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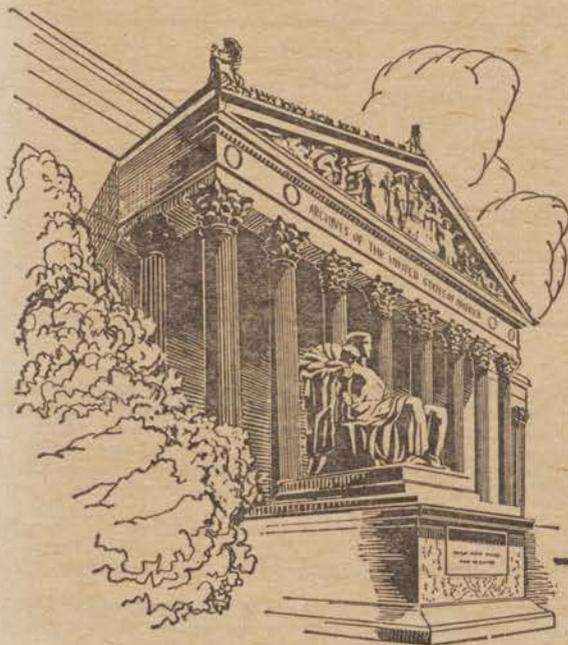
Washington, D.C.

Pages 8741-8849

Agencies in this issue—

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Conservation Service
Atomic Energy Commission
Civil Aeronautics Board
Civil Service Commission
Commerce Department
Federal Aviation Agency
Federal Communications Commission
Federal Home Loan Bank Board
Federal Maritime Commission
Federal Power Commission
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Housing and Urban Development
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Just Released

LIST OF CFR SECTIONS AFFECTED

January-May 1966

(Codification Guide)

The List of CFR Sections Affected is published monthly on a cumulative basis. It lists by number the titles, parts, and sections of the Code of Federal Regulations amended or otherwise affected by documents published in the FEDERAL REGISTER during 1966. Entries indicate the exact nature of all changes effected. This cumulative list of CFR sections affected is supplemented by the current lists of CFR parts affected which are carried in each daily FEDERAL REGISTER.

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(Codification Guide)

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Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 36—LOAN GUARANTY

Miscellaneous Amendments

1. In Part 36, § 36.4390 and the center title immediately preceding the section are revised to read as follows:

FEDERALLY ASSISTED CONSTRUCTION CONTRACTS—NONDISCRIMINATION IN EMPLOYMENT—EXECUTIVE ORDER 11246

§ 36.4390 Purpose.

Sections 36.4390 through 36.4393 are promulgated to achieve the aims of the applicable provisions of Executive Order 11246 and the regulations of the Secretary of Labor with respect to federally assisted construction contracts.

2. In § 36.4391, paragraph (a) and those portions of paragraphs (b) and (c) immediately preceding subparagraph (1) and paragraph (c) (4) are amended to read as follows:

§ 36.4391 Applicability.

(a) For the purposes of the home loan guaranty and insurance and direct loan programs of the Veterans Administration, the term "applicant for Federal assistance" or "applicant" in Part III of Executive Order 11246, shall mean the builder, sponsor or developer of land to be improved by such builder, sponsor or developer for the purpose of constructing housing thereon for sale to eligible veterans with financing which is to be guaranteed or insured or made under the provisions of 38 U.S.C. Chapter 37, or the builder, sponsor or developer of housing to be constructed for sale to eligible veterans with financing which is to be guaranteed or insured or made under the provisions of 38 U.S.C. Chapter 37.

(b) The provisions of Executive Order 11246 and the rules and regulations of the Secretary of Labor are applicable to:

(c) The provisions of Executive Order 11246 and the rules and regulations of the Secretary of Labor are not applicable to:

(4) Any other contract or subcontract which is exempted or excepted by the regulations of the Secretary of Labor.

3. Section 36.4392 is revised to read as follows:

§ 36.4392 Certification requirements.

In any case in which §§ 36.4390 through 36.4393 are applicable, as set forth in § 36.4391, no action will be taken

by the Veterans' Administration on any request for appraisal relating to proposed construction, site approval of land to be improved by a builder, sponsor or developer for the construction of housing thereon, or for a direct loan fund reservation commitment unless the builder, sponsor or developer has furnished the Veterans' Administration a signed certification in form as follows:

To induce the Veterans' Administration to act on any request submitted by or on behalf of the undersigned for site approval of land to be improved for the construction of housing thereon to be financed with loans guaranteed, insured or made by the Veterans' Administration, or for establishment by the Veterans' Administration of reasonable value relating to proposed construction or for direct loan fund reservation commitments, the undersigned hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work or modification thereof, as defined in the rules and regulations of the Secretary of Labor relating to the land or housing included in its request to the Veterans' Administration the following equal opportunity clause:

"During the performance of this contract the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: Employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of Sept. 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investi-

gation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Except in special cases and in subcontracts for the performance of construction work at the site of construction, the clause is not required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by reference the equal opportunity clause.

The undersigned further agrees that it will be bound by the above equal opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of Government.

The undersigned agrees that it will cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The undersigned further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon the contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246.

RULES AND REGULATIONS

In addition, the undersigned agrees that if it fails or refuses to comply with these undertakings such failure or refusal shall be a proper basis for cancellation by the Veterans' Administration of any outstanding master certificates of reasonable value or individual certificates of reasonable value relating to proposed construction, except in respect to cases in which an eligible veteran has contracted to purchase a property included on such certificates, and for the rejection of future requests submitted by the undersigned or on his behalf for site approval, appraisal services, and direct loan fund reservation commitments until satisfactory assurance of future compliance has been received from the undersigned, and for referral of the case to the Department of Justice for appropriate legal proceedings.

4. In § 36.4393, paragraph (f) is amended to read as follows:

§ 36.4393 Complaint and hearing procedure.

(f) Failure or refusal to comply and give satisfactory assurances of future compliance with the equal employment opportunity requirements shall be proper basis for applying sanctions. The sanctions shall be applied in accordance with the provisions of Executive Order 11246, and the regulations of the Secretary of Labor.

(72 Stat. 1114; 38 U.S.C. 210)

These VA regulations are effective upon publication in the FEDERAL REGISTER.

Approved: June 20, 1966

By direction of the Administrator.

[SEAL] CYRIL F. BRICKFIELD,
Deputy Administrator.

[F.R. Doc. 66-6924; Filed, June 23, 1966;
8:47 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

National Advisory Commission on Health Manpower

Section 213.3188 is added to show that positions on the staff of the National Advisory Commission on Health Manpower are excepted under Schedule A. Effective on publication in the FEDERAL REGISTER, a new § 213.3188 is added as set out below.

§ 213.3188 National Advisory Commission on Health Manpower.

(a) Until September 30, 1967, all positions on the staff of the Commission.

(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. 66-6928; Filed, June 23, 1966;
8:48 a.m.]

PART 213—EXCEPTED SERVICE

Department of the Army

Section 213.3307 is amended to show that the position of Director of Facilities, Office of the Assistant Secretary of the Army (Installations and Logistics) is excepted under Schedule C and that the position of Deputy to the Assistant Secretary (Installations and Logistics)—Installations, is no longer excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, paragraph (a) of § 213.3307 is amended by revoking subparagraph (2) and adding a new subparagraph (17) as set out below.

§ 213.3307 Department of the Army.

- (a) Office of the Secretary. * * *
- (2) [Revoked]

(17) One Director of Facilities, Office of the Assistant Secretary of the Army (Installations and Logistics).

(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. 66-6926; Filed, June 23, 1966;
8:47 a.m.]

PART 213—EXCEPTED SERVICE

Department of the Army

Section 213.3307 is amended to show that the position of Deputy Under Secretary—Manpower is excepted under Schedule C in lieu of the position of Deputy Under Secretary (Manpower and Reserve Forces) and that the position of Deputy Under Secretary for Personnel Management is no longer excepted under Schedule C. Section 213.3307 is also amended to show that the title of the Deputy for International Affairs to the Under Secretary is changed to Deputy Under Secretary—International Affairs, and that the titles of his Assistant and Confidential Assistant are correspondingly amended. Effective on publication in the FEDERAL REGISTER, paragraph (a) of § 213.3307 is amended as set out below.

§ 213.3307 Department of the Army.

- (a) Office of the Secretary. * * *

(5) One Deputy Under Secretary of the Army—International Affairs.

(7) One Deputy Under Secretary of the Army—Manpower.

(8) One Confidential Assistant to the Deputy Under Secretary of the Army—International Affairs.

(10) One Assistant to the Deputy Under Secretary of the Army—International Affairs.

(11) [Revoked]

(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. 66-6927; Filed, June 23, 1966;
8:48 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT

[Docket No. 7448; Amdt. 39-250]

PART 39—AIRWORTHINESS DIRECTIVES

Grumman Model G-73 Series Airplanes

There have been cracks in the aileron hinge brackets on Grumman Model G-73 Series airplanes. Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued to require inspection of the aileron hinge brackets and replacement if necessary on the subject airplanes.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

GRUMMAN. Applies to Model G-73 Series airplanes.

Compliance required within the next 10 hours' time in service after the effective date of this AD, unless already accomplished within the last 190 hours' time in service, and thereafter at intervals not to exceed 200 hours' time in service from the last inspection.

To detect cracks or corrosion in the aileron hinge brackets, accomplish the following:

(a) Remove both ailerons, remove paint from aileron hinge brackets, P/N 106326 at

Wing Station 270 left and right, P/N 106327 at Wing Station 317 left and right, and P/N 106325 at Wing Station 368 left and right, (6 per airplane), and inspect each bracket for cracks or corrosion using a dye penetrant in conjunction with a glass of at least 10-power, or an FAA-approved equivalent.

(b) If a crack or corrosion is found, replace the part before further flight with a part of the same part number that has been inspected in accordance with paragraph (a) and found free of cracks or corrosion, or with an equivalent part approved by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region.

This amendment becomes effective July 4, 1966.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on June 20, 1966.

JAMES F. RUDOLPH,
Acting Director,
Flight Standards Service.

[F.R. Doc. 66-6899; Filed, June 23, 1966; 8:45 a.m.]

SUBCHAPTER E—AIRSPACE

[Airspace Docket No. 65-AL-10]

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

Redescription of Federal Airway, Control Zone, Transition Area, and Reporting Point

On July 8, 1965, a Notice of Proposed Rulemaking was published in the FEDERAL REGISTER (30 F.R. 8636) stating that the Federal Aviation Agency proposed to revoke Red Federal airway No. 99, the Iliamna, Alaska, Transition Area and Control Zone, and the Kukaklek, Alaska, Transition Area. In addition, Kakaklek Intersection (a low altitude reporting point) was proposed to be redescribed as the intersection of the NE course of the King Salmon, Alaska, R.R. and a bearing of 145° from the Big Mountain, Alaska, radio beacon. Since spelling of the intersection name is incorrect, action was proposed to correct the name to Kukaklek Intersection.

Interested persons were afforded an opportunity to participate in the rulemaking through the submission of comments. Northern Consolidated Airlines submitted comments objecting to the revocation of the controlled airspace associated with the Iliamna R.R. This air carrier holds a Civil Aeronautics Board Certificate of Convenience and Necessity for scheduled operations between Anchorage, Alaska, and King Salmon, Alaska, with intermediate point Iliamna, Alaska. Northern Consolidated Airlines stated that revocation of the controlled airspace would materially affect IFR operation into the Iliamna Airport. They further stated that villages in addition to Iliamna which would be affected are Nondalton, Port Alsworth, Pedro Bay, Pile Bay, and Kakhonak since these points are served from Iliamna by air taxi operators. Iliamna and the other villages in the area are served by air transportation only—there are no highways or railroads to these communities.

Petitions, signed by many residents of some of these communities, were received protesting any reduction in services to the aviation community.

Subsequent to publication of the Notice of Proposed Rule Making, informal comments from users of low and medium frequency navigational aids in Alaska indicated the desirability of converting the MRL (loop) radio ranges to radio beacons to provide a usable automatic direction finding (ADF) capability. The low frequency radio navigational aid at Iliamna is an MRL-type radio range.

Further study of the proposal of this docket has been conducted and due consideration has been given to comments received. As a result, it has been determined that the Iliamna radio navigational aid and the associated control airspace are necessary to assure safety and regularity in air commerce. However, since it is planned to convert the Iliamna radio range to a radio beacon, as requested by the users, it is necessary to redescribe the associated airway and control airspace based upon the radio beacon. That action is taken herein.

Redescription of the Kukaklek Intersection as proposed would provide a more usable intersection than that presently described. Action is therefore taken herein to redescribe the Kukaklek Intersection as proposed. Action is also taken to correct the spelling of this intersection.

Redescriptions provided herein, but not previously proposed, can be effected without placing a burden on any person. Therefore, further notice and public procedure are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., August 18, 1966, as hereinafter set forth.

1. In § 71.107 (31 F.R. 2007), Red Federal Airways are amended as follows:

R-99 From the INT of the NE course of the King Salmon, Alaska, R.R. and a bearing 196° from the Iliamna, Alaska, RBN via the Iliamna RBN to the INT of a bearing 121° from the Iliamna RBN and the W. course of the Homer, Alaska, R.R.

2. In § 71.171 (31 F.R. 2100), the Iliamna, Alaska, Control Zone is amended as follows:

ILIAMNA, ALASKA

Within a 5-mile radius of the Iliamna Airport (latitude 59°45'08" N., longitude 154°54'38" W.) and within 2 miles each side of a bearing 196° from the Iliamna RBN, extending from the 5-mile radius zone to a point 12 miles S of the RBN, from 0545 to 2145 hours, local time, daily.

3. In § 71.181 (31 F.R. 2202), the Iliamna, Alaska, Transition Area is amended as follows:

ILIAMNA, ALASKA

That airspace extending upward from 1,200 feet above the surface within 6 miles W. and 8 miles E. of the 016° and 196° bearings from the Iliamna RBN, extending from 7 miles N. to 13 miles S. of the RBN.

4. In § 71.181 (31 F.R. 2209), the Kukaklek, Alaska, Transition Area is amended as follows:

KUKAKLEK, ALASKA

That airspace extending upward from 1,200 feet above the surface within 9 miles SE. and 6 miles NW. of the 056° and 236° bearings from the INT of the NE. course of the King Salmon, Alaska, R.R. and a bearing of 145° from the Big Mountain, Alaska, RBN, extending from 8 miles NE. to 19 miles SW. of the INT.

5. In § 71.211 (31 F.R. 2289), Alaskan low altitude reporting points are amended as follows:

Iliamna, Alaska, R.R. is deleted and Iliamna, Alaska, RBN is added. Kakaklek INT is deleted and Kukaklek INT: INT NE. course King Salmon, Alaska, R.R. 145° bearing Big Mountain, Alaska, RBN is added.

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

Issued in Anchorage, Alaska, on June 15, 1966.

GEORGE M. GARY,
Director, Alaskan Region.

[F.R. Doc. 66-6900; Filed, June 23, 1966; 8:45 a.m.]

[Airspace Docket No. 65-EA-106]

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

Alteration of Federal Airways

On March 5, 1966, a Notice of Proposed Rulemaking was published in the FEDERAL REGISTER (31 F.R. 3467) stating that the Federal Aviation Agency was considering amendments to Part 71 of the Federal Aviation Regulations that would raise the floors of segments of Federal airways in the Cleveland, Ohio, flight advisory area.

Interested persons were afforded an opportunity to participate in the rulemaking through submission of comments. Due consideration was given to all comments received. The Air Transport Association of America concurred in the actions proposed, provided that where cardinal altitudes could be preserved, the minimum en route altitudes be established at no more than 1,500 feet above the terrain. This was done on those airway segments within transition areas. No other comments were received.

Subsequent to publication of the Notice, V-5 was realigned between Cincinnati, Ohio, and Appleton, Ohio. Such alignment is reflected herein.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., August 18, 1966, as hereinafter set forth.

Section 71.123 (31 F.R. 2009, 2473, 3231, 4839, 5055, 5057, 5285, 5287, 5408, 6297, 6484) is amended as follows:

1. In V-4 all between "to Louisville;" and "Elkins, W. Va.," is deleted and "12 AGL Lexington, Ky., including a 12 AGL N alternate via INT Louisville 081° and Lexington 303° radials and also a 12 AGL S alternate via INT Louisville 114° and Lexington 251° radials; 12 AGL Newcombe, Ky.; 12 AGL Charleston, W. Va.," is substituted therefor.

