note citing the present section of the regulations upon which it is based. A cross-reference table has been placed at the end of Part 125 [New] to permit easy access from the old regulations to the new. Internal cross references to parts or sections that are not yet recodified contain a blank space for later insertion of the correct recodified number with the present number contained in brackets. When a part or section that is referred to in a cross reference is later recodified, the correct number will be inserted and the bracketed number will be dropped.

No substantive changes involving an increased burden on the public have been made in the regulations, the purpose of the recodification project being simply to streamline and clarify present regulatory language and to delete obsolete or redundant provisions. It should be noted that the definitions, abbreviations, and rules of construction contained in Part 1 [New] published in the FEDERAL REGISTER on May 15, 1962 (27 F.R. 4587) would apply to proposed Part 125 [New].

As Part 1 [New] includes "inspection" in the definition of the term "maintenance" this proposal drops the present practice of referring to "inspection" in addition to "maintenance". The term "authorized representative of the Administrator" has also been dropped as it is included in the term "Administrator". We recognize that additional definitions must be added to Part 1 [New] before the issue of the air carrier parts (including Part 125 [New]) in final form. However, due to conflicts in the definitions of terms in these parts, no action will be taken to amend Part 1 [New] until after all the air carrier parts have been issued as notices of proposed rule making.

The language of proposed Part 125 [New] has been conformed wherever possible to comparable provisions in proposed Part 123 [New] (29 F.R. 1347), including revisions to Part 123 that will result from comments received on the proposal. However, final conforming of language must await not only the receipt of comments on this proposal but on the receipt of comments on the notice of proposed rule making of Part 121 [New] (CAR 40) that will be issued shortly.

Proposed § 125.479 [New] eliminates the present conflict in § 42.370 as to when, in the case of extended overwater operations, passengers must be briefed on the location and operation of emergency exits. The revised language reflects the intent of § 42.370(a) and makes it clear that this briefing must be given before takeoff.

All references to dispatchers have been dropped in Part 125 [New] as there are no dispatcher requirements in CAR 42. The term "operational control personnel" is used and will cover dispatchers where they are used voluntarily by persons subject to this part.

When finally adopted, Part 125 [New] will include the substance of any applicable rules or amendments adopted and made effective during the period between the date of notice and the effective date of the final rule, and may also include applicable rules on which individual notices of proposed rule making have been issued and the comment period has expired, but which have not been theretofore adopted.

Appendices A and B of present Part 42 will be retained without substantive change and therefore have not been reprinted with proposed Part 125 [New]. They will be published at the time that the final rule is adopted.

Part 125 [New] is proposed under the authority of sections 313(a), 601, 604, and 605 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1424, and 1425).

In consideration of the foregoing, it is proposed to amend Chapter I of Title 14 of the Code of Federal Regulations by deleting Part 42 and adding a Part 125 [New] reading as hereinafter set forth.

Issued in Washington, D.C., on April 30, 1964.

N. E. HALABY,
Administrator.

PART 125—CERTIFICATION AND OPERATIONS OF SUPPLEMENTAL AIR CARRIERS, COMMERCIAL OPERATORS USING LARGE AIRCRAFT, AND CERTIFICATED ROUTE AIR CARRIERS ENGAGING IN CHARTER FLIGHTS OR OTHER SPECIAL SERVICES [NEW]

Subpart A—General

Subpart B—Certification and Operations Specifications

Subpart C—Approval of Areas and Routes

AUTHORITY: The provisions of this Part 125 issued under secs. 313(a), 601, 604, and 605 of the Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1424 and 1425.

Subpart A—General

§ 125.1 Applicability.

This part prescribes rules governing the following persons and operations:

(a) Each supplemental air carrier when it engages with aircraft in the carriage of persons or property in air commerce for compensation or hire.

(b) Each certificated route air carrier when it engages with aircraft in charter flights or other special services.

(c) Each certificated route air carrier when it engages with aircraft in scheduled cargo-only operations to be conducted under the certification and operating rules of this part, as authorized under _____, _____, or _____ (present Part 40, 41, or 46) of this chapter.

(d) Each commercial operator when it engages with large aircraft in the carriage of persons or property in air commerce for compensation or hire, except when it conducts operations under Part 133 [New] and except that an applicant or commercial operator who carries or intends to carry passengers for compensation or hire as a common carrier between two points entirely within any State with the frequency set forth in subparagraph (1) or (2) of this paragraph shall show that it is able to and will conduct the operations under Part _____ (present Part 40) (except §§ _____, _____, _____ through _____ (present §§ 40.1, 40.10, 40.12 through 40.17)) or any other requirements that the Administrator finds to be necessary to provide an appropriate level of safety for the operation:

(1) Two flights, or one round trip a week on the same day or days of the week for eight or more weeks in any 90 consecutive days.

(2) A total of 36 or more flights or 18 or more round trips in any 90 consecutive days.

For the purpose of determining whether a person is a commercial operator under this part, operations are considered to be for "compensation or hire" when they are a major enterprise for profit and not merely incidental to the person's other business.

(e) Each person employed or used by an air carrier or commercial operator in operations under this part, including the maintenance and preventive maintenance of aircraft.

(f) Each person who is on board an aircraft being operated under this part.

[Revision note: Based on § 42.1]

§ 125.3 Rules applicable to operations subject to this part.

Unless otherwise specified in this part or in its operations specifications, each air carrier and commercial operator operating an aircraft shall—

(a) While operating inside the United States, comply with the applicable rules of Part 91 [New] of this chapter;

(b) While operating over the high seas, comply with Annex 2 (Rules of the Air) to the convention on International Civil Aviation, except where any rule of this part is more restrictive and may be followed without violating Annex 2; and

(c) While operating within a foreign country, comply with the air traffic rules of the country concerned and local airport rules, except where any rule of this part is more restrictive and may be followed without violating the rules of that country.

[Revision note: Based on § 42.2]

Subpart B—Certification and Operations Specifications

§ 125.11 Certificate and operations specifications required.

(a) No air carrier may operate an aircraft in operations to which this part applies without, or in violation of—

(1) An air carrier operating certificate and operations specifications issued under this part; or

(2) In the case of a certificated route carrier required to be certificated under Part ____, ____, or ____, (present Part 40, 41, or 46) appropriate amendments to its air carrier certificate and operations specifications issued under the appropriate part.

(b) No commercial operator may operate an aircraft in operations to which this part applies without, or in violation of, a commercial operator certificate, and operations specifications issued under this part.

(c) No holder of an air carrier operating certificate is eligible for a commercial operator certificate under this part.

(d) No holder of an air carrier operating certificate issued under part ____, ____, or ____ [Present Part 40, 41, or 46] is eligible for a certificate issued under this part.

[Revision note: Combines §§ 42.10 and 42.18]

NOTE: § 42.10(b) (1st 31 words) is omitted as covered by revised § 125.1(d); § 42.18 (a) and (b) (last sentence) is omitted as executed.

§ 125.13 Contents of certificate and operations specifications.

(a) Each certificate issued under this part contains the following:

(1) The air carrier or commercial operator's name.

(2) A description of the type of operations authorized.

(3) The date it is issued and the date it terminates.

(b) The operations specifications issued under this part contain the following:

(1) The kinds of operations authorized.

(2) The types and registration numbers of aircraft authorized for use.

(3) En route authorizations and limitations, including areas of operation.

(4) Special airport authorizations.

(5) Special airport limitations.

(6) Time limitations, or standards for determining time limitations, for overhauls, inspections, and checks of airframes, aircraft engines, propellers, and appliances.

(7) Procedures for control of weight and balance of airplanes.

(8) Any other item that the Administrator determines is necessary to cover a particular situation.

[Revision note: Combines §§ 42.11 and 42.19]

§ 125.15 Application for air carrier and commercial operator certificates.

(a) Each applicant for the original issue or renewal of an air carrier or commercial operator certificate must submit his application, in a form and manner prescribed by the Adminstrator, to the FAA Air Carrier District Office in whose area the applicant proposes to establish or has established its principal operations base, at least 60 days before the date of intended operations, or in the case of a renewal application, at least 60 days before the expiration date of the certificate.

(b) Each applicant must submit with the application a signed statement showing the following:

(1) For corporate applicants:

(i) The name and address of each stockholder who owns five percent or more of the total voting stock of the corporation, and if that stockholder is not the sole beneficial owner of the stock, the name and address of the beneficial owner. An individual is considered to own the stock owned, directly or indirectly, by or for his spouse, his children, his grandchildren, or his parents.

(ii) The name and address of each director and each officer, and each person employed or who will be employed in a management position described in § 125.43.

(iii) The name and address of each person directly or indirectly controlling or controlled by the applicant, and each person under direct or indirect control with the applicant.

(2) For non-corporate applicants:

(i) The name and address of each person having a financial interest therein and the nature and extent of that interest.

(ii) The name and address of each person employed or who will be employed in a management position described in § 125.43.

(c) In addition each applicant for the original issue or renewal of a commercial operator certificate must submit with the application a signed statement showing—

(1) The financial information listed in § 125.17; and

(2) The nature and scope of its intended operation, including the name and address of each person, if any, with whom the applicant has a contract to provide services as a commercial operator and the scope, nature, date, and duration of each of those contracts.

(d) Each applicant for, or holder of an air carrier or commercial operator certificate, shall notify the Administrator within 10 days after—

(1) A change in any of the persons, or the names and addresses of any of the persons, submitted to the Administrator under paragraph (b) (1) or (2) of this section; or

(2) A change in the financial information submitted to the Administrator under § 125.17 that occurs while the application for the issue or renewal is pending before the FAA and that would make the applicant's financial situation substantially less favorable than originally reported.

[Revision note: Based on § 42.12]

§ 125.17 Commercial operator: financial information required.

(a) Each applicant for the original issue or renewal of a commercial operator certificate must submit the following financial information:

(1) A balance sheet that shows assets, liabilities, and net worth, as of a date not more than 60 days before the date of application.

(2) In the case of an application for renewal, a profit and loss statement for a fiscal year ending on a date not more than 60 days before the date of the application, with separation of items relating to applicant's commercial operator activities from his other business activities. The applicant shall submit a listing and brief description of the nature and scope of the commercial operator contracts that gave rise to the operating income shown on the profit and loss statement, including the names of the contracting parties and the date and duration of each contract. However, if the applicant's regular fiscal year for income tax purposes ends on a date more than 60 days before the date of application, the applicant may submit a profit and loss statement covering its normal fiscal year, plus a supplementary profit and loss statement for the period from the end of the regular fiscal year to a date not more than 60 days before the date of application.

(3) An itemization of over-due liabilities showing amounts, names and addresses of creditors, description of indebtedness, and due date of obligations.

(4) An itemization of claims in litigation against the applicant showing the amounts claimed, the name and address of each claimant, and a description of each claim.

(5) A detailed analysis covering the first three months of the proposed operation after the possible issue or renewal of the certificate applied for that shows—

(i) Estimated amount and source of both operating and non-operating revenue, including identification of its existing and anticipated income producing contracts and estimated revenue per mile or hour of operation by aircraft type;

(ii) Estimated amount of operating and non-operating expenses by expense objective classification; and

(iii) Estimated profit or loss.

(6) An estimate of the cash that will be needed during the first three months of the proposed operation after the possible issue or renewal date of the certificate applied for to cover—

(i) Acquisition of property and equipment.

(ii) Retirement of debt.

(iii) Additional working capital.

(iv) Operations (losses).

(v) Other (explain).

(7) An estimate of the cash that will be available from the following sources during the first three months of the proposed operation after the possible issue or renewal of the certificate applied for that shows—

(i) Sale of property or flight equipment;

(ii) New debt;

(iii) New equity;

(iv) Working capital reduction;

(v) Operations (profits);

(vi) Depreciation and amortization; and

(vii) Other (explain).

(8) Any other financial information the Administrator requires to enable him to determine that the applicant has sufficient financial resources to conduct its operations with the degree of safety required in the public interest.

(b) Each financial statement filed with the FAA under this part must be based on accounts prepared and maintained on an accrual basis in accordance with generally accepted accounting principles applied on a consistent basis, and must contain the name and address of the applicant's public accounting firm, if any.

[Revision note: Based on § 42.13]

§ 125.19 Issue of certificate.

(a) An applicant for an air carrier or commercial operator certificate is entitled to the certificate if he is a citizen of the United States and the Administrator, after investigation (including any necessary verification of financial and other information submitted) finds that the applicant—

(1) Holds the economic authority required by the Civil Aeronautics Board, if any;

(2) Is not disqualified under paragraph (b) of this section; and

(3) Is properly and adequately equipped and able to conduct a safe operation in accordance with the requirements of this part and the operations specifications provided for in this part.

(b) The Administrator may deny an application for an air carrier or commercial operator certificate if he finds—

(1) That an air carrier or commercial operator certificate previously issued to the applicant was revoked;

(2) That a person who was employed in a management position similar to any listed under § 125.43 with (or has exercised control with respect to) any air carrier or commercial operator whose operating certificate has been revoked, will be employed in any of those positions or a similar position (or will be in control of or have a substantial ownership interest in the applicant), and that the person's employment or control contributed materially to the reasons for revoking that certificate; or

(3) In the case of an applicant for a commercial operator certificate, that for financial reasons the applicant is not able to conduct a safe operation.

[Revision note: Based on § 42.14]

§ 125.21 Commercial operator: supplemental periodic financial report.

(a) Each holder of a commercial operator certificate shall, within 45 days after his original or renewed certificate has been in effect for four months, submit a signed financial statement to the FAA that shows profit and loss for—

(1) The four-month period after the date the certificate was issued or renewed, as the case may be; and

(2) Any period immediately preceding the date of certificate issue or renewal not covered by the preceding financial statement filed under § 125.15(c)(1).

(b) Each holder shall submit a listing and brief description of the nature and scope of the contracts that gave rise to the operating income shown on the profit and loss statement, including the names of the contracting parties, and the date and duration of each contract. In addition, it shall submit all other information required for original issue of a certificate under § 125.15(c)(1).

[Revision note: Based on § 42.15]

§ 125.23 Availability of certificate and operations specifications.

Each air carrier and commercial operator shall make its operating certificate and operations specifications available for inspection by the Administrator at its principal operations office.

[Revision note: Based on § 42.17]

§ 125.25 Duration of certificate.

(a) An air carrier or commercial operator certificate issued under this part is effective for one year unless the Administrator sooner suspends, revokes, or otherwise terminates it, or in the case of an air carrier, unless the economic authorization required by the Civil Aeronautics Board terminates sooner.

(b) The Administrator may suspend or revoke a certificate under section 609 of the Federal Aviation Act of 1958 and the applicable procedures of Part 13 [New] for any cause that, at the time of suspension or revocation, would have been grounds for denying an application for a certificate.

(c) If the Administrator suspends or revokes a certificate or it is otherwise terminated, the holder of that certificate shall return it to the Administrator.

[Revision note: Based on § 42.17a]

§ 125.27 Use of operations specifications.

(a) Each air carrier or commercial operator shall keep each of its employees informed of the provisions of its operations specifications that apply to the employee's duties and responsibilities.

(b) Each air carrier or commercial operator shall maintain a complete and separate set of its operations specifications. In addition, each air carrier or commercial operator shall insert pertinent provisions of its operations specifications, or reference thereto, in its manual in such a manner that they retain their identity as operations specifications.

[Revision note: Based on § 42.20]

§ 125.29 Amendment of certificate.

(a) The Administrator may amend an operating certificate issued under this part—

(1) Upon application by the holder, if the Administrator determines that safety in air commerce or air transportation and the public interest allows the amendment; or

(2) Under section 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1429) and Part 13 [New] of this chapter, if the Administrator determines that safety in air commerce or air transportation and the public interest requires the amendment.

(b) An applicant for an amendment to an operating certificate issued under this part must file his application with the FAA Air Carrier District Office charged with the overall inspection of his operations at least 15 days before the date that the applicant proposes for the amendment to become effective, unless a shorter filing period is allowed by that office.

(c) At any time within 30 days after refusal of the Administrator to approve the application for amendment the holder may petition the Administrator personally to reconsider the refusal.

[Revision note: Based on § 42.16]

§ 125.31 Amendment of operations specifications.

(a) The Administrator may amend any operations specifications issued under this part—

(1) Upon application by the holder, if the Administrator determines that safety in air commerce or air transportation and the public interest allows the amendment; or

(2) If the Administrator determines that safety in air commerce or air transportation and the public interest requires the amendment.

(b) In the case of an amendment under paragraph (a)(2) of this section, the Administrator notifies the holder, in writing, of the proposed amendment, fixing a reasonable period (but not less than seven days) within which the holder may submit written information, views, and arguments on the amendment. After considering all relevant material presented, the Administrator notifies the holder of any amendment adopted, or rescinds the notice. The amendment becomes effective not less than 30 days after the holder receives notice of it, unless he petitions the Administrator personally to reconsider the amendment, in which case its effective date is stayed pending a decision by the Administrator. If the Administrator finds that there is an emergency requiring immediate action with respect to safety in air commerce or air transportation, that makes the procedure in this paragraph impracticable or contrary to the public interest, he may issue an amendment effective, without stay, on the date the holder receives notice of it. In such a case, the Administrator incorporates the finding, and a brief statement of the reasons for it, in the notice of the amended operations specifications to be adopted.

(c) An applicant must file his application for an amendment of operations specifications with the FAA Air Carrier District Office charged with the overall inspection of his operations at least 15 days before the date that he proposes for the amendment to become effective, unless a shorter filing period is allowed by that Office.

(d) Within 30 days after receiving from the Administrator a notice of refusal to the application for amendment, the holder may petition the Administrator personally to reconsider the refusal to amend.

[Revision note: Based on § 42.21]

§ 125.33 Inspection authority.

Each air carrier and commercial operator shall allow the Administrator, at any time or place, to make any inspections or tests to determine its compliance with the Federal Aviation Act of 1958, the Federal Aviation Regulations, its operating certificate and operations specifications, or its eligibility to continue to hold its certificate. These inspections and tests include inspections and tests of financial books and records, except that the Administrator does not exercise this authority with respect to the financial books and records of an air carrier if the information sought can be obtained from the Civil Aeronautics Board.

[Revision note: Based on § 42.22]

§ 125.35 Change of address.

Each air carrier and commercial operator shall notify the FAA Air Carrier District Office charged with the overall inspection of its operations, in writing, at least 30 days in advance, of any change in the address of its principal business office, its principal operations base, or its principal maintenance base.

[Revision note: Based on § 42.23]

§ 125.37 Certificated route air carriers; charter flights or other special service operation.

Each certificated route air carrier holding an operating certificate and operations specifications issued under ____, ____, or ______ (present Part 40, 41, or 46) shall conduct under this Part—

(a) Any charter flight or other special service conducted over routes into airports listed in its operations specifications, unless the carrier obtains authority from the Administrator to conduct those operations under _____, ______, or ______ (present Part 40, 41, or 46), as appropriate; and

(b) Any charter flight or other special service that involves, in whole or in part, off-route operations.

[Revision note: Based on § 42.24]

NOTE: § 42.24(c) omitted as covered by § 125.11(a).

§ 125.39 Obtaining waivers and authority for deviations.

(a) The Administrator may, upon application by the air carrier or commercial operator, authorize deviations from this part, by an appropriate amendment to the operations specifications, for the kinds of operations and requirements listed in this section. The Administrator may, at any time, terminate any grant of deviation authority or waiver issued under this section. Each air carrier and commercial operator authorized deviations under this section shall comply with the terms of the authorization when conducting operations affected thereby.

(b) If the Department of Defense certifies to the Administrator that an operation is essential to the national defense and requires a requested deviation, and the Administrator finds that the deviation is not based on an economic advantage or convenience to the air carrier or commercial operator or the United States, the Administrator may authorize deviations for—

(1) Operations conducted under a contract with an armed force as the primary contractor; or

(2) Operations conducted for an armed force under a subcontract with a primary contractor.

(c) The Administrator may authorize deviations for operations under emergency conditions that necessitate the transportation of persons or supplies for the protection of life or property, if he

finds that a deviation is necessary for the expeditious conduct of the operation.

(d) The Administrator may, by an appropriate amendment to the operations specifications, waive, in whole or in part, submission of the financial information required by a commercial operator in a renewal application or supplemental periodic financial report if—

(1) Application for the waiver is filed at least 30 days before the information is due; and

(2) The Administrator finds that the submission is not required in the public interest, based on information as to the operator's—

(i) Financial standing;

(ii) Management; and

(iii) Kind of operations.

The filing of an application for a waiver under this paragraph does not automatically extend the time for submitting the required information.

[Revision note: Based on § 42.25]

§ 125.41 Helicopter requirements; deviation authority.

(a) In addition to the applicable rules of this part, each person operating a helicopter shall comply with §§ ____, ____, ____, ____, ____-____, ____, ____, ____, ____, ____, ____-____, ____-____, ____-____, and ____-____ (present §§ 46.70, 46.71, 46.110, 46.153, 46.170–46.178, 46.200, 46.206, 46.230, 46.231, 46.265, 46.280–46.289, 46.300–46.302, 46.381–46.412, and 46.500–46.511).

(b) The Administrator may issue operations specifications authorizing a deviation from any specific requirement for helicopter operations if he finds that the deviation provides a substantially equivalent standard of safety.

[Revision note: Based on § 42.26]

§ 125.43 Management personnel required.

(a) Each applicant for a certificate issued under this part must comply with this section.

(b) Each applicant must show that it has a sufficient number of qualified management personnel to provide the highest degree of safety in its operations and that those personnel are employed on a full-time basis in the following or equivalent positions:

(1) General manager.

(2) Director of operations (who may be the general manager, if qualified).

(3) Director of maintenance.

(4) Chief pilot.

(5) Chief inspector.

(c) Upon application by the air carrier or commercial operator the Administrator may approve different positions or numbers of positions than those listed in paragraph (b) of this section for a particular operation if the air carrier or commercial operator shows that it can perform the operation with the highest degree of safety under the direction of fewer or different categories of management personnel due to—

(1) The kind of operation involved;

(2) The number and type of aircraft used; and

(3) The area of operations.

If the Administrator so approves positions, the title and number of positions approved are set forth in the operations specifications of the air carrier or commercial operator.

(d) Each air carrier and commercial operator shall—

(1) Set forth the duties, responsibilities, and authority, of the personnel required by this section, in the general policy section of the air carrier manual or commercial operator manual;

(2) List in the manual the names and addresses of the persons assigned to those positions; and

(3) Within at least 10 days, notify the FAA Air Carrier District Office charged with the overall inspection of the air carrier or commercial operator, of any change made in the assignment of persons to the listed positions.

[Revision note: Based on § 42.27]

§ 125.45 Management personnel; qualifications.

(a) Each air carrier and commercial operator certificated under this part shall comply with this section.

(b) No person may serve as director of operations unless he knows the contents of the air carrier's or commercial operator's operations manual and operations specifications, and the provisions of this part necessary to the proper performance of his duties and—

(1) Holds, or has held, an airline transport pilot certificate and has had at least three years of experience as pilot in command of a large aircraft; or

(2) Has had at least three years of experience as director of operations, of an operation using large aircraft, or a position of comparable responsibility.

(c) No person may serve as chief pilot unless he—

(1) Holds a current airline transport pilot certificate with appropriate ratings for the type of aircraft used;

(2) Has had at least three years of experience as a pilot in command of a large aircraft with an air carrier or commercial operator; and

(3) Knows the contents of the air carrier's or commercial operator's manual or operations specifications, and the provisions of this Part necessary to the proper performance of his duties.