2. In V-5 all after "Nashville 117° radials;" is deleted and "12 AGL Bowling Green, Ky.; 12 AGL New Hope, Ky., including a 12 AGL E alternate from Nashville to New Hope via INT Nashville 029° and New Hope 202° radials; 12 AGL Louisville, Ky.; 12 AGL Cincinnati, Ohio; 12 AGL Appleton, Ohio, including a 12 AGL E alternate; 12 AGL Mansfield, Ohio; 12 AGL Cleveland, Ohio; 12 AGL London, Ont., Canada. The airspace within Canada is excluded." is substituted therefor.

3. In V-6 all between "12 AGL Waterville;" and "12 AGL Selinsgrove, Pa.;" is deleted and "12 AGL Cleveland, Ohio; 12 AGL Youngstown, Ohio; 12 AGL Clarion, Pa.; 12 AGL Philipsburg, Pa.;" is substituted therefor.

4. In V-7 all between "12 AGL Nashville, Tenn.;" and "12 AGL Evansville, Ind.;" is deleted and "12 AGL Central City, Ky.;" is substituted therefor.

5. In V-8 all between "12 AGL Findlay, Ohio;" and "12 AGL Martinsburg, W. Va.;" is deleted and "12 AGL Briggs, Ohio; 12 AGL INT Briggs 126° and Allegheny, Pa., 286° radials; 12 AGL Allegheny; 12 AGL Indian Head, Pa.;" is substituted therefor.

6. In V-10 all after "12 AGL Carleton, Mich.;" is deleted and "12 AGL INT Jefferson, Ohio, 279° and Youngstown, Ohio, 320° radials; 12 AGL Youngstown. The airspace within Canada is excluded." is substituted therefor.

7. In V-12 all between "12 AGL Dayton, Ohio;" and "12 AGL Harrisburg, Pa.;" is deleted and "12 AGL Appleton, Ohio, including a 12 AGL N alternate from Dayton to Appleton via INT Dayton 068° and Rosewood, Ohio, 083° radials; 12 AGL Newcomerstown, Ohio; 12 AGL Wheeling, W. Va.; 12 AGL Allegheny, Pa.; 12 AGL Johnstown, Pa.;" is substituted therefor.

8. In V-14 all between "12 AGL Findlay;" and "12 AGL Dunkirk, N.Y.;" is deleted and "12 AGL Attica, Ohio; 12 AGL Cleveland, Ohio; 12 AGL Jefferson, Ohio; 12 AGL Erie, Pa., including a 12 AGL N alternate from Cleveland to Erie via INT Cleveland 049° and Jefferson 279° radials;" is substituted therefor.

9. In V-30 all between "12 AGL Waterville, Ohio;" and "12 AGL Selinsgrove, Pa.;" is deleted and "12 AGL Attica, Ohio; 12 AGL Akron, Ohio; 12 AGL INT Akron 092° and Clarion, Pa., 265° radials; 12 AGL Clarion; 12 AGL Philipsburg, Pa.;" is substituted therefor.

10. In V-35 all between "Holston Mountain 203° radials;" and "12 AGL Tyrone, Pa.;" is deleted and "12 AGL Blackford, Va.; 12 AGL Charleston, W. Va., including a 12 AGL E alternate via Bluefield, W. Va.; 12 AGL INT Charleston 051° and Elkins, W. Va., 264° radials; 12 AGL Clarksburg, W. Va.; 12 AGL Morgantown, W. Va.; 12 AGL Indian Head, Pa.; 12 AGL Johnstown, Pa.;" is substituted therefor.

11. In V-37 all after "12 AGL Morgantown, W. Va.;" is deleted and "12 AGL Allegheny, Pa.; 12 AGL INT Allegheny 325° and Ellwood City, Pa., 183° radials; 12 AGL Ellwood City; 12 AGL Erie, Pa.; 12 AGL Toronto, Ont., Canada. The

airspace within Canada is excluded." is substituted therefor.

12. In V-38 all between "12 AGL Findlay, Ohio;" and "12 AGL Elkins, W. Va.;" is deleted and "12 AGL INT Findlay 131° and Appleton, Ohio, 312° radials; 12 AGL Appleton; 12 AGL Zanesville, Ohio; 12 AGL Parkersburg, W. Va.;" is substituted therefor.

13. V-40 is amended to read as follows:

V-40 From Cleveland, Ohio, 12 AGL Briggs, Ohio; 12 AGL Imperial, Pa.

14. V-41 is amended to read as follows:

V-41 From Imperial, Pa., 12 AGL INT Imperial 326° and Youngstown, Ohio, 177° radials; 12 AGL Youngstown.

15. In V-42 all after "4 mi. W. of centerline;" is deleted and "12 AGL Cleveland, Ohio; 12 AGL Akron, Ohio, including a 12 AGL E alternate from Windsor, Ont., Canada, to INT Strongville, Ohio, 162° and Akron 289° radials via INT Windsor 134° and Strongville 342° radials and Strongville. The airspace within Canada is excluded." is substituted therefor.

16. V-43 is amended to read as follows:

V-43 From Appleton, Ohio, 12 AGL Tiverton, Ohio; 12 AGL Briggs, Ohio; 12 AGL Youngstown, Ohio; 12 AGL Erie, Pa.

17. In V-44 all between "12 AGL Falmouth, Ky.;" and "12 AGL Martinsburg, W. Va.;" is deleted and "12 AGL York, Ky.; 12 AGL Parkersburg, W. Va.; 12 AGL Morgantown, W. Va.;" is substituted therefor.

18. In V-45 all between "Greensboro, N.C.;" and "From Waterville, Ohio," is deleted and "12 AGL INT Greensboro 334° and Hickory, N.C., 049° radials; 12 AGL Pulaski, Va.; 12 AGL Bluefield, W. Va.; 12 AGL Charleston, W. Va.;" is substituted therefor.

19. In V-51 all between "Highway, Tenn.;" and "12 AGL Nabb, Ind.;" is deleted and "12 AGL Louisville, Ky., including a 12 AGL E alternate and also a 12 AGL W alternate from Highway to Louisville via INT Highway 333° and New Hope, Ky., 165° radials and New Hope;" is substituted therefor.

20. In V-53 all between "Holston Mountain, Tenn.;" and "12 AGL INT Louisville 333°" is deleted and "12 AGL Whitesburg, Ky.; 12 AGL Lexington, Ky.; 12 AGL Louisville, Ky.;" is substituted therefor.

21. In V-57 all after "Graham, Tenn.;" is deleted and "12 AGL Bowling Green, Ky. From Lexington, Ky., 12 AGL Falmouth, Ky.; 12 AGL INT Richmond, Ind., 142° and Cincinnati, Ohio, 022° radials;" is substituted therefor.

22. V-59 is amended to read as follows:

V-59 From Pulaski, Va., 12 AGL Beckley, W. Va.; 12 AGL Parkersburg, W. Va.; 12 AGL Newcomerstown, Ohio.

23. In V-72 "From Akron, Ohio, via Youngstown, Ohio; Tideout, Pa.;" is deleted and "From Akron, Ohio, 12 AGL Youngstown, Ohio; 12 AGL Tideout, Pa.;" is substituted therefor.

24. V-75 is amended to read as follows:

V-75 From Morgantown, W. Va., 12 AGL INT Morgantown 319° and Wheeling, W. Va., 149° radials; 12 AGL Wheeling; 12 AGL Briggs, Ohio; 12 AGL Cleveland, Ohio.

25. In V-92 all after "12 AGL Waterville, Ohio;" is deleted and "12 AGL Attica, Ohio; 12 AGL Mansfield, Ohio; 12 AGL Briggs, Ohio; 12 AGL Wheeling, W. Va.; 12 AGL Grantsville, Md.; 12 AGL Front Royal, Va.;" is substituted therefor.

26. In V-97 all between "Knoxville;" and "12 AGL Shelbyville, Ind.;" is deleted and "12 AGL London, Ky., including a 12 AGL E alternate via INT Knoxville 013° and London 141° radials; 12 AGL Lexington, Ky., including a 12 AGL W alternate; 12 AGL Cincinnati, Ohio, including a 12 AGL W alternate via INT Lexington 327° and Cincinnati 192° radials, and also a 12 AGL E alternate from London to Cincinnati via INT London 004° and Lexington 107° radials and Falmouth, Ky.;" is substituted therefor.

27. In V-98 all before "London" is deleted and "From INT Litchfield, Mich., 126° and Carleton, Mich., 249° radials; 12 AGL Carleton; 12 AGL Windsor, Ont., Canada;" is substituted therefor.

28. In V-103 all between "12 AGL Clarksburg, W. Va.;" and "12 AGL INT Akron 312°;" is deleted and "12 AGL INT Clarksburg 354° and Imperial, Pa., 193° radials; 12 AGL Imperial; 12 AGL Akron, Ohio;" is substituted therefor.

29. In V-106 all before "12 AGL INT Ravine, Pa., 279°" is deleted and "From Charleston, W. Va., 12 AGL INT Charleston 051° and Elkins, W. Va., 264° radials; 12 AGL Clarksburg, W. Va.; 12 AGL Morgantown, W. Va.; 12 AGL Indian Head, Pa.; 12 AGL Johnstown, Pa.;" is substituted therefor.

30. In V-115 all between "Knoxville;" and "12 AGL Jamestown, N.Y.;" is deleted and "12 AGL Whitesburg, Ky.; 12 AGL Charleston, W. Va.; 12 AGL Parkersburg, W. Va.; 12 AGL INT Parkersburg 067° and Allegheny, Pa., 215° radials; 12 AGL Allegheny. From Ellwood City, Pa.; 12 AGL Tidioute, Pa.;" is substituted therefor.

31. In V-119 all before "12 AGL Wells-ville, N.Y.;" is deleted and "From Newcombe, Ky., 12 AGL Henderson, W. Va.; 12 AGL Parkersburg, W. Va.; 12 AGL Bellaire, Ohio; 12 AGL Wheeling, W. Va.; 12 AGL Imperial, Pa.; 12 AGL Clarion, Pa.; 12 AGL Bradford, Pa.;" is substituted therefor.

32. In V-126 all between "Waterville, Ohio;" and "12 AGL Bradford, Pa.;" is deleted and "12 AGL Cleveland, Ohio; 12 AGL Jefferson, Ohio; 12 AGL Erie, Pa.;" is substituted therefor.

33. In V-128 all after "12 AGL Cincinnati;" is deleted and "12 AGL York, Ky., including a 12 AGL N alternate and also a 12 AGL S alternate via INT Cincinnati 120° and York 271° radials; 12 AGL Charleston, W. Va.;" is substituted therefor.

34. In V-133 all between "Hickory, N.C.;" and "12 AGL INT Sandusky 342°" is deleted and "12 AGL Charleston, W. Va.; 12 AGL Zanesville, Ohio; 12 AGL Tiverton, Ohio; 12 AGL Mansfield, Ohio; 12 AGL Sandusky, Ohio;" is substituted therefor.

35. In V-140 all between "12 AGL Dyersburg, Tenn.;" and "12 AGL Clif-

[Airspace Docket No. 66-CE-5]

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

Alteration of Control Zone and Transition Area

On April 26, 1966, a Supplemental Notice of Proposed Rule Making was published in the FEDERAL REGISTER (31 F.R. 6319) stating that the Federal Aviation Agency proposed to alter controlled airspace in the Salina, Kans., terminal area.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t. August 18, 1966, as hereinafter set forth.

(1) In § 71.171 (31 F.R. 2065) the Salina, Kans., control zone is amended to read:

SALINA, KANS.

Within a 5-mile radius of Salina Municipal Airport, latitude 38°49'10" N., longitude 97°34'00" W., and within a 5-mile radius of Schilling Airport (formerly Schilling AFB) latitude 38°47'30" N., longitude 97°38'45" W., and within 2 miles each side of the 188° radial of the Salina, Kans., VORTAC, extending from the 5-mile radius to the VORTAC.

(2) In § 71.181 (31 F.R. 2149) the transition area is amended to read:

SALINA, KANS.

That airspace extending upward from 700 feet above the surface within 2 miles each side of the Salina VORTAC 008° radial, extending from the VORTAC to 8 miles N of the VORTAC; and that airspace extending upward from 1,200 feet above the surface within 8 miles SW and 5 miles NE of the 321° and 141° radials of the Salina, Kans., VORTAC, extending to points 12 miles NW and 5 miles SE, and the airspace north of VOR Federal Airway No. 4 within a 14-mile radius of the VORTAC.

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

Issued in Kansas City, Mo., on June 14, 1966.

DANIEL E. BARROW,
Acting Director, Central Region.

[F.R. Doc. 66-6902; Filed, June 23, 1966; 8:45 a.m.]

[Airspace Docket No. 66-CE-26]

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

Designation of Transition Area

On April 19, 1966, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (31 F.R. 5972) stating that the Federal Aviation Agency proposed to designate controlled airspace in the Fergus Falls, Minn., terminal area.

Interested persons were afforded an opportunity to participate in the rule-

dale, Va.;" is deleted and "12 AGL Nashville, Tenn., including a 12 AGL S alternate from Dyersburg to Nashville via INT Dyersburg 115° and Graham, Tenn., 270° radials; and Graham; 12 AGL Highway, Tenn., including a 12 AGL S alternate; 12 AGL London, Ky., including a 12 AGL N alternate from Nashville to London via INT Nashville 044° and London 258° radials; 12 AGL Whitesburg, Ky.; 12 AGL Bluefield, W. Va.;" is substituted therefor.

36. In V-144 all between "12 AGL Fort Wayne, Ind.;" and "12 AGL Kessel, W. Va.;" is deleted and "12 AGL Findlay, Ohio; 12 AGL INT Findlay 131° and Appleton, Ohio, 312° radials; 12 AGL Appleton; 12 AGL Zanesville, Ohio; 12 AGL Morgantown, W. Va.;" is substituted therefor.

37. In V-174 all before "12 AGL Elkins, W. Va.;" is deleted and "From York, Ky., 12 AGL Henderson, W. Va.;" is substituted therefor.

38. V-178 is amended to read as follows:

V-178 From Farmington, Mo., 12 AGL Paducah, Ky., including a 12 AGL S alternate; 12 AGL Central City, Ky.; 12 AGL New Hope, Ky.; 12 AGL Lexington, Ky.

39. V-184 is amended to read as follows:

V-184 From Erie, Pa., 12 AGL Tidioute, Pa.; 12 AGL INT Tidioute 154° and Phillipsburg, Pa., 296° radials; 12 AGL Philipsburg.

40. In V-188 all before "12 AGL Slate Run, Pa.;" is deleted and "From Carleton, Mich., 12 AGL Jefferson, Ohio; 12 AGL Tidioute, Pa.;" is substituted therefor.

41. In V-210 all between "INT Fort Wayne, Ind., 187° radials;" and "12 AGL INT Carrolltown 114°" is deleted and "12 AGL Rosewood, Ohio; 12 AGL Tiverton, Ohio; 12 AGL Imperial, Pa.; 12 AGL INT Imperial 074° and Carrolltown, Pa., 276° radials; 12 AGL Carrolltown;" is substituted therefor.

42. In V-214 all after "Rosewood, Ohio, 202° radials." is deleted and "From Columbus, Ohio, Port Columbus Airport ILS localizer, 12 AGL Zanesville, Ohio; 12 AGL Bellaire, Ohio; 12 AGL Allegheny, Pa.;" is substituted therefor.

43. In V-221 all after "12 AGL INT Salem 083° and Erie, Pa., 290° radials;" is deleted and "12 AGL Erie. The airspace within Canada is excluded." is substituted therefor.

44. V-224 is amended to read as follows:

V-224 From Carleton, Mich., 12 AGL INT Carleton 082° and Windsor, Ont., Canada, 100° radials. The airspace within Canada is excluded.

45. V-226 all before "12 AGL Williamsport, Pa.;" is deleted and "From Ellwood City, Pa., 12 AGL Clarion, Pa.; 12 AGL Keating, Pa.;" is substituted therefor.

46. In V-232 all before "12 AGL Milton, Pa.;" is deleted and "From Sandusky, Ohio, 12 AGL INT Sandusky 061° and Chardon, Ohio, 281° radials; 12 AGL Chardon; 12 AGL Franklin, Pa.; 12 AGL Keating, Pa.;" is substituted therefor.

47. In V-243 all after "Chattanooga;" is deleted and "12 AGL Bowling Green, Ky.; 12 AGL Scotland, Ind." is substituted therefor.

48. V-246 is amended to read as follows:

V-246 From Rosewood, Ohio, 12 AGL Mansfield, Ohio; 12 AGL INT Cleveland, Ohio, 138° and Tiverton, Ohio, 017° radials.

49. In V-276 all before "12 AGL INT Tyrone 096°" is deleted and "From Briggs, Ohio, 12 AGL Ellwood City, Pa.; 12 AGL Tyrone, Pa.;" is substituted therefor.

50. V-279 is amended to read as follows:

V-279 From the Columbus, Ohio, RBN 12 AGL Findlay, Ohio.

51. In V-297 all before "12 AGL INT Strongsville 304°" is deleted and "From Johnstown, Pa., 12 AGL Ellwood City, Pa.; 12 AGL Akron, Ohio; 12 AGL Strongsville, Ohio;" is substituted therefor.

52. In V-310 all before "INT Holston Mountain 104°" is deleted and "From Louisville, Ky., 12 AGL London, Ky.; 12 AGL Holston Mountain, Tenn.;" is substituted therefor.

53. V-427 is amended to read as follows:

V-427 From Newcomerstown, Ohio, 12 AGL Briggs, Ohio.

54. V-435 is amended to read as follows:

V-435 From Rosewood, Ohio, 12 AGL Attica, Ohio.

55. V-443 is amended to read as follows:

V-443 From Bellaire, Ohio, 12 AGL Newcomerstown, Ohio, 12 AGL Tiverton, Ohio; 12 AGL Cleveland, Ohio, including a 12 AGL E alternate via INT Tiverton 017° and Cleveland 138° radials; 12 AGL INT Cleveland 049° and Aymer, Ont., Canada, 205° radials; 12 AGL Aymer. This airspace within Canada is excluded.

56. In V-474 all before "12 AGL INT St. Thomas 088°" is deleted and "From Bellaire, Ohio, 12 AGL Indian Head, Pa.; 12 AGL St. Thomas, Pa.;" is substituted therefor.

57. V-478 is amended to read as follows:

V-478 From Falmouth, Ky., 12 AGL Newcombe, Ky.; 12 AGL Beckley, W. Va.

58. V-493 is amended to read as follows:

V-493 From Highway, Tenn., 12 AGL Lexington, Ky.; 12 AGL York, Ky.; 12 AGL Appleton, Ohio; 12 AGL Waterville, Ohio; 12 AGL Carleton, Mich.

59. V-502 is amended to read as follows:

V-502 From Louisville, Ky., 12 AGL Falmouth, Ky.

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

Issued in Washington, D.C., on June 17, 1966.

T. McCORMACK,
Acting Chief, Airspace and
Air Traffic Rules Division.

[F.R. Doc. 66-6901; Filed, June 23, 1966; 8:45 a.m.]

making through the submission of comments. Of the two comments received, one was favorable and the other offered no objection to the proposal.

The Einar Michelson Municipal Airport coordinates recited in the Notice of Proposed Rule Making have been changed slightly in this final rule. Since this change is minor in nature and imposes no additional burden on anyone, it is being incorporated in the rule without notice and public procedure.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., August 18, 1966, as hereinafter set forth.

In § 71.181 (31 F.R. 2149) the following transition area is added:

FERGUS FALLS, MINN.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Einar Michelson Municipal Airport (latitude 46°17'10" N., longitude 96°09'35" W.), and within 2 miles each side of the 187° bearing from Einar Michelson Municipal Airport, extending from the 5-mile radius area to 8 miles S of the airport; and that airspace extending upward from 1,200 feet above the surface within 5 miles W and 8 miles E of the 187° and 007° bearings from Einar Michelson Municipal Airport extending from 12 miles S of the airport to the S edge of V-2.

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

Issued in Kansas City, Mo., on June 14, 1966.

DANIEL E. BARROW,
Acting Director, Central Region.

[F.R. Doc. 66-6903; Filed, June 23, 1966; 8:45 a.m.]

[Airspace Docket No. 66-CE-27]

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

Designation of Transition Area

On April 15, 1966, a Notice of Proposed Rulemaking was published in the FEDERAL REGISTER (31 F.R. 5839) stating that the Federal Aviation Agency proposed to designate controlled airspace in the vicinity of Sheboygan, Wis.

Interested persons were afforded an opportunity to participate in the rule-making through submission of comments. The one comment received was favorable.

Since the publication of the above described Notice, it has been determined that the coordinates of the Sheboygan County Memorial Airport as set forth in the description of the transition area were incorrect. The correct coordinates are being included in the description set forth herein. Since this correction is minor in nature and imposes no additional burden on any person, notice and public procedure thereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., August 18, 1966, as hereinafter set forth.

In § 71.181 (31 F.R. 2149) the following transition area is added:

SHEBOYGAN, WIS.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Sheboygan County Memorial Airport (latitude 43°48'05" N., longitude 87°51'05" W.); and within 5 miles E and 8 miles W of the 021° bearing from Sheboygan County Memorial Airport, extending from the airport to 12 miles N of the airport.

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

Issued in Kansas City, Mo., on June 14, 1966.

DANIEL E. BARROW,
Acting Director, Central Region.

[F.R. Doc. 66-6904; Filed June 23, 1966; 8:45 a.m.]

[Airspace Docket No. 65-CE-130]

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

Alteration of Federal Airways

On December 21, 1965, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (30 F.R. 15759) stating in part that the Federal Aviation Agency was considering raising the floor of the segment of V-63 from Springfield, Mo., to Burlington, Iowa, to 1,200 feet above the surface (AGL). In Federal Register Document No. 66-4763, published in the FEDERAL REGISTER on May 3, 1966 (31 F.R. 6582) the 1,200 feet AGL floor for the segment of V-63 from Quincy, Ill., to Burlington, Iowa, was inadvertently omitted. Corrective action is taken herein.

Since the action is editorial in nature in that the rule is amended to conform to the Notice and the original intent, the Administrator has determined that notice and public procedure hereon are unnecessary and it may be made effective immediately.

In consideration of the foregoing, in Federal Register Document 66-4763, Item 11 is amended effective immediately as hereinafter set forth.

Item 11 is amended as follows: In V-63 "Burlington, Iowa." is deleted and "12 AGL Burlington, Iowa." is substituted therefor.

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

Issued in Washington, D.C., on June 17, 1966.

T. McCORMACK,
Acting Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 66-6905; Filed June 23, 1966; 8:46 a.m.]

[Airspace Docket No. 65-CE-154]

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

Alteration of Control Zone and Transition Area

On January 22, 1966, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (31 F.R. 912) stating

that the Federal Aviation Agency proposed to alter the controlled airspace in the vicinity of Worthington, Minn. Subsequent to the publication of that Notice, a new special VOR approach procedure was published. As a result thereof, a Supplemental Notice of Proposed Rule Making was published on April 15, 1966, in the FEDERAL REGISTER (31 F.R. 5838) making the necessary changes in the proposed alteration of the existing control zone and transition area.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. The one comment received was favorable.

Subsequent to the publication of the Notice and the Supplemental Notice, it was discovered that there was an error in the coordinates of the Worthington Municipal Airport as they were set forth in the two descriptions. Therefore, the coordinates are corrected in the descriptions contained herein. Since this change is minor in nature and imposes no additional burden on any person, notice and public procedure thereon are considered unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., August 18, 1966, as hereinafter set forth.

(1) In § 71.171 (31 F.R. 2065) the Worthington, Minn., control zone is amended to read:

WORTHINGTON, MINN.

Within a 5-mile radius of Worthington Municipal Airport (latitude 43°39'10" N., longitude 95°34'50" W.); and within 2 miles each side of the Worthington VOR 358° radial, extending from the 5-mile radius zone to 7 miles N of the VOR; and within 2 miles each side of the Worthington VOR 189° radial, extending from the 5-mile radius zone to 7 miles S of the VOR. This control zone shall be effective during the specific dates and/or times established in advance by a Notice to Airmen and continuously published in the Airman's Information Manual.

(2) In § 71.181 (31 F.R. 2149) the Worthington, Minn., transition area is amended to read:

WORTHINGTON, MINN.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Worthington Municipal Airport (latitude 43°39'10" N., longitude 95°34'50" W.); and within 5 miles E and 8 miles W of the Worthington VOR 358° radial, extending from the VOR to 13 miles N of the VOR; and within 2 miles each side of the Worthington VOR 189° radial, extending from the 6-mile radius area to 8 miles S of the VOR; and that airspace extending upward from 1,200 feet above the surface within 5 miles W and 8 miles E of the Worthington VOR 189° radial, extending from the VOR to 12 miles S of the VOR; and within 5 miles each side of the Worthington VOR 178° radial, extending from the VOR to the S boundary of V-120.

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

Issued in Kansas City, Mo., on June 14, 1966.

DANIEL E. BARROW,
Acting Director, Central Region.

[F.R. Doc. 66-6906; Filed, June 23, 1966; 8:46 a.m.]

SUBCHAPTER F—AIR TRAFFIC AND GENERAL OPERATING RULES

[Reg. Docket No. 7429; Amdt. 487]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

The amendments to the standard instrument approach procedures contained herein are adopted to become effective when indicated in order to promote safety. The amended procedures supersede the existing procedures of the same classification now in effect for the airports specified therein. For the convenience of the users, the complete procedure is republished in this amendment indicating the changes to the existing procedures.

As a situation exists which demands immediate action in the interests of safety in air commerce, I find that compliance with the notice and procedure provisions of the Administrative Procedure Act is impracticable and that good cause exists for making this amendment effective within less than 30 days from publication.

In view of the foregoing and pursuant to the authority delegated to me by the Administrator (24 F.R. 5662), Part 97 (14 CFR Part 97) is amended as follows:

1. By amending the following automatic direction finding procedures prescribed in § 97.11(b) to read:

ADF STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
EUG VOR.....	LOM.....	Direct.....	2100	T-dn%.....	300-1	300-1	200-1½
CVO VOR.....	LOM.....	Direct.....	2200	C-dn.....	500-1	500-1	500-1½
				S-dn-16.....	400-1	400-1	400-1
				A-dn.....	800-2	800-2	800-2

Procedure turn E side of crs, 339° Outbnd, 159° Inbnd, 2160' within 10 miles. Not authorized beyond 10 miles. (Final approach from holding pattern at EU LOM not authorized, procedure turn required.)

Minimum altitude over facility on final approach crs, 1500'.

Crs and distance, facility to airport, 159°—3.7 miles.

NOTE: All turns to be made on the E side of the crs; high terrain to W.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 3.7 miles after passing EU LOM, turn right and climb direct to EU LOM, thence continue to 2100' on crs, 339° Outbnd, 159° Inbnd within 10 miles of EU LOM, or when directed by ATC, turn right, climb to 3000' on R 250°, EUG VOR within 10 miles.

CAUTION: High terrain E and W.

%Takeoffs all runways: Climb on the Eugene VORTAC 355° radial within 10 miles to cross the VORTAC, southbound, V-23, 900'; westbound, 251° radial, 1000'.

MSA within 25 miles of facility: 000°-090°-4500'; 090°-180°-4200'; 180°-270°-4500'; 270°-360°-5100'.

City, Eugene; State, Oreg.; Airport name, Mahlon Sweet Field; Elev., 365'; Fac. Class., LOM; Ident., EU; Procedure No. 1, Amdt. 16; Eff. date, 16 July 66; Sup. Amdt. No. 15; Dated, 12 June 65

Fort Wayne VOR.....	LOM.....	Direct.....	2100	T-dn.....	300-1	300-1	200-1½
Whitely Int.....	LOM.....	Direct.....	2200	C-dn.....	400-1	500-1	500-1½
New Haven Int.....	LOM.....	Direct.....	2200	S-dn-31.....	400-1	400-1	400-1
Rock Creek Int.....	LOM.....	Direct.....	2200	A-dn.....	800-2	800-2	800-2

Radar available.

Procedure turn E side SE crs, 135° Outbnd, 315° Inbnd, 2100' within 10 miles.

Minimum altitude over LOM on final approach crs, 1900'.

Crs and distance, LOM to approach end of Runway 31, 315°—3.8 miles.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 3.8 miles after passing LOM, climb to 2600' on crs of 315° and proceed to Whitely Int westbound on R 281° FWA VOR, or when directed by ATC, climb to 2600' on 315° crs and proceed direct to Wolflake VOR.

NOTE: Reduction below ¾ mile not authorized.

MSA: 000°-270°-2200'; 270°-360°-2700'.

City, Fort Wayne; State, Ind.; Airport name, Baer Field; Elev., 801'; Fac. Class., LOM; Ident., FW; Procedure No. 1, Amdt. 11; Eff. date, 16 July 66; Sup. Amdt. No. 10; Dated, 23 May 64

PROCEDURE CANCELED, EFFECTIVE 16 JULY 1966.

City, Imperial; State, Nebr.; Airport name, Imperial Municipal; Elev., 3276'; Fac. Class., BH; Ident., IML; Procedure No. 1, Amdt. 2; Eff. date, 13 Mar. 65; Sup. Amdt. No. 1; Dated, 12 Jan. 63

Paterson RBN.....	AR LOM.....	Direct.....	2000	T-dn.....	300-1	300-1	200-1½
Paterson RBN.....	Allan Int#.....	Direct.....	2000	C-dn*.....	900-1	900-1	900-1½
Allan Int.....	AR LOM (final)#.....	Direct.....	2000	S-dn-22.....	900-1	900-1	900-1
				A-dn.....	1000-2	1000-2	1000-2
					The following minimums apply to turbojet aircraft when circling W of Runways 4-22 centerlines extended.*		
				C-dn*.....	900-2	900-2	900-2

Radar available.

Procedure turn W side of crs, 037° Outbnd, 217° Inbnd, 2000' within 10 miles.

Minimum altitude over facility on final approach crs, 2000'.

Crs and distance, facility to airport, 217°—5.8 miles.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 5.8 miles after passing LOM, climb to 2000' on crs, 217°, make right turn, proceed direct to Chatham RBN, hold NE, 1-minute right turns, Inbnd crs, 241°.

CAUTION: Building, 598'—2.2 miles N of airport.

*Authorized only for aircraft with dual ADF's operating simultaneously.

MSA within 25 miles of facility: 000°-090°-2000'; 090°-180°-2600'; 180°-270°-1600'; 270°-360°-2500'.

City, Newark; State, N.J.; Airport name, Newark; Elev., 18'; Fac. Class., LOM; Ident., AR; Procedure No. 2, Amdt. 7; Eff. date, 16 July 66; Sup. Amdt. No. 6; Dated, 5 Feb. 66

RULES AND REGULATIONS

ADF STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Warrington Int.	ING RBn	Direct	2200	T-dn	300-1	NA	NA
Pottstown VOR	ING RBn	Direct	2200	C-dn	600-1	NA	NA
Fraser Int.	ING RBn (final)	Direct	1200	A-dn	NA	NA	NA

Radar authorized.
 Procedure turn N side of crs, 241° Outbnd, 061° Inbnd, 2200' within 10 miles.
 Minimum altitude over facility on final approach crs, 1200'.
 Crs and distance, facility to airport, 061°—0.8 mile.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0.8 mile after passing ING RBn, climb on crs, 061° to 1400' within 5 miles, then make left-climbing turn returning to ING RBn at 2200'. Hold SW, 1-minute left turns, Inbnd crs, 061°.
 MSA within 25 miles of facility: 000°-090°—2000'; 090°-180°—2400'; 180°-360°—2000'.

City, Philadelphia (Ambler); State, Pa.; Airport name, Wings Field; Elev., 320'; Fac. Class., MHW; Ident., ING; Procedure No. 1, Amdt. 4; Eff. date, 16 July 66; Sup. Amdt. No. 3; Dated, 12 Mar. 66

2. By amending the following very high frequency omnirange (VOR) procedures prescribed in § 97.11(c) to read:

VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
China Int.	BPT VOR (final)	Direct	1500	T-dn	300-1	300-1	200-1/2
				C-dn	400-1	500-1	500-1 1/2
				A-dn	800-2	800-2	800-2

Procedure turn S side of crs, 248° Outbnd, 068° Inbnd, 1500' within 10 miles.
 Minimum altitude over facility on final approach crs, 1500'.
 Crs and distance, facility to airport, 067°—4.6 miles.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.6 miles after passing BPT VOR, climb to 1500' on R 068° within 20 miles, or when directed by ATC, climb to 1500' on R 051° within 20 miles.
 MSA within 25 miles of facility: 000°-090°—2100'; 090°-180°—2000'; 180°-270°—1400'; 270°-360°—1700'.