(d) No person may serve as director of maintenance unless he—

(1) Holds a current mechanic certificate with either an airframe or powerplant rating, and has had at least five years of experience in the maintenance of large aircraft, one year of which must have been in a supervisory capacity; and

(2) Knows the maintenance parts of the air carrier's or commercial operator's manual and operations specifications and the applicable maintenance provisions of this part.

(e) No person may serve as chief inspector unless he—

(1) Holds a current mechanic certificate with both airframe and powerplant ratings, and has held these ratings for at least three years;

(2) Has had at least three years of diversified maintenance experience on large aircraft with an air carrier, commercial operator, or certificated repair station, one year of which must have been as a maintenance inspector; and

(3) Knows the maintenance parts of the air carrier's or commercial operator's manual and operations specifications, and the applicable maintenance provisions of this part.

[Revision note: Based on § 42.28]

§ 125.47 Operation of small aircraft.

Upon application, the Administrator may issue operations specifications to an air carrier conducting operations under this part, authorizing it to conduct operations with small aircraft under ____ (present Part 42a of the Civil Air Regulations) (Part 135 [New] of the Federal Aviation Regulations), if he finds that safety in air transportation and the public interest allows it. Operations specifications issued under this section contain such operating limitations and requirements as the Administrator finds necessary.

[Revision note: Based on § 42.29]

Subpart C—Approval of Areas and Routes

§ 125.51 Area and route requirements: general.

(a) Each air carrier or commercial operator seeking route and area approval must show—

(1) That it is able to conduct operations within the United States in accordance with subparagraphs (3) and (4) of this paragraph;

(2) That it is able to conduct operations in accordance with the applicable requirements for each area outside the United States for which authorization is requested;

(3) That it is equipped and able to conduct operations over, and use the navigational facilities associated with, the Federal airways, foreign airways, or advisory routes (ADR's) to be used; and

(4) That it will conduct all IFR and night VFR operations over Federal airways, foreign airways, or advisory routes (ADR's).

(b) Notwithstanding paragraph (a) (4) of this section, the Administrator may approve a route outside of controlled airspace if the air carrier or commercial operator shows the route is safe for operations and the Administrator finds that traffic density is such that an adequate level of safety can be assured. The air carrier or commercial operator may not use such a route unless it is approved by the Administrator and is listed in the air carrier's or commercial operator's operations specifications.

[Revision note: Based on § 42.30]

§ 125.53 Route width.

(a) Approved routes and route segments over Federal airways, foreign airways, or advisory routes have a width equal to the designated width of those airways or advisory routes. Whenever the Administrator finds it necessary to determine the width of other approved routes he considers the following:

(1) Terrain clearance.

(2) Minimum en route altitudes.

(3) Ground and airborne navigation aids.

(4) Air traffic density.

(5) ATC procedures.

(b) Any route widths determined by the Administrator are specified in the air carrier or commercial operator's operations specifications.

[Revision note: Based on § 42.31]

§ 125.55 Airports.

No air carrier or commercial operator may use any airport unless it is properly equipped and adequate for the proposed operation, considering such items as size, surface, obstructions, facilities, lighting, navigational and communications aids, and ATC.

[Revision note: Based on § 42.33]

§ 125.57 Weather reporting facilities.

(a) No air carrier or commercial operator may use any weather report to control flight unless it was prepared and released by the U.S. Weather Bureau or a source approved by the Weather Bureau. For operations outside the U.S., or at U.S. Military airports, where those reports are not available, the air carrier or commercial operator must show that its weather reports are prepared by a source found satisfactory by the Administrator.

(b) Each air carrier or commercial operator that uses forecasts to control flight movements shall prepare each forecast from weather reports specified in paragraph (a) of this section.

[Revision note: Based on § 42.35]

§ 125.59 En route navigational facilities.

(a) Except as provided in paragraph (b) of this section, no air carrier or commercial operator may conduct any operation over a route unless nonvisual ground aids are—

(1) Available over the route for navigating aircraft within the degree of accuracy required for ATC; and

(2) Located to allow navigation to any airport of destination, or alternate airport, within the degree of accuracy necessary for the operation involved.

(b) Nonvisual ground aids are not required for—

(1) Day VFR operations that can be conducted safely by pilotage because of the characteristics of the terrain;

(2) Night VFR operations on lighted airways or on routes that the Administrator determines have reliable landmarks adequate for safe operation; or

(3) Operations on route segments where the use of celestial or other specialized means of navigation is approved.

(c) Except for those aids required for routes to alternate airports, the nonvisual ground navigational aids that are required for approval of routes outside of controlled airspace are specified in the air carrier's or commercial operator's operations specifications.

[Revision note: Based on § 42.36]

§ 125.61 Servicing and maintenance facilities.

Each air carrier or commercial operator must show that competent personnel and adequate facilities and equipment (including spare parts, supplies, and materials) are available for the proper servicing, maintenance, and preventive maintenance of aircraft and auxiliary equipment.

[Revision note: Based on § 42.37]

NOTE: The word "refueling" is omitted as covered by the word "servicing".

§ 125.63 Flight following system.

(a) Each air carrier or commercial operator must show that it has—

(1) An approved flight following system established in accordance with this part and adequate for the proper monitoring of each flight, considering the operations to be conducted; and

(2) Flight following centers located at those points necessary—

(i) To insure the proper monitoring of the progress of each flight with respect to its departure at the point of origin and arrival at its destination, including intermediate stops and diversions therefrom, and maintenance or mechanical delays encountered at those points or stops; and

(ii) To insure that the pilot in command is provided with all information necessary for the safety of the flight.

(b) An air carrier or commercial operator may arrange to have flight following facilities provided by persons other than its employees, but in such a case the air carrier or commercial operator continues to be primarily responsible for operational control of each flight.

(c) A flight following system need not provide for inflight monitoring by a flight following center.

(d) The air carrier's or commercial operator's operation specifications specify the flight following system it is authorized to use and the location of the centers.

[Revision note: Based on § 42.38]

§ 125.65 Flight following system: requirements.

(a) Each air carrier or commercial operator using a flight following system must show that—

(1) The system has adequate facilities and personnel to provide the information necessary for the initiation and safe conduct of each flight to—

(i) The flight crew of each aircraft; and

(ii) The persons designated by the air carrier or commercial operator to perform the function of operational control of the aircraft; and

(2) The system has a means of communication by private or available public facilities (such as telephone, telegraph, or radio) to monitor the progress of each flight with respect to its departure at the point of origin and arrival at its destination, including intermediate stops and diversions therefrom, and maintenance or mechanical delays encountered at those points or stops.

(b) The air carrier or commercial operator must show that the personnel specified in paragraph (a) of this section, and those it designates to perform the function of operational control of the aircraft, are able to perform their required duties.

[Revision note: Based on § 42.39]

Subpart D—Manual Requirements

§ 125.71 Preparation.

Each air carrier or commercial operator shall prepare and keep current a manual for the use and guidance of flight, ground operations, and management personnel in conducting its operations.

[Revision note: Based on § 42.50]

§ 125.73 Contents.

(a) Each manual required by § 125.71 must—

(1) Include instructions and information necessary to allow the personnel concerned to perform their duties and responsibilities with a high degree of safety;

(2) Be in a form that is easy to revise;

(3) Have the date of last revision on each page concerned; and

(4) Not be contrary to any applicable regulation or the air carrier's or commercial operator's operations specifications or operating certificate.

(b) The manual may be in two or more separate parts, containing together all of the following information, but each part must contain that part of the information that is appropriate for each group of personnel:

(1) General policies.

(2) Duties and responsibilities of each crewmember and appropriate members of the ground organization and management personnel.

(3) Reference to appropriate Federal Aviation Regulations.

(4) Flight control, or flight following procedures.

(5) En route flight, navigation, and communication procedures, including procedures for the release or continuance of flight if any item of equipment required for the particular type of operation becomes inoperative or unserviceable en route.

(6) Appropriate information from the operations specifications, including the area of operations authorized, the types of aircraft authorized, their crew complement, the type of operation such as VFR, IFR, day, night, etc., and any other pertinent information.

(7) Appropriate information from the airport operations specifications, including—

(i) Instrument approach procedures;

(ii) Landing and takeoff minimums; and

(iii) Any other pertinent information.

(8) Takeoff, en route, and landing weight limitations or approved means of readily determining these limitations.

(9) Procedures for familiarizing passengers with the use of emergency equipment during flight.

(10) Emergency equipment and procedures.

(11) The method of designating succession of command of flight crewmembers.

(12) Procedures for determining the usability of landing and takeoff areas, and disseminating pertinent information thereon to operations personnel.

(13) Procedures for operating in periods of icing, hail, thunderstorms, turbulence, or any potentially hazardous meteorological condition.

(14) Airman training programs, including appropriate ground, flight, and emergency phases.

(15) Instructions and procedures for maintenance, preventive maintenance, and servicing.

(16) Time limitations for maintenance, preventive maintenance, and checks of airframes, engines, propellers, and appliances, or standards by which the time limitations can be determined.

(17) Procedures for refueling aircraft, eliminating fuel contamination, protection from fire (including electrostatic protection), and supervising and protecting passengers during refueling.

(18) Airworthiness inspections, including instructions covering procedures, standards, responsibilities, and authority of inspection personnel.

(19) Methods and procedures for maintaining the aircraft weight and center of gravity within approved limits.

(20) Pilot airport qualification procedures.

(21) Accident notification procedures.

(22) Other information or instructions relating to safety.

(c) Each air carrier and commercial operator shall maintain at least one complete copy of the manual at the appropriate operations base.

[Revision note: Based on § 42.51]

§ 125.75 Distribution.

(a) Each air carrier and commercial operator shall furnish copies (and the changes and additions thereto) of the manual required by § 125.71 to—

(1) Its appropriate ground operations and maintenance personnel;

(2) Crewmembers; and

(3) Representatives of the Administrator assigned to it.

(b) Each person to whom a manual or appropriate parts of it is furnished under paragraph (a) of this section shall keep it up to date with the changes and additions furnished to him.

(c) Except as provided in paragraph (d) of this section, each air carrier and commercial operator shall carry appropriate parts of the manual on each aircraft when away from the principal base. The appropriate parts must be available for use of ground or flight personnel.

(d) If an air carrier or commercial operator is able to perform all scheduled maintenance at specified stations where it keeps maintenance parts of the manual, it does not have to carry those parts of the manual aboard the aircraft en route to those stations.

[Revision note: Based on § 42.52]

§ 125.77 Aircraft Flight Manual.

(a) Each air carrier and commercial operator shall keep a current approved Aircraft Flight Manual for each type of transport category aircraft that it operates.

(b) Each air carrier and commercial operator shall carry an approved Aircraft Flight Manual, or a manual containing the information required for the Aircraft Flight Manual, in each transport category airplane. If sections of the required information from the Aircraft Flight Manual are incorporated in the operations manual, the air carrier or commercial operator shall clearly identify the sections as Aircraft Flight Manual requirements.

[Revision note: Based on § 42.53]

Subpart E—Aircraft Requirements

§ 125.91 Aircraft requirements: general.

(a) No air carrier or commercial operator may operate an aircraft unless that aircraft—

(1) Is registered as a civil aircraft of the United States and carries an appropriate current airworthiness certificate issued under this chapter; and

(2) Meets the applicable airworthiness requirements of this chapter, including those relating to identification and equipment.

(b) An air carrier or commercial operator may use an approved weight and balance control system based on average, assumed, or estimated weight to comply with applicable airworthiness requirements and operating limitations.

(c) No air carrier or commercial operator may use any aircraft in operations unless—

(1) It has exclusive use of the aircraft;

(2) The aircraft is listed in its operations specifications; and

(3) The aircraft is not listed in the operations specifications of any other air carrier or commercial operator.

(d) Within 10 days after an air carrier or commercial operator ceases to have exclusive use of an aircraft listed in its operations specifications it shall notify the FAA Air Carrier Inspector assigned to its operations, and request an appropriate amendment deleting the aircraft from its operations specifications.

(e) An air carrier or commercial operator that does not have the exclusive use of at least one aircraft does not meet the requirements of this Part, and the Administrator may, in an appropriate case, suspend or revoke the air carrier's or commercial operator's certificate.

(f) For the purposes of this section, an air carrier or commercial operator has exclusive use of an aircraft if it has the sole possession, control, and use of it for flight, as owner, or has a written agreement (including arrangements for the performance of required maintenance) giving it that possession, control, and use for at least six months.

[Revision note: Based on § 42.60]

§ 125.93 Aircraft certification and equipment requirements.

(a) *Airplanes certificated before July 1, 1942.* No air carrier or commercial operator may operate an airplane that was type certificated before July 1, 1942, unless—

(1) That airplane meets the requirements of § 125.111(c); or

(2) That airplane and all other airplanes of the same or related type operated by that air carrier or commercial operator meet the performance requirements of §§ ____ through ____ (present §§ 4a.737–T through 4a.750–T) of this chapter;

or §§ ____ through ____ (present §§ 4b.110 through 4b.125) and § 125.111 (a), (b), (d), and (e) of this chapter.

(b) *Airplanes certificated after June 30, 1942.* No air carrier or commercial operator may operate an airplane that was type certificated after June 30, 1942, unless it is certificated as a transport category airplane and meets the requirements of § 125.111 (a), (b), (d), and (e). However, an air carrier or commercial operator may use a nontransport category C–46 airplane as a cargo airplane until July 12, 1964, if that airplane meets the requirements of § 42.14–1(b) of Part 42, as in effect on November 10, 1963, in place of §§ 125.137 through 125.143.

(c) *Helicopters.* No air carrier or commercial operator may operate a helicopter unless it is operated, certificated and equipped in accordance with §§ ____ through ____ (present §§ 46.70 through 46.231).

[Revision note: Based on § 42.61]

NOTE: § 42.61(a)(1) (1st six words) and (b)(2) (last sentence) are omitted as surplusage.

§ 125.95 Single-engine airplanes prohibited.

No air carrier or commercial operator may operate a single-engine airplane.

[Revision note: Based on § 42.62 (1st sentence)]

§ 125.97 Airplane limitations: type of route.

(a) Unless otherwise authorized by the Administrator based on the character of the terrain, the kind of operation, or the performance of the airplane to be used, no air carrier or commercial operator may operate a two-engine or three-engine airplane in passenger carrying operations (except a three-engine turbine-powered airplane) over a route that contains a point farther than one hour's flying time (in still air at normal cruising speed with one engine inoperative) from an adequate airport.

(b) No air carrier or commercial operator may operate a land airplane (other than a DC–3, C–46, CV–340, or CV–440) in an extended overwater operation unless it is certificated or approved as adequate for ditching under the ditching provisions of Part ____ (present Part 4b) of this chapter.

[Revision note: Based on § 42.62 (less 1st sentence)]

§125.99 Aircraft proving tests.

(a) No air carrier or commercial operator may operate an aircraft not before proven for use in air carrier or commercial operator operations unless an aircraft of that type has had, in addition to the aircraft certification tests, at least 100 hours of proving tests under the Administrator's supervision at least 50 hours of which must have been flown over authorized routes and at least 10 hours must have been flown at night.

(b) An air carrier or commercial operator may not operate an aircraft of a type that has been proven for use in air carrier or commercial operator operations if it has not previously used that type, or if that aircraft has been materially altered in design, unless—

(1) The aircraft has been tested for at least 50 hours, of which at least 25 hours were over authorized routes; or

(2) The Administrator specifically authorizes deviations because special circumstances of the particular case make a literal observance of the requirements of this paragraph unnecessary.

(c) For the purposes of paragraph (b) of this section, a type of aircraft is considered to be materially altered in design if the alterations include—

(1) The installation of powerplants other than those of a type similar to those with which it is certificated; or

(2) Alterations to the aircraft or its components that materially affect flight characteristics.

(d) No air carrier or commercial operator may carry passengers in an aircraft during proving tests, except for those needed to make the test and those designated by the Administrator. However, it may carry mail, express, or other cargo, when approved.

[Revision note: Based on § 42.63]

Subpart F—Airplane Performance Operating Limitations

§ 125.111 General.

(a) Each air carrier or commercial operator operating a nonturbine-powered transport category airplane shall comply with §§ 125.113 through 125.125.

(b) Each air carrier or commercial operator operating a turbine-powered transport category airplane in passenger-carrying operations shall comply with applicable provisions of §§ 125.127 through 125.135, except that when it operates a turbopropeller-powered transport category airplane certificated after August 26, 1959, but previously type certificated with the same number of reciprocating engines, it may comply with §§ 125.113 through 125.125.

(c) Each air carrier or commercial operator operating a large nontransport category airplane shall comply with §§ 125.137 through 125.143 and any determination of compliance must be based only on approved performance data.

(d) The performance data in the airplane flight manual applies in determining compliance with §§ 125.113 through 125.135. No person may operate a transport category turbine-powered airplane outside the operational limits specified in the airplane flight manual. Where conditions are different from those on which the performance data is based, compliance is determined by interpolation or by computing the effects of changes in the specific variables, if the results of the interpolations or computations are substantially as accurate as the results of direct tests.

(e) No person may takeoff a nonturbine-powered transport category airplane at a weight that is more than the allowable weight for the runway being used (determined under the runway takeoff limitations of the transport category operating rules of this part) after taking into account the temperature operating correction factors in §____ or ____ of this chapter (present § 4a.749a–T or 4b.117), and set forth in the applicable airplane flight manual.

(f) The Administrator may authorize deviations from the requirements in this subpart in the operations specifications, if special circumstances make a literal observance of a requirement unnecessary for safety.

(g) The ten-mile width specified in §§ 125.117 through 125.121 may be reduced to five miles, for not more than 20 miles, when operating VFR or where navigation facilities furnish reliable and accurate identification of high ground and obstructions located outside of five miles, but within ten miles, on each side of the intended track.

[Revision note: Combines §§ 42.70, 42.76, 42.90, and 40T.80 and 40T.81(d) of SR 422, SR 422A, and SR 422B]

§ 125.113 Transport category airplane: nonturbine-powered: takeoff limitations.

(a) No person operating a nonturbine-powered transport category airplane may takeoff that airplane unless it is possible—

(1) To stop the airplane safely on the runway, as shown by the acceleration-stop distance data, at any time during take off until reaching critical-engine failure speed;

(2) If the critical engine fails at any time after the airplane reaches critical-engine failure speed, to continue the takeoff and reach a height of 50 feet, as indicated by the takeoff path data, before passing over the end of the runway; and

(3) To clear all obstacles either by at least 50 feet vertically (as shown by the takeoff path data) or 200 feet horizontally within the airport boundary and 300 feet horizontally beyond the boundary, without banking before reaching a height of 50 feet (as shown by the takeoff path data) and thereafter without banking more than 15 degrees.

(b) In applying this section, corrections must be made for any runway gradient. To allow for wind effect, takeoff data based on still air may be corrected by taking into account not more than 50 percent of any reported head wind component and must be corrected by taking into account not less than 150 percent of any reported tail wind component.

[Revision note: Based on § 42.72]

§ 125.115 Transport category airplanes: nonturbine-powered: weight limitations.

(a) No person may take off a nonturbine-powered transport category airplane from an airport located at an elevation outside of the range for which maximum takeoff weights have been determined for that airplane.

(b) No person may take off a nonturbine-powered transport category airplane for an airport of intended destination that is located at an elevation outside of the range for which maximum landing weights have been determined for that airplane.

(c) No person may specify, or have specified, an alternate airport that is located at an elevation outside of the range for which maximum landing weights have been determined for the nonturbine-powered transport category airplane concerned.

(d) No person may take off a nonturbine-powered transport category airplane at a weight more than the maximum authorized takeoff weight for the elevation of the airport.

(e) No person may take off a nonturbine-powered transport category airplane if its weight on arrival at the airport of destination will be more than the maximum authorized landing weight for the elevation of that airport, allowing for normal consumption of fuel and oil en route.

[Revision note: Based on § 42.71]

§ 125.117 Transport category airplanes: nonturbine-powered: en route limitations: all engines operating.

(a) No person operating a nonturbine-powered transport category airplane may take off that airplane at a weight, allowing for normal consumption of fuel and oil, that does not allow a rate of climb (in feet per minute), with all engines operating, of at least 6 V_{S_0} (V_{S_0} is expressed in miles per hour) at an altitude of at least 1,000 feet above the highest ground or obstruction within ten miles of each side of the intended track.

(b) This section does not apply to transport category airplanes certificated under Part 4a of the Civil Air Regulations.

[Revision note: Based on § 42.73]

§ 125.119 Transport category airplane: nonturbine powered: en route limitations: one engine inoperative.

(a) Except as provided in paragraph (b) of this section, no person operating a nonturbine-powered transport category airplane may take off that airplane at a weight, allowing for normal consumption of fuel and oil, that does not allow a rate of climb (in feet per minute), with one engine inoperative, of at least $\left(0.06-\frac{0.08}{N}\right) V_{S_0}{}^2$ (N is the number of engines installed and V_{S_0} is in miles per hour) at an altitude of at least 1,000 feet above the highest ground or obstruction within 10 miles of each side of the intended track. However, for the purposes of this paragraph the rate of climb for transport category airplanes certificated under Part 4a of the Civil Air Regulations of this chapter is $0.02\ V_{S_0}{}^2$.

(b) In place of the requirements of paragraph (a) of this section, a person may, under an approved procedure, operate a nonturbine-powered transport category airplane, at an all-engines-operating altitude that allows the airplane to continue, after an engine failure, to an alternate airport where a landing can be made in accordance with § 125.125, allowing for normal consumption of fuel and oil. After the assumed failure, the flight path must clear the ground and any obstruction within five miles on each side of the intended track by at least 2,000 feet.

(c) If an approved procedure under paragraph (b) of this section is used,

the air carrier or commercial operator shall comply with the following:

(1) The rate of climb (as presented in the Airplane Flight Manual for the appropriate weight and altitude) used in calculating the airplane's flight path shall be diminished by an amount, in feet per mniute, equal to $\left(0.06-\frac{0.08}{N}\right) V_{S_0}{}^2$ (when N is the number of engines installed and V_{S_0} is expressed in miles per hour) for airplanes certificated under Part _____ (present Part 4b) of this chapter and by 0.02 $V_{S_0}{}^2$ for airplanes certificated under Part 4a of this chapter.

(2) The all-engines-operating altitude must be sufficient so that in the event the critical engine becomes inoperative at any point along the route, the flight will be capable of proceeding to a predetermined alternate airport by use of this procedure. In determining the takeoff weight, the airplane is assumed to pass over the critical obstruction following engine failure at a point no closer to the critical obstruction than the nearest approved radio navigational fix, unless the Administrator approves a procedure established on a different basis upon the showing by the air carrier or commercial operator that adequate operational safeguards exist.

(3) The airplane must meet the provisions of paragraph (a) of this section at 1,000 feet above the airport used as an alternate in this procedure.

(4) The procedure must include an approved method of accounting for winds and temperatures that would otherwise adversely affect the flight path.

(5) In complying with this procedure fuel jettisoning is allowed if the air carrier or commercial operator shows that it has an adequate training program, that proper instructions are given to the flight crew, and all other precautions are taken to insure a safe procedure.

(6) The air carrier or commercial operator shall specify in the flight release an alternate airport that meets the requirements of § 125.519.

[Revision note: Based on § 42.74]

§ 125.121 Part ____ (present Part 4b) transport category airplanes with four or more engines: nonturbine powered: en route limitations: two engines inoperative.