City, Beaumont; State, Tex.; Airport name, Jefferson County; Elev., 16'; Fac. Class., BVOR; Ident., BPT; Procedure No. 1, Amdt. 7; Eff. date, 16 July 66; Sup. Amdt. No. 6; Dated, 16 May 64

				T-dn	300-1	300-1	200-1/2
				C-dn	1000-3	1000-3	1000-3
				A-dn	1000-3	1000-3	1000-3
If aircraft equipped to receive DME and Bishop DME Fix received, the following minimums are authorized:							
				C-dn	400-1	500-1	500-1 1/2
				S-dn	400-1	400-1	500-1 1/2

Procedure turn N side of crs, 021° Outbnd, 201° Inbnd, 7400' within 10 miles. Beyond 10 miles not authorized.
 Minimum altitude over facility on final approach crs, 7400'; over Bishop DME Fix, 6300'.
 Crs and distance, facility to airport, 201°—13.2 miles; facility to Bishop DME Fix, 201°—8 miles; Bishop DME Fix to Runway 21—5.2 miles.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 10 miles after passing CPR VOR, climb to 8000' on R 201° CPR VOR within 20 miles, or when directed by ATC, turn right, climb to 8000' direct to VOR.
 MSA within 25 miles of facility: 000°-090°—8300'; 090°-180°—10,300'; 180°-270°—10,000'; 270°-360°—8200'.
 %Southeastbound, 134° through 156°, IFR departures: On V 19 cross Deer Creek Int at or above 9000'; on V 85 cross Mountain Int at or above 10,000'.

City, Casper; State, Wyo.; Airport name, Casper Air Terminal; Elev., 5348'; Fac. Class., BVORTAC; Ident., CPR; Procedure No. 1, Amdt. 7; Eff. date, 16 July 66; Sup. Amdt. No. 6; Dated, 19 June 65

R 277°, EAU VOR clockwise	R 077, EAU VOR	Via 6-mile DME Arc	2800	T-dn	300-1	300-1	200-1/2
R 087°, EAU VOR counterclockwise	R 007, EAU VOR	Via 6-mile DME Arc	2800	C-dn	500-1	600-1	600-1 1/2
6-mile DME Fix, R 007°	EAU VORTAC (final)	Direct	2000	A-dn	800-2	800-2	800-2

Procedure turn W side of crs, 007° Outbnd, 187° Inbnd, 2800' within 10 miles.
 Minimum altitude over facility on final approach crs, 2000'.
 Crs and distance, facility to airport, 187°—2.1 miles.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 2.1 miles after passing EAU VOR, climb to 3000' on R 254° within 10 miles.
 NOTE: Final approach from holding pattern at the VOR not authorized. Procedure turn required.
 *When weather is less than 1000-1, aircraft departing Runway 14, make left-climbing turn to 2000' on R 103°, EAU VOR and aircraft departing Runway 22 make right-climbing turn to 2000' on R 235° prior to departing southbound due to 1350' tower, 2.2 miles SE and 1347' tower, 3.6 miles SSE of airport.
 MSA within 25 miles of facility: 000°-090°—2500'; 090°-180°—3600'; 180°-270°—2500'; 270°-360°—2800'.

City, Eau Claire; State, Wis.; Airport name, Eau Claire Municipal; Elev., 888'; Fac. Class., L-BVORTAC; Ident., EAU; Procedure No. 1, Amdt. 12; Eff. date, 16 July 66; Sup. Amdt. No. 11; Dated, 13 Nov. 65

RULES AND REGULATIONS

8753

VOR STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Gerry Int.	Jamestown VOR	Direct	3600	T-dn C-d C-n S-d-25# S-n-25# A-dn	300-1 600-1 600-2 600-1 600-2 NA	300-1 600-1 600-2 600-1 600-2 NA	200-1/2 600-1 1/2 600-2 600-1 600-2 NA

Procedure turn N side of crs, 078° Outbnd, 258° Inbnd, 3600' within 10 miles.
 Minimum altitude over facility on final approach crs, 2800'.
 Crs and distance, facility to airport, 258°—6.1 miles.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 6.1 miles after passing VOR, make a right-climbing turn to 3600' and return to Jamestown VOR. Hold E on R 078° 1-minute right turns, 258° Inbnd.
 †Reduction in visibility minimums not authorized for REIL.
 MSA within 25 miles of facility: 000°-360°—3500'.

City, Jamestown; State, N. Y.; Airport name, Jamestown Municipal; Elev., 1723'; Fac. Class., L-BVOR; Ident., JHW; Procedure No. 1, Amdt. 3; Eff. date, 16 July 66; Sup. Amdt. No. 2; Dated, 10 Oct. 64

				T-d C-d C-n	300-1 500-1 600-1	300-1 500-1 600-1	NA NA NA
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Procedure turn S side of crs, 066° Outbnd, 246° Inbnd, 2700' within 10 miles. Nonstandard due to high towers to N. All turns to the S side of crs.
 Minimum altitude over facility on final approach crs, 1700'.
 Crs and distance, facility to airport, 251°—1 mile.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 1 mile after passing VOR, make left-climbing turn to 2700' and proceed to JFN VOR. Hold NE, 1-minute left turns, 246° Inbnd.
 CAUTION: Unlighted transmission poles, 40' high, 80' from approach end of Runway 27.
 NOTES: (1) Weather service not available. (2) Nonstandard holding. All turns to the S side of crs due to high towers to N.
 MSA within 25 miles of facility: 090°-180°—2800'; 180°-090°—2300'.

City, Jefferson; State, Ohio; Airport name, Ashtabula-Jefferson; Elev., 935'; Fac. Class., L-BVORTAC; Ident., JFN; Procedure No. 1, Amdt. 2; Eff. date, 16 July 66; Sup. Amdt. No. 1; Dated, 18 Apr. 64

KG LFR 10-mile DME Fix, R 291°	AKN VORTAC AKN VORTAC (final)	Direct Direct	1700 700	T-dn T-dn-29° C-dn* S-dn-11*# A-dn	300-1 300-1 500-1 500-1 800-2	300-1 300-1 500-1 500-1 800-2	200-1/2 300-1 500-1 1/2 500-1 800-2
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Procedure turn S side of crs, 291° Outbnd, 111° Inbnd, 1700' within 10 miles.
 Minimum altitude over facility on final approach crs, 700'.
 Crs and distance, facility to airport, 111°—3.7 miles.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 3.7 miles after passing AKN VORTAC, climb on R 111° to 3000' within 15 miles, or when directed by ATC, right turn, climb on R 165°. AKN VORTAC to 2000' within 15 miles.
 NOTE: When authorized by ATC, DME may be used within 15 miles to position aircraft for final approach at 3000' in all directions with the elimination of a procedure turn.
 *CAUTION: Radio towers, 262' 0.5 mile and 185' 1.1 miles W of airport.
 †500-1/2 authorized with operative ALS except 4-engine turbojets.
 MSA within 25 miles of facility: 000°-090°—3000'; 090°-180°—2000'; 180°-270°—1500'; 270°-360°—1500'.

City, King Salmon; State, Alaska; Airport name, King Salmon FAA; Elev., 55'; Fac. Class., H-BVORTAC; Ident., AKN; Procedure No. 1, Amdt. 5; Eff. date, 16 July 66; Sup. Amdt. No. 4; Dated, 26 Mar. 66

R 040° PIR VOR clockwise 6-mile DME Fix, R 076°	R 095° PIR VOR PIR VOR (final)	Via 6-mile DME Arc Direct	3500 3200	T-dn C-dn C-n S-dn-25# A-dn	300-1 400-1 400-1 1/2 400-1 800-2	300-1 500-1 500-1 1/2 400-1 800-2	200-1/2 500-1 1/2 500-2 400-1 800-2
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Procedure turn N side of crs, 076° Outbnd, 256° Inbnd, 3500' within 10 miles.
 Minimum altitude over facility on final approach crs, 3200'.
 Crs and distance, facility to airport, 256°—4.8 miles.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.8 miles after passing PIR VOR, climb to 4000' on R 242°, PIR VOR within 20 miles.
 †Reduction not authorized for nonstandard REIL.
 MSA within 25 miles of facility: 000°-360°—3400'.

City, Pierre; State, S. Dak.; Airport name, Pierre Municipal; Elev., 1742'; Fac. Class., L-BVORTAC; Ident., PIR; Procedure No. 1, Amdt. 9; Eff. date, 16 July 66; Sup. Amdt. No. 8; Dated, 19 Feb. 66

3. By amending the following terminal very high frequency omnirange (TerVOR) procedures prescribed in § 97.13 to read:

TERMINAL VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.
 If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Mount Holly Int. Dayton VOR	MGY VOR	Direct	2700	T-dn	300-1	300-1	200-1
	MGY VOR	Via DAY VOR R 163°	3000	C-dn	700-1	700-1	700-1½
				A-dn	NA	NA	NA
Camden Int. Mount Holly Int.	MGY VOR	Direct	2700				
	5-mile Radar Fix on R 146°	Via CVG R 055° and MGY R 146°					
5-mile Radar Fix on R 146°	MGY VOR (final)	Direct	2700 1700				

Radar available.
 Procedure turn E side of crs, 146° Outbnd, 326° Inbnd, 2700' within 10 miles.
 Minimum altitude over 5-mile Radar Fix on R 146° on final 1800'.
 Facility on airport.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished after passing MGY VOR, make climbing right turn to 2700', hold SE on R 146° MGY VOR, 1-minute right turns.
 MSA within 25 miles of facility: 000°-270°-2000'; 270°-360°-3100'.
 City, Dayton; State, Ohio; Airport name, Montgomery County; Elev., 960'; Fac. Class., T-VORW; Ident., MGY; Procedure No. TerVOR R 146°, Amdt. 5; Eff. date, 16 July 66; Sup. Amdt. No. 4; Dated, 11 June 66

10-mile DME Fix, R 152°	EUG VOR	Direct	3200	T-dn	300-1	300-1	200-½
10-mile DME Fix, R 167°	EUG VOR	Direct	3000	C-dn	800-1	800-1	800-1½
10-mile DME Fix, R 204°	EUG VOR	Direct	3000	A-dn	800-2	800-2	800-2

If aircraft equipped to receive VOR and ADF simultaneously or equipped with DME and Junction City Int identified the following minimums apply:
 C-dn 500-1 500-1 500-1½
 S-dn-16# 400-1 400-1 400-1

Procedure turn W side of crs, 347° Outbnd, 167° Inbnd, 2600' within 10 miles.
 Final approach from holding pattern at EUG VOR not authorized, procedure turn required.
 Minimum altitude over Junction City Int on final approach crs, 1200'.
 Crs and distance, Junction City Int to airport 167°-3.8 miles; breakoff point to approach end of Runway 16, 159°-0.6 mile (LMM).
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 mile after passing EUG VOR, turn right, climb to 2600' on R 347°, within 10 miles, or when directed by ATC, turn right and climb to 3000' on R 250°, EUG VOR within 10 miles of EUG VOR.
 CAUTION: High terrain E and W.
 NOTE: When authorized by ATC, DME may be used between R 326°, EUG VOR clockwise to R 010°, EUG VOR within 10 miles at 2300' to position aircraft for straight-in approach with elimination of the procedure turn.
 *If Junction City Int not identified, authorized minimum over EUG VOR is 1200'.
 #400-¾ authorized, except for 4-engine turbojet aircraft, with operative high-intensity runway lights.
 #400-½ authorized, except for 4-engine turbojet aircraft, with operative ALS.
 % Takeoffs all runways: Climb on the Eugene VORTAC 355° radial within 10 miles to cross the VORTAC, southbound V23 900': westbound 251° radial 1000'.
 MSA within 25 miles of facility: 000°-090°-4500'; 090°-180°-4800'; 180°-270°-3800'; 270°-360°-4500'.
 City, Eugene; State, Oreg.; Airport name, Mahlon Sweet Field; Elev., 365'; Fac. Class., L-BVORTAC; Ident., EUG; Procedure No. VOR-16, Amdt. 9; Eff. date, 16 July 66; Sup. Amdt. No. 8; Dated, 27 May 65

CSG VOR	LSF VOR	Direct	2200	T-dn	300-1	300-1	200-½
LGC VOR	LSF VOR	Direct	3000	C-dn	800-1	800-1	800-1½
EUF VOR	LSF VOR	Direct	3000	S-dn-14#	800-1	800-1	800-1
				A-dn	800-2	800-2	800-2

Radar available.
 Procedure turn W side of crs, 339° Outbnd, 159° Inbnd, 2200' within 10 miles of CS LOM.
 Minimum altitude over CS LOM on final approach crs, 2100'.
 Crs and distance, CS LOM to Runway 14, 159°-6.9 miles.
 Crs and distance, breakoff point to Runway 14, 143°-0.7 mile.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 mile of LSF VOR, turn right, climb to 2000' on R 207°, LSF VOR within 15 miles, or when directed by ATC, turn right, climb to 3200' and proceed to Flat Rock Int via 024° bearing from AWS RBA.
 CAUTION: Jump towers, 580' 1.5 miles NE, R-3002 E and SE of Lawson AAF.
 NOTES: (1) Authorized for military use only except by prior arrangement. (2) This procedure to be utilized only by aircraft having operating VOR and ADF receivers.
 #Reduction not authorized.
 MSA within 25 miles of facility: 000°-090°-1800'; 090°-180°-3300'; 180°-270°-1500'; 270°-360°-2200'.
 City, Fort Benning; State, Ga.; Airport name, Lawson AAF; Elev., 232'; Fac. Class., VOR; Ident., LSF; Procedure No. TerVOR-14, Amdt. 4; Eff. date, 16 July 66; Sup. Amdt. No. 3; Dated, 14 Aug. 65

HRL VOR	MFE VOR	Direct	2000	T-dn	300-1	300-1	200-½
				C-dn	500-1	500-1	500-1½
				A-dn	800-2	800-2	800-2

Procedure turn N side of crs, 086° Outbnd, 266° Inbnd, 1600' within 10 miles.
 Minimum altitude over facility on final approach crs, 600'.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 mile after passing MFE VOR, turn right, climb to 1700' on R 312° within 10 miles.
 CAUTION: 257' water tower, 0.9 mile N of airport; 398' radio tower, 2.5 miles ENE of airport; 270' tower, 1.6 miles N of airport.
 MSA within 25 miles of facility within United States: 000°-090°-2100'; 090°-270°-1500'; 270°-360°-1700'.
 City, McAllen; State, Tex.; Airport name, Miller International; Elev., 106'; Fac. Class., L-BVOR; Ident., MFE; Procedure No. TerVOR (R 086), Amdt. 4; Eff. date, 16 July 66; Sup. Amdt. No. 3; Dated, 9 Mar. 63

RULES AND REGULATIONS

TERMINAL VOR STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Geneseo VOR	Rush Int.	Direct	2600	T-dn	300-1	300-1	200-1/2
Rush Int.	5-mile Radar or DME Fix R 177° (final).	Direct	1200	C-dn	500-1	500-1	500-1 1/2
				S-dn	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2

Radar available.
 Procedure turn E side of crs, 177° Outbnd, 357° Inbnd, 2300' within 10 miles.
 Facility on airport.
 Minimum altitude over 5-mile Radar or DME Fix, R 177° on final approach crs, 1200'.
 Crs and distance, breakoff point to approach end of Runway 1, 007°—0.4 mile.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 mile of ROC VOR, make left-climbing turn to 3000', intercept R 298° of Rochester VOR, proceed to Spenceport Int. Hold W, 1-minute left turns, 118° Inbnd.
 NOTE: When authorized by ATC, DME may be used throughout 360° at 2600', via 11-mile DME Arc, to position aircraft for straight-in, with elimination of procedure turn.
 CAUTION: Tower, 890', 2.3 miles N; Tower, 946', 2.5 miles SW of airport.
 AIR CARRIER NOTE: Takeoff on Runway 12 and landing on Runway 30 not authorized.
 MSA within 25 miles of facility: 000°-090°-2100'; 090°-180°-3800'; 180°-270°-3100'; 270°-360°-2000'.

City, Rochester; State, N. Y.; Airport name, Rochester-Monroe County; Elev., 560'; Fac. Class., L-BVORTAC; Ident., ROC; Procedure No. TerVOR-1, Amdt. 10; Eff. date, 16 July 66; Sup. Amdt. No. 9; Dated, 3 July 65

Geneseo VOR	Scottsville Int.	Direct	2600	T-dn	300-1	300-1	200-1/2
Linwood Int.	Scottsville Int.	Direct	2600	C-dn	700-1	700-1	700-1 1/2
Scottsville Int.	5-mile Radar or DME Fix, R 223° (final).	Direct	1400	A-dn	800-2	800-2	800-2

Radar available.
 Procedure turn E side of crs, 223° Outbnd, 043° Inbnd, 2400' within 10 miles.
 Minimum altitude over 5-mile Radar or DME Fix, R 223° on final approach crs, 1400'.
 Facility on airport; breakoff point to runway, 040°—0.26 mile.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 mile of the Rochester VOR, make left-climbing turn to 3000', intercept R 298° of Rochester VOR, proceed to Spenceport Int. Hold W, 1-minute left turns, 118° Inbnd.
 NOTE: When authorized by ATC, DME may be used throughout 360° at 2600', via 11-mile DME Arc, to position aircraft for straight-in, with elimination of procedure turn.
 CAUTION: Tower 946', 2.5 miles SW; Tower, 890' 2.3 miles N of airport.
 AIR CARRIER NOTE: Takeoff on Runway 12 and landing on Runway 30 not authorized.
 MSA within 25 miles of facility: 000°-090°-2100'; 090°-180°-3800'; 180°-270°-3100'; 270°-360°-2000'.

City, Rochester; State, N. Y.; Airport name, Rochester-Monroe County; Elev., 560'; Fac. Class., L-BVORTAC; Ident., ROC; Procedure No. Ter VOR-4, Amdt. 2; Eff. date, 16 July 66; Sup. Amdt. No. 1; Dated, 12 June 65

				T-dn	300-1	300-1	200-1/2
				C-dn	500-1	500-1	500-1 1/2
				S-dn-10°	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2

Radar available.
 Procedure turn S side of crs, 286° Outbnd, 109° Inbnd, 1900' within 10 miles.
 Minimum altitude over 5-mile Radar or DME Fix, R 289° final approach crs, 1100'.
 Facility on airport.
 Crs and distance, breakoff point to approach end Runway 10, 067°—0.5 mile.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 mile of Rochester VOR, climb to 3000' on R 109°, turn right intercept R 134°, proceed Outbnd to Fishers Int. Hold SE, 1-minute left turns, 314° Inbnd.
 NOTE: When authorized by ATC, DME may be used throughout 360° at 2600', via 11-mile DME Arc to position aircraft for straight-in with elimination of procedure turn.
 CAUTION: Tower, 890', 2.3 miles N; tower 946', 2.5 miles SW of airport.
 AIR CARRIER NOTE: Takeoff on Runway 12 and landing on Runway 30 not authorized.
 *400-1/2 authorized, except for 4-engine turbojet aircraft, with operative high-intensity runway lights.
 MSA within 25 miles of facility: 000°-090°-2100'; 090°-180°-3800'; 180°-270°-3100'; 270°-360°-2000'.

City, Rochester; State, N. Y.; Airport name, Rochester-Monroe County; Elev., 560'; Fac. Class., L-BVORTAC; Ident., ROC; Procedure No. Ter VOR-10, Amdt. 5; Eff. date, 16 July 66; Sup. Amdt. No. 4; Dated, 3 July 65

				T-dn	300-1	300-1	200-1/2
				C-dn	600-1	600-1	600-1 1/2
				A-dn	800-2	800-2	800-2

Radar available.
 Procedure turn W side of crs, 035° Outbnd, 215° Inbnd, 2200' within 10 miles.
 Minimum altitude over 5-mile Radar or DME Fix, R 035° on final approach crs, 1300'.
 Facility on airport, Breakoff point to runway, 220°—0.8 mile.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 mile of Rochester VOR, make right-climbing turn to 3000', intercept R 298° of Rochester VOR, proceed to Spenceport Int. Hold W, 1-minute left turns, 118° Inbnd.
 NOTE: When authorized by ATC, DME may be used throughout 360° at 2600', via 11-mile DME Arc, to position aircraft for straight-in with elimination of procedure turn.
 CAUTION: Tower 890', 2.3 miles N of airport; Tower, 946', 2.5 miles SW of airport.
 AIR CARRIER NOTE: Takeoff on Runway 12 and landing on Runway 30 not authorized.
 MSA within 25 miles of facility: 000°-090°-2100'; 090°-180°-3800'; 180°-270°-3100'; 270°-360°-2000'.

City, Rochester; State, N. Y.; Airport name, Rochester-Monroe County; Elev., 560'; Fac. Class., LBVORTAC; Ident., ROC; Procedure No. Ter VOR-22, Amdt. 3; Eff. date, 16 July 66; Sup. Amdt. No. 2; Dated, 25 Dec. 65

RULES AND REGULATIONS

4. By amending the following very high frequency omnirange—distance measuring equipment (VOR/DME) procedures prescribed in § 97.15 to read:

VOR/DME STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.
 If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition		Course and distance	Minimum altitude (feet)	Condition	Ceiling and visibility minimums		
From—	To—				2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
MC LFR 4-mile DME Fix, R 345°	MCG VORTAC 2-mile DME Fix, R 345°	Direct Direct	3000 900	T-dn C-dn S-dn-15 A-dn	300-1 400-1 400-1 800-2	300-1 500-1 400-1 800-2	200-1/2 500-1 1/2 400-1 800-2

Procedure turn E side of crs, 345° Outbnd, 165° Inbnd, 3000' within 10 miles of 4-mile DME Fix.
 Minimum altitude over 4-mile DME Fix, 1100'; over 2-mile DME Fix, *900'; over facility on final approach crs, 747'.
 Crs and distance, breakoff point to approach end of Runway 15, 155°—1 mile.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 mile of the MCG VORTAC, turn left, climb to 3000' on R 100° within 15 miles.
 CAUTION: Mountainous terrain all quadrants. Terrain 1266', 3.1 miles S of airport.
 NOTE: When authorized by ATC, DME may be used to position aircraft for final approach at 3500' between radials 325° clockwise to 200° and from 200° clockwise to 325° at 5200' within 15 miles of the elimination of a procedure turn.
 *If 2-mile DME Fix not received, ceiling minimum becomes 600'.
 MSA within 25 miles of facility: 000°-090°—3000'; 090°-180°—3000'; 180°-270°—5200'; 270°-360°—6300'.

City, McGrath; State, Alaska; Airport name, McGrath FAA; Elev., 337'; Fac. Class., H-BVORTAC; Ident., MCG; Procedure No. VOR/DME 1, Amdt. 2; Eff. date, 16 July 66; Sup. Amdt. No. 1; Dated, 14 May 66

5. By amending the following instrument landing system procedures prescribed in § 97.17 to read:

ILS STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.
 If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition		Course and distance	Minimum altitude (feet)	Condition	Ceiling and visibility minimums		
From—	To—				2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
CPR VOR	LOM	Direct	8000	T-dn%	300-1	300-1	200-1/2
Henning Int	LOM	Direct	8000	C-dn	500-1	500-1	500-1 1/2
Alcova Int	LOM	Direct	8000	S-dn-7@	200-1/2	200-1/2	200-1/2
Glenrock Int	Evansville Int	Direct	8000	A-dn	600-2	600-2	600-2
Evansville Int	LOM	Direct	8000				
Airport Int	LOM	Direct	8000				
Oil Field Int	LOM	Direct	8000				
Lockett Int	LOM	Direct	8000				
Pipeline VHF/DME Int	LOM (final)	Direct	6700				

Procedure turn S side of W crs, 254° Outbnd, 074° Inbnd, 8000' within 10 miles.
 Minimum altitude at glide slope interception Inbnd, 6700'.
 Altitude of glide slope and distance to approach end of runway at OM, 6680'—3.9 miles; at MM, 5648'—0.6 mile.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0.6 mile after passing MM, climb to 8000' on E crs of ILS within 15 miles of LOM, or, when directed by ATC, turn left, proceed direct to CPR VOR, climbing to 8000'.
 NOTES: (1) Glide slope unusable beyond 1 mile W of LOM and above 7000' due to moderate-to-severe roughness. (2) When authorized by ATC, DME may be used from 21 miles to 25 miles at 7700' between CPR Radial 201° clockwise to Radial 338° to position aircraft over Pipeline DME Fix for final approach with elimination of procedure turn.
 *Final approach from holding pattern not authorized. Procedure turn required.
 %Southeastbound (134° through 156°) IFR departures: On V-19 cross Deer Creek Int at or above 9000', on V-85 cross Mountain Int at or above 10,000'.
 @500-1 required when glide slope inoperative.

City, Casper; State, Wyo.; Airport name, Casper Air Terminal; Elev., 5348'; Fac. Class., ILS; Ident., I-CPR; Procedure No. ILS-7, Amdt. 13; Eff. date, 16 July 66; Sup. Amdt. No. 12; Dated, 18 Sept. 65

10-mile DME Fix, R 152°	LOM	Direct	3200	T-dn%	300-1	300-1	200-1/2
EUG VOR	LOM	Direct	2100	C-dn	500-1	500-1	500-1 1/2
12-mile DME Fix and N crs EUG localizer.*	LOM (final)	Direct	1500	S-dn-16	200-1/2	200-1/2	200-1/2
10-mile DME Fix, R 167°	LOM	Direct	3000	A-dn	600-2	600-2	600-2
10-mile DME Fix, R 204°	LOM	Direct	3000				
CVO VOR 135-R and N crs EUG localizer.	LOM (final)	Direct	**2200				

Procedure turn E side of crs, 336° Outbnd, 159° Inbnd, 2100' within 10 miles. Not authorized beyond 10 miles. (Final approach from holding pattern at EU LOM not authorized, procedure turn required.)
 Minimum altitude at glide slope interception Inbnd, 1500'.
 Altitude of glide slope and distance to approach end of runway at LOM, 1480'—3.7 miles; at LMM, 570'—0.6 mile.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished, turn right and climb to 2100' on N crs, Eugene ILS localizer within 10 miles of LOM, or when directed by ATC, turn right and climb to 3000' on R 250° EUG VOR within 10 miles of EUG VOR.
 CAUTION: High terrain E and W.
 NOTE: When authorized by ATC, DME may be used between R 326°, EUG VOR clockwise to R 010°, EUG VOR within 12 miles at 2300' to position aircraft for straight-in approach with elimination of the procedure turn.
 *Glide slope altitude at 12-mile DME Fix, 3700'.
 **Descent on glide slope authorized.
 %Takeoffs all runways: Climb on the Eugene VORTAC 355° radial within 10 miles to cross the VORTAC, southbound V-23, 900'; westbound 251° radial, 1000'.

City, Eugene; State, Oreg.; Airport name, Mahlon Sweet Field; Elev., 365'; Fac. Class., ILS; Ident., I-EUG; Procedure No. ILS-16, Amdt. 18; Eff. date, 16 July 66; Sup. Amdt. No. 17; Dated, 1 May 65

RULES AND REGULATIONS

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ILS STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Whitley Int.	LOM	Direct	2200	T-dn	300-1	300-1	200-1/4
New Haven Int.	LOM	Direct	2200	C-dn	400-1	600-1	500-1 1/4
Rock Creek Int.	LOM	Direct	2200	S-dn-31*	200-1/2	200-1/2	200-1/4
Fort Wayne VOR	LOM	Direct	2100	A-dn	600-2	600-2	600-2

Radar available.
 Procedure turn E side of SE crs, 135° Outbnd, 315° Inbnd, 2100' within 10 miles.
 Minimum altitude at glide slope interception Inbnd, 2100'.
 Altitude of glide slope and distance to approach end of runway at OM, 2045'—3.8 miles; at MM, 1075'—0.7 mile.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished, climb to 2600' on NW crs, ILS and proceed to Whitley Int westbound on R 281° FWA VOR, or as directed by ATC, climb on NW crs, ILS to 2600' and proceed direct to Wolflake VOR.
 Note: When authorized by ATC, DME may be used to position aircraft on final approach crs at 2600' via 10-mile DME Arc, 068° clockwise to 233° from FWA VOR, with the elimination of the procedure turn.
 *400-1/4 required when glide slope not utilized, reduction below 1/4 mile not authorized.

City, Fort Wayne; State, Ind.; Airport name, Bair Field; Elev., 801'; Fac. Class., ILS; Ident., I-FWA; Procedure No. ILS-31, Amdt. 12; Eff. date, 16 July 66; Sup. Amdt. No. 11; Dated, 17 Oct. 64

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Paterson RBN	Allan Int.	Direct	2000	T-dn	300-1	300-1	200-1/4
Allan Int.	A R LOM (final)	Direct	2000	C-dn	600-1	600-1	600-1 1/4
				S-dn-22*	200-1/2	200-1/2	200-1/4
				A-dn	600-2	600-2	600-2
The following minimums apply to turbojet aircraft when circling W of Runways 4/22 centerlines extended:†							
				C-dn	900-2	900-2	900-2
				A-dn	900-2	900-2	900-2

Radar available.
 Procedure turn W side NE crs, 037° Outbnd, 217° Inbnd, 2000' within 10 miles.
 Minimum altitude at glide slope interception Inbnd, 2000'.
 Altitude of glide slope and distance to approach end of runway at OM, 1938'—5.8 miles; at MM, 237'—0.6 mile.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 5.8 miles after passing LOM, climb to 2000' straight ahead on SW crs of Newark ILS to Amboy VHF Int, then turn right and proceed direct to Kilmer VHF Int at 2000'. Hold SW Kilmer Int right turns, 1-minute, 069° Inbnd.
 CAUTION: (1) Building, 598', 2.2 miles N of Airport. (2) 50' hangar row, 200' E of approach light lane between MM and end of Runway 22. (3) Procedure turn accomplished over Teterboro MM, Teterboro OM and Newark OM at approximately same geographic location and signals are simultaneously keyed to indicate one OM serving two ILS systems.
 †600-1 required when glide slope inoperative.
 ‡RVR, 2000' authorized Runways 4 and 22.
 §RVR, 2000'. Descent below 218' not authorized unless approach lights are visible.

City, Newark; State, N.J.; Airport name, Newark; Elev., 18'; Fac. Class., ILS; Ident., I-ARK; Procedure No. ILS-22, Amdt. 12; Eff. date, 16 July 66; Sup. Amdt. No. 11; Dated, 5 Feb. 66

6. By amending the following radar procedures prescribed in § 97.19 to read:

RADAR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.
 If a radar instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below. Positive identification must be established with the radar controller. From initial contact with radar to final authorized landing minimums, the instructions of the radar controller are mandatory except when (A) visual contact is established on final approach at or before descent to the authorized landing minimums, or (B) at pilot's discretion if it appears desirable to discontinue the approach, except when the radar controller may direct otherwise prior to final approach, a missed approach shall be executed as provided below when (A) communication on final approach is lost for more than 5 seconds during a precision approach, or for more than 30 seconds during a surveillance approach; (B) directed by radar controller; (C) visual contact is not established upon descent to authorized landing minimums; or (D) if landing is not accomplished.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	

PROCEDURE CANCELED, EFFECTIVE 16 JULY 1966.
 City, Detroit; State, Mich.; Airport name, Willow Run; Elev., 716'; Fac. Class. and Ident., Willow Run Radar; Procedure No. 1, Amdt. 13; Eff. date, 3 July 65; Sup. Amdt. No. 12; Dated, 10 Oct. 64

PROCEDURE CANCELED, EFFECTIVE 16 JULY 1966.
 City, Washington, D.C.; Airport name, National; Elev., 15'; Fac. Class. and Ident., Washington Radar; Procedure No. 2 (river approach), Amdt. Orig.; Eff. date, 20 May 66

These procedures shall become effective on the dates specified therein.
 (Secs. 307(c), 313(a), and 601 of the Federal Aviation Act of 1958; 49 U.S.C. 1348(c), 1354(a), 1421; 72 Stat. 749, 752, 775)
 Issued in Washington, D.C., on June 9, 1966.

JAMES F. RUDOLPH,
 Acting Director, Flight Standards Service.

[F.R. Doc. 66-6560; Filed, June 23, 1966; 8:45 a.m.]

Title 7—AGRICULTURE

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

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 722—COTTON

Subpart—1967 Crop of Upland Cotton; Acreage Allotments and Marketing Quotas

RESULTS OF REFERENDA FOR OUT-OF-COUNTY TRANSFERS OF ALLOTMENTS

Basis and purpose. Section 722.462 is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, as amended; 7 U.S.C. 1281 et seq.). The purpose of § 722.462 is to announce the results of the several referenda for out-of-county transfers of allotments held under section 344a(b) (i) of the act (7 U.S.C. 1344b(b) (ii) and § 722.461 (31 F.R. 6580).