(a) No person may operate an airplane certificated under Part ____ (present Part 4b) of this chapter and having four or more engines unless—

(1) There is no place along the intended track that is more than 90 minutes (with all engines operating at cruising power) from an airport that meets the requirements of § 125.125; or

(2) It is operated at a weight allowing the airplane, with the two critical engines inoperative, to climb at 0.01 $V_{S_0}{}^2$ feet per minute (V_{S_0} is in miles per hour) at an altitude of 1,000 feet above the highest ground or obstruction within 10 miles on each side of the intended track or at an altitude of 5,000 feet, whichever is higher.

(b) For the purposes of paragraph (a)(2) of this section, it is assumed that—

(1) The two engines fail at the point that is most critical with respect to the takeoff weight;

(2) Consumption of fuel and oil is normal with all engines operating up to the point where the two engines fail and with two engines operating beyond that point;

(3) Where the engines are assumed to fail at an altitude above the prescribed minimum altitude, compliance with paragraph (a)(2) need not be shown during the descent from the cruising altitude to the prescribed minimum altitude if those requirements can be met once the prescribed minimum altitude is reached, and assuming descent to be along a net flight path and the rate of descent to be 0.01 $V_{S_0}{}^2$ greater than the rate in the approved performance data; and

(4) If fuel jettisoning is provided, the airplane's weight at the point where the two engines fail is considered to be not less than that which would include enough fuel to proceed to an airport meeting the requirements of § 125.125 and to arrive at an altitude of at least 1,000 feet directly over that airport.

[Revision note: Based on § 42.75]

§ 125.123 Transport category airplanes: nonturbine-powered: landing limitations; destination airport.

(a) Except as provided in paragraph (b) of this section, no person operating a nonturbine-powered transport category airplane may take off that airplane, unless its weight on arrival, allowing for normal consumption of fuel and oil in flight, would allow a full stop landing at the intended destination within 60 percent of the effective length of each runway described below from a point 50 feet directly above the intersection of the obstruction clearance plane and the runway. For the purposes of determining the allowable landing weight at the destination airport the following is assumed:

(1) The airplane is landed on the runway with the longest effective length in still air.

(2) The airplane is landed on the most suitable runway considering the probable wind velocity and direction, (forecast for the expected time of arrival) the ground handling characteristics of the type of airplane, and other conditions such as landing aids and terrain, and allowing for the affect on the landing path and roll of not more than 50 percent of the headwind component or not less than 150 percent of the tailwind component.

(b) An airplane that would be prohibited from being taken off because it could not meet the requirements of paragraph (a)(2) of this section may be taken off if an alternate airport is specified that meets all of the requirements of this section except that the airplane can accomplish a full stop landing within 70 percent of the effective length of the runway.

[Revision note: Based on § 42.77]

§ 125.125 Transport category airplanes: nonturbine-powered: landing limitations: alternate airport.

No person may list an airport as an alternate airport in a dispatch release unless the airplane (at the weight anticipated at the time of arrival at the airport), based on the assumptions in § 121.123, can be brought to a full stop landing within 70 percent of the effective length of the runway from a point 50 feet above the intersection of the obstruction clearance plane and the runway.

[Revision note: Based on § 42.78]

§ 125.127 Transport category airplanes: turbine-powered: takeoff limitations.

(a) No person operating a turbine-powered transport category airplane may take off that airplane at a weight greater than that specified in subparagraph (1), (2), or (3) of this paragraph, as appropriate to the requirements under which the airplane was certificated. The takeoff weight for each takeoff may not exceed the maximum weight set forth in the airplane flight manual that allows takeoff within the minimum distance required for takeoff in the net takeoff flight path, or in the case of an airplane certificated under SR 422, that provides the required obstacle clearance. In determining, these maximum weights, minimum distances, and flight paths, correction must be made for the runway to be used, the elevation of the airport, the effective runway gradient, and the ambient temperature and wind component at the time of takeoff—

(1) In the case of an airplane certificated under SR 422, at a weight greater than that allowing a takeoff flight path that clears all obstacles either by an altitude equal to (35+0.01D) feet vertically (D is the distance along the intended flight path from the end of the runway in feet), or by at least 200 feet horizontally within the airport boundaries and by at least 300 feet horizontally after passing the boundaries;

(2) In the case of an aircraft certificated under SR 422A, at a weight greater than that allowing a net takeoff flight path that clears all obstacles either by an altitude of 35 feet, or by at least 200 feet horizontally within the airport boundaries and by at least 300 feet horizontally after passing the boundaries except that if the takeoff distance includes a clearway, the clearway distance included must not be greater than one-half of the takeoff run; or

(3) In the case of an aircraft certificated under SR 422B, at a weight greater than that allowing a net takeoff flight path that clears all obstacles either by an altitude of 35 feets, or by at least 200 feet horizontally within the airport boundaries and by at least 300 feet horizontally after passing the boundaries:

(i) The accelerate-stop distance must not exceed the length of the runway plus the length of the stopway (if present).

(ii) The takeoff distance must not exceed the length of the runway plus the length of any clearway (if present) except that the length of the clearway must

not be greater than one-half the length of the runway.

(iii) The takeoff run must not be greater than the length of the runway.

(b) For the purposes of this section, it is assumed that the airplane is not banked before reaching an altitude of 50 feet as shown by the takeoff path data in the airplane flight manual, and thereafter that the maximum bank is not more than 15 degrees.

[Revision note: Combines §§ 40T.81 (less (b) and (d)) and 40T.82 of SRs 422, 422A, and 422B]

§ 125.129 Transport category airplanes: turbine-powered: en route limitations: one engine inoperative.

(a) No person operating a turbine-powered transport category airplane may take off that airplane at a weight that is greater than that which (under the approved, one engine inoperative, en route net flight path data in the Airplane Flight Manual for that airplane) will allow compliance with subparagraph (1) or (2) of this paragraph, based on the ambient temperatures expected en route:

(1) There is a positive slope at an altitude of at least 1,000 feet above all terrain and obstructions within five statute miles on each side of the intended track, and, in addition if that airplane was certificated after August 29, 1959, there is a positive slope at 1,500 feet above the airport where the airplane is assumed to land after an engine fails.

(2) The flight path allows the airplane to continue flight from the cruising altitude to an airport where a landing can be made under § 125.135 clearing all terrain and obstructions within five statute miles of the intended track by at least 2,000 feet vertically and with a positive slope at 1,000 feet above the airport where the airplane lands after an engine fails, or, if that airplane was certificated after September 30, 1958, with a positive slope at 1,500 feet above the airport where the airplane lands after an engine fails.

(b) For the purposes of paragraph (a) (2) of this section, it is assumed that—

(1) The engine fails at the most critical point en route;

(2) The airplane passes over the critical obstruction, after engine failure, at a point that is no closer to the obstruction than the nearest approved radio navigation fix, unless the Administrator authorizes a different procedure based on adequate operational safeguards;

(3) An approved method is used to allow for adverse winds;

(4) Fuel jettisoning will be approved if the air carrier or commercial operator shows that the crew is properly instructed, that the training program is adequate, and that all other precautions are taken to insure a safe procedure;

(5) The alternate airport is specified in the dispatch release and meets the prescribed weather minimums; and

(6) The consumption of fuel and oil after engine failure is the same as the consumption that is allowed for in the approved net flight path data in the Airplane Flight Manual.

[Revision note: Combines §§ 40T.83 (less (b)) of SRs 422, 422A, and 422B]

§ 125.131 Transport category airplanes: turbine-powered: en route limitations: two engines inoperative.

(a) *Airplanes certificated after August 26, 1957, but before October 1, 1958.* No person may operate a turbine-powered transport category airplane along an intended route unless he complies with either of the following:

(1) There is no place along the intended track that is more than 90 minutes (with all engines operating at cruising power) from an airport that meets the requirements of § 125.135.

(2) Its weight, according to the two-engine-inoperative, en route, net flight path data in the airplane flight manual, allows the airplane to fly from the point where the two engines are assumed to fail simultaneously to an airport that meets the requirements of § 125.135, with a net flight path (considering the ambient temperature anticipated along the track) having a positive slope at an altitude of at least 1,000 feet above all terrain and obstructions within five miles on each side of the intended track, or at an altitude of 5,000 feet, whichever is higher.

For the purposes of subparagraph (2) of this paragraph, it is assumed that the two engines fail at the most critical point en route, that if fuel jettisoning is provided, the airplane's weight at the point where the engines fail includes enough fuel to continue to the airport and to arrive at an altitude of at least 1,000 feet directly over the airport, and that the fuel and oil consumption after engine failure is the same as the consumption allowed for in the net flight path data in the airplane flight manual.

(b) *Aircraft certificated after September 30, 1958, but before August 30, 1959.* No person may operate a turbine-powered transport category airplane along an intended route unless he complies with either of the following:

(1) There is no place along the intended track that is more than 90 minutes (with all engines operating at cruising power) from an airport that meets the requirements of § 125.135.

(2) Its weight, according to the two-engine-inoperative, en route, net flight path data in the airplane flight manual, allows the airplane to fly from the point where the two engines are assumed to fail simultaneously to an airport that meets the requirements of § 125.135, with a net flight path (considering the ambient temperatures along the track) having a positive slope at an altitude of at least 1,000 feet above all terrain and obstructions within five miles on each side of the intended track, or at an altitude of 2,000 feet, whichever is higher.

For the purposes of subparagraph (2) of this paragraph, it is assumed that the two engines fail at the most critical point en route, that the airplane's weight at the point where the engines fail includes enough fuel to continue to the airport, to arrive at an altitude of at least 1,500 feet directly over the airport, and thereafter to fly for 15 minutes at cruise power or thrust, or both, and that the consumption of fuel and oil after engine failure is the same as the consumption allowed for in the net flight path data in the airplane flight manual.

(c) *Aircraft certificated after August 29, 1959.* No person may operate a turbine-powered transport category airplane along an intended route except at a weight that, according to the two-engine-inoperative, en route, net flight path data in the airplane flight manual, allows the airplane to fly from the point where the two engines are assumed to fail simultaneously to an airport that meets the requirements of § 125.135, with the net flight path (considering the ambient temperatures anticipated along the track) clearing vertically by at least 2,000 feet all terrain and obstructions within five statute miles (4.34 nautical miles) on each side of the intended track. For the purposes of this paragraph, it is assumed that—

(1) The two engines fail at the most critical point en route;

(2) The net flight path has a positive slope at 1,500 feet above the airport where the landing is assumed to be made after the engines fail;

(3) Fuel jettisoning is allowed, if the Administrator finds that the air carrier or commercial operator has an adequate training program, the flight crew has proper instructions, and other necessary precautions for a safe procedure have been taken;

(4) The airplane's weight at the point where the two engines are assumed to fail provides enough fuel to continue to the airport, to arrive at an altitude of at least 1,500 feet directly over the airport, and thereafter to fly for 15 minutes at cruise power or thrust, or both; and

(5) The consumption of fuel and oil after the engine failure is the same as the consumption allowed for in the net flight path data in the Airplane Flight Manual.

[Revision note: Combines §§ 40T.83(b) of SRs 422, 422A, and 422B]

§ 125.133 Transport category airplanes: turbine-powered: landing limitations: destination airports.

(a) No person operating a turbine-powered transport category airplane may take off that airplane at such a weight that (allowing for normal consumption of fuel and oil in flight to the destination airport) the weight of the airplane on arrival would exceed the landing weight set forth in the Airplane Flight Manual for the elevation of the destination airport and the ambient temperature anticipated at the time of landing.

(b) Except as provided in paragraph (c) of this section, no person operating a turbine-powered transport category airplane may takeoff that airplane unless its weight on arrival, allowing for normal consumption of fuel and oil in flight, (in accordance with the landing distance set forth in the Airplane Flight Manual for the elevation of the destination airport and the wind conditions anticipated there at the time of landing) would allow a full stop landing at the intended destination airport within 60 percent of the effective length of each runway described below from a point 50 feet above the intersection of the obstruction clearance plane and the runway. For the purpose of determining

the allowable landing weight at the destination airport the following is assumed:

(1) The airplane is landed on the most favorable runway and direction, in still air.

(2) The airplane is landed on the most suitable runway considering the probable wind velocity and direction and the ground handling characteristics of the airplane, and considering other conditions such as landing aids and terrain.

(d) An airplane that would be prohibited from being taken off because it could not meet the requirements of paragraph (b)(2) of this section, may be taken off if an alternate airport is specified that meets all the requirements of this section except that the airplane can accomplish a full stop landing within 70 percent of the effective length of the runway.

[Revision note: Combines §§ 40T.81(b) and 40T.84(a) of SRs 422, 422A, and 422B]

§ 125.135 Transport category airplanes: turbine-powered: landing limitations: alternate airports.

No person may list an airport as an alternate airport in a flight release for a turbine-powered transport category airplane unless that airplane, based on the assumptions contained in § 125.133(c), can be brought to a full stop landing within 70 percent of the effective length of the runway from a point 50 feet above the intersection of the obstruction clearance plane and the runway.

[Revision note: Combines §§ 40T.84 (less (a)) of SR 422, SR 422A, and SR 422B]

§ 125.137 Nontransport category airplanes: takeoff limitations.

(a) No person operating a nontransport category airplane may take off that airplane at a weight greater than the weight that would allow the airplane to be brought to a safe stop within the effective length of the runway from any point during the takeoff before reaching 105 percent of minimum control speed or 115 percent of the power off stalling speed in the takeoff configuration, whichever is greater.

(b) For the purposes of this section—

(1) It may be assumed that takeoff power is used on all engines during the acceleration;

(2) Not more than 50 percent of the reported headwind component may be taken into account and not less than 150 percent of the reported tailwind component must be taken into account;

(3) The average runway gradient must be considered if it is more than one-half of one percent; and

(4) It is assumed that the airplane is operating in standard atmosphere.

For the purposes of subparagraph (3) of this paragraph, the average runway gradient is the difference between the elevations of the end points of the runway divided by the total length.

[Revision note: Based on § 42.91]

§ 125.139 Nontransport category airplanes; en route limitations: one engine inoperative.

(a) Except as provided in paragraph (b) of this section, no person operating take off that airplane at a weight that does not allow a rate of climb of at least 50 feet a minute with the critical engine inoperative at an altitude of at least 1,000 feet above the highest obstruction within five miles on each side of the intended track, or 5,000 feet, whichever is higher.

(b) Notwithstanding paragraph (a) of this section, if the Administrator finds that safe operations are not impaired, a person may operate the airplane at an altitude that allows the airplane, in case of engine failure, to clear all obstructions within five miles on each side of the intended track by 1,000 feet. If this procedure is used, the rate of descent for the appropriate weight and altitude is assumed to be 50 feet a minute greater than the rate in the approved performance data. Before approving such a procedure, the Administrator considers the following for the route, route segment, or area concerned:

(1) The reliability of wind and weather forecasting.

(2) The location and kinds of navigation aids.

(3) The prevailing weather conditions, particularly the frequency and amount of turbulence normally encountered.

(4) Terrain features.

(5) Air traffic control problems.

(6) Any other operational factors that affect the operation.

(c) For the purposes of this section, it is assumed that—

(1) The critical engine is inoperative;

(2) The propeller of the inoperative engine is in the minimum drag position;

(3) The wing flaps and landing gear are in the most favorable position;

(4) The operating engines are operating at the maximum continuous power available;

(5) The airplane is operating in standard atmosphere; and

(6) The weight of the airplane is progressively reduced by the anticipated consumption of fuel and oil.

[Revision note: Based on § 42.92]

§ 125.141 Nontransport category airplanes: landing limitations: destination airport.

(a) No person operating a nontransport category airplane may take off that airplane at a weight that—

(1) Allowing for anticipated consumption of fuel and oil, is greater than the weight that would allow a full stop landing within 60 percent of the effective length of the most suitable runway at the destination airport; and

(2) Is greater than the weight allowable if the landing is to be made on the runway—

(i) With the greatest effective length in still air; and

(ii) Required by the probable wind, taking into account not more than 50 percent of the head wind component or not less than 150 percent of the tail wind component.

(b) For the purposes of this section, it is assumed that—

(1) The airplane passes directly over the intersection of the obstruction clearance plane and the runway at a height of 50 feet in a steady gliding approach a nontransport category airplane may at a true indicated airspeed of at least $1.3\ V_{S_0}$;

(2) The landing does not require exceptional pilot skill; and

(3) The airplane is operating in standard atmosphere.

[Revision note: Based on § 42.93]

§ 125.143 Nontransport caetgory airplanes: landing limitations: alternate airport.

No person may list an airport as an alternate airport in a flight release for a nontransport category airplane unless that airplane (at the weight anticipated at the time of arrival) based on the assumptions contained in § 125.141, can be brought to a full stop landing within 70 percent of the effective length of the runway.

[Revision note: Based on § 42.94]

Subpart G—Special Airworthiness Requirements: Airplanes

§ 125.161 Special airworthiness requirements: general.

(a) Except as provided in paragraph (b) of this section, no air carrier or commercial operator may use an airplane powered by engines rated at more than 600 horsepower each for maximum continuous operation that has not been certificated under Part 4b of the Civil Air Regulations in effect after October 31, 1946, or under Part _____ of this chapter (present Part 4b), unless that airplane meets the requirements of §§ 125.163 through 125.235.

(b) If the Administrator determines that, for a particular model of airplane used in cargo service, literal compliance with any requirement of §§ 125.163 through 125.235 would be extremely difficult and that compliance would not contribute materially to the objective sought, he may require compliance with only those requirements that are necessary to accomplish the basic objectives of this part.

[Revision note: Based on § 42.110]

§ 125.163 Cabin interiors.

(a) Each compartment used by the crew or passengers must meet the requirements of this section.

(b) Materials must be at least flash-resistant.

(c) The wall and ceiling linings and the covering of upholstering, floors, and furnishings must be flame-resistant.

(d) Each compartment where smoking is to be allowed must be equipped with self-contained ash trays that are completely removable and other compartments must be placarded against smoking.

(e) Each receptacle for used towels, papers, and wastes must be of fire-resistant material and must have a cover or other means of containing possible fires started in the receptacles.

[Revision note: Based on § 42.112]

§ 125.165 Internal doors.

In any case where internal doors are equipped with louvres or other ventilating means, there must be a means con-

venient to the crew for closing the flow of air through the door when necessary.

[Revision note: Based on §42.113]

§ 125.167 Ventilation.

Each passenger or crew compartment must be suitably ventilated. Carbon monoxide concentration may not be more than one part in 20,000 parts of air, and fuel fumes may not be present. In any case where partitions between compartments have louvres or other means allowing air to flow between them, there must be a means convenient to the crew for closing the flow of air through the partitions, when necessary.

[Revision note: Based on §42.114]

§ 125.169 Fire precautions.

(a) Each compartment must be designed so that, when used for storing cargo or baggage, it complies with subparagraphs (1) through (4) of this paragraph:

(1) No compartment may include controls, wiring, lines, equipment, or accessories that would affect the safe operation of the airplane upon damage or failure, unless the item is adequately shielded, isolated, or otherwise protected so that it cannot be damaged by movement of cargo in the compartment and so that damage to or failure of the item would not create a fire hazard in the compartment.

(2) Cargo or baggage may not interfere with the functioning of the fire-protective features of the compartment.

(3) Materials used in the construction of the compartments, including tie-down equipment, must be at least flame resistant.

(4) Each compartment must include provisions for safeguarding against fires according to the classifications set forth in paragraphs (b) through (f) of this section.

(b) *Class A.* Cargo and baggage compartments are classified in the "A" category if—

(1) A fire therein would be readily discernible to a member of the crew while at his station; and

(2) All parts of the compartment are easily accessible in flight.

There must be a hand fire extinguisher available for each Class A compartment.

(c) *Class B.* Cargo and baggage compartments are classified in the "B" category if enough access is provided while in flight to enable a member of the crew to effectively reach all of the compartment and its contents with a hand fire extinguisher and the compartment is so designed that, when the access provisions are being used, no hazardous amount of smoke, flames, or extinguishing agent enters any compartment occupied by the crew or passengers. Each Class B compartment must comply with the following:

(1) It must have a separate approved smoke or fire detector system to give warning at the pilot or flight engineer stations.

(2) There must be a hand fire extinguisher available for the compartment.

(3) It must be lined with fire-resistant material, except that additional service lining of flame-resistant material may be used.

(d) *Class C.* Cargo and baggage compartments are classified in the "C" category if they do not conform with the requirements for the "A", "B", "D", or "E" categories. Each Class C compartment must comply with the following:

(1) It must have a separate approved smoke or fire detector system to give warning at the pilot or flight engineer station.

(2) It must have an approved built-in fire-extinguishing system controlled from the pilot or flight engineer station.

(3) It must be designed to exclude hazardous quantities of smoke, flames, or extinguishing agents from entering into any compartment occupied by the crew or passengers.

(4) It must have ventilation and draft controlled so that the extinguishing agent provided can control any fire that may start in the compartment.

(5) It must be lined with fire-resistant material, except that additional service lining of flame-resistant material may be used.

(e) *Class D.* Cargo and baggage compartments are classified in the "D" category if they are so designed and constructed that a fire occurring therein will be completely confined without endangering the safety of the airplane or the occupants. Each Class D compartment must comply with the following:

(1) It must have a means to exclude hazardous quantities of smoke, flames, or noxious gases from entering any compartment occupied by the crew or passengers.

(2) Ventilation and drafts must be controlled within each compartment so that any fire likely to occur in the compartment will not progress beyond safe limits.

(3) It must be completely lined with fire-resistant material.

(4) Consideration must be given to the effect of heat within the compartment on adjacent critical parts of the airplane.

(f) *Class E.* On airplanes used for the carriage of cargo only the cabin area may be classified as a Class "E" compartment. Each Class E compartment must comply with the following:

(1) It must be completely lined with fire-resistant material.

(2) It must have a separate system of an approved type smoke or fire detector to give warning at the pilot or flight engineer station.

(3) It must have a means to shut off the ventilating air flow to or within the compartment and the controls for that means must be accessible to the flight crew in the crew compartment.

(4) It must have a means to exclude hazardous quantities of smoke, flames, or noxious gases from entering the flight crew compartment.

(5) Required crew emergency exits must be accessible under all cargo loading conditions.

[Revision note: Based on § 42.115]

§ 125.171 Proof of compliance with § 125.169.

Compliance with those provisions of § 125.169 that refer to compartment accessibility, the entry of hazardous quantities of smoke or extinguishing agent into compartments occupied by the crew or passengers, and the dissipation of the extinguishing agent in Class "C" compartments must be shown by tests in flight.

During these tests it must be shown that no inadvertent operation of smoke or fire detectors in other compartments within the airplane would occur as a result of fire contained in any one compartment, either during the time it is being extinguished, or thereafter unless the extinguishing system floods those compartments simultaneously.

[Revision note: Based on § 42.116]

§ 125.173 Propeller deicing fluid.

If combustible fluid is used for propeller deicing, the air carrier or commercial operator must comply with § 125.201.

[Revision note: Based on § 42.117]

§ 125.175 Pressure cross-feed arrangements.

(a) Pressure cross-feed lines may not pass through parts of the airplane used for carrying persons or cargo unless—

(1) There is a means to allow crewmembers to shut off the supply of fuel to these lines; or

(2) The lines are enclosed in a fuel and fume-proof enclosure that is ventilated and drained to the exterior of the airplane.

However, such an enclosure need not be used if those lines incorporate no fittings on or within the personnel or cargo areas and are suitably routed or protected to prevent accidental damage.

(b) Lines that can be isolated from the rest of the fuel system by valves at each end must incorporate provisions for relieving excessive pressures that may result from exposure of the isolated line to high temperatures.

[Revision note: Based on § 42.118]

§ 125.177 Location of fuel tanks.

(a) Fuel tanks must be located in accordance with § 125.203.