Since the only purpose of § 722.462 is to announce the referenda results, it is hereby found and determined that compliance with the notice, public procedure and 30-day effective date requirements of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) is unnecessary. Accordingly, § 722.462 shall be effective upon filing this document with the Director, Office of the Federal Register.

§ 722.462 Result of the county referenda on transfer of allotments by sale or lease across county lines within a State.

(a) *Period when referenda held.* The county referenda were held in those counties designated in § 722.461 (31 F.R. 6580) by mail ballot during the period May 16-25, 1966 in accordance with § 722.461 and the referenda regulations in Part 717 of this chapter (§ 717.18, 31 F.R. 6533).

(b) *Results of referenda.* The results of the referenda held in those counties designated in § 722.461 during the period May 16-25, 1966, are based on data for each county furnished to the Deputy Administrator in accordance with § 717.13 of this chapter of the Regulations governing the holding of referenda on marketing quotas (28 F.R. 13249). Two-thirds or more of the producers of cotton voting in each county referendum in the counties listed in the table in this paragraph voted to permit the transfer of allotments by sale or lease to farms outside the county. Accordingly, it is hereby determined and proclaimed by the Secretary that transfers of allotments by sale or lease from the following counties to other counties within the same State to take effect during 1967, 1968 and 1969 may be approved subject to the requirements of section 344a of the act:

ALABAMA

Pike.

Columbia.
Crawford.
Fulton.
Hot Spring.
Howard.

Montgomery.
Newton.
Perry.
Scott.

CALIFORNIA

Los Angeles.

San Benito.

FLORIDA

Gilchrist.
Leon.

Levy.
Union.

GEORGIA

Brantley.
Bryan.
Clinch.
Dodge.

Echols.
Gwinnett.
Pierce.
Taylor.

LOUISIANA

Iberia.

Union.

MISSISSIPPI

Amite.
Jefferson.

Lauderdale.
Newton.

MISSOURI

Cape Girardeau.

NEVADA

Clark.

NEW MEXICO

Grant.

NORTH CAROLINA

Carteret.

OKLAHOMA

Beaver.
Craig.
Grant.

Kay.
Noble.

SOUTH CAROLINA

Jasper.

TENNESSEE

Cannon.
Coffee.
Loudon.

Moore.
Perry.
Polk.

TEXAS

Angelina.
Burnet.
Chambers.
Comal.
Crockett.
Dallam.
Dimmit.
Eastland.
Erath.

Franklin.
Harris.
Kendall.
LaSalle.
Lavaca.
Pecos.
Polk.
Reagan.

Less than two-thirds of the producers of cotton voting in each county referendum in those counties designated in § 722.461 and not listed above in this paragraph voted to permit the transfer of allotments by sale or lease to farms outside the county. Accordingly, it is hereby determined and proclaimed by the Secretary that transfers of allotments by sale or lease from such counties to other counties shall not be approved under section 344a of the act unless the required approval is obtained in a future referendum.

(c) *Availability of data.* In addition to the data available for public inspection in the county committee and State committee offices regarding these referenda as provided in §§ 717.11 and 717.12 of this chapter of the regulations governing the holding of referenda on marketing quotas (28 F.R. 13249, as amended), copies of the State summaries on Form MQ-8 and the following information are available for public inspection in the office of the Director, Policy and Program Appraisal Division, ASCS, Washington, D.C.:

(1) The number of eligible producers of the 1966 crop of cotton who voted in each county.

(2) The number of such producers who voted to permit the transfer of allotments by sale or lease to farms outside the county during 1967, 1968 and 1969.

(3) The percentage of producers who voted to permit such transfers.

(Sec. 344a, 79 Stat. 1197, 7 U.S.C. 1344b)

Effective date. Date of filing this document with the Director, Office of the Federal Register.

Signed at Washington, D.C., on June 20, 1966.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 66-6963; Filed, June 23, 1966; 8:51 a.m.]

PART 728—WHEAT

Subpart—Regulations Pertaining to Farm Acreage Allotments, Yields, Wheat Diversion and Wheat Certificate Programs for Crop Years 1966-1969

GENERAL

Sec.	
728.309	Basis and purpose.
728.310	Definitions.
728.311	Extent of calculations.
728.312	Forms and instructions.
728.313	Supervision, review and approval by State committees.
	ALLOTMENTS AND YIELDS
728.314	Method of apportioning county allotments for 1967 and subsequent crops.
728.315	Determination of preliminary allotments for old farms for 1967 and subsequent crops.
728.316	Determination of acreage allotments for old farms.
728.317	Determination of preliminary allotments for new farms for 1967 and subsequent crops.
728.318	Determination of acreage allotments for new farms.
728.319	Projected farm yield.
728.320	Farms removed from agricultural production because of acquisition by Federal, State, or other agency having the right of eminent domain.
728.321	Farms divided or combined.
728.322	Temporary release and reapportionment of allotments determined for farms acquired by an agency having the right of eminent domain.
728.323	Mailing of farm allotment notices.
728.324	[Reserved]
728.325	Special national acreage reserve.
728.326	Transfer of farm wheat acreage affected by a natural disaster.
728.327	Data for old wheat farms.
728.328	Determination of 1966 farm allotments.

WHEAT DIVERSION PROGRAM

728.400	Wheat diversion program—general.
728.401	Requirements for eligibility.
728.402	Designation, use, and care of diverted acreage.
728.403	Approved conservation uses for diverted acreage.
728.404	Farm conserving base.
728.405	Permitted acreage of wheat.
728.406	Determination of payment rates.
728.407	Maximum diverted acres.

- 728.408 Notice of payment rate, projected yield, and conserving base.
- 728.409 Intention to participate in the program.
- 728.410 Oats-rye diversion payment; substitution of feed grains for wheat and wheat for feed grains, oats and rye.
- 728.411 Advance payment.
- 728.412 Determination of compliance.
- 728.413 Diversion payment.
- 728.414 Division of payment.
- 728.415 [Reserved]
- 728.416 County projected yields and county rates used in determining diversion payment for the 1966 crop of wheat.
- 728.417 Establishment of 1966 projected farm yields.

WHEAT CERTIFICATE PROGRAM

- 728.500 Wheat certificate program—general.
- 728.501 Requirements for eligibility.
- 728.502 Issuance of certificates.
- 728.503 Purchase of certificates by Commodity Credit Corporation.
- 728.504 Division of certificates between producers.
- 728.505 Storage of excess wheat.
- 728.506 Depletion of stored excess wheat.

MISCELLANEOUS PROVISIONS

- 728.507 Additional provisions and requirements relative to tenants and sharecroppers.
- 728.508 Successors-in-interest.
- 728.509 Scheme or device and fraudulent representation.
- 728.510 Setoffs and assignments.
- 728.511 Appeals.
- 728.512 Performance in reliance on advice or action of a representative of a county or State committee.
- 728.513 Delegation of authority.

AUTHORITY: The provisions of this subpart issued under secs. 301, 331-339, 362, 372-379, 379a through 379j, 52 Stat. 38, as amended, 52-55, as amended, 62, as amended, 65-66, as amended, 76 Stat. 626-629, 631, 79 Stat. 1192, 1206, 1210, 1211; secs. 106, 112, 70 Stat. 191, 195; secs. 326, 776 Stat. 631, 77 Stat. 47, 79 Stat. 1192; sec. 327, 76 Stat. 631; sec. 328, 76 Stat. 631, 79 Stat. 1206; sec. 706, 708, 79 Stat. 1210, 1211; 7 U.S.C. 1301, 1305, 1306, 1331-1339, 1339a, 1339b, 1339c, 1362, 1372-1379, 1379a-1379j, 1824, 1836.

GENERAL

§ 728.309 Basis and purpose.

(a) The regulations in this subpart are issued pursuant to and in accordance with the provisions of the Agricultural Adjustment Act of 1938, as amended. They provide the terms and conditions for (1) the establishment of farm wheat acreage allotments for the 1967, 1968, and 1969 crop years, (2) the establishment of projected farm wheat yields for the 1966, 1967, 1968, and 1969 crop years, (3) the wheat diversion program for the 1966, 1967, 1968, and 1969 crop years; and (4) the wheat certificate program for the 1966, 1967, 1968, and 1969 crop years.

(b) (1) For 1966 and preceding years, farm wheat acreage allotments have been established from farm wheat bases determined on the basis of past acreages of wheat, tillable acres, crop-rotation practices, type of soil and topography. For 1967 and subsequent years, under the authority of Public Law 89-321, wheat acreage allotments will be established for each old farm on the basis of past acreages of wheat and the farm

acreage allotment for the prior year. For this purpose, the prior year wheat allotments are considered to reasonably reflect past acreages of wheat, including the reductions for overplanting applicable to 1964 and prior years. For regular rotation farms, the prior year final wheat allotment will be adopted as the preliminary allotment for the current year. For odd and even rotation farms, the allotment for the prior year will be adjusted by a rotation factor which will reflect past acreages of wheat on the farm under the rotation pattern. After adjustment, the prior year allotment will be adopted as the preliminary allotment for the current year except, in a case where the prior year allotment is zero, (i) the 1965 wheat base acreage will be adjusted by the 1966 county allotment proration factor before being adopted as the 1967 preliminary allotment, and (ii) for 1968 and subsequent years, the final wheat acreage allotment for the second year preceding the current year will be adjusted by the prior year county allotment proration factor before being adopted as the current year preliminary allotment. The foregoing adjustments are made for the purpose of providing comparable treatment for odd and even rotation farms with a low year of zero with other odd and even rotation farms and regular rotation farms which received reduced allotments in the zero year of the rotation on the farm to which the adjustment is applied. A preliminary allotment may be adjusted upward to make it comparable to preliminary allotments established for other farms that are similar with respect to crop-rotation practices and cropland available for wheat production. Odd and even rotation farms which overplanted a zero 1964 allotment will be subject to an adjustment to reduce the 1967 preliminary allotment comparable to the reduction already applied to farms that overplanted a 1964 allotment of more than zero. The terms and conditions for accepting applications and approving allotments for new wheat farms are not changed. In accordance with Public Law 89-321, no reduction will be made in a future farm allotment for overplanting an allotment in any of the years 1966 through 1969, inclusive, in which a voluntary diversion or certificate program is in effect.

(2) Except in the case where land is acquired under the right of eminent domain (in which case the farm allotments may be pooled pursuant to section 378 of the Act), if the county committee determines that a farm will be devoted to nonagricultural uses in the current year, a zero allotment will be determined for the farm for the current year, because the land in the farm will not be used for agricultural purposes and therefore will not be considered to be a farm for such year.

(3) The counties listed in § 728.325 in which farms shall be eligible for additional allotment from the 1967 special national acreage reserve authorized in section 334(a) of the Act have been determined to be counties where wheat is a major income-producing crop, as re-

quired by the statute. The counties so listed are counties in which wheat accounts for 50 per centum or more of the total farm income from crops in the county and includes also, upon recommendation of the State committee, any county in which wheat accounts for 40 per centum or more of the total farm income from crops in the county if such a county borders on a county in the 50 per centum or more farm income category.

(c) The programs authorized in this subpart are applicable in the commercial wheat-producing area, which will be announced for each of the years 1967 through 1969 at the time State wheat acreage allotments are announced.

(d) Marketing quotas will not be in effect for the 1966 through 1969 marketing years and the regulations in this subpart insofar as the 1966 through 1969 crops of wheat are concerned relate solely to loans, grants, and benefits, and are therefore exempted from the notice, public procedure and effective date provisions of section 4 of the Administrative Procedure Act. Wheat producers need to know the provisions of these regulations in order to adjust their farm wheat acreage allotments to comply with the wheat diversion or other conservation programs under applicable laws, and accordingly it is necessary that the regulations in this subpart be made effective upon the date of their publication in the FEDERAL REGISTER.

§ 728.310 Definitions.

As used in the regulations in this subpart and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings assigned to them herein, unless the context or subject matter otherwise requires. The following words or phrases are defined in Part 718 or Part 719 of this chapter and shall have the meanings assigned to them by such regulations: "Allotment, closing date, combination, community committee, county, county committee, county office manager, cropland, crop year, current year, Department, Deputy Administrator, Director, division, farm, farm number, Federally-owned land, landlord, operator, person, preceding year, producer, reconstitution, representative of the State committee, Secretary, sharecropper, State committee, State executive director, tenant."

(a) "Acreage indicated by cropland" means the number of acres computed by multiplying the cropland acreage for a farm by the ratio of the allotment determined pursuant to § 728.315 for all farms in the community to the cropland acreage for all farms in the community.

(b) "Act" means the Agricultural Adjustment Act of 1938, and any amendments or supplements thereto, including the amendments and supplements enacted by sections 326, 327, and 328 of the Food and Agriculture Act of 1962, as amended, and sections 501-517, 706 and 708 of the Food and Agriculture Act of 1965.

(c) "Commercial wheat-producing area" means all States in the United

States excluding States for which the wheat acreage allotment for the current year will be 25,000 acres or less and which are designated by the Secretary as being outside the commercial wheat-producing area for the current year. For 1966, all States in the United States except Alaska and Hawaii have been designated as the commercial wheat-producing area.

(d) "Community" means the community established by the State committee for purpose of the selection of community and county committeemen as provided in Part 7 of this title.

(e) "New farm" means any farm for which a wheat allotment is requested for the current year other than an old farm.

(f) "Odd and even crop rotation" means the practice carried out by wheat producers of alternating the number of acres devoted to the production of wheat for harvest as grain from year to year in a set pattern of acres of wheat; e.g., 1964—60 acres; 1965—40 acres; 1966—60 acres; 1967—40 acres, etc.

(g) "Old farm" means a farm for which an allotment was properly established for the preceding year.

(h) "Farm projected yield" means the yield determined for the farm under § 728.319.

(i) "Wheat acreage" means any acreage planted to wheat and any acreage of volunteer wheat which reaches maturity with a yield of 3 bushels per acre or more, excluding any acreage of:

(1) A mixture of wheat and other grains which contains less than 25 percent wheat by weight at harvest, except the acreage of emmer, spelt, einkorn, Polish wheat, and poulard wheat containing more than 10 percent wheat shall be considered wheat acreage.

(2) Wheat in excess of the allotment on a wildlife refuge farm consisting solely of Federal or State-owned land, provided the wheat is not harvested but is left on land for wildlife feed.

(3) Wheat approved as a conservation use on the diverted acreage as provided under the regulations governing the conserving base and designated diverted acreage, Part 792 of this chapter.

(4) Wheat within the permitted acreage computed under § 728.405, destroyed by mechanical means after farm disposal date and prior to harvest to the extent that no grain or forage crop remains, provided the operator requests reclassification in writing and the acreage is used: (i) To meet a deficiency in designated diverted acreage or conserving acreage, or (ii) for the purpose of removing stored excess wheat.

(5) Wheat within the farm permitted acreage destroyed by natural causes after farm disposal date and prior to harvest to extent that no grain or forage crop remains, if the operator requests a reclassification in writing.

(6) Wheat utilized as pasture, to the extent that the wheat will not mature as grain, or harvested for hay or green chop, or destroyed or disposed of by any means, prior to the farm disposal date.

Notwithstanding any other provision of this paragraph (i), wheat acreage planted for harvest but excluded under

subparagraph (6) of this paragraph which has not been designated within the total intention as diverted under any land diversion program, or used for the purpose of removing stored excess wheat, may be credited as wheat acreage if a written request is signed by the farm operator, or if it is determined at time of final compliance that all or any portion of such excluded wheat acreage, if credited as wheat acreage, would earn additional wheat marketing certificates or would be advantageous to the producers on the farm under the substitution provision for the farm. "Wheat acreage" also includes an acreage of volunteer wheat, within the farm permitted acreage, which was intended for harvest but which, prior to reaching maturity, was destroyed by natural causes.

(j) "Farm disposal date" means the date as listed in Part 718 of this chapter, Determination of Acreage and Performance, by which the excess acreage of wheat on the farm must be utilized, destroyed, or disposed of in a prescribed manner.

(k) "National allocation percentage" means the percentage which the Secretary has determined will result in marketing certificates being issued to producers equal to the amount of wheat he estimates will be used during the current year for food products for consumption in the United States. For 1966, this percentage is 45.

(l) "Farm wheat marketing allocation" means the number of bushels obtained by multiplying the current farm acreage allotment by the current farm projected yield and multiplying the resulting number of bushels by the national allocation percentage.

(m) "Wheat history acreage" for any year prior to 1965 means the wheat acreage as defined in § 728.10 of the regulations relating to the 1964 and subsequent crops of wheat, and for 1965 means the 1965 farm base acreage determined under § 728.15a.

(n) "Wheat history acreage" for 1966 and subsequent crops means:

(1) For any old farm in any year in which a voluntary diversion and certificate program is in effect, the farm allotment as determined under § 728.316 except that, if there has been a failure to receive planting credit for 75 percent or more of the farm allotment for three successive years beginning with 1966, the wheat history acreage for the third year shall be the average of the farm allotment and the wheat acreage credited as planted in the third year.

(2) For any new farm for which a wheat acreage allotment was determined, the determined allotment will be the wheat history acreage unless the acreage credited as planted is less than 75 percent of the allotment, in which case the acreage credited as planted shall be the wheat history acreage.

(o) "Cropland Adjustment Program" (herein called CAP) means the program formulated under Title VI of the Food and Agriculture Act of 1965, Part 751 of this chapter.

(p) "Cropland Conversion Program" (herein called CCP) means the program

formulated under section 16 of the Soil Conservation and Domestic Allotment Act, as amended, Part 751 of this chapter.

(q) "Conservation Reserve Program" (herein called CRP) means the program formulated under the Soil Bank Act, Part 750 of this chapter, as amended.

(r) "Upland Cotton Program" means the program formulated under Title IV of the Food and Agriculture Act of 1965, Part 722 of this chapter, as amended.

(s) "Feed Grain Program" means the program formulated under Title III of the Food and Agriculture Act of 1965.

(t) "Substitute crop" means any of the following crops which may be produced on the diverted acreage in lieu of conservation uses: Guar, castor beans, sunflower, safflower, plantago ovato, sesame, crambe, and mustard seed.

§ 728.311 Extent of calculations.

Acreages shall be expressed in acres and tenths rounded to the nearest tenth, yields in whole bushels and rounded to the nearest whole bushel, and monetary amounts in dollars and cents for all program purposes.

§ 728.312 Forms and instructions.

The Director shall cause to be prepared and issued such forms as are necessary, and shall cause to be prepared such instructions with respect to internal management as are necessary for carrying out the regulations in this subpart. The forms and instructions shall be issued by the Deputy Administrator.

§ 728.313 Supervision, review and approval by State committees.

State committees shall have overall responsibility for the administration of the regulations in this subpart in their respective States. The State committee may take any action required by these regulations which has not been taken by a county committee. The State committee may also (a) correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations in this subpart, or (b) require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart. All acreage allotments and yields shall be approved by a representative of the State committee and no official notice thereof shall be mailed until approved by such representative.

ALLOTMENTS AND YIELDS

§ 728.314 Method of apportioning county allotments for 1967 and subsequent crops.

The county acreage allotment, less a reserve for appeals, corrections, and missed farms, shall be apportioned to old farms in the county pro rata on the basis of the farm preliminary allotment determined under § 728.315.

§ 728.315 Determination of preliminary allotments for old farms for 1967 and subsequent crops.

(a) *Basis for determination.* The county committee shall determine for each old farm a preliminary allotment for

the current year as provided in this section in order to reflect past acreage of wheat and the farm acreage allotment for the immediately preceding year, adjusted as provided in paragraphs (b), (c), and (d) of this section.

(b) *Preliminary allotment.* The preliminary allotment for each old farm shall be as follows:

(1) For a regular rotation farm, the allotment established for the preceding year.

(2) For an established odd and even crop-rotation farm, the allotment established for the preceding year, adjusted upward or downward by application of an adjustment factor determined under § 728.15a(b)(2) of the regulations for 1964 and subsequent crops of wheat. Where a changed odd and even rotation is established for 1967 or a subsequent crop year, the adjustment factor for the year to which the change first applies shall be determined by dividing the revised preliminary allotment for that year (allotment requested divided by county adjustment factor) by the residual obtained by subtracting such revised preliminary allotment from the sum of the preceding year final allotment and the current year preliminary allotment that would have been computed had there been no rotation change. Conversely, the adjustment factor for the year following the year to which the change first applies shall be determined by dividing the residual determined as provided above by the revised preliminary allotment for such year. If the low year allotment for any farm is zero, the high year preliminary allotment for such farm (i) for 1967 will be the 1965 farm wheat base multiplied by the 1966 county proration factor used to apportion the county wheat allotment among old wheat farms, and (ii) for 1968 and subsequent years will be the farm wheat allotment for the second year preceding the current year multiplied by the county proration factor used in apportioning the county wheat allotment among old wheat farms in the year immediately preceding the current year. If there was wheat acreage in 1964 on a farm with a zero allotment for such year, the preliminary allotment for 1967 shall be further reduced by 7 percent.

(3) For an odd and even crop-rotation farm which the county committee determines should be changed to a regular rotation in the current year because of past or prospective changes in crop-rotation practices, the preliminary allotment shall be the average of the allotment for the preceding year and the preliminary allotment for the current year determined as provided in subparagraph (2) of this paragraph, but not in excess of the preliminary allotment initially determined for the farm.

(c) *Limitations.* Except for cases where the land is acquired under the right of eminent domain, if the county committee determines that all the land in the farm will be devoted to nonagricultural uses in the current year, the land shall not be considered a farm for the purposes of the regulations in this subpart and a zero allotment shall be established.

(d) *Adjustments.* The preliminary allotment determined for a farm under paragraphs (a), (b), and (c) of this section, may be adjusted as provided under this paragraph (d).

(1) The county committee may adjust upward the preliminary allotment for a farm when it determines an adjustment is necessary to obtain a preliminary allotment which is fair and equitable when compared with preliminary allotments established for other farms which are similar with respect to crop-rotation practices and cropland available for the production of wheat.

(2) The preliminary allotment may be adjusted downward to reflect a reduction in the tillable acreage on the farm.

(3) The preliminary allotment shall not be adjusted upward for the sole purpose of offsetting the effects of exceeding the farm allotment in a prior year.

§ 728.316 Determination of acreage allotments for old farms.

The current year's county acreage allotment, less a reserve for appeals, corrections of errors, and missed farms, shall be apportioned by the county committee pro rata among all old farms within the county on the basis of the preliminary allotments determined under § 728.315.

§ 728.317 Determination of preliminary allotments for new farms for 1967 and subsequent crops.

(a) The county committee shall determine a recommended preliminary allotment for each eligible new farm for 1967 and any subsequent crop for which an acreage allotment is requested in writing prior to July 1 of the year immediately preceding the current year in the winter wheat area, and prior to March 1 of the current year in the spring wheat area. The spring wheat area shall include any area where spring wheat is normally grown, even though winter wheat is also grown in such area. Each request for such allotment shall be made by the owner or operator on Form MQ-25, Application for New Farm Allotment, which shall contain statements as to location and identification of the farm, name and address of the farm operator and other data necessary to enable the county committee to determine whether the conditions of eligibility prescribed by paragraph (b) of this section have been met.

(b) Eligibility for a new farm allotment shall be conditioned upon the following:

(1) The application for a new farm allotment is filed by the farm operator or farm owner at the office of the county committee on or before the applicable closing date.

(2) Neither the operator nor the owner of the farm covered by the application owns or operates any other farm in the United States for which a wheat allotment will be established for the current year.

(3) The available land, type of soil and topography of the land on the farm for which the wheat allotment is requested is suitable for the production of

wheat and the production of wheat on the farm ordinarily will not result in an undue erosion hazard under continuous production.

(4) The operator owns or otherwise has readily available adequate equipment and the other facilities of production necessary to the successful production of wheat on the farm.

(5) The operator expects to obtain during the current year more than 50 percent of his income from the production of agricultural commodities or products from the farm for which the new farm allotment application is filed. In making this computation of income from the farm, no value will be allowed for the estimated return from the production of the requested allotment. However, in addition to the value of agricultural products sold from the farm, credit will be allowed for the estimated value of home gardens, livestock and livestock products, poultry, or other agricultural products produced for home consumption or other use on the farm. Where the farm operator is a partnership, each partner must expect to obtain during the current year more than 50 percent of his income from the agricultural commodities or products from the farm; where the farm operator is a corporation, it must have no major purpose other than operation or ownership, as applicable, of such farm, and the officers and general manager of the corporation must expect to obtain more than 50 percent of their income, including dividends and salaries, from the corporation.

(6) A farm which includes land acquired by an agency having the right of eminent domain for which the entire wheat allotment was pooled pursuant to Part 719 of this chapter which is subsequently returned to agricultural production shall not be eligible for a new farm wheat allotment for a period of 3 years from the date the former owner was displaced from the acquired farm.

(7) A farm which includes land for which a zero old farm wheat allotment is in effect because the owner of a parent farm did not designate any wheat allotment for such farm in making a reconstitution pursuant to Part 719 of this chapter shall not be eligible for a new farm allotment for 3 years beginning with the year in which the reconstitution becomes effective.

(c) In determining the preliminary allotment for each new farm, the county committee shall take into consideration the tillable acres, crop-rotation practices, and the farming system to be followed by the operator, including the equipment and other facilities available for the production of wheat under such system: *Provided*, That the preliminary allotment so established shall not exceed the wheat acreage for the farm for the current year under the planned crop-rotation system.

§ 728.318 Determination of acreage allotments for new farms.

(a) *Computation.* The State committee shall determine a wheat acreage allotment for the current year for each

new farm by multiplying the preliminary allotment so established or as revised by the State committee by the smaller of (1) the factor determined under § 728.316, or (2) the factor obtained by dividing the State reserve for new farms by the sum of the preliminary allotments determined for all new farms in the State under § 728.317. The sum of all new farm acreage allotments in the State shall not exceed the State reserve set aside for new farms.

(b) *Reduction for underplanting.* The allotment determined under this section for a new farm shall be reduced to the wheat acreage on the farm when it is found that such acreage is less than 75 percent of the allotment. The acreage regained as a result of such reductions in each county shall be transferred to the reserve for appeals, corrections of errors, and missed farms.

(c) *Cancellation of new farm allotment.* Any new farm allotment established under this section shall be void as of the date issued if the State committee determines that the applicant knowingly furnished false, incomplete, or inaccurate information to obtain the allotment.

§ 728.319 Projected farm yield.

(a) *Farms for which yields will be determined.* The county committee shall determine projected farm wheat yields for old wheat allotment farms based upon the yield per harvested acre of wheat on the farm during the 3 years immediately preceding the year in which such projected yields are determined, adjusted for abnormal weather conditions affecting such yields, for trends in yields, and for any significant changes in production practices.

(b) *Farm yields weighted to county projected yield.* The average of the projected yields initially determined for all farms in the county, weighted by the allotment determined for such farms, shall be adjusted if necessary to equal the projected county yield for the then current year less a reserve for appeals and corrections of errors.

(c) *Yields based on reliable records.* Where reliable records of the actual yield in bushels per harvested acre for each of the 3 years immediately preceding the year in which the yield is determined are available to the county committee, the projected yield per harvested acre of wheat for the farm shall be not less than the average of such yields.

(d) *Yield reserve.* Increased yields approved by the county committee under paragraphs (a) and (c) of this section shall not exceed the established county yield reserve for appeals and corrections. Increased yields provided for in paragraph (c) of this section, approved by a representative of the State committee, may be in excess of the established county yield reserve if the remaining reserve balance is inadequate to satisfy the approved increase.

(e) *Yield for new wheat allotment farm.* The county committee shall determine a projected wheat yield for each new wheat allotment farm, taking into consideration the yields approved for old wheat farms which are comparable with

respect to type of soil, topography, moisture conditions, and current production practices. New wheat allotment farm yields may be in excess of the county yield reserve.

§ 728.320 Farms removed from agricultural production because of acquisition by Federal, State, or other agency having the right of eminent domain.

The wheat acreage allotment determined for a farm shall, if the farm was acquired in 1954 or thereafter for any purpose other than for the continued production of allotment crops, by any Federal, State, or other agency having the right of eminent domain, become available for use in providing allotments for other farms owned by the owner so displaced, and such apportionment shall be made in accordance with Part 719 of this chapter.

§ 728.321 Farms divided or combined.

The wheat acreage allotment, yield, and related data determined for a farm shall, if there is a division or combination, be apportioned in accordance with Part 719 of this chapter.

§ 728.322 Temporary release and reapportionment of allotments determined for farms acquired by an agency having the right of eminent domain.

The displaced owner of a farm removed from agricultural production under § 728.320 may, not later than November 15 of the year immediately preceding the year for which the farm acreage allotments are established in the winter wheat area and prior to April 15 of the year for which the allotments are established in the spring wheat area, release in writing to the county committee for one year at a time, all or part of the acreage for the farm in a pool under § 719.12 of this chapter, for reapportionment by the county committee to other wheat allotment farms in the county. The county committee may reapportion, not later than December 1 of the year immediately preceding the year for which the allotments were established in the winter wheat area and not later than May 1 of the year for which the allotments were established in the spring wheat area, the released acreage or any part thereof to other wheat allotment farms in the county for which a verbal or written application for allotment increase is filed in amounts it determines to be fair and reasonable on the basis of the past acreage of wheat, land, labor, equipment available for the production of wheat, crop-rotation practices, and soil and other physical facilities affecting the production of wheat. In no event can such reapportionment be made after the normal date for seeding wheat in the area has passed. The allotment acreage released shall for future allotment purposes be considered to have remained in the pool as though it had not been released therefrom. The acreage reapportioned to a farm under this section shall automatically be reduced, where applicable, so as not to exceed the acreage by which the final wheat acreage on the farm determined pursuant to Part 718 of this chapter exceeds the allotment

for the farm prior to being increased by reapportionment of acreage under this section.

§ 728.323 Mailing of farm allotment notices.

Notice of the farm acreage allotment and other related determinations shall be mailed on a form prescribed by the Administrator by the county committee to the operator of the farm and, if so determined by the State committee, to each other producer indicated by the records of the county committee as having an interest in the wheat crop on the farm in the current year. Such notice shall bear the actual or facsimile signature of a member of the county committee. The facsimile signature may be affixed by the county committeeman or by an employee of the county office. Insofar as practicable, all notices in the county shall be mailed on the same date.

§ 728.324 [Reserved]

§ 728.325 Special national acreage reserve.

(a) If the allotment established under § 728.316 for any old wheat farm in a county designated in paragraph (b) of this section is less than one-half of the county average ratio of allotment to cropland, such allotment may be adjusted if the county committee, with the approval of a State committee representative, determines that:

(1) There is only limited opportunity on the farm for the production of an alternative income-producing crop,

(2) An efficient farming operation on the farm requires an increase in the present wheat allotment established for the farm, and

(3) The farm operator expects to obtain during the current year more than 50 percent of his income from farming operations, excluding the estimated return from the requested allotment increase.

To receive consideration for an adjustment in a farm wheat allotment under this section, the farm owner or operator must file an application for increased wheat allotment (Form MQ-37) in the county office not later than 30 days from the date of the mailing of the original notice of allotment for the farm for such year. Notwithstanding any other provision of this section, in no case shall the allotment for any farm be increased hereunder so as to be in excess of one-half of the county average ratio of allotment to cropland, or for the purpose of restoring farm allotment acreage lost because of the overplanting of a previous year's allotment, and the total of the increases for all farms in the county shall not exceed the additional acreage apportioned to the county from the special national acreage reserve provided for by section 334(a) of the Act, as amended. A farm which has a wheat acreage allotment of less than one-half of the county average ratio of allotment to cropland because the owner of a parent farm did not designate sufficient allotment for such farm in making a reconstitution pursuant to Part 719 of this chapter shall not be eligible for increased allotment under this section unless all farms resulting from the reconstitution

have allotments of less than one-half of the county average ratio of allotment to cropland. For the purpose of making the increases hereunder, the cropland on the farm shall not include any land developed as cropland subsequent to the 1963 crop year.

(b) The following counties shall be considered eligible for participation in the special national acreage reserve:

NEBRASKA—Continued

Perkins.
Phelps.
Red Willow.
Salline.

Sheridan.
Sioux.
Thayer.
Webster.

NEW MEXICO

Colfax.
Curry.
Harding.

Quay.
Roosevelt.
Union.

NORTH DAKOTA

All counties.

OREGON

Baker.
Gilliam.
Jefferson.
Lake.
Morrow.
Sherman.

Umatilla.
Union.
Wallowa.
Wheeler.
Wasco.