(b) No part of the engine nacelle skin that lies immediately behind a major air outlet from the engine compartment may be used as the wall of an integral tank.

(c) Fuel tanks must be isolated from personnel compartments by means of fume- and fuel-proof enclosures.

[Revision note: Based on § 42.119]

§ 125.179 Fuel system lines and fittings.

(a) Fuel lines must be installed and supported so as to prevent excessive vibration and so as to be adequate to withstand loads due to fuel pressure and accelerated flight conditions.

(b) Lines connected to components of the airplane between which there may be relative motion must incorporate provisions for flexibility.

(c) Flexible connections in lines that may be under pressure and subject to axial loading must use flexible hose assemblies rather than those clamp connections.

(d) Flexible hose must be of an acceptable type or proven suitable for the particular application.

[Revision note: Based on § 42.120]

§ 125.181 Fuel lines and fittings in designated fire zones.

Fuel lines and fittings in each designated fire zone must comply with § 125.207.

[Revision note: Based on § 42.121]

§ 125.183 Fuel valves.

Each fuel valve must—

(a) Comply with § 125.205;

(b) Have positive stops or suitable index provisions in the "on" and "off" positions; and

(c) Be supported so that loads resulting from its operation or from accelerated flight conditions are not transmitted to the lines connected to the valve.

[Revision note: Based on § 42.122]

§ 125.185 Oil lines and fittings in designated fire zones.

Oil lines and fittings in each designated fire zone must comply with § 125.207.

[Revision note: Based on § 42.123]

§ 125.187 Oil valves.

(a) Each oil valve, must—

(1) Comply with § 125.205;

(2) Have positive stops or suitable index provisions in the "on" and "off" positions; and

(3) Be supported so that loads resulting from its operation or from accelerated flight conditions are not transmitted to the lines attached to the valve.

(b) The closing of an oil shutoff means must not prevent feathering the propeller, unless equivalent safety provisions are incorporated.

[Revision note: Based on § 42.124]

§ 125.189 Oil system drains.

Accessible drains that incorporate either a manual or automatic means for positive locking in the closed position must be provided to allow safe drainage of the entire oil system.

[Revision note: Based on § 42.125]

§ 125.191 Engine breather lines.

(a) Engine breather lines must be so arranged that condensed water vapor that may freeze and obstruct the line cannot accumulate at any point.

(b) Engine breathers must discharge in a location that does not constitute a fire hazard in case foaming occurs and so that oil emitted from the line does not impinge upon the pilots' windshield.

(c) Engine breathers may not discharge into the engine air induction system.

[Revision note: Based on § 42.126]

§ 125.193 Fire walls.

Each engine, auxiliary power unit, fuel-burning heater, or other item of combustion equipment that is intended for operation in flight must be isolated from the rest of the airplane by means of fire walls or shrouds, or by other equivalent means.

[Revision note: Based on § 42.127]

§ 125.195 Fire-wall construction.

Each fire wall and shroud must—

(a) Be so made that no hazardous quantity of air, fluids, or flame can pass from the engine compartment to other parts of the airplane;

(b) Have all openings in the fire wall or shroud sealed with close-fitting fireproof grommets, bushings, or fire-wall fittings;

(c) Be made of fireproof material; and

(d) Be protected against corrosion.

[Revision note: Based on § 42.128]

NOTE: § 42.128 (last sentence) is omitted as not a rule.

§ 125.197 Cowling.

(a) Cowling must be made and supported so as to resist the vibration, inertia, and air loads to which it may be normally subjected.

(b) Provisions must be made to allow rapid and complete drainage of the cowling in normal ground and flight attitudes. Drains must not discharge in locations constituting a fire hazard. Parts of the cowling that are subjected to high temperatures because they are near exhaust system parts or because of exhaust gas impingement must be made of fireproof material. Unless otherwise specified in these regulations, all other parts of the cowling must be made of fire-resistant material.

[Revision note: Based on §42.129]

§ 125.199 Engine accessory section diaphragm.

Unless equivalent protection can be shown by other means, a diaphragm that complies with § 125.195 must be provided on air-cooled engines to isolate the engine power section and all parts of the exhaust system from the engine accessory compartment.

[Revision note: Based on § 42.130]

§ 125.201 Powerplant fire protection.

(a) Designated fire zones must be protected from fire by compliance with §§ 125.203 through 125.209.

(b) Designated fire zones are—

(1) Engine accessory sections;

(2) Installations where no isolation is provided between the engine and accessory compartment; and

(3) Areas that contain auxiliary power units, fuel-burning heaters, and other combustion equipment.

[Revision note: Based on § 42.131]

§ 125.203 Flammable fluids.

(a) No tanks or reservoirs that are a part of a system containing flammable fluids or gases may be located in designated fire zones, except where the fluid contained, the design of the system, the materials used in the tank, the shutoff means, and the connections, lines, and controls provide equivalent safety.

(b) At least one-half inch of clear airspace must be provided between any tank or reservoir and a fire wall or shroud isolating a designated fire zone.

[Revision note: Based on § 42.132]

§ 125.205 Shutoff means.

(a) Each engine must have a means for shutting off or otherwise preventing hazardous amounts of fuel, oil, deicer, and other flammable fluids from flowing into, within, or through any designated fire zone. However, means need not be provided to shut off flow in lines that are an integral part of an engine.

(b) The shutoff means must allow an emergency operating sequence that is compatible with the emergency operation of other equipment, such as feathering the propeller, to facilitate rapid and effective control of fires.

(c) Shutoff means must be located outside of designated fire zones, unless equivalent safety is provided, and it must be shown that no hazardous amount of flammable fluid will drain into any designated fire zone after a shut off.

(d) Adequate provisions must be made to guard against inadvertent operation of the shutoff means and to make it possible for the crew to reopen the shutoff means after it has been closed.

[Revision note: Based on § 42.133]

§ 125.207 Lines and fittings.

(a) Each line, and its fittings, that is located in a designated fire zone, if it carries flammable fluids or gases under pressure, or is attached directly to the engine, or is subject to relative motion between components (except lines and fittings forming an integral part of the engine), must be flexible and fire-resistant with fire-resistant, factory-fixed, detachable, or other approved fire-resistant ends.

(b) Lines and fittings that are not subject to pressure or to relative motion between components must be of fire-resistant materials.

[Revision note: Based on § 42.134]

§ 125.209 Vent and drain lines.

Each vent and drain line, and its fittings, that is located in a designated fire zone must, if it carries flammable fluids or gases, comply with § 125.207, if the Administrator finds that its rupture or breakage may result in a fire hazard.

[Revision note: Based on § 42.135]

§ 125.211 Fire-extinguishing systems.

(a) Unless the air carrier or commercial operator shows that equivalent protection against destruction of the airplane in case of fire is provided by the use of fireproof materials in the nacelle and other components that would be subjected to flame, fire-extinguishing systems must be provided to serve all designated fire zones.

(b) Materials in the fire-extinguishing system must not react chemically with the extinguishing agent so as to be a hazard.

[Revision note: Based on § 42.136]

§ 125.213 Fire-extinguishing agents.

Only methyl bromide, carbon dioxide, or another agent that has been shown to provide equivalent extinguishing action may be used as a fire-extinguishing

agent. If methyl bromide or any other toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid or fluid vapors from entering any personnel compartment either because of leakage during normal operation of the airplane or because of discharging the fire extinguisher on the ground or in flight when there is a defect in the extinguishing system. If a methyl bromide system is used, the containers must be charged with dry agent and sealed by the fire-extinguisher manufacturer or some other person using satisfactory recharging equipment. If carbon dioxide is used, it must not be possible to discharge enough gas into the personnel compartments to create a danger of suffocating the occupants.

[Revision note: Based on § 42.137]

§ 125.215 Extinguishing agent container pressure relief.

Extinguishing agent containers must be provided with a pressure relief to prevent bursting of the container because of excessive internal pressures. The discharge line from the relief connection must terminate outside the airplane in a place convenient for inspection on the ground. An indicator must be provided at the discharge end of the line to provide a visual indication when the container has discharged.

[Revision note: Based on § 42.138]

§ 125.217 Extinguishing agent container compartment temperature.

Precautions must be taken to insure that the extinguishing agent containers are installed in places where reasonable temperatures can be maintained for effective use of the extinguishing system.

[Revision note: Based on § 42.139]

§ 125.219 Fire-extinguishing system materials.

(a) Except as provided in paragraph (b) of this section, each component of a fire-extinguishing system that is in a designated fire zone must be made of fireproof materials.

(b) Connections that are subject to relative motion between components of the airplane must be made of flexible fire-resistant materials and be located so as to minimize the possibility of failure.

[Revision note: Based on § 42.140]

§ 125.221 Fire-detector systems.

Enough quick-acting fire detectors must be provided in each designated fire zone to insure the detection of any fire that may occur in that zone.

[Revision note: Based on § 42.141]

§ 125.223 Fire detectors.

Fire detectors must be made and installed in a manner that insures their ability to resist, without failure, all vibration, inertia, and other loads to which they may be normally subjected. Fire detectors must be unaffected by exposure to fumes, oil, water, or other fluids that may be present.

[Revision note: Based on § 42.142]

§ 125.225 Protection of other airplane components against fire.

(a) Except as provided in paragraph (b) of this section, all airplane surfaces aft of the nacelles in the area of one nacelle diameter on both sides of the nacelle centerline must be made of fire-resistent material.

(b) Paragraph (a) of this section does not apply to tail surfaces lying behind nacelles unless the dimensional configuration of the airplane is such that the tail surfaces could be affected readily by heat, flames, or sparks emanating from a designated fire zone or from the engine compartment of any nacelle.

[Revision note: Based on § 42.143]

§ 125.227 Control of engine rotation.

(a) Except as provided in paragraph (b) of this section, each airplane must have a means of individually stopping and restarting the rotation of any engine in flight.

(b) In the case of turbine engine installations, a means of stopping the rotation need be provided only if the Administrator finds that rotation could jeopardize the safety of the airplane.

[Revision note: Based on § 42.150]

§ 125.229 Fuel system independence.

(a) Each airplane fuel system must be arranged so that the failure of any one component does not result in the irrecoverable loss of power of more than one engine.

(b) A separate fuel tank need not be provided for each engine if the air carrier or commercial operator shows that the fuel system incorporates features that provide equivalent safety.

[Revision note: Based on § 42.151]

§ 125.231 Induction system ice prevention.

A means for preventing the malfunctioning of each engine due to ice accumulation in the engine air induction system must be provided for each airplane.

[Revision note: Based on § 42.152]

§ 125.233 Carriage of cargo in passenger compartments.

(a) Except as provided in paragraph (b) or (c) of this section, no air carrier or commercial operator may carry cargo in the passenger compartment of an airplane.

(b) Cargo may be carried aft of the foremost seated passengers if it is carried in an approved cargo bin that meets the following requirements:

(1) The bin must withstand the load factors and emergency landing conditions applicable to the passenger seats of the airplane in which the bin is installed, multiplied by a factor of 1.15 using the combined weight of the bin and the maximum weight of cargo that may be carried in the bin.

(2) The maximum weight of cargo that the bin is approved to carry and any instructions necessary to insure proper weight distribution within the bin must be conspicuously marked on the bin.

(3) The bin may not impose any load on the floor or other structure of the airplane that exceeds the load limitations of that structure.

(4) The bin must be attached to the seat tracks or to the floor structure of the airplane, and its attachment must withstand the load factors and emergency landing conditions applicable to the passenger seats of the airplane in which the bin is installed, multiplied by either the factor 1.15 or the seat attachment factor specified for the airplane, whichever is greater, using the combined weight of the bin and the maximum weight of cargo that may be carried in the bin.

(5) The bin may not be installed in a position that restricts access to or use of any required emergency exit, or of the aisle in the passenger compartment.

(6) The bin must be fully enclosed and made of material that is at least flame resistant.

(7) Suitable safeguards must be provided within the bin to prevent the cargo from shifting under emergency landing conditions.

(8) The bin may not be installed in a position that obscures any passenger's view of the "seat belt" sign, "no smoking" sign, or any required exit sign, unless an auxiliary sign or other approved means for proper notification of that passenger is provided.

(c) Cargo may be carried forward of the foremost seated passengers if carried either in approved cargo bins as specified in paragraph (b) of this section, or in accordance with the following:

(1) It is properly secured by a safety belt or other tiedown having enough strength to eliminate the possibility of shifting under all normally anticipated flight and ground conditions.

(2) It is packaged or covered in a manner to avoid possible injury to passengers.

(3) It does not impose any load on seats or the floor structure that exceeds the load limitation for those compartments.

(4) Its location does not restrict access to or use of any required emergency or regular exit, or of the aisle in the passenger compartment.

(5) Its location does not obscure any passenger's view of the "seat belt" sign, "no smoking" sign, or required exit sign, unless an auxiliary sign or other approved means for proper notification of that passenger is provided.

[Revision note: Based on § 42.153]

§ 125.235 Carriage of cargo in cargo compartments.

When cargo is carried in cargo compartments that are designed to require the physical entry of a crewmember to extinguish any fire that may occur during flight, the cargo must be loaded so as to allow a crewmember to effectively reach all parts of the compartment with the contents of a hand fire extinguisher.

[Revision note: Based on § 42.154]

Subpart H—Instrument and Equipment Requirements

§ 125.251 Airplane instruments and equipment: airplanes.

(a) Unless otherwise specified, the instrument and equipment requirements of

this subpart apply to all operations under this part.

(b) Instruments and equipment required by §§ 125.253 through 125.303 must be approved and installed in accordance with the airworthiness requirements applicable to them.

(c) Each airspeed indicator must be calibrated in knots, and each airspeed limitation and item of related information in the Airplane Flight Manual and pertinent placards must be expressed in knots.

(d) Except as provided in § 125.521(b) and (c), no person may take off any airplane unless the following instruments and equipment are in operable condition:

(1) Instruments and equipment required to comply with airworthiness requirements under which the airplane is type certificated and as required by §§ 125.161 through 125.235.

(2) Instruments and equipment specified in §§ 125.253 through 125.269 for all operations, and the instruments and equipment specified in §§ 125.271 through 125.303 for the kind of operation indicated, wherever these items are not already required by subparagraph (1) of this paragraph.

[Revision note: Based on § 42.170]

§ 125.253 Flight and navigational equipment: airplanes.

No person may operate an airplane unless it is equipped with the following flight and navigational instruments and equipment:

(a) An airspeed indicating system with heated pitot tube or equivalent means for preventing malfunctioning due to icing.

(b) A sensitive altimeter.

(c) A sweep-second clock.

(d) A free-air temperature indicator.

(e) A gyroscopic bank and pitch indicator (artificial horizon).

(f) A gyroscopic rate-of-turn indicator combined with a slipskid indicator (turn-and-bank indicator).

(g) A gyroscopic direction indicator (directional gyro or equivalent).

(h) A magnetic compass.

(i) A vertical speed indicator (rate-of-climb indicator).

[Revision note: Based on § 42.171]

§ 125.255 Engine instruments: airplanes.

Unless the Administrator allows or requires different instrumentation for turbine-powered airplanes to provide equivalent safety, no person may conduct any operation under this part without the following engine instruments:

(a) A carburetor air temperature indicator for each engine.

(b) A cylinder head temperature indicator for each air-cooled engine.

(c) A fuel pressure indicator for each engine.

(d) A fuel flowmeter or fuel mixture indicator for each engine not equipped with an automatic altitude mixture control.

(e) A means for indicating fuel quantity in each fuel tank to be used.

(f) A manifold pressure indicator for each engine.

(g) An oil pressure indicator for each engine.

(h) An oil quantity indiactor for each oil tank when a transfer or separate oil reserve supply is used.

(i) An oil-in temperature indicator for each engine.

(j) A tachometer for each engine.

(k) An independent fuel pressure warning device for each engine or a master warning device for all engines with a means for isolating the individual warning circuits from the master warning device.

(l) A device for each reversible propeller to indicate to the pilot when the propeller is in reverse pitch, that complies with the following:

(1) The device may be actuated at any point in the reversing cycle between the normal low pitch stop position and full reverse pitch, but it may not give an indication at or above the normal low pitch stop position.

(2) The source of indication must be actuated by the propeller blade angle or be directly responsive to it.

[Revision note: Based on § 42.172]

§ 125.257 Emergency equpiment: airplanes.

(a) *General.* No person may operate an airplane unless it is equipped with the emergency equipment listed in this section.

(b) Each item of emergency equipment—

(1) Must be inspected regularly in accordance with inspection periods established in the operations specifications to insure its continued serviceability and immediate readiness for its intended emergency purposes;

(2) Must be readily accessible to the crew;

(3) Must clearly indicate its method of operation; and

(4) When carried in a compartment or container, must have that compartment or container marked as to contents and date of last inspection.

(c) *Hand fire extinguishers for crew, passenger, and cargo compartments.* Hand fire extinguishers of an approved type must be provided for use in crew, passenger, and cargo compartments in accordance with the following:

(1) The type and quantity of extinguishing agent must be suitable for the kinds of fires likely to occur in the compartment where the extinguisher is intended to be used.

(2) At least one hand fire extinguisher must be provided and conveniently located on the flight deck for use by the flight crew.

(3) At least one hand fire extinguisher must be conveniently located in the passenger compartment of each airplane accommodating more than 6 but less than 31 passengers, and at least two hand fire extinguishers must be conveniently located in each airplane accommodating more than 30 passengers.

(d) *First-aid equipment.* Approved first-aid kits for treatment of injuries likely to occur in flight or in minor accidents must be provided and must meet the specifications and requirements of Appendix A.

(e) *Crash ax.* Each airplane must be equipped with a crash ax.

(f) *Means for emergency evacuation.* Each passenger-carrying airplane must have a means to help occupants descend from the airplane from each emergency exit that is more than six feet from the ground with the landing gear extended. At approved floor level emergency exits, this means must be a chute or equivalent device suitable for rapid evacuation of passengers and must be in position during flight for immediate installation and ready use. This paragraph does not apply if the emergency exit is over a wing and the distance from the lower sill of the exit to the surface of the wing is 36 inches or less.

(g) *Interior emergency exit markings.* Each passenger-carrying airplane emergency exit means of access, and means of opening, must be conspicuously marked. The identity and location of each emergency exit must be recognizable from a distance equal to the width of the cabin. The location of the emergency exit operating handle and the instructions for opening must be marked on or adjacent to the emergency exit and must be readable from at least 30 inches by a person with normal eyesight.

(h) *Lighting for interior emergency exit markings.* Each passenger-carrying airplane must have a source or sources of light (with an energy supply that is independent of the main lighting system) for each passenger emergency exit marking. Each light must be designed to—

(1) Function automatically in a crash landing, to continue functioning thereafter, and to be manually operable; or

(2) Be manually operable only and to continue functioning after a crash landing.

If a light requires manual operation, it must be turned on before each takeoff and landing. If a light requires arming of the system to function automatically, the system must be armed before each takeoff and landing.

[Revision note: Based on § 42.173]

§ 125.259 Seat and safety belts: airplanes.

(a) No air carrier or commercial operator may operate an airplane unless there are available during the takeoff, en route flight, and landing—

(1) An approved seat or berth for each person over two years of age aboard the airplane; and

(2) An approved safety belt for separate use by each person over two years of age aboard the airplane, except that two persons occupying a berth may share one approved safety belt and two persons occupying a multiple lounge or divan seat may share one approved safety belt during en route flight only.

(b) During the takeoff or landing of an airplane, each person on board shall occupy an approved seat or berth and secure himself with the approved safety belt provided him. However, a person who is two years of age or less may be held by an adult who is occupying a seat or berth. A safety belt provided for the occupant of a seat may not be used by

more than one adult during takeoff or landing.

[Revision note: Based on § 42.174]

§ 125.261 Miscellaneous equipment: airplanes.

(a) No person may conduct any operation unless the equipment listed in paragraphs (b) through (j) of this section is installed in the airplane.

(b) If protective fuses are installed on an airplane, the number of spare fuses approved for that airplane and appropriately described in the air carrier or commercial operator's manual must be carried aboard the airplane.

(c) There must be a windshield wiper or equivalent for each pilot station.

(d) There must be a power supply and distribution system that meets the requirements of §§ ____, ____, ____, ____, ____, and ____ (present §§ 4b.606 (a), (b), and (c), 4b.612(e), 4b.622 (a) and (b), 4b.623, 4b.625 and 4b.650(b)) or that is able to produce and distribute the load for the required instruments and equipment with use of an external power supply if any one power source or component of the power distribution system fails. The use of common elements in the system may be approved if the air carrier or commercial operator shows that they are designed to be reasonably protected against malfunctioning. Engine-driven sources of energy, when used, must be on separate engines.

(e) There must be a means for indicating the adequacy of the power being supplied to required flight instruments.

(f) There must be two independent static pressure systems, vented to the outside atmospheric pressure so that they will be least affected by air flow variation or moisture or other foreign matter, and installed so as to be airtight except for the vent. When a means is provided for transferring an instrument from its primary operating system to an alternate system, the means must include a positive positioning control and must be marked to indicate clearly which system is being used.

(g) There must be a means for locking all companionway doors that separate passenger compartments from flight crew compartments.

(h) There must be a key for each door that separates a passenger compartment from another compartment that has emergency exit provisions. The key must be readily available for each crewmember.

(i) Each door that is the means of access to a required passenger emergency exit must be placarded to indicate that it must be open during takeoff and landing.

(j) Each door that leads to a compartment that is normally accessible to passengers and that can be locked by passengers must be provided with a means for unlocking by the crew in the event of an emergency.

[Revision note: Based on § 42.175]

§ 125.263 Cockpit check procedure.

(a) Each air carrier and commercial operator shall provide an approved cockpit check procedure for each type of aircraft.

(b) The approved procedures must include each item necessary for flight crewmembers to check for safety before starting engines, taking off, or landing, and in engine and systems emergencies. The procedures must be designed so as to obviate the necessity for a flight crewmember to rely upon his memory for items to be checked.

(c) The approved procedures must be readily usable in the cockpit of each aircraft and the flight crew shall follow them when operating the airplane.

[Revision note: Based on § 42.176]

§ 125.265 Passenger information: airplanes.

(a) No person may operate an airplane unless it is equipped with signs that are visible to passengers and cabin attendants to notify them when smoking is prohibited and when safety belts should be fastened. The signs must be so constructed that the crew can turn them on and off and must be turned on for each takeoff and each landing and when otherwise considered to be necessary by the pilot in command.

(b) No passenger or cabin attendant may smoke while the no smoking sign is lighted and each passenger shall fasten his seat belt and keep it fastened while the seat belt sign is lighted.

[Revision note: Based on § 42.177]

§ 125.267 Exterior exits and evacuation markings: airplanes.

No person may operate an airplane unless the exterior surfaces of the airplane are marked to clearly identify each required emergency exit. If the exits are operable from the outside, the markings must consist of or include information indicating the method of opening.

[Revision note: Based on § 42.178]

§ 125.269 Shoulder harness: airplanes.

No person may operate a transport category airplane that was certificated after January 1, 1958, unless it is equipped with a shoulder harness at the pilot in command station, the second in command station, and the flight engineer station.

[Revision note: Based on § 42.179]

§ 125.271 Instruments and equipment for operations at night: airplanes.

No person may operate an airplane at night unless it is equipped with the following instruments and equipment in addition to those required by §§ 125.253 through 125.269:

(a) Position lights.

(b) An anti-collision light, for large airplanes.

(c) Two landing lights.

(d) Instrument lights providing enough light to make each required instrument, switch, or similar instrument, easily readable and installed so that the direct rays are shielded from the flight crewmembers' eyes and that no objectionable reflections are visible to them. There must be a means of controlling the intensity of illumination unless the air carrier or commercial operator shows that nondimming instrument lights are satisfactory.

(e) An airspeed indicating system with heated pitot tube or equivalent means for preventing malfunctioning due to icing.

(f) A sensitive altimeter.

[Revision note: Based on § 42.200]

§ 125.273 Instruments and equipment for operations under IFR or over-the-top: airplanes.

No person may operate an airplane under IFR or over-the-top conditions unless it is equipped with the following instruments and equipment in addition to instruments required by §§ 125.253 through 125.269:

(a) An airspeed indicating system with heated pitot tube or equivalent means of preventing malfunctioning due to icing.

(b) A sensitive altimeter.

(c) Instrument lights providing enough light to make each required instrument, switch, or similar instrument, easily readable and installed so that the direct rays are shielded from the flight crewmembers' eyes and that no objectionable reflections are visible to them, and a means of controlling the intensity of illumination unless the air carrier or commercial operator shows that nondimming instrument lights are satisfactory.

[Revision note: Based on § 42.201]

§ 125.275 Supplemental oxygen; reciprocating-engine-powered airplanes.

(a) *General.* Except where supplemental oxygen is provided in accordance with § 125.279, no person may operate an airplane unless supplemental oxygen is furnished and used as set forth in paragraphs (b) and (c) of this section. The amount of supplemental oxygen required for a particular operation is determined on the basis of flight altitudes and flight duration, consistent with the operation procedures established for each operation and route.

(b) *Crewmembers.*

(1) At cabin pressure altitudes above 10,000 feet up to and including 12,000 feet, oxygen must be provided for, and used by, each member of the flight crew on flight deck duty, and must be provided for other crewmembers, for that part of the flight at those altitudes that is of more than 30 minutes duration.

(2) At cabin pressure altitudes above 12,000 feet, oxygen must be provided for, and used by, each member of the flight crew on flight deck duty, and must be provided for other crewmembers, during the entire flight time at those altitudes.

(3) When a flight crewmember is required to use oxygen, he must use it continuousuly, except when necessary to remove the oxygen mask or other dispenser in connection with his regular duties. Standby crewmembers who are on call or are definitely going to have flight deck duty before completing the flight must be provided with an amount of supplemental oxygen equal to that provided for crewmembers on duty other than on flight deck duty. If a standby crewmember is not on call and will not be on flight deck duty during the remainder of the flight, he is considered to be a passenger for the purposes of supplemental oxygen requirements.

(c) *Passengers.* Each air carrier and commercial operator shall provide a supply of oxygen, approved for passenger safety, in accordance with the following:

(1) For flights of more than 30 minutes duration at cabin pressure altitudes above 8,000 feet up to and including 14,000 feet, enough oxygen for 30 minutes for 10 percent of the passengers.

(2) For flights at cabin pressure altitudes above 14,000 feet up to and including 15,000 feet, enough oxygen for that part of the flight at those altitudes for 30 percent of the passengers.

(3) For flights at cabin pressure altitudes above 15,000 feet, enough oxygen for each passenger carried during the entire flight at those altitudes.

(d) For the purposes of this subpart "cabin pressure altitude" means the pressure altitude corresponding with the pressure in the cabin of the airplane, and "flight altitude" means the altitude above sea level at which the airplane is operated. For airplanes without pressurized cabins, "cabin pressure altitude" and "flight altitude" mean the same thing.

[Revision note: Based on § 42.202]

§ 125.277 Supplemental oxygen for sustenance; turbine-powered airplanes.

(a) *General.* When operating a turbine-powered airplane, each air carrier and commercial operator shall equip the airplane with sustaining oxygen and dispensing equipment for use as set forth in this section:

(1) The amount of oxygen provided must be at least the quantity necessary to comply with paragraphs (b) and (c) of this section.

(2) The amount of sustaining and first-aid oxygen required for a particular operation to comply with the rules in this Part is determined on the basis of cabin pressure altitude and flight duration, consistent with the operating procedures established for each operation and route.

(3) The requirements for airplanes with pressurized cabins is determined on the basis of cabin pressure altitude and the assumption that a cabin pressurization failure will occur at the altitude or point of flight that is most critical from the standpoint of oxygen need, and that after the failure the airplane will descend in accordance with the emergency procedures specified in the Airplane Flight Manual, without exceeding its operating limitations, to a flight altitude that will allow successful termination of the flight.

(4) Following the failure the cabin pressure altitude is considered to be the same as the flight altitude unless the air carrier or commercial operator shows that no probable failure of the cabin or pressurization equipment will result in a cabin pressure altitude equal to the flight altitude. Under those circumstances, the maximum cabin pressure altitude attained may be used as a basis for certification or determination of oxygen supply, or both.

(b) *Crewmembers.* Each air carrier and commercial operator shall provide a supply of oxygen for crewmembers in accordance with the following:

(1) At cabin pressure altitudes above 10,000 feet up to and including 12,000 feet, oxygen must be provided for and used by each member of the flight crew on flight deck duty and must be provided for other crewmembers for that part of the flight at those altitudes that is of more than 30 minutes duration.

(2) At cabin pressure altitudes above 12,000 feet, oxygen must be provided for, and used by, each member of the flight crew on flight deck duty, and must be provided for other crewmembers during the entire flight at those altitudes.

(3) When a flight crewmember is required to use oxygen, he must use it continuously except when necessary to remove the oxygen mask or other dispenser in connection with his regular duties. Standby crewmembers who are on call or are definitely going to have flight deck duty before completing the flight must be provided with an amount of supplemental oxygen equal to that provided for crewmembers on duty other than on flight deck duty. If a standby crewmember is not on call and will not be on flight deck duty during the remainder of the flight, he is considered to be a passenger for the purposes of supplemental oxygen requirements.

(c) *Passengers.* Each air carrier and commercial operator shall provide a supply of oxygen for passengers in accordance with the following:

(1) For flights at cabin pressure altitudes above 10,000 feet up to and including 14,000 feet, enough oxygen for that part of the flight at those altitudes that is of more than 30 minutes duration, for 10 percent of the passengers.

(2) For flights at cabin pressure altitudes above 14,000 feet up to and including 15,000 feet, enough oxygen for that part of the flight at those altitudes for 30 percent of the passengers.

(3) For flights at cabin pressure altitudes above 15,000 feet, enough oxygen for each passenger carried during the entire flight at those altitudes.

[Revision note: Based on § 42.202–T]

§ 125.279 Supplemental oxygen requirements for pressurized cabin airplanes: reciprocating-engine-powered airplanes.

(a) When operating a pressurized cabin airplane, each air carrier and commercial operator shall equip the airplane to comply with paragraphs (b) through (d) of this section in the event of cabin pressurization failure.

(b) *For crewmembers.* When operating at flight altitudes above 10,000 feet, the air carrier or commercial operator shall provide enough oxygen for each crewmember for the entire flight at those altitudes and not less than a two-hour supply for each flight crewmember on flight deck duty. The oxygen required by § 125.285 may be considered in determining the supplemental breathing supply required for flight crewmembers on flight deck duty in the event of cabin pressurization failure.

(c) *For passengers.* When operating at flight altitudes above 8,000 feet, the air carrier and commercial operator shall provide oxygen as follows:

(1) When an airplane is not flown at a flight altitude above 25,000 feet, enough oxygen for 30 minutes for 10 percent of the pasesngers, if at any point along the route to be flown the airplane can safely descend to a flight altitude of 14,000 feet or less within four minutes.

(2) If the airplane cannot descent to a flight altitude of 14,000 feet or less within four minutes, the following supply of oxygen must be provided:

(i) For that part of the flight that is more than four minutes duration at flight altitudes above 15,000 feet, the supply required by § 125.275(c)(3).

(ii) For that part of the flight at flight altitudes above 14,000 feet up to and including 15,000 feet, the supply required by § 125.275(c)(2).

(iii) For flight at flight altitudes above 8,000 feet up to and including 14,000 feet, enough oxygen for 30 minutes for 10 percent of the passengers.

(3) When an airplane is flown at a flight altitude above 25,000 feet, enough oxygen to allow the airplane to descend to an appropriate flight altitude at which the flight can be safely continued. In addition, it must furnish enough oxygen for 30 minutes for 10 percent of the passengers for the entire flight above 8,000 feet up to and including 14,000 feet, and to comply with § 125.275(c)(2) and (3) for flight above 14,000 feet.

(d) For the purposes of this section it is assumed that the cabin pressurization failure occurs at a time during flight that is critical from the standpoint of oxygen need and that after the failure the airplane will descend, without exceeding its normal operating limitations, to flight altitudes allowing safe flight with respect to terrain clearance.

[Revision note: Based on § 42.203]

§ 125.281 Supplemental oxygen for emergency descent and for first aid; turbine-powered airplanes with pressurized cabins.

(a) *General.* When operating a turbine-powered airplane with a pressurized cabin, the air carrier and commercial operator shall furnish oxygen and dispensing equipment to comply with paragraphs (b) through (e) of this section in the event of cabin pressurization failure.

(b) *Crewmembers.* When operating at flight altitudes above 10,000 feet, the air carrier and commercial operator shall supply enough oxygen to comply with § 125.277, but not less than a two-hour supply for each flight crewmember on flight deck duty. The oxygen required by § 125.285 may be included in determining the supply required for flight crewmembers on flight deck duty in the event of cabin pressurization failure.

(c) *Use of oxygen masks by flight crewmembers.* (1) When operating at flight altitudes above 25,000 feet, each flight crewmember on flight deck duty must be provided with an oxygen mask so designed that it can be rapidly placed on his face from its ready position, properly secured, sealed, and supplying oxygen upon demand; and so designed that after being placed on the face it does not prevent immediate communication between the flight crewmember and other

crewmembers over the airplane intercommunication system. When it is not being used at flight altitudes above 25,000 feet, the oxygen mask must be kept in condition for ready use and located so as to be within the immediate reach of the flight crewmember while at his duty station.

(2) When operating at flight altitudes above 25,000 feet, one pilot at the controls of the airplane shall at all times wear and use an oxygen mask secured, sealed, and supplying oxygen, except that the one pilot need not wear and use an oxygen mask while at or below 35,000 feet if each flight crewmember on flight deck duty has a quick-donning type of oxygen mask that the air carrier or commercial operator has shown to the satisfaction of the Administrator can be placed on the face from its ready position, properly secured, sealed, and supplying oxygen upon demand, with one hand and within five seconds. The air carrier and commercial operator shall also show that the mask can be put on without disturbing eyeglasses and without delaying the flight crewmember from proceeding with his assigned emergency duties. The oxygen mask after being put on must not prevent immediate communication between the flight crewmember and other crewmembers over the airplane intercommunication system.

(3) Notwithstanding subparagraph (2) of this paragraph, if for any reason at any time it is necessary for one pilot to leave his station at the controls of the airplane when operating at flight altitudes above 25,000 feet, the remaining pilot at the controls shall put on and use his oxygen mask until the other pilot has returned to his duty station.

(4) Before the takeoff of a flight, each flight crewmember shall personally preflight his oxygen equipment to insure that the oxygen mask is functioning, fitted properly, and connected to appropriate supply terminals, and that the oxygen supply and pressure is adequate for use.

(d) *Use of portable oxygen equipment by cabin attendants.* Each attendant shall, during flight above 25,000 feet flight altitude, carry portable oxygen equipment with at least a 15-minute supply of oxygen unless it is shown that enough portable oxygen units with masks or spare outlets and masks are distributed throughout the cabin to insure immediate availability of oxygen to each cabin attendant, regardless of his location at the time of cabin depressurization.

(e) *Passenger cabin occupants.* When operating at flight altitudes above 10,000 feet, the following supply of oxygen must be provided for the use of passenger cabin occupants:

(1) When an airplane certificated to operate at flight altitudes up to and including 25,000 feet, can at any point along the route to be flown, descend safely to a flight altitude of 14,000 feet or less within four minutes, oxygen must be available at the rate prescribed by this part for a 30-minute period for at least 10 percent of the passenger cabin occupants.

(2) When an airplane is operated at flight altitudes up to and including 25,000 feet and cannot descend safely to a flight altitude of 14,000 feet within four minutes, or when an airplane is operated at flight altitudes above 25,000 feet, oxygen must be available at the rate prescribed by this part for not less than 10 percent of the passenger cabin occupants for the entire flight after cabin depressurization, at cabin pressure altitudes above 10,000 feet up to and including 14,000 feet and, as applicable, to allow compliance with § 125.277(c) (2) and (3), except that there must be not less than a 10-minute supply for the passenger cabin occupants.

(3) For first-aid treatment of occupants who for physiological reasons might require undiluted oxygen following descent from cabin pressure altitudes above 25,000 feet, a supply of oxygen in accordance with the requirements of § ____ (§ 4b.651(b)(4)) must be provided for two percent of the occupants for the entire flight after cabin depressurization at cabin pressure altitudes above 8,000 feet, but in no case to less than one person. An appropriate number of acceptable dispensing units, but in no case less than two, must be provided, with a means for the cabin attendants to use this supply.

(f) *Passenger briefing.* Before flight is conducted above 25,000 feet, a crewmember shall instruct the passengers on the necessity of using oxygen in the event of depressurization and shall show them the location and operation of the oxygen-dispensing equipment.

[Revision note: Based on § 42.203–T]

§ 125.283 Equipment standards: airplanes.

(a) *Nonturbine-powered airplanes.* The oxygen apparatus, the minimum rates of oxygen flow, and the supply of oxygen necessary to comply with § 125.275 must meet the standards established in § ____ (§ 4b.651) of this chapter effective July 20, 1950, except, that if the air carrier or commercial operator shows full compliance with those standards to be impracticable, the Administrator may authorize any changes in those standards that he finds will provide an equivalent level of safety.

(b) *Turbine-powered airplanes.* The oxygen apparatus, the minimum rate of oxygen flow, and the supply of oxygen necessary to comply with §§ 125.277 and 125.281 must meet the standards established in § ____ (§ 4b.651) of this chapter, except that if the air carrier or commercial operator shows full compliance with those standards to be impracticable, the Administrator may authorize any changes in those standards that he finds will provide an equivalent level of safety.

[Revision note: Based on § 42.204]

§ 125.285 Protective breathing equipment for the flight crew: airplanes.

(a) *Pressurized cabin airplanes.* Each required flight crewmember on flight deck duty must have readily available at his station protective breathing equipment covering the eyes, nose, and mouth (or the nose and mouth if accessory equipment is provided to protect the eyes) to protect him from the effects of smoke or carbon dioxide or other harmful gases. There must be at least a 300-liter standard temperature and pressure dry supply of oxygen for each required flight crewmember on flight deck duty. (Standard temperature and pressure dry oxygen is oxygen at 0° centigrade, 760 mm. Hg.)

(b) *Nonpressurized cabin airplanes.* The requirements of paragraph (a) of this section apply to nonpressurized cabin airplanes if the Administrator finds that it is possible to obtain a dangerous concentration of smoke or carbon dioxide or other harmful gases in the flight crew compartments in any attitude of flight that might occur when the airplane is flown in accordance with either normal or emergency procedures.

[Revision note: Based on § 42.205]

§ 125.287 Equipment for extended overwater operations: airplanes.

(a) Except as provided in paragraph (b) of this section, no person may operate an airplane in extended overwater operations without having on the airplane the following equipment:

(1) A life preserver for each occupant of the airplane.

(2) Enough liferafts of a rated capacity and buoyancy to accommodate the occupants of the airplane.

(3) Suitable pyrotechnic signaling devices.

(4) One self-buoyant, water-resistant, portable emergency radio signaling device, that is capable of transmission on the appropriate emergency frequency or frequencies, and not dependent upon the airplane power supply.

(b) The Administrator may, by amending the operations specifications of the air carrier or commercial operator allow deviations from paragraph (a) of this section for any overwater operation. In addition, upon application of an air carrier or commercial operator, the Administrator may allow deviations from that paragraph for any particular extended overwater operation.

(c) The required liferafts, life preservers, and signaling devices must be easily accessible in the event of a ditching without appreciable time for preparatory procedures. This equipment must be installed in conspicuously marked approved locations.

(d) A survival kit, appropriately equipped for the route to be flown, must be attached to each required liferaft.

[Revision note: Based on § 42.206]

§ 125.289 Equipment for operations in icing conditions: airplanes.

(a) Unless an airplane is certificated under the transport category airworthiness requirements relating to ice protection, no person may operate an airplane in icing conditions unless it is equipped with means for the prevention or removal of ice on windshields, wings, empennage, propellers, and other parts of the airplane where ice formation will adversely affect the safety of the airplane.

(b) No person may operate an airplane in icing conditions at night unless means are provided for illuminating or otherwise determining the formation of ice on the parts of the wings that are critical from the standpoint of ice accumulation. Any illuminating means that is used must be of a type that will not cause glare or reflection that would handicap crewmembers in the performance of their duties.

[Revision note: Based on § 42.207]

§ 125.291 Equipment for operations over uninhabited terrain areas; airplanes.

Unless it has the following equipment, no air carrier or commercial operator may conduct an operation over an uninhabited area or any other area that (in its operations specifications) the Administrator specifies required equipment for search and rescue in case of an emergency:

(a) Suitable pyrotechnic signaling devices.

(b) One self-buoyant, water-resistant, portable emergency radio signaling device capable of transmission on the appropriate emergency frequency or frequencies and not dependent upon the airplane power supply.

(c) Enough survival kits, appropriately equipped for the route to be flown, for the number of occupants of the airplane.

[Revision note: Based on § 42.208]

§ 125.293 Equipment for operations on which specialized means of navigation are required: airplanes.

No person may conduct an operation for which specialized means of navigation are required unless it shows that adequate airborne equipment is provided for the specialized navigation authorized for the particular route to be operated.

[Revision note: Based on § 42.209]

§ 125.295 Flight recorders: airplanes.

(a) Unless the airplane is equipped with an approved flight recorder that records at least time, altitude, airspeed, vertical acceleration, and heading, no person may operate—

(1) A large airplane that is certificated for operations above 25,000 feet altitude; or

(2) Any large turbine-powered airplane.

(b) When an approved flight recorder is installed, it must be operated continuously from the instant the airplane begins the takeoff roll until it has completed the landing roll at an airport.

(c) Each carrier or commercial operator shall keep the recorded information for at least 60 days and for a longer period upon the request of the Administrator or the Civil Aeronautics Board for a particular flight or series of flights.

[Revision note: Based on § 42.210]

§ 125.297 Radio equipment: airplanes.

(a) No person may operate an airplane unless it is equipped with radio equipment required for the kind of operation being conducted.

(b) Where two independent (separate and complete) radio systems are required by §§ 125.299 through 125.303, each system must have an independent antenna installation except that, where rigidly supported nonwire antennas or other antenna installations of equivalent reliability are used, only one antenna is required.

[Revision note: Based on § 42.230]

§ 125.299 Radio equipment for operations under VFR over routes navigated by pilotage: airplanes.

(a) No person may operate an airplane under VFR over routes that can be navigated by pilotage, unless it is equipped with the radio equipment necessary under normal operating conditions to fulfill the following:

(1) Communicate with at least one appropriate ground station from any point on the route.

(2) Communicate with appropriate traffic control facilities from any point in the control zone within which flights are intended.

(3) Receive meteorological information from any point en route by either of two independent systems. One of the means provided to comply with this subparagraph may be used to comply with subparagraphs (1) and (2) of this paragraph.

(b) No person may operate an airplane at night under VFR over routes that can be navigated by pilotage unless that airplane is equipped with the radio equipment necessary under normal operating conditions to fulfill the functions specified in paragraph (a) of this section and to receive radio navigational signals applicable to the route flown, except that a marker beacon receiver or ILS receiver is not required.

[Revision note: Based on § 42.231]

§ 125.301 Radio equipment for operations under VFR over routes not navigated by pilotage or for operations under IFR or over-the-top: airplanes.

(a) No person may operate an airplane under VFR over routes that cannot be navigated by pilotage or for operations conducted under IFR or over-the-top, unless the airplane is equipped with that radio equipment necessary under normal operating conditions to fulfill the functions specified in § 125.299(a) and to receive satisfactorily by either of two independent systems, radio navigational signals from all primary en route and approach navigational facilities intended to be used. However, only one marker beacon receiver providing visual and aural signals and one ILS receiver need be provided. Equipment provided to receive signals en route may be used to receive signals on approach, if it is capable of receiving both signals.

(b) In the case of operation over routes on which navigation is based on low frequency radio range or automatic direction finding, only one low frequency radio range or ADF receiver need be installed if the airplane is equipped with two VOR receivers, and VOR navigational aids are so located and the airplane is so fueled that, in the case of failure of the low frequency radio range receiver or ADF receiver, the flight may proceed safely to a suitable airport, by means of VOR aids, and complete an instrument approach by use of the remaining airplane radio system.

(c) Whenever VOR navigational receivers are required by paragraph (a) or (b) of this section, at least one approved distance measuring equipment unit (DME), capable of receiving and indicating distance information from VORTAC facilities, must be installed on each airplane when operated within the 48 contiguous States and the District of Columbia at and above 24,000 feet MSL and must be installed on each of the following airplanes, regardless of the altitude flown, when operating within the 48 contiguous States and the District of Columbia after the indicated dates:

(1) Turbojet airplanes—June 30, 1963.

(2) Turboprop airplanes—December 31, 1963.

(3) Pressurized reciprocating engine airplanes—June 30, 1964.

(4) Other large airplanes—June 30, 1965.

(d) If the distance measuring equipment (DME) becomes inoperative en route, the pilot shall notify ATC of that failure as soon as it occurs.

[Revision note: Based on § 42.232]

§ 125.303 Radio equipment for extended overwater operations and for certain other operations: airplanes.

No person may conduct any of the following operations unless the airplane is equipped with the radio equipment necessary to comply with § 125.301 and an independent system that complies with § 125.299(a)(1):

(a) Extended overwater operations.

(b) Operations for which the Administrator finds the equipment to be necessary for search and rescue operations because of the character of the terrain to be flown over.

[Revision note: Based on § 42.233]

Subpart I—Maintenance and Preventive Maintenance

§ 125.321 Responsibility for maintenance and preventive maintenance.

Regardless of any arrangements with any other person for performing maintenance and preventive maintenance, each air carrier and commercial operator is primarily responsible for the airworthiness of its aircraft and required equipment.

[Revision note: Based on § 42.240]

§ 125.323 Maintenance and preventive maintenance requirements.

(a) Each air carrier and commercial operator (or person performing maintenance or preventive maintenance for it) shall perform maintenance, preventive maintenance, and alterations in accordance with Part ____ (present Part 18) of this chapter and the manual and operations specifications of that air carrier or commercial operator.

(b) Each person who is directly in charge of the maintenance or preventive maintenance of any airframe, engine, propeller, or appliance must hold an appropriate airman certificate.

[Revision note: Based on § 42.241 (less 1st sentence of (a))]

§ 125.325 Inspection organization.

Each air carrier and commercial operator (or person performing maintenance or preventive maintenance functions for it) shall maintain an adequate inspection organization that is responsible for determining that the workmanship, methods, and material used conform to the applicable regulations of this chapter with accepted standards and good practices, and that each airframe, engine, propeller, and appliance released to service is airworthy.

[Revision note: Based on § 42.241(a) (1st sentence)]

§ 125.327 Maintenance and preventive maintenance training program.

Each air carrier and commercial operator (or a person performing maintenance or preventive maintenance functions for it) shall have a training program to insure that all persons who determine the adequacy of work done are fully informed about procedures and techniques and new equipment in use and are competent to perform their duties.