OKLAHOMA

Alfalfa.
Beaver.
Beckham.
Blaine.
Caddo.
Canadian.
Cimarron.
Comanche.
Cotton.
Craig.
Custer.
Delaware.
Dewey.
Ellis.
Garfield.
Grady.
Grant.
Greer.
Harmon.
Harper.
Jackson.

Kay.
Kingfisher.
Kiowa.
Logan.
Major.
Mayes.
Noble.
Nowata.
Oklahoma.
Osage.
Ottawa.
Pawnee.
Payne.
Roger Mills.
Rogers.
Texas.
Tillman.
Washington.
Washita.
Woods.
Woodward.

SOUTH DAKOTA

Beadle.
Bennett.
Brown.
Brule.
Buffalo.
Butte.
Campbell.
Corson.
Custer.
Dewey.
Edmunds.
Fall River.
Faulk.
Haakon.
Hand.
Harding.
Hughes.
Hyde.
Jackson.

Jones.
Lawrence.
Lyman.
McPherson.
Meade.
Mellette.
Pennington.
Perkins.
Potter.
Shannon.
Spink.
Stanley.
Sully.
Todd.
Trip.
Walworth.
Washabaugh.
Ziebach.

TEXAS

Archer.
Armstrong.
Baylor.
Callahan.
Carson.
Dallam.
Deaf Smith.
Foard.
Gray.
Hansford.
Hardeman.
Hartley.
Hemphill.
Hutchinson.
Lipscomb.

Moore.
Ochiltree.
Oldham.
Potter.
Randall.
Roberts.
Sherman.
Shackelford.
Stephens.
Taylor.
Throckmorton.
Wichita.
Wilbarger.
Young.

UTAH

Box Elder.
Cache.
Juab.
Rich.

Salt Lake.
San Juan.
Tooele.

WASHINGTON

Adams.
Asotin.
Benton.
Chelan.
Columbia.
Douglas.
Ferry.
Franklin.
Grant.

Garfield.
Klickitat.
Lincoln.
Okanogan.
Spokane.
Stevens.
Walla Walla.
Whitman.
Yakima.

WYOMING

Campbell.
Carbon.
Laramie.

Platte.
Sheridan.

(c) Cancellation of adjustment: Any allotment increase approved under this section shall be void as of the date the producer was notified of the adjustment if the State committee determines that the applicant knowingly furnished false, incomplete, or inaccurate information to obtain the increased allotment.

§ 728.326 Transfer of farm wheat acreage affected by a natural disaster.

(a) *General authority.* Upon a determination for any year that because of a natural disaster a portion of the farm allotments in a county cannot be timely planted or replanted in such year, a transfer of such wheat acreage (permission to plant an acreage of the farm allotment on another farm) may be authorized under section 334(k) of the Act. For any year in which a natural disaster within the meaning of section 334(k) of the Act occurs, the necessary determination and designation of affected States and counties and closing date for filing applications for transfer will be published later.

(b) *Application for transfer.* The owner or operator of a farm in a county designated for any year pursuant to paragraph (a) of this section may file a written application for transfer of wheat acreage, within the farm wheat allotment, for such year to another farm in the same county or in an adjoining county in the same or another State if such acreage cannot be timely planted or replanted because of the natural disaster determined for such year. The application shall be filed with the county committee for the county in which the farm affected by such disaster is located. If the application involves a transfer to an adjoining county, the county committee for the adjoining county shall be consulted before action is taken by the county committee receiving the application.

(c) *Amount of transfer.* The acreage to be transferred shall not exceed the smallest of (1) the farm allotment established less such acreage planted to wheat and not destroyed by the natural disaster, or (2) the smallest permitted acreage of nonconserving crops under the Conservation Reserve Program, Cropland Conversion Program, or the Cropland Adjustment Program, or (3) the acreage requested to be transferred.

(d) *County committee approval.* The county committee shall approve the transfer if it finds that the following conditions have been met:

COLORADO

Adams.
Arapahoe.
Archuleta.
Baca.
Bent.
Boulder.
Cheyenne.
Crowley.
Dolores.
Douglas.
Elbert.
El Paso.
Huerfano.
Jefferson.
Kiowa.
Kit Carson.
La Plata.

Larimer.
Las Animas.
Lincoln.
Logan.
Moffat.
Montezuma.
Morgan.
Phillips.
Prowers.
Pueblo.
Rio Blanco.
Routt.
San Miguel.
Sedgwick.
Washington.
Weld.
Yuma.

IDAHO

Bannock.
Bear Lake.
Benewah.
Camas.
Caribou.
Clearwater.
Franklin.
Fremont.
Idaho.

Kootenai.
Latah.
Lewis.
Madison.
Nez Perce.
Oneida.
Power.
Teton.

KANSAS

All counties.

MINNESOTA

Kittson.
Marshall.
West Polk.

Norman.
Clay.
Wilkin.

MONTANA

Big Horn.
Blaine.
Broadwater.
Carbon.
Carter.
Cascade.
Chouteau.
Custer.
Daniels.
Dawson.
Fallon.
Fergus.
Flathead.
Gallatin.
Garfield.
Glacier.
Golden Valley.
Hill.
Jefferson.
Judith Basin.
Lake.
Lewis and Clark.
Liberty.
McCone.
Madison.

Meagher.
Mineral.
Missoula.
Musselshell.
Park.
Petroleum.
Phillips.
Pondera.
Powder River.
Prairie.
Richland.
Roosevelt.
Rosebud.
Sanders.
Sheridan.
Stillwater.
Sweet Grass.
Teton.
Toole.
Treasure.
Valley.
Wheatland.
Wibaux.
Yellowstone.

NEBRASKA

Adams.
Banner.
Box Butte.
Chase.
Cheyenne.
Clay.
Dawes.
Deuel.
Dundy.
Fillmore.
Franklin.
Frontier.

Furnas.
Garden.
Gosper.
Harlan.
Hayes.
Hitchcock.
Jefferson.
Kearney.
Keith.
Kimball.
Morrill.
Nuckolls.

(1) All or part of the farm allotment for the farm from which the acreage is to be transferred could not timely be planted or replanted because of the natural disaster and planting was not prohibited by the lease in the case of lands owned by the Federal Government.

(2) One or more producers of wheat on the farm from which the acreage is to be transferred will be a bona fide producer engaged in the production of wheat on the farm to which the acreage is to be transferred and will share in the crop or in the proceeds of the wheat. Such sharing shall be in the manner customary in the area in order to establish the status of such producer as a bona fide producer on the farm to which the acreage is to be transferred.

(e) *Cancellation of transfer.* If a transfer is approved under this section and it is later determined that the conditions in paragraph (d) of this section have not been met, the county committee, State committee or the Deputy Administrator may cancel such transfer. Action by the county committee to cancel a transfer shall be subject to the approval of the State committee or its representative.

(f) *Wheat acreage deemed planted on farm from which transferred.* The wheat acreage shall be deemed to be planted on the farm from which it was transferred for purposes of participation in the programs in this subpart, and for acreage history credits and other purposes under the Act.

(g) *Closing date.* The closing date for filing application for transfer with the county committee shall be December 15 of the calendar year immediately preceding the calendar year in which the crop is harvested in the winter wheat area and June 1 of the calendar year in which the crop is harvested in the spring wheat area.

(h) *Designated States and counties affected by natural disaster.* (States and counties will be designated by amendments to this section.)

§ 728.327 Data for old wheat farms.

(a) *Reports by producers.* If requested by the county office manager, the owner, operator, or any other interested person shall furnish any required information regarding the farm in which he has an interest to the ASCS county office of the county in which the farm is regarded as located if the farm is an old wheat farm.

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

§ 728.328 Determination of 1966 farm allotments.

The 1966 farm allotment shall be determined as provided in §§ 728.15a through 728.24.

WHEAT DIVERSION PROGRAM

§ 728.400 Wheat diversion program—general.

(a) Under the wheat diversion program for 1966 through 1969, diversion payments are made to producers who divert acreage from the production of wheat to approved conservation uses and increase their average acreage of cropland devoted in 1959 and 1960 to designated soil conserving crops and practices, including summer fallow and idle land (herein called "conserving base") by an equal amount, except to the extent that producers devote the diverted acreage to substitute crops in lieu of conservation uses.

(b) If the operator of the farm elects to participate in the program, diversion payments and wheat marketing certificates shall be made available to the producers on such farm only if such producers divert from the production of wheat an acreage on the farm equal to the number of acres stated on Form ASCS-477, Intention to Participate and Payment Application (herein called "Form ASCS-477").

(c) For the wheat diversion program and in all instructions, forms, and documents in connection therewith, the words and phrases defined in § 728.310 shall have the meanings assigned to them therein unless the context or subject matter otherwise requires, except that "current year" shall mean the calendar year in which the crop of wheat with respect to which payment would be made under this subpart would normally be harvested.

§ 728.401 Requirements for eligibility.

(a) *General.* A person is eligible for the wheat diversion program if he is a producer on a farm which meets the requirements of paragraph (b) of this section and he fulfills the requirements of paragraph (c) of this section.

(b) *Farm requirements.* (1) An Intention to Participate and Payment Application (herein called Form ASCS-477) must be filed for the farm by the operator in accordance with § 728.409.

(2) A minimum acreage on the farm shall be diverted from the production of wheat equal to the number of acres determined by multiplying the farm wheat acreage allotment by the national diversion factor. This factor is determined by dividing (i) the number of acres by which 55 million acres exceeds the national allotment by (ii) the national allotment. For 1966, the diversion factor has been determined to be 15 percent. In the case of any farm which is participating in the CRE, CCP, or CAP, if the number of acres of nonconserving crops permitted is less than the minimum acreage otherwise required for participation in the program, participation to the extent of such number of acres shall meet the minimum diversion acres requirement.

(3) An acreage equivalent in area to the acreage diverted from the production of wheat must be devoted to one or more of the approved conservation uses speci-

fied in Part 792 of this chapter, as amended, and the producer must comply with the limitations on use of such acreage specified in Part 792 of this chapter.

(4) In addition to the acreage referred to in subparagraph (3) of this paragraph, an acreage equal to the conserving base established for the farm under Part 792 of this chapter, as amended, must be devoted to one or more of the conservation uses also specified in such part. Acreage designated as diverted under any other Federal acreage reduction program shall not be more of the conservation uses also specified toward maintaining the conserving base unless authorized in the regulations governing such program or Part 792 of this chapter, as amended.

(5) Land owned by the Federal Government which has been leased subject to restrictions prohibiting the production of wheat or requiring the use of land for other purposes, or prohibiting the receipt of Federal payments for diversion of such acreage will not be eligible for participation in the program. Any other land owned by the Federal Government which is being occupied without a lease, permit or other right of possession, or land in a National wildlife refuge shall not be eligible for participation in the program.

(6) Producers on a farm on which a new farm wheat allotment is established shall not be eligible for diversion payments under the program with respect to such farm but may earn marketing certificates by diverting the minimum acreage required in subparagraph (2) of this paragraph and complying with all other requirements of the program.

(c) *Producer requirements.* (1) The producer must be a person who would have had an interest as a producer in the acreage diverted from wheat if wheat had been produced thereon.

(2) (i) The producer shall not knowingly exceed the allotment for the farm for any commodity.

(ii) On each other farm in which the producer has an interest, the acreage of wheat shall not exceed the wheat allotment. The feed grains shall also not exceed the feed grain base on any farm in which the producer has an interest. For the purpose of this subdivision (ii) of this subparagraph, a producer shall not be considered as violating the foregoing requirements if he satisfies the county committee that he did not have control of the managerial operations of the other farm, that he has made a reasonable effort to encourage compliance with the requirements of this subparagraph and that it was through no fault of his own that such farm was not in compliance. In applying the provisions of this subdivision (ii), a landowner or landlord cannot escape responsibility for any wheat allotment being exceeded by leasing for cash or other consideration all or part of a farm. For purposes of this subdivision (ii), all persons or entities in each category listed below shall be considered as one

producer and fully responsible for the actions of any person or entity in that category: (a) A partnership and any member of the partnership; (b) a corporation and the majority stockholder of such corporation; (c) an estate and an heir of the estate with over a 50-percent interest in the estate; (d) a trust and a beneficiary of the trust with over a 50 percent interest in the trust; (e) minor children and the parent, guardian, or other person legally responsible for the minor unless they do not occupy the same household and share no interest in the farming operations of the minor; and (f) husband and wife, except that the husband and wife may be considered as separate producers if the spouse receiving benefits under the program does not share to any degree in crops or proceeds thereof from the other farm, managerial control of the other farm is not shared by the spouse, and there have been no changes in the operations or managerial control of the other farm which would tend to defeat the purpose of the provisions of this subdivision (ii). Any executor, trust officer, or farm manager responsible for the management of a farm shall be considered as a producer on the farm when he receives a percentage of the farm income exceeding 10 percent of the crops or proceeds thereof for such management services. For the purposes of this subdivision (ii), a producer shall be deemed not to have exceeded the farm wheat allotment for the program year if the acreage in excess of the allotment does not exceed 50 percent of the allotment, an amount of wheat is stored as required under the provisions of § 728.505 of the regulations governing the farm wheat certificate program, as amended, and the farm is eligible for wheat marketing certificates. If there is unauthorized depletion of the stored excess wheat, the producer shall pay the amount provided in § 728.506. (Compliance with the farm acreage allotments, other than wheat, on any other farm for any crop in which the producer has a share is not required.)

(3) A minor will be eligible to participate in the program only if (i) the right of majority has been conferred on him by court proceedings; or (ii) a guardian has been appointed to manage his property and the applicable documents are signed by the guardian; or (iii) a bond is furnished under which a surety guarantees to protect ASCS from any loss incurred for which the minor would be liable had he been an adult. Notwithstanding the foregoing, payment may be made to a minor after December 31 of the current year upon a determination by the county committee that the minor has met the requirements of the program.

§ 728.402 Designation, use, and care of diverted acreage.

The regulations governing the designation, use, and care of land diverted from the production of wheat are set forth in Part 792 of this chapter, as amended.

§ 728.403 Approved conservation uses for diverted acreage.

The approved conservation uses for designated diverted acreage are set forth in Part 792 of this chapter, as amended.

§ 728.404 Farm conserving base.

The regulations governing the establishment and maintenance of the farm conserving base, Part 792 of this chapter, as amended, shall be applicable to the program.

§ 728.405 Permitted acreage of wheat.

The acreage of wheat planted on the farm for harvest in the current year shall not exceed the farm acreage allotment minus the number of acres which the producer agrees to divert from the production of wheat in excess of the required minimum diversion. Notwithstanding the foregoing, in the case of any farm participating in the CRP, CCP, or CAP, the acreage of wheat and other nonconserving crops other than approved crops on acreage diverted under this program, the upland cotton program, and the feed-grain program, plus the designated diverted acreages under such programs, shall not exceed the smallest number of acres of nonconserving crops permitted under the CRP, CCP, or CAP.

§ 728.406 Determination of payment rates.

(a) The diversion payment rate per acre for the farm shall be obtained by multiplying the county diversion payment rate per bushel by the farm projected yield determined under § 728.319. No payment shall be made with respect to the minimum diversion acreage as determined under § 728.401(b)(2), and the county diversion payment rate per bushel for any additional diversion eligible for payment shall be 40 percent of the rates specified in § 728.416.

(b) Notwithstanding any other provision of this section, the diversion payment rate per acre shall be (1) 50 percent of the payment rate otherwise applicable to the farm in the case of diverted acreage devoted to castor beans, guar, crambe, or sesame, (2) 30 percent of the payment rate otherwise applicable to the farm in the case of diverted acreage devoted to mustard seed or plantago ovato, and (3) 20 percent of the payment rate otherwise applicable to the farm in the case of diverted acreage devoted to sunflower. No diversion payment shall be made with respect to diverted acreage devoted to safflower.

(c) The rate of diversion payment under the program with respect to land which is leased or rented on a cash-rent basis from the Federal, State, county or local government, or subdivisions thereof, if such land is not otherwise ineligible for participation in the program, shall be the smaller of (1) the average per acre payment rate for which the farm would have qualified if this provision for land cash rented from a governmental unit were not in effect, or (2) one-half the average per acre payment determined under subparagraph (1) of

this paragraph plus the actual cash rent per acre of the land adjusted to take into account the quality of the acres actually diverted when compared with the total acres rented and the services performed and capital improvements made at the producer's expense which are in addition to rent: *Provided*, That for purposes of computing a payment rate under subparagraph (1) of this paragraph, the rate for a farm participating in this program and the feed grain program shall