[Revision note: Based on § 42.242]

§ 125.329 Maintenance and preventive maintenance personnel duty time limitation.

Within the United States, each air carrier and commercial operator (or person performing maintenance or preventive maintenance for it) shall relieve each individual performing maintenance or preventive maintenance from duty for a period of at least 24 consecutive hours during any seven consecutive days, or the equivalent thereof within any one month.

[Revision note: Based on § 42.243]

Subpart J—Airman and Crewmember Requirements

§ 125.341 Airman: limitations on use of services.

(a) No air carrier or commercial operator may use a person as an airman unless that person—

(1) Holds an appropriate current airman certificate issued by the FAA;

(2) Has appropriate current airman and medical certificates in his personal possession while engaged in operations under this Part; and

(3) Is otherwise qualified for the operation for which he is to be used.

(b) Each airman covered by paragraph (a) (2) of this section shall present either or both certificates for inspection upon the request of the Administrator.

(c) No air carrier or commercial operator may use the services of any person as a pilot on an airplane engaged in operations under this part if that person has reached his 60th birthday. No person may serve as a pilot on an airplane engaged in operations under this part if that person has reached his 60th birthday.

[Revision note: Based on § 42.260]

§ 125.345 Composition of flight crew.

(a) No air carrier or commercial operator may operate an aircraft with less than the minimum flight crew set forth in the airworthiness certificate or the aircraft flight manual approved for that type aircraft and required by this part for the kind of operation being conducted.

(b) In any case in which this part requires the performance of two or more functions for which an airman certificate is necessary, that requirement is not satisfied by the performance of multiple functions at the same time by one airman.

(c) If an air carrier or commercial operator is authorized to operate helicopters under IFR, or if it operates large airplanes, the minimum pilot crew is two pilots and the carrier or operator shall designate one pilot as pilot in command and the other second in command.

(d) On each flight requiring a flight engineer at least one flight crewmember, other than the flight engineer, must be qualified to provide emergency performance of the flight engineer's functions for the safe completion of the flight if the flight engineer becomes ill or is otherwise incapacitated. A pilot need not hold a flight engineer's certificate to perform the flight engineer's functions in such a situation.

[Revision note: Based on § 42.261]

§ 125.347 Flight engineer: airplanes.

(a) No air carrier or commercial operator may operate an airplane having a maximum certificated takeoff weight of more than 80,000 pounds without a flight crewmember holding a current flight engineer certificate.

(b) Such a flight crewmember is also required on each four-engine airplane having a maximum certificated takeoff weight of more than 30,000 pounds, if the Administrator determines that the design of the airplane or the kind of operation requires a flight engineer for safe operation.

[Revision note: Based on § 42.263]

§ 125.349 Flight navigator: airplanes.

(a) No air carrier or commercial operator may operate an airplane over any area, route, or route segment that is outside the 48 contiguous States, and the District of Columbia, without a crewmember holding a current flight navigator certificate, whenever the Administrator determines that celestial navigation is necessary or other specialized means of navigation necessary to obtain a reliable fix for the safety of the flight cannot be adequately accomplished from the pilot station for a period of more than one hour. However, the Administrator may also require a certificated flight navigator when those specialized means of navigation are necessary for one hour or less. In making that determination the Administrator considers—

(1) The speed of the airplane;

(2) Normal weather conditions en route;

(3) Extent of air traffic control;

(4) Traffic congestion;

(5) Area of land at destination;

(6) Fuel requirements;

(7) Fuel available for return to point of departure or alternates; and

(8) Predication of flight upon operation beyond the point-of-no-return.

(b) The routes or route segments over which a navigator is required are specified in the operations specifications of the air carrier or commercial operator.

[Revision note: Based on § 42.262]

§ 125.351 Flight attendants: airplanes.

(a) Except as provided in paragraph (b) of this section, each air carrier and commercial operator conducting a passenger operation shall provide at least the following flight attendants on each airplane used:

(1) For airplanes having a seating capacity of at least 10 but less than 45 passengers—one flight attendant.

(2) For airplanes having a seating capacity of at least 45 but less than 101 passengers—two flight attendants.

(3) For airplanes having a seating capacity of more than 100 passengers—three flight attendants.

(b) Upon application by the air carrier or commercial operator, the Administrator may approve the use of an airplane in a particular operation with less than the number of flight attendants required by paragraph (a) of this section, if the air carrier or commercial operator shows that, based on the following, safety and emergency procedures and functions established under § 125.355 for the particular type of airplane and operation can be adequately performed by fewer flight attendants:

(1) Kind of operation.

(2) The number of passenger seats.

(3) The number of compartments.

(4) The number of emergency exits.

(5) Emergency equipment.

(6) The presence of other trained flight crewmembers, not on flight deck duty, whose services may be used in emergencies.

[Revision note: Based on § 42.265]

§ 125.355 Emergency and emergency evacuation duties: airplanes.

(a) Each air carrier and commercial operator of airplanes shall assign to each required crewmember the necessary functions that he is to perform in an emergency or a situation requiring emergency evacuation. The air carrier or commercial operator shall assign those functions for each type of airplane that it uses and shall show that those functions are realistic and can be accomplished.

(b) The air carrier or commercial operator shall describe each required crewmember's functions under paragraph (a) of this section in its manual.

(c) The air carrier or commercial operator shall train each required crewmember in his functions under paragraph (a) of this section during the emergency training part of the approved training program prescribed in § 125.371.

[Revision note: Based on § 42.267]

Subpart K—Training Program: Airplanes

§ 125.371 Establishment.

(a) Each air carrier and commercial operator shall have an approved training program that insures that each crew-

member is adequately trained to perform his assigned duties. Each crewmember must satisfactorily complete the initial training phases before serving in operations under this part.

(b) Each air carrier and commercial operator shall provide adequate ground and flight training facilities and properly qualified instructors for the training required by this section, and enough check airmen to conduct the flight checks required by this part. Each check airmen must hold the airman certificates and ratings that are required for the airman being checked.

(c) The training program for each flight crewmember must consist of appropriate ground and flight training, including proper flight crew coordination and training in emergency procedures. The air carrier or commercial operator shall standardize procedures for each flight crew function to the extent that each flight crewmember knows the functions for which he is responsible and the relation of those functions to the functions of other flight crewmembers. The initial program must include at least the requirements set forth in §§ 125.373 through 125.380.

(d) The crewmember emergency procedures training program must include at least the requirements set forth in § 125.380.

(e) Each instructor, supervisor, or check airman that is responsible for a particular training check or flight check shall certify as to the proficiency of the crewmember concerned after he completes his initial training and after he completes his recurrent training. That certification shall be made a part of the crewmember record.

[Revision note: Based on § 42.280]

§ 125.373 Ground training: pilots.

(a) Each air carrier and commercial operator shall provide at least the following initial ground training for each pilot before he serves as a flight crewmember:

(1) Instruction in the appropriate provisions of the carrier's or operator's operations specifications and of this chapter, especially the operating and flight release rules and airplane operating limitations.

(2) Flight release procedures and appropriate contents of the manuals.

(3) Duties and responsibilities of crewmembers.

(4) The type of airplane to be flown, including a study of the airplane, engines, major components and systems, performance limitations, standard and emergency operating procedure, and appropriate contents of the approved Airplane Flight Manual.

(5) Principles and methods for determining weight and balance limitations for takeoff and landing.

(6) Navigation and the use of appropriate navigation aids, including instrument approach facilities and procedures that the air carrier or commercial operator is authorized to use.

(7) Air traffic control systems and procedures, and pertinent ground control letdown procedures.

(8) Enough meteorology to insure a practical knowledge of the principles of icing, fog, thunderstorms, and frontal systems.

(9) Procedures for operating in turbulent air, icing, hail, thunderstorm, and other potentially hazardous meteorological conditions.

(10) Communications procedures and communications equipment failure procedures.

(b) Each air carrier and commercial operator shall provide each pilot—

(1) That additional ground training necessary to insure qualifications in new equipment, procedures, or techniques; and

(2) Recurrent ground training and checks at least once every twelve months (a check may be given during the month before or after it is due without affecting its effective date) to insure his continued proficiency in procedures, techniques, and information essential to the satisfactory performance of his duties.

[Revision note: Based on § 42.281]

§ 125.375 Flight training: pilots.

(a) The initial flight training that the air carrier and commercial operator must provide for each pilot before he serves as a flight crewmember must include at least—

(1) Takeoffs and landings during day and night in each type of airplane he is to pilot in operations under this part;

(2) Normal and emergency flight maneuvers in each type of airplane he is to pilot in operations under this part; and

(3) Flight under simulated instrument conditions.

(b) A pilot qualifying to serve as other than pilot in command or second in command, shall show the Administrator or a check pilot that he is able to take off and land each type of airplane in which he is to serve.

(c) Initial flight training for each pilot qualifying to serve as a pilot in command (or second in command of an airplane in an operation that requires three or more pilots) must include flight instruction and practice in at least the following maneuvers and procedures:

(1) In each type of airplane to be flown by him in operations under this part, he must perform the following:

(i) Takeoffs at the authorized maximum takeoff weight using maximum takeoff power with a simulated failure of the critical engine. In transport category airplanes the simulated failure must be done as close as possible to the critical engine failure speed (V_1) and climbout must be made as close as possible to the takeoff safety speed (V_2), the pilot determining the values for (V_1) and (V_2).

(ii) If a three-engine or four-engine airplane, flight (including maneuvering to a landing) at the authorized maximum landing weight, where appropriate, with the most critical combination of two engines inoperative, or operating at zero thrust, using appropriate climb speeds set forth in the airplane flight manuals.

(iii) At the authorized maximum landing weight, simulated pull-out from the landing and approach configuration at a safe altitude with the critical engine inoperative or operating at zero thrust.

(2) Flight must be conducted under simulated IFR conditions using each kind of navigation facility and letdown procedure that is used in normal operations. If a particular kind of facility is not available in the training area, the training may be given in a synthetic trainer.

For the purposes of subparagraph (1) of this paragraph, weight and power combinations less than those specified in subdivisions (i), (ii), and (iii) of that subparagraph may be used if the performance capabilities of this airplane under the specified conditions are simulated.

(d) Initial flight training for each pilot qualifying to serve as second in command of an airplane that requires two pilots must include flight instruction and practice in at least the maneuvers and procedures in subparagraphs (1) and (2) of this paragraph:

(1) In each type of airplane to be flown by him in operations under this part, flight training must include—

(i) Assigned flight duties as second in command; including flight emergencies;

(ii) Taxiing;

(iii) Takeoffs and landings;

(iv) Climbs and climbing turns;

(v) Slow flight;

(vi) Approach to stall;

(vii) Engine shutdown and restart;

(viii) Takeoff and landing with simulated engine failure; and

(ix) Flight under simulated IFR conditions, including instrument approach at least down to circling approach minimums and missed approach procedures.

(2) Flight must be conducted under simulated IFR conditions using each kind of navigation facility and letdown procedure that is used in normal operations. Except for those approach procedures for which the lowest minimums are approved, letdown procedures may be given in a synthetic trainer that has the radio equipment and instruments necessary to simulate other navigational and letdown procedures approved for the air carrier or commercial operator.

(e) The air carrier or commercial operator shall give each pilot any additional flight training necessary to insure his qualification for new equipment, procedures, or techniques. At least once each 12 months, as a part of the training program, it shall give him recurrent flight training and checks (a check may be given during the month before or after it is due without affecting its effective date) to insure his continued proficiency with respect to procedures, techniques, and information essential to the satisfactory performance of his duties. If the check of a pilot in command or second in command requires actual flight, satisfactory completion of the applicable proficiency checks required by § 125.397 or 125.403 meets the requirements of this section.

[Revision note: Based on § 42.282]

§ 125.377 Flight navigator training.

(a) The training for each flight navigator must include at least the applicable parts of subparagraphs (1) through (4) and (6) through (8) of § 125.373(a).

(b) Before serving as a flight crewmember, each flight navigator must have

enough ground and flight training to be proficient in the duties assigned to him by the air carrier or commercial operator. The flight training may be given during flights subject to this part under the supervision of a qualified flight navigator.

(c) The air carrier or commercial operator shall give each flight navigator any additional ground and flight training necessary to insure his qualification for new equipment, procedures, and techniques. At least once within the preceding 12 months, as a part of the training program, it shall give him recurrent ground training and a flight check to insure his continued proficiency with respect to procedures, techniques, and information essential to the satisfactory performance of his duties. The flight check may be given during passenger or cargo flights under the supervision of a qualified navigator, or in a synthetic trainer in place of a check in flight. A competence check may be given during the month before or the month after it is due without affecting its effective date.

[Revision note: Based on § 42.283]

§ 125.379 Flight engineer training.

(a) The training for each flight engineer must include at least the applicable parts of subparagraphs (1) through (5) of § 125.373(a).

(b) Before serving as a flight crewmember, each flight engineer must have enough flight training to be proficient in the duties assigned to him by the air carrier or commercial operator. Except for emergency procedures, the flight training may be given during flights subject to this part under the supervision of a qualified flight engineer.

(c) The air carrier or commercial operator shall give each flight engineer any additional ground and flight training necessary to insure his qualification for new equipment, procedures, and techniques. At least once each 12 months, as a part of the training program, it shall give him recurrent ground training and a flight check to assure his continued proficiency with respect to procedures, techniques, and information essential to the satisfactory performance of his duties. Except for emergency procedures, the flight check may be given during flights subject to this part under the supervision of a qualified flight engineer, or the entire check may be given in a synthetic trainer in place of a check in flight. A competence check may be given during the month before or the month after it is due without affecting its effective date.

[Revision note: Based on § 42.284]

§ 125.380 Crewmember emergency training.

(a) Each air carrier and commercial operator shall design its initial training in emergency procedures to give each required crewmember appropriate individual instruction in emergency procedures, including assignments in an emergency and coordination among crewmembers and individual instruction appropriate to their duties as a crewmember in at least the following subjects:

(1) Procedures for failure of an engine, engines, or other airplane components or systems.

(2) Procedures for—

(i) Emergency decompression;

(ii) Fire in the air or on the ground;

(iii) Ditching; and

(iv) Evacuation.

(3) The location of emergency equipment.

(4) The operation of emergency equipment.

(5) The power setting for maximum endurance and maximum range.

(b) The air carrier or commercial operator shall give each crewmember, at least once each 12 months, recurrent training in the emergency procedures set forth in paragraph (a) of this section, and shall place evidence of the completion of that training in the crewmember's records.

(c) Synthetic trainers that simulate flight operating emergency conditions may be used for training crewmembers in emergency procedures.

(d) The air carrier or commercial operator shall give instruction to each crewmember performing duties on pressurized airplanes operated above 25,000 feet by lectures and films, or other equivalent means approved after demonstration, covering at least—

(1) Respiration;

(2) Hypoxia;

(3) Duration of consciousness at altitudes without supplemental oxygen;

(4) Gas expansion;

(5) Gas bubble formation; and

(6) Physical phenomena and incidents of decompression.

(e) The air carrier or commercial operator shall give each crewmember performing duties on pressurized airplanes operated above 25,000 feet training and practice in putting on oxygen masks and operating oxygen equipment.

[Revision note: Based on § 42.285]

Subpart L—Flight Crewmember Qualification

§ 125.391 General.

(a) No air carrier or commercial operator may use a flight crewmember, and none of its flight crewmembers may perform duties under his airman certificate unless—

(1) For airplane operations, he meets the appropriate requirements of Subpart K of this part and § 125.395; or

(2) For helicopter operations, he meets the requirements of §§ ____ or ____, and ____ and ____ (§§ 46.280 or 46.289 and 46.301 and 46.302).

(b) When a pilot completes a check required by this subpart the check airman who is responsible for the particular check shall certify as to the pilot's proficiency. This certification shall be made a part of the pilot's record.

(c) If a flight crewmember who is required to take a check takes that check in the calendar month before, or the calendar month after, the month in which it becomes due, he is considered to have taken it during the month it became due.

[Revision note: Based on § 42.300(a) (1st sentence) and (b)]

§ 125.393 Pilot qualification: certificates required.

(a) No pilot may act as pilot in command of an aircraft (or as second in command of an aircraft in an operation that requires three or more pilots) unless he holds an airline transport pilot certificate and an appropriate type rating for that aircraft.

(b) Each pilot who acts as a pilot in a capacity other than those specified in paragraph (a) of this section must hold at least a commercial pilot certificate and an instrument rating.

[Revision note: Based on § 42.300 (less 1st sentence of (a) and less (b))]

§ 125.395 Pilot qualification: airplanes; recent experience.

No air carrier or commercial operator may use a pilot as a pilot in command or second in command unless, within the preceding 90 days, he has made at least three takeoffs and landings in an airplane of the type in which he is to serve.

[Revision note: Based on § 42.301]

§ 125.397 Pilot checks: airplanes.

(a) *Line check.* No air carrier or commercial operator may use a pilot as pilot in command of an airplane until he has passed a line check in one of the types of airplanes that he is to fly. Thereafter he may not serve as a pilot in command unless each 12 months he passes a similar line check. The check must be given by a check pilot who is qualified on the airplane. The check must consist of at least one flight over a part of a Federal airway, foreign airway, or advisory route over which the pilot may be assigned. It must be long enough for the check pilot to determine whether the pilot being checked satisfactorily performs the duties and responsibilities of a pilot in command.

(b) *Proficiency check.* No air carrier or commercial operator may use a pilot as a pilot in command of an airplane unless he has satisfactorily shown to the Administrator or a check pilot that he is able to pilot and navigate airplanes that he is to fly. Thereafter he may not serve as a pilot in command unless each six months he passes a similar pilot proficiency check. If a pilot serves in more than one airplane type, at least each alternate check must be given in flight in the largest type of airplane in which he serves. The proficiency check must include the following:

(1) Equipment test (oral or written).

(2) Taxiing.

(3) Runup.

(4) Takeoff.

(5) Climb.

(6) Climbing turns.

(7) Steep turns.

(8) Maneuvers at minimum speeds.

(9) Approaches to stalls.

(10) Propeller feathering.

(11) Maneuvers with one or more engine(s) inoperative.

(12) Rapid descent and pullout.

(13) Radio tuning.

(14) Orientation.

(15) Approach procedures.

(16) Missed approach procedures.

(17) Traffic control procedures.

(18) Crosswind landings.

(19) Landing under circling approach conditions.

(20) Takeoffs and landings with engine(s) failure.

(21) Demonstration of pilot judgment.

(22) Emergency procedures.

(23) Flight maneuvers specified in § 125.375(c)(1), except that the simulated engine failure during takeoff need not be at speed V_1 or at the actual or simulated maximum authorized weight.

(24) Approved flight maneuvers under simulated instrument conditions using the navigation facilities and letdown procedures normally used by the pilot, except that maneuvers other than those associated with approach procedures for which the lowest minimums are approved may be given in a synthetic trainer that contains the radio equipment and instruments necessary to simulate other navigational and letdown procedures approved for the air carrier or commercial operator.

(c) If, in the judgment of the check pilot, the pilot being checked performs any of the items listed in paragraph (b) of this section in an unsatisfactory manner, the check pilot may give additional training to the pilot during the course of the proficiency check. If, after that training, the pilot being checked is still unable to demonstrate satisfactory performance to the check pilot, the air carrier or commercial operator may not use him in operations under this Part until he has satisfactorily shown his proficiency.

(d) *Use of flight simulator.* After the first proficiency check, the satisfactory completion of an approved training course in an approved airplane simulator may be substituted at alternate six-month intervals for the proficiency check required by paragraph (b) of this section, if the simulator meets the requirements of Appendix B of this part and—

(1) The simulator is maintained at the same level as required for initial approval;

(2) A functional preflight check of the simulator is performed each day before beginning simulator flight training or proficiency checks;

(3) A daily discrepancy log is kept and an entry of each discrepancy is made by the simulator instructor or check airman before the end of each training or check flight; and

(4) If a modification is made to the airplane, a corresponding modification is made to the simulator if necessary for flight crew training or proficiency checks.

The simulator may be used with inoperative instruments or equipment, if they are not applicable to the particular phase of training being given.

(e) Before serving as a pilot in command on any airplane, the pilot must have passed, during the preceding 12 months, either a proficiency check or a line check in that type of airplane.

[Revision note: Based on § 42.302]

§ 125.399 Pilot in command qualification: routes and airports.

(a) Each air carrier and commercial operator shall establish in its manual a procedure whereby each pilot who has not flown over a route and into an airport within the preceding 60 days will certify on a form provided by the operator that he has studied and knows the subjects listed in paragraph (b) of this section in regard to the routes and airports into which he is to operate.

(b) Each qualifying pilot shall show that he has adequate knowledge of the following:

(1) Weather characteristics appropriate to the seasons.

(2) Navigation facilities.

(3) Communication procedures.

(4) Kinds of terrain and obstruction hazards.

(5) Minimum safe flight levels.

(6) Pertinent air traffic control procedures including terminal area, arrival, departure, and holding and all kinds of instrument approach procedures.

(7) Congested areas, obstructions, and physical layout of each airport in the terminal area in which the pilot will operate.

[Revision note: Based on § 42.303]

§ 125.403 Proficiency checks: second in command: airplanes.

(a) An air carrier or commercial operator may not use a pilot as second in command unless he has satisfactorily shown to the Administrator or a check pilot that he is able to pilot and navigate airplanes that he is to fly and to perform his assigned duties. Thereafter, he may not serve as second in command unless each 12 months he satisfactorily completes a similar pilot proficiency check.

(b) If a pilot serves in more than one airplane type, at least each alternate check must be given in flight in the largest type of airplane in which he serves.

(c) The proficiency check must include at least an oral or written equipment test and the procedures and flight maneuvers specified in § 125.375(d)(1). The check may be given from either the right or left pilot seat.

(d) After the initial check, satisfactory completion of an approved course of training in an aircraft simulator that meets the requirements of § 125.397(d) may be substituted at alternate 12-month intervals for the checks required by paragraphs (a) of this section. In addition, satisfactory completion of the proficiency check in accordance with § 125.397 (b), (c), and (d) meets the requirements of this section.

(e) The proficiency check for the second in command of a required three-pilot crew is that set forth in § 125.397 (b), (c), and (d).

[Revision note: Based on § 42.305]

§ 125.405 Flight navigator qualification: airplanes.

(a) No air carrier or commercial operator may use a flight navigator unless, within the preceding 12-month period, he has had at least 50 hours of flight time as a flight navigator, or the air carrier or commercial operator or the Administrator has checked him (including a check in flight or in an approved synthetic trainer) and has determined that he is familiar with essential current navigation information pertaining to routes to be flown by him and that he is competent in the operating procedures and navigation equipment to be used.

(b) An air carrier or commercial operator may check a flight navigator during a flight subject to this part, but it may not assign him as a required flight crewmember on that flight.

[Revision note: Based on § 42.306]

§ 125.407 Flight engineer qualification: airplanes.

(a) No air carrier or commercial operator may use a flight engineer unless, within the preceding six-month period, he has had at least 50 hours of flight time as a flight engineer on the type of airplane in which he is to serve, or the air carrier or commercial operator or the Administrator has checked him (in a flight other than a flight under this Part) and has determined that he is familiar with all essential current information and operating procedures for the type of airplane to which he is assigned and is competent in that airplane.

(b) If a flight engineer has been previously qualified in the type of airplane in which he is to serve, the air carrier or commercial operator may give the check in an approved synthetic trainer in place of the flight check.

[Revision note: Based on §42.307]

Subpart M—Flight Time Limitations

§ 125.411 Flight time limitations: helicopters.

No air carrier or commercial operator may schedule a flight crewmember for duty aloft in helicopter operations subject to this part, or in any other commercial flying, that would exceed the flight time limitations prescribed in § _____ (present § 46.320).

[Revision note: Based on § 42.315]

§ 125.421 Flight time limitations: pilots: airplanes.

(a) An air carrier or commercial operator may schedule a pilot to fly in an airplane for eight hours or less during any 24 consecutive hours without a rest period during those eight hours.

(b) Each pilot who has flow more than eight hours during any 24 consecutive hours must be given at least 16 hours of rest before being assigned to any duty with the air carrier or commercial operator.

(c) Each air carrier and commercial operator shall relieve each pilot from all duty for at least 24 consecutive hours at least once during any seven consecutive days.

(d) No pilot may fly as a crewmember in air carrier service more than 100 hours during any 30 consecutive days.

(e) No pilot may fly as a crewmember in air carrier service more than 1,000 hours during any calendar year.

[Revision note: Based on § 42.317(a) (less (6) and (7))]

§ 125.423 Flight time limitations: two pilot crews: airplanes.

(a) If an air carrier or commercial operator schedules a pilot to fly more than eight hours during any 24 consecutive hours, it shall give him an intervening rest period at or before the

end of eight scheduled hours of flight duty. This rest period must be at least twice the number of hours flown since the preceding rest period, but not less than eight hours. The air carrier or commercial operator shall relieve that pilot of all duty with it during that rest period.

(b) No pilot of an airplane that has a crew of two pilots may be on duty for more than 16 hours during any 24 consecutive hours.

[Revision note: Based on § 42.317(b)]

§ 125.425 Flight time limitations: three pilot crews: airplanes.

(a) No air carrier or commercial operator may schedule a pilot—

(1) For flight deck duty in an airplane that has a crew of three pilots for more than eight hours in any 24 consecutive hours; or

(2) To be aloft in an airplane that has a crew of three pilots for more than 12 hours in any 24 consecutive hours.

(b) No pilot of an airplane that has a crew of three pilots may be on duty for more than 18 hours in any 24 consecutive hours.

[Revision note: Based on § 42.317(c)]

§ 125.427 Flight time limitations: four pilot crews: airplanes.

(a) No air carrier or commercial operator may schedule a pilot—

(1) For flight deck duty in an airplane that has a crew of four pilots for more than eight hours in any 24 consecutive hours; or

(2) To be aloft in an airplane that has a crew of four pilots for more than 16 hours in any 24 consecutive hours.

(b) No pilot of an airplane that has a crew of four pilots may be on duty for more than 20 hours in any 24 consecutive hours.

[Revision note: Based on § 42.317 (less (a), (b), and (c))]

§ 125.429 Flight time limitations: flight engineers: airplanes.

(a) In any operation in which one flight engineer is serving the flight time limitations in §§ 125.421 and 125.423 apply to that flight engineer.

(b) In any operation in which more than one flight engineer is serving and the flight crew contains more than two pilots the flight time limitations in § 125.427 apply in place of those in § 125.423.

[Revision note: Based on § 42.318]

§ 125.431 Flight time limitations: overseas and international operations: airplanes.

In place of the flight time limitations in §§ 125.421 through 125.429, an air carrier or commercial operator may elect to comply with the flight time limitations of §§ 125.433 and 125.439 through 125.443 for operations conducted—

(a) Between a place in the 48 contiguous States and the District of Columbia; or Alaska, and any place outside thereof;

(b) Between any two places outside the 48 contiguous States, the District of Columbia, and Alaska; or

(c) Between two points within the State of Alaska or the State of Hawaii.

[Revision note: Based on § 42.319]

§ 125.433 Flight time limitations: all airmen: airplanes.

No airman may be aloft as a flight crewmember more than 1,000 hours in any 12-month period.

[Revision note: Based on § 42.320(a)]

§ 125.435 Flight time limitations: other commercial flying: airplanes.

No airman who is employed by an air carrier or commercial operator may do any other commercial flying, if that commercial flying plus his flying in operations under this part will exceed any flight time limitation in this part.

[Revision note: Combines §§ 42.317(a)(6) and 42.320 (less (a) and (b))]

§ 125.437 Flight time limitations: deadhead transportation: airplanes.

Time spent by an airman in deadhead transportation to or from a duty assignment is not considered to be part of any rest period.

[Revision note: Combines §§ 42.317(a)(7) and 42.320(b)]

§ 125.439 Flight time limitations: crew of two pilots and one additional airman as required.

(a) No air carrier or commercial operator may schedule an airman to be aloft in an airplane that has a crew of two pilots and at least one additional crewmember for more than 12 hours during any 24 consecutive hours.

(b) If an airman has been aloft as a member of a flight crew for 20 or more hours during any 48 consecutive hours or 24 or more hours during any 72 consecutive hours, he must be given at least 18 hours of rest before being assigned to any duty with the air carrier or commercial operator. In any case, he must be relieved of all duty for at least 24 consecutive hours during any seven consecutive days.

(c) No airman may be aloft as a flight crewmember more than—

(1) 120 hours during any 30 consecutive days; or

(2) 300 hours during any 90 consecutive days.

[Revision note: Based on § 42.321]

§ 125.441 Flight time limitations: crew of three or more pilots and additional airmen as required.

(a) No air carrier or commercial operator may schedule an airman for flight deck duty as a flight engineer, or navigator in a crew of three or more pilots and additional airmen for a total of more than 12 hours during any 24 consecutive hours.

(b) Each air carrier and commercial operator shall schedule its flights hours to provide adequate rest periods on the ground for each airman who is away from his principal operations base. It shall also provide adequate sleeping quarters on the airplane whenever an airman is scheduled to be aloft as a member of a flight crew for more than 12 hours during any 24 consecutive hours.

(c) No air carrier or commercial operator may schedule any flight crewmember to be on continuous duty for more than 30 hours. Such a crewmember is considered to be on continuous duty from the time he reports for duty until the time he is released from duty for a rest period of at least 10 hours on the ground. If a flight crewmember is on continuous duty for more than 24 hours (whether scheduled or not) duty any scheduled duty period, he must be given at least 16 hours for rest on the ground after completing the last flight scheduled for that scheduled duty period before being assigned any further flight duty.

(d) If a flight crewmember is required to engage in deadhead transportation for more than four hours before beginning flight duty, one half of the time spent in deadhead transportation must be treated as duty time for the purpose of complying with duty time limitations, unless he is given at least 10 hours of rest on the ground before being assigned to flight duty.

(e) Each air carrier and commercial operator shall give each airman, upon return to his operations base from any flight or series of flights, a rest period that is at least twice the total number of hours he was aloft as a member of a flight crew since the last rest period at his base, before assigning him to any further duty. If the required rest period is more than seven days, that part of the rest period that is more than seven days may be given at any time before the pilot is again scheduled for flight duty.

(f) No airman may be aloft as a flight crewmember for more than 350 hours in any 90 consecutive days.

[Revision note: Based on § 42.322]

§ 125.443 Flight time limitations: pilots serving in more than one kind of flight crew.

(a) This section applies to each pilot assigned during any 30 consecutive days to more than one type of flight crew.

(b) The flight time limitations for a pilot who is assigned to duty aloft for more than 20 hours in two-pilot crews in 30 consecutive days, or whose assignment in such a crew is interrupted more than once in any 30 consecutive days by assignment to a crew of two or more pilots and an additional flight crewmember, are those listed in §§ 125.421 through 125.427, as appropriate.

(c) Except for a pilot covered by paragraph (b) of this section, the flight time limitations for a pilot assigned to duty aloft for more than 20 hours in two-pilot and additional flight crewmember crews in 30 consecutive days or whose assignment in such a crew is interrupted more than once in any 30 consecutive days by assignment to a crew consisting of three pilots and an additional flight crewmember, are those set forth in § 125.439.

(d) The flight time limitations for a pilot to whom paragraphs (b) and (c) of this section do not apply, and who is assigned to duty aloft for a total of not more than 20 hours within 30 consecutive days in two-pilot crews (with or without additional flight crewmembers) are those set forth in § 125.441.

(e) The flight time limitations for a pilot assigned to each of two-pilot, two-pilot and additional flight crewmember, and three-pilot and additional flight crewmember crews in 30 consecutive

days, and who is not subject to paragraph (b), (c), or (d) of this section, are those listed in § 125.441.

[Revision note: Based on § 42.323]

Subpart N—Flight Operations

§ 125.451 Responsibility for operational control.

(a) Each air carrier and commercial operator—

(1) Is responsible for operational control; and

(2) Shall list each person authorized by it to exercise operational control in its operator's manual.

(b) The pilot in command and the director of operations are jointly responsible for the initiation, continuation, diversion, and termination of a flight in compliance with this chapter and the operations specifications. The director of operations may delegate the functions for the initiation, continuation, diversion, and termination of a flight but he may not delegate the responsibility for those functions.

(c) The director of operations is responsible for canceling, diverting, or delaying a flight if in his opinion or the opinion of the pilot in command the flight cannot operate or continue to operate safely as planned or released. The director of operations is responsible for assuring that each flight is monitored with respect to at least the following:

(1) Departure of the flight from the place of origin and arrival at the place of destination, including intermediate stops and any diversions therefrom.

(2) Maintenance and mechanical delays encountered at places of origin and destination and intermediate stops.

(3) Any known conditions that may adversely affect the safety of flight.

(d) Each pilot in command of an aircraft is, during flight time, in command of the aircraft and crew and is responsible for the safety of the passengers, crewmembers, cargo, and aircraft. The pilot in command has full control and authority in the operation of the aircraft, without limitation, over other crewmembers and their duties during flight time, whether or not he holds valid certificates authorizing him to perform the duties of those crewmembers.

(e) Each pilot in command of an aircraft is responsible for the preflight planning and the operation of the flight in compliance with this chapter and the operations specifications.

(f) No pilot may operate an aircraft in a careless or reckless manner so as to endanger life or property.

[Revision note: Combines §§ 42.350 and 42.352]

§ 125.453 Operations notices.

Each air carrier and commercial operator shall notify its appropriate operations personnel of each change in equipment and operating procedures, including each known change in the use of navigation aids, airports, air traffic control procedures and regulations, local airport traffic control rules, and known hazards to flight, including icing and other potentially hazardous meteorological conditions and irregularities in ground and navigation facilities.

[Revision note: Based on § 42.353]

§ 125.455 Flight crewmembers at controls.

Each required flight crewmember on flight deck duty shall remain at his station while the aircraft is taking off or landing, and while it is en route except when the absence of one member is necessary for the performance of duties in connection with operating the aircraft. Each flight crewmember shall keep his seat belt fastened when at his station.

[Revision note: Based on § 42.354]

§ 125.457 Manipulation of controls.

No person may manipulate the flight controls of an aircraft during flight unless he is—

(a) A qualified pilot employed by the air carrier or commercial operator operating that aircraft;

(b) An authorized pilot safety representative of the Administrator or of the Civil Aeronautics Board who has the permission of the pilot in command, is qualified in the aircraft, and is checking flight operations; or

(c) A pilot employed by another air carrier or commercial operator who has the permission of the pilot in command, is qualified in the aircraft, and is authorized by the air carrier or commercial operator operating the aircraft.

[Revision note: Based on § 42.355]

§ 125.459 Admission to flight deck.

(a) No person may admit any person to the flight deck of an aircraft unless the person being admitted is—

(1) A crewmember;

(2) An FAA air carrier inspector, or an authorized representative of the Civil Aeronautics Board, who is performing official duties;

(3) An employee of the United States, an air carrier or commercial operator, or an aeronautical enterprise who has the permission of the pilot in command and whose duties are such that admission to the flight deck is necessary or advantageous for safe operations; or

(4) Any person who has the permission of the pilot in command and is specifically authorized by the air carrier or commercial operator management and by the Administrator.

Subparagraph (2) of this paragraph does not limit the emergency authority of the pilot in command to exclude any person from the flight deck in the interests of safety.

(b) For the purposes of paragraph (a)(3) of this section, employees of the United States who deal responsibly with matters relating to safety and employees of the air carrier or commercial operator whose efficiency would be increased by familiarity with flight conditions, may be admitted by the air carrier or commercial operator. However, the air carrier or commercial operator may not admit employees of traffic, sales, or other departments that are not directly related to flight operations, unless they are eligible under subparagraph (a)(4) of this section.

(c) No person may admit any person to the flight deck unless there is a seat available for his use in the passenger compartment, except—

(1) An FAA air carrier inspector or an authorized representative of the Administrator or Civil Aeronautics Board who is checking or observing flight operations;

(2) An air traffic controller who is authorized by the Administrator to observe ATC procedures;

(3) A certificated airman employed by the air carrier or commercial operator whose duties require an airman's certificate;

(4) A certificated airman employed by another air carrier or commercial operator whose duties with that air carrier or commercial operator require an airman's certificate and who is authorized by the air carrier or commercial operator operating the airplane to make specific trips over a route;

(5) An employee of the air carrier or commercial operator operating the airplane whose duty is directly related to the conduct or planning of flight operations, or the in-flight monitoring of aircraft equipment or operating procedures, if his presence on the flight deck is necessary to perform his duties and he has been authorized in writing by a responsible supervisor, listed in the Operations Manual as having that authority; and

(6) A technical representative of the manufacturer of the aircraft or its components whose duties are directly related to the in-flight monitoring of aircraft equipment or operating procedures, if his presence on the flight deck is necessary to perform his duties, and he has been authorized in writing by the Administrator and by a responsible supervisor of the operations department of the air carrier or commercial operator, listed in the Operations Manual as having that authority.

[Revision note: Based on § 42.356]

§ 125.461 Flying equipment.

(a) The pilot in command shall insure that appropriate aeronautical charts containing adequate information concerning navigation aids and instrument approach procedures are aboard the airplane for each flight.

(b) Each crewmember shall, on each flight, have readily available for his use a flashlight that is in good working order.

[Revision note: Based on § 42.357]

§ 125.463 Restriction or suspension of operation.

When an air carrier, commercial operator, or pilot in command knows of conditions, including airport and runway conditions, that are a hazard to safe operations, it shall restrict or suspend operations until those conditions are corrected.

[Revision note: Based on § 42.358]

§ 125.467 Emergencies.

(a) In an emergency situation that requires immediate decision and action, the pilot in command may take any action that he considers necessary under

the circumstances. In such a case, he may deviate from prescribed operations, procedures and methods, weather minimums, and this chapter, to the extent required in the interests of safety.

(b) In an emergency situation arising during flight that requires immediate decision and action by appropriate management personnel in the case of operations conducted with a flight following service and which is known to them, those personnel shall advise the pilot in command of the emergency, shall ascertain the decision of the pilot in command, and shall have the decision recorded. If they cannot communicate with the pilot, they shall declare an emergency and take any action that they consider necessary under the circumstances.

(c) Whenever emergency authority is exercised, the pilot in command or the appropriate management personnel shall keep the appropriate ground radio station fully informed of the progress of the flight. The person declaring the emergency shall send a written report of any deviation, through the air carrier's or commercial operator's director of operations, to the Administrator within 10 days after the flight is completed or, in the case of operations outside the United States, upon return to the home base.

[Revision note: Based on § 42.360]

§ 125.469 Reporting potentially hazardous meteorological conditions and irregularities of ground and navigation facilities.

(a) Whenever he encounters a meteorological condition or an irregularity in a ground or navigational facility, in flight, the knowledge of which he considers essential to the safety of other flights, the pilot in command shall notify an appropriate FAA communications station or a ground radio station as soon as practicable.

(b) The ground radio station that is notified under paragraph (a) of this section shall report the information to the appropriate agency of the United States.

[Revision note: Based on § 42.361]

§ 125.471 Reporting mechanical irregularities.

The pilot in command shall enter or have entered in the maintenance log of the aircraft each mechanical irregularity that comes to his attention during flight time. Before each flight, he shall ascertain the status of each irregularity entered in the log at the end of the preceding flight.

[Revision note: Based on § 42.362]

§ 125.473 Engine inoperative; landing; reporting: airplanes.

(a) Except as provided in paragraph (b) of this section, whenever an engine of an airplane fails or whenever the rotation of an engine is stopped to prevent possible damage, the pilot in command shall land the airplane at the nearest suitable airport, in point of time, at which a safe landing can be made.

(b) If not more than one engine of an airplane that has three or more engines fails or its rotation is stopped, the pilot in command may proceed to an airport that he selects if, after considering the following, he decides that proceeding to that airport is as safe as landing at the nearest suitable airport:

(1) The nature of the malfunction and the possible mechanical difficulties that may occur if flight is continued.

(2) The altitude, weight, and usable fuel at the time of engine stoppage.

(3) The weather conditions en route and at possible landing points.

(4) The air traffic congestion.

(5) The kind of terrain.

(6) His familiarity with the airport to be used.

(c) The pilot in command shall report each stoppage of engine rotation in flight to the appropriate ground radio station as soon as practicable and shall keep that station fully informed of the progress of the flight.

(d) If the pilot in command lands at an airport other than the nearest suitable airport, in point of time, he shall (upon completing the trip) send a written report, in duplicate, to his operations manager or director of operations, as appropriate, stating his reasons for determining that his selection of an airport, other than the nearest airport, was as safe a course of action as landing at the nearest suitable airport. The air carrier or commercial operator shall, within 10 days after the pilot returns to his home base, send a copy of this report with the comments of the appropriate management personnel to the FAA Air Carrier District Office charged with the overall inspection of its operations.

[Revision note: Based on § 42.363]

§ 125.475 Instrument approach procedures and IFR landing minimums.

No person may make an instrument approach or IFR landing at an airport except in accordance with the IFR weather minimums and instrument approach procedures set forth in the air carrier's or commercial operator's operations specifications.

[Revision note: Based on § 42.364]

§ 125.479 Briefing passengers: airplanes.

(a) Before each takeoff, each air carrier or commercial operator operating an airplane carrying passengers shall insure that each passenger is orally briefed on—

(1) Smoking;

(2) The use of seat belts;

(3) The location and operation of emergency exits; and

(4) The emergency evacuation procedures to be used in an emergency examination of the airplane.

(b) In the case of extended overwater operations, each air carrier or commercial operator shall insure that each passenger is orally briefed on the location of liferafts and the location and operation of life preservers including a demonstration of putting on and inflating a life preserver. If the airplane proceeds directly over water after takeoff, the briefing on locations of life preservers must be given before takeoff, and the rest of the briefing must be given as soon as practicable after takeoff. If the airplane does not proceed directly over water after takeoff, no part of the briefing has to be given before takeoff but the entire briefing must be given before reaching the overwater part of the flight. The air carrier or commercial operator shall describe the procedure to be followed in the briefing in its manual.

[Revision note: Based on § 42.370]

§ 125.481 Alcoholic beverages.

(a) No person may drink any alcoholic beverage aboard an aircraft unless the air carrier or commercial operator operating the aircraft has served that beverage to him.

(b) No air carrier or commercial operator may serve any alcoholic beverage to any person aboard any of its aircraft if that person appears to be intoxicated.

(c) No air carrier or commercial operator may allow any person to board any of its aircraft if that person appears to be intoxicated.

(d) Each air carrier and commercial operator shall, within five days after the incident, report to the Administrator the refusal of any person to comply with paragraph (a) of this section, or of any disturbance caused by a person who appears to be intoxicated aboard any of its aircraft.

[Revision note: Based on § 42.371]

§ 125.483 Minimum altitudes for use of automatic pilot: airplanes.

(a) *En route operations.* Except as provided in paragraph (b) of this section, no person may use an automatic pilot enroute, including climb and descent, at an altitude above the terrain that is less than twice the maximum altitude loss specified in the Airplane Flight Manual for a malfunction of the automatic pilot under cruise conditions, or less than 500 feet, whichever is higher.

(b) *Approaches.* When using an instrument approach facility, no person may use an automatic pilot at an altitude above the terrain that is less than twice the maximum altitude loss specified in the Airplane Flight Manual for a malfunction of the automatic pilot under approach conditions, or less than 50 feet below the approved minimum ceiling for the facility, whichever is higher, except—

(1) When reported weather conditions are less than the basic VFR weather conditions in § 91.105 of this chapter, no person may use an automatic pilot with an approach coupler for ILS approaches at an altitude above the terrain that is less than 50 feet higher than the maximum altitude loss specified in the Airplane Flight Manual for the malfunction of the automatic pilot with approach coupler under approach conditions; and

(2) When reported weather conditions are equal to or better than the basic VFR minimums in § 91.105 of this chapter, no person may use an automatic pilot with an approach coupler for ILS approaches at an altitude above the terrain that is less than the maximum altitude loss specified in the Airplane Flight Manual for the malfunction of the automatic pilot with approach coupler under approach conditions, or 50 feet, whichever is higher.

[Revision note: Based on § 42.372]

§ 125.485 Forward observer's seat; en route inspections.

(a) Each air carrier shall make available a seat on the flight deck of each airplane, used by it in air transportation, for occupancy by the Administrator while conducting en route inspections. The location and equipment of the seat, with respect to its suitability for use in conducting en route inspections, is determined by the Administrator.

(b) In each airplane that has more than one observer's seat, in addition to the seats required for the crew complement for which the aircraft was certificated, the forward observer's seat must be made available to the Administrator.

[Revision note: Based on SR 440]

Subpart O—Flight Release Rules: Airplanes

§ 125.501 Flight release authority.

(a) No person may start a flight under a flight following system without specific authority from the person authorized by the operator to exercise operational control over the flight.

(b) No person may start a flight unless the pilot in command has executed a flight release setting forth the conditions under which the flight will be conducted and certifying that it will be conducted in accordance with this chapter and the air carrier's or commercial operations specifications. The pilot in command may sign the flight release only when he and the person authorized by the operator to exercise operational control believe that the flight can be made with safety.

(c) No person may continue a flight from an intermediate airport without a new flight release if the airplane has been on the ground more than six hours.

[Revision note: Based on § 42.381]

§ 125.503 Familiarity with weather conditions.

No pilot in command may begin a flight unless he is thoroughly familiar with reported and forecast weather conditions on the route to be flown.

[Revision note: Based on § 42.382]

§ 125.505 Facilities and services.

(a) Before beginning a flight, each pilot in command shall obtain all available current reports or information on airport conditions and irregularities of navigation facilities that may affect the safety of the flight.

(b) During a flight, the pilot in command of an airplane shall obtain any additional available information of meteorological conditions and irregularities of facilities and services that may affect the safety of the flight.

[Revision note: Based on § 42.383]

§ 125.507 Airplane equipment.

No person may release an airplane for operation unless it is airworthy and is equipped as prescribed in § 125.251.

[Revision note: Based on § 42.384]

§ 125.509 Communication and navigation facilities.

No person may release an airplane over any route or route segment unless the communication and navigation facilities required by § 125.59 are in satisfactory operating condition.

[Revision note: Based on § 42.385]

§ 125.511 Flight release under VFR.

No person may release an airplane for VFR operation unless the ceiling and visibility en route, as indicated by appropriate weather reports or forecasts, or any combination thereof, are and will remain at or above applicable VFR minimums until the airplane arrives at the airport or airports of intended landing specified in the flight release.

[Revision note: Based on § 42.386]

§ 125.513 Flight release under IFR, over-the-top, or overwater.

(a) Except as provided in paragraph (b) of this section, no person may release an airplane for operations under IFR or over-the-top, unless appropriate weather reports or forecasts, or any combination thereof, indicate that the ceilings and visibilities will be at or above the authorized minimums at the estimated time of arrival at the airport or airports to which released.

(b) A person may release an airplane for a flight that involves extended overwater operation if appropriate weather reports or forecasts, or any combination thereof, indicate that the ceilings and visibilities will be at or above the authorized minimums at the estimated time of arrival at any airport to which released or to any required alternate airport.

(c) Each air carrier and commercial operator shall conduct extended overwater operations under IFR unless it shows that operating under IFR is not necessary for safety.

(d) Each air carrier and commercial operator shall conduct other overwater operations under IFR if the Administrator determines that operation under IFR is necessary for safety.

(e) Each authorization to conduct extended overwater operations under VFR and each requirement to conduct other overwater operations under IFR will be specified in the carrier's or operator's operations specifications .

[Revision note: Based on § 42.387]

§ 125.515 Alternate airport for departure.

(a) If the weather conditions at the airport of takeoff are below the landing minimums in the air carrier's or commercial operator's operations specifications for that airport, no person may release an airplane from that airport unless the release specifies an alternate airport located within the following distances from the airport of takeoff:

(1) *Airplanes having two engines.* Not more than one hour from the departure airport at normal crusing speed in still air with one engine inoperative.

(2) *Airplanes having three or more engines.* Not more than two hours from the departure airport at normal crusing speed in still air with one engine inoperative.

(b) For the purposes of paragraph (a) of this section, the alternate airport weather conditions must meet the requirements of the air carrier's or commercial operator's operations specifications.

(c) No person may release an airplane from an airport unless he lists each required alternate airport in the flight release.

[Revision note: Based on § 42.388]

§ 125.517 Alternate airport for destination; IFR or over-the-top.

(a) Except as provided in paragraph (b) of this section, each person releasing an airplane for operation under IFR or over-the-top shall list at least one alternate airport for each destination airport in the flight release.

(b) An alternate airport need not be designated for IFR or over-the-top operations where the airplane carries sufficient fuel to meet the requirements of §§ 125.531 and 125.533 for flights outside the 48 contiguous States and the District of Columbia over routes without an available alternate airport for a particular airport of destination.

(c) For the purposes of paragraph (a) of this section, the weather requirements at the alternate airport must meet the requirements of the carrier's or operator's operations specifications.

(d) No person may release a flight unless he lists each required alternate airport in the flight release.

[Revision note: Based on § 42.389]

§ 125.519 Alternate airport weather minimums.

No person may list an airport as an alternate airport in the flight release unless the appropriate weather reports or forecasts, or any combination thereof, indicate that the ceilings and visibilities will be at or above the alternate weather minimums specified in the air carrier's or commercial operator's operations specifications, for that airport, when the flight arrives.

[Revision note: Based on § 42.390]

§ 125.521 Continuing flight in unsafe conditions.

(a) No person may allow a flight to continue toward any airport to which it has been released if, in the opinion of the pilot in command, the flight cannot be completed safely, unless, in the opinion of the pilot in command, there is no safer procedure. In that event, continuation toward that airport is an emergency situation as set forth in § 125.467.

(b) If any instrument or item of equipment required under this chapter for the particular operation becomes inoperative en route, the pilot in command shall comply with the approved procedures for such an occurrence as specified in the air carrier's or commercial operator's manual.

[Revision note: Based on § 42.391]

§ 125.523 Operation in icing conditions.

(a) No person may release an airplane, continue to operate an airplane en route, or land an airplane if, in the opinion of the pilot in command, icing conditions are expected or met that might adversely affect the safety of the flight.

(b) No person may takeoff an airplane when frost, snow, or ice is adhering to the wings, control surfaces, or propellers of the airplane.

[Revision note: Based on § 42.392]

§ 125.525 Original flight release; amendment of flight release.

(a) An air carrier or commercial operator may specify any airport, authorized for the type of airplane as a destination for the purpose of original flight release.

(b) No person may allow a flight to continue to an airport to which it has been released unless the weather conditions at an alternate airport that was specified in the flight release are forecast to be at or above the minimums specified in the operations specifications for that airport at the time the airplane would arrive there. However, the flight release may be amended en route to include any alternate airport that is within the fuel range of the airplane as specified in §§ 125.531 through 125.535.

(c) No person may change an original destination or alternate airport that is specified in the original flight release to another airport while the airplane is en route unless the other airport is safe for that type of airplane and meets the requirements of §§ 125.501 through 125.541 and 125.111 at the time of amendment of the flight release.

(d) Each person who amends a flight release en route shall record that amendment.

[Revision note: Based on § 42.393]

§ 125.531 Fuel supply: nonturbine and turbo-propeller-powered airplanes.

(a) Except as provided in paragraph (b) of this section, no person may release for flight a nonturbine or turbo-propeller-powered airplane unless, considering the wind and other weather conditions expected, it has enough fuel—

(1) To fly to and land at the airport to which it is released;

(2) Thereafter, to fly to and land at the most distant alternate airport specified in the flight release; and

(3) Thereafter, to fly for 45 minutes.

(b) If the airplane is released under any of the following conditions it must carry enough fuel to fly for 30 minutes plus 15 percent of the total time required to fly at normal cruising fuel consumption to the airports specified in subparagraphs (1) and (2) of paragraph (a) of this section, or to fly for 90 minutes at normal cruising fuel consumption, whichever is less:

(1) From the United States to an airport outside thereof.

(2) To an airport within the United States from a place outside thereof.

(3) From any place to an airport within the State of Alaska or Hawaii or any possession of the United States.

(c) No person may release a nonturbine or turbo-propeller-powered airplane to an airport for which an alternate is not specified under § 125.517(a)(2), unless it has enough fuel, considering wind and other weather conditions expected, to fly to that airport and thereafter to fly for three hours at normal cruising fuel consumption.

[Revision note: Based on § 42.396(a)]

§ 125.533 Fuel supply; turbine-powered airplanes, other than turbo propeller.

(a) No person may release for flight or take off a turbine-powered airplane (other than a turbo-propeller airplane) unless, considering wind and other weather conditions expected, it has enough fuel to comply with § 125.531. However, for operations outside the 48 contiguous States and the District of Columbia, the airplane must have enough fuel—

(1) To fly to and land at the airport to which it is released;

(2) Thereafter, to fly for a period of 10 percent of the total time required to fly from the airport of departure to, and land at, the airport to which it was released;

(3) Thereafter, to fly to and land at the most distant alternate airport specified in the flight release, if an alternate is required; and

(4) Thereafter, to fly for 30 minutes at holding speed at 1,500 feet above the alternate airport (or the destination airport if no alternate is required) under standard temperature conditions.

(b) No person may release a turbine-powered airplane (other than a turbo-propeller airplane) to an airport for which an alternate is not specified under § 125.517(a)(2) unless it has enough fuel, considering wind and other weather conditions expected, to fly to that airport and thereafter to fly for at least two hours at normal cruising fuel consumption.

(c) The Administrator may amend the operations specifications of an air carrier or commercial operator to require more fuel than any of the minimums stated in paragraph (a) or (b) of this section if he finds that additional fuel is necessary on a particular route in the interest of safety.

[Revision note: Based on § 42.396 (less (a))]

§ 125.535 Factors for computing fuel required.

Each person computing fuel required for the purposes of this subpart shall consider the following:

(a) Wind and other weather conditions forecast.

(b) Anticipated traffic delays.

(c) One instrument approach and possible missed approach at destination.

(d) Any other conditions that may delay landing of the aircraft.

For the purposes of this section, required fuel is in addition to unusable fuel.

[Revision note: Based on § 42.397]

§ 125.537 Takeoff and landing weather minimums: IFR: airplanes.

(a) Regardless of any clearance from ATC, if the reported ceiling or ground visibility is less than that specified in the air carrier or commercial operator's operations specifications, no pilot may—

(1) Take off an airplane under IFR; or

(2) Except as provided in paragraph (c) of this section, land an airplane under IFR.

(b) Except as provided in paragraph (c) of this section, no pilot may execute an instrument approach procedure if the latest reported ceiling or visibility is less than the landing minimums specified in the air carrier or commercial operator's operations specifications.

(c) If a pilot initiates an instrument approach procedure when the latest weather report indicates that the specified ceiling and visibility minimums exist, and a later weather report indicating below minimum conditions is received after the airplane—

(1) Is on an ILS final approach and has passed the outer marker;

(2) Is on final approach using a radio range station or comparable facility, has passed the appropriate facility, and has reached the authorized minimum landing altitude; or

(3) Is on PAR final approach and has been turned over to the final approach controller;

the approach may be continued and a landing may be made, if the pilot in command finds, upon reaching the authorized landing minimum altitude, that actual weather conditions are at least equal to the minimums prescribed in the operations specifications.

(d) If the pilot in command of an airplane has not served 100 hours as pilot in command in operations under this part or under Parts 121 or 123 of this chapter in the type of airplane he is operating, the ceiling and visibility landing minimums in the air carrier or commercial operator's operations specifications for airports are increased by 100 feet and one-half mile, respectively. The ceiling and visibility minimums need not be increased above those applicable to the airport when used as an alternate airport.

[Revision note: Based on § 42.406]

§ 125.539 Applicability of reported weather minimums.

In conducting operations under § 125.537, the ceiling and visibility values in the main body of the latest weather report control for VFR and IFR takeoffs and landings and for instrument approach procedures on all runways of an airport. However, if the latest weather report, including an oral report from the control tower, contains a visibility value specified as runway visibility or runway visual range for a particular runway of an airport, that specified value controls for VFR and IFR landings and takeoffs and straight-in instrument approaches for that runway.

[Revision note: Based on § 42.407]

§ 125.541 Flight altitude rules.

(a) *General.* Notwithstanding § 91.79 or any rule applicable outside the United States, no person may operate an airplane below the minimums set forth in paragraphs (b) and (c) of this section,

except when necessary for takeoff or landing, or except when, after considering the character of the terrain, the quality and quantity of meteorological services, the navigational facilities available, and other flight conditions, the Administrator prescribes other minimums for any route or part of a route where he finds that the safe conduct of the flight requires other altitudes. Outside of the United States the minimums prescribed in this paragraph or paragraph (b) of this section are controlling unless higher minimums are prescribed in the air carrier or commercial operator's operations specifications or by the foreign country over which the airplane is operating.

(b) *Day VFR operations.* No person may operate an airplane under VFR during the day at an altitude less than 1,000 feet above the surface or less than 1,000 feet from any mountain, hill, or other obstruction to flight.

(c) *Night VFR, IFR, and over-the-top operations.* No person may operate an airplane under IFR including over-the-top or at night under VFR at an altitude less than 1,000 feet above the highest obstacle within a horizontal distance of five miles from the center of the intended course, or, in designated mountainous areas, less than 2,000 feet above the highest obstacle within a horizontal distance of five miles from the center of the intended course. However, any person operating an airplane under VFR at night in designated mountainous areas may operate over an approved lighted airway at a minimum altitude of 1,000 feet above such an obstacle. Adherence to a flight altitude is not required during the time a flight is operating in accordance with paragraph (d) of this section.

(d) *Day over-the-top operations below minimum en route altitudes.* A person may conduct day over-the-top operations in an airplane at flight altitudes lower than the minimum en route IFR altitudes if—

(1) The operation is conducted at least 1,000 feet above the top of lower broken or overcast cloud cover;

(2) The top of the lower cloud cover is generally uniform and level;

(3) Flight visibility is at least five miles; and

(4) The base of any higher broken or overcast cloud cover is generally uniform and level and is at least 1,000 feet above the minimum en route IFR altitude for that route segment.

[Revision note: Based on § 42.408]

§ 125.543 Initial approach altitude.

(a) Except for over-the-top operations conducted under § 125.541(d), when making an initial approach to a radio navigation facility under IFR, no person may descend an airplane below the applicable minimum altitude for initial approach (as specified in the instrument approach procedure for that facility) until his arrival over that facility has been definitely established.

(b) When making an initial approach on a flight conducted under § 125.541(d), no person may begin an instrument approach until his arrival over the radio facility has been definitely established. When making an instrument approach under those circumstances, no person may fly an airplane at an altitude less than 1,000 feet above the top of the lower cloud cover or the minimum altitude determined by the Administrator for that part of the instrument approach procedure, whichever is lower.

[Revision note: Based on § 42.409]

§ 125.547 Load manifest.

Each air carrier and commercial operator is responsible for the preparation and accuracy of a load manifest form before each takeoff. The form must be prepared for each flight by employees of the air carrier or commercial operator who have the duty of supervising the loading of airplanes and preparing the load manifest forms or by other qualified persons authorized by the air carrier or commercial operator and must be signed by the pilot in command.

[Revision note: Combines §§ 42.411 and 42.504(b)]

§ 125.549 Flight plan: VFR and IFR.

(a) No person may take off an airplane unless the pilot in command has filed a flight plan, containing the appropriate information required by Part 91 [New], with the nearest FAA communication station or appropriate military station or, when operating outside the United States, with other appropriate authority. However, if communications facilities are not readily available, the pilot in command shall file the flight plan as soon as practicable after the airplane is airborne. A flight plan must continue in effect for all parts of the flight.

(b) When flights are operated into military airports, the arrival or completion notice required by § 91.83 may be filed with the appropriate airport control tower or aeronautical communication facility used for that airport.

[Revision note: Based on § 42.412]

§ 125.561 Crewmember records: airplanes.

Each air carrier or commercial operator of an airplane shall—

(a) Maintain at its principal operations base, or at another location used by the air carrier or commercial operator and approved by the Administrator, a current record of each crewmember that shows whether he complies with this chapter (e.g. proficiency and line checks, airplane qualifications, training, physical examinations, and flight time records); and

(b) Record each action taken concerning the release from employment or the physical or professional disqualification of any flight crewmember, and keep the record for at least six months thereafter.

[Revision note: Based on § 42.501]

§ 125.565 Flight release form: airplanes.

(a) Except as provided in paragraph (c) of this section, the flight release may be in any form but must contain at least the following information concerning each flight:

(1) Company or organization name.

(2) Make, model, and registration number of the airplane being used.

(3) Flight or trip number, and date of flight.

(4) Name of each flight crewmember, flight attendant, and pilot designated as pilot in command.

(5) Departure airport, destination airports, alternate airports, and route.

(6) Minimum fuel supply (in gallons or pounds).

(7) A statement of the type of operation (e.g. IFR, VFR).

(b) The airplane flight release must contain, or have attached to it, weather reports, available weather forecasts, or a combination thereof, for the destination airport, and alternate airports, that are the latest available at the time the release is signed. It may include any additional available weather reports or forecasts that the pilot in command considers necessary or desirable.

(c) Each certificated route air carrier operating under this part shall comply with the dispatch or flight release forms required for scheduled operations under Part ____, ____, or ____ (present Part 40, 41, or 46).

[Revision note: Based on § 42.503]

§ 125.567 Load manifest: airplanes.

The load manifest must contain the following information concerning the airplane at takeoff time:

(a) The weight of the airplane, fuel and oil, cargo and baggage, passengers, and crewmembers.

(b) The maximum allowable weight for that flight that must not exceed the least of the following weights:

(1) Maximum allowable takeoff weight for the runway intended to be used (including corrections for altitude and gradient, and wind and temperature conditions existing at the takeoff time).

(2) Maximum takeoff weight considering anticipated fuel and oil consumption that allows compliance with applicable en route performance limitations.

(3) Maximum takeoff weight considering anticipated fuel and oil consumption that allows compliance with the maximum authorized design landing weight limitations on arrival at the destination airport.

(4) Maximum takeoff weight considering anticipated fuel and oil consumption that allows compliance with landing distance limitations on arrival at the destination and alternate airports.

(c) The total weight computed under approved procedures.

(d) Evidence that the airplane is loaded according to an approved schedule that insures that the center of gravity is within approved limits.

(e) Names of passengers.

[Revision note: Based on § 42.504 (less (b))]

§ 125.569 Disposition of load manifest, flight release, and flight plans: airplanes.

(a) The pilot in command of an airplane shall carry in the airplane to its destination the original or a signed copy of the—

(1) Load manifest;

(2) Flight release;

(3) Maintenance release;
(4) Pilot route certification; and
(5) Flight plan.

(b) If a flight originates at the principal operations base of the air carrier or commercial operator, it shall retain at that base a signed copy of each document listed in paragraph (a) of this section.

(c) If a flight originates at a place other than the principal operations base, the pilot in command (or other person authorized by the carrier or operator) shall, before or immediately after departure of the flight, mail signed copies of the documents listed in paragraph (a) of this section to the principal operations base.

(d) The air carrier or commercial operator shall keep at its operations base either the original or a copy of the records required in this section for at least six months.

[Revision note: Based on § 42.505]

§ 125.571 Maintenance records: airplanes.

(a) Each air carrier and commercial operator shall keep, at its principal maintenance base, current records for its airplanes of total time in service, time since last overhaul, and time since last inspection, for each major component of each airframe, engine, propeller, and, where practicable, appliance.

(b) An air carrier or commercial operator may discontinue total time in service records if it shows that the service life of component parts is safely controlled by other means such as inspection, overhaul, or parts retirement procedures. The Administrator may require the keeping of total time in service records for a part when he finds that other procedures will not safely limit the service life of that part.

(c) An airplane component for which complete records required by this section are not available may be placed in service if—

(1) It is of a type for which total time in service records are not required by paragraph (b) of this section;

(2) Parts that the Administrator or manufacturer limits to a specific total time in service are retired and replaced by new parts; or

(3) It has been properly overhauled or rebuilt and the overhaul or rebuilding is recorded in the maintenance records.

[Revision note: Based on § 42.506]

§ 125.573 Maintenance log: airplanes.

(a) Each person who takes action in the case of a reported or observed failure or malfunction of an airframe, engine, propeller, or appliance that is critical to the safety of flight shall make, or have made, a record of that action in the airplane's maintenance log.

(b) Each air carrier or commercial operator shall have an approved procedure for keeping adequate copies of the record required in paragraph (a) of this section in the airplane in a place readily accessible to each flight crewmember and shall put that procedure in the air carrier's or commercial operator's manual.

(c) The maintenance log must contain information from which the flight crew may determine the time since the last overhaul of the airframe and engines.

[Revision note: Based on § 42.507]

§ 125.575 Mechanical reliability reports: airplanes.

(a) Each air carrier and commercial operator shall report the occurrence or detection of each failure, malfunction, or defect concerning—

(1) Fires during flight and whether the related fire-warning system functioned properly;

(2) Fires during flight not protected by a related fire-warning system;

(3) False fire-warning during flight;

(4) An engine exhaust system that causes damage during flight to the engine, adjacent structure, equipment, or components;

(5) An airplane component that causes accumulation or circulation of smoke, vapor, or toxic or noxious fumes in the crew compartment or passenger cabin during flight;

(6) Engine shutdown during flight because of flameout;

(7) Engine shutdown during flight when external damage to the engine or airplane structure occurs;

(8) Engine shutdown during flight due to foreign object ingestion or icing;

(9) Engine shutdown during flight of more than one engine;

(10) A propeller feathering system or ability of the system to control overspeed during flight;

(11) A fuel or fuel-dumping system that affects fuel flow or causes hazardous leakage during flight;

(12) A landing gear extension or retraction or opening or closing of landing gear doors during flight;

(13) Brake system components that result in loss of brake actuating force when the airplane is in motion on the ground;

(14) An airplane structure that requires major repair;

(15) Cracks, permanent deformation, or corrosion of airplane structures, if more than the maximum acceptable to the manufacturer or the FAA; and

(16) Airplane components or systems that result in taking emergency actions during flight (except action to shutdown an engine).

(b) For the purpose of this section "during flight" means the period from the moment the airplane leaves the surface of the earth on takeoff until it touches down on landing.

(c) In addition to the reports required by paragraph (a) of this section, each air carrier and commercial operator shall report any other failure, malfunction, or defect in an airplane that occurs or is detected at any time if, in its opinion, that failure, malfunction, or defect has endangered or may endanger the safe operation of an airplane used by it.

(d) Each air carrier and commercial operator shall send each report required by this section, in writing, covering each 24-hour period beginning at 0900 hours local time of each day and ending at 0900 hours local time on the next day, to the FAA maintenance inspector assigned to its operations. The report must be delivered to him by 0900 hours local time on the following day. However, a report that is due on Saturday or Sunday may be delivered on the following Monday and one that is due on a holiday may be delivered on the next workday.

(e) The air carrier or commercial operator shall transmit the reports required by this section in a manner and on a form that is convenient to its system of communication and procedure, and shall include in the first daily report as much of the following as is available:

(1) Type and identification number of the airplane.

(2) The name of the air carrier or commercial operator.

(3) The date, flight number, and stage during which the incident occurred (e.g. preflight, takeoff, climb, cruise, descent, landing, and inspection).

(4) The emergency procedure effected (e.g. unscheduled landing and emergency descent).

(5) The nature of the failure, malfunction, or defect.

(6) Identification of the part and system involved, including available information pertaining to type designation of the major component and time since overhaul.

(7) Apparent cause of the failure, malfunction, or defect (e.g. wear, crack, design deficiency, or personnel error).

(8) Whether the part was repaired, replaced, sent to the manufacturer, or other action taken.

(9) Whether the airplane was grounded.

(10) Other information necessary for identification, determination of seriousness, or corrective action.

(f) Failures, malfunctions, or defects reported under the accident reporting provisions of Part 320 of chapter II of this title (regulations of the Civil Aeronautics Board) need not be reported under this section.

(g) No person may withhold a report required by this section even though all information required in this section is not available.

(h) When an air carrier or commercial operator gets additional information, including information from the manufacturer or other agency, concerning a report required by this section, it shall expeditiously submit it as a supplement to the first report and reference the date and place of submission of the first report.

[Revision note: Based on § 42.508]

§ 125.577 Mechanical interruption summary report: airplanes.

Each air carrier and commercial operator of an airplane shall regularly and promptly send a summary report on the following occurrences to the Administrator:

(a) Each interruption to a flight, unscheduled change of airplane en route, or unscheduled stop or diversion from a route, caused by known or suspected mechanical difficulties or malfunctions that are not required to be reported under § 125.575.

(b) The number of engines removed prematurely because of malfunction,

failure, or defect, listed by make and model and the aircraft type in which it was installed.

(c) The number of propeller featherings in flight, listed by type of propeller and type of engine and airplane on which it was installed. Propeller featherings for training, demonstration, or flight check purposes need not be reported.

[Revision note: Based on § 42.509]

§ 125.579 Alteration and repair reports: airplanes.

(a) Each air carrier and commercial operator shall, promptly upon its completion, prepare a report of each major alteration or major repair of an airframe, engine, propeller, or appliance, of an airplane operated by it.

(b) The air carrier or commercial operator shall submit a copy of each report of a major alteration to, and shall keep a copy of each report of a major repair available for inspection by, the representative of the Administrator who is assigned to it.

[Revision note: Based on § 42.510]

§ 125.581 Maintenance release: airplanes.

(a) When a maintenance organization releases an airplane to flight operations, a maintenance inspector or a person authorized by the inspection organization of the air carrier or commercial operator shall prepare and sign a maintenance release certifying that the airplane is airworthy.

(b) If a maintenance release form is used, the air carrier or commercial operator shall give a copy to the pilot in command and shall keep an appropriate record for at least two months.

[Revision note: Based on § 42.511]

§ 125.583 Retention of contracts and amendments: commercial operator.

Each commercial operator shall keep a copy of each written contract under which it provides services as a commercial operator for a period of at least one year after the date of execution of the contract. In the case of an oral contract, it shall keep a memorandum stating its elements, and of any amendments to it, for a period of at least one year after the execution of that contract or change.

[Revision note: Based on § 42.513]

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[F.R. Doc. 64-4551; Filed, May 7, 1964; 8:45 a.m.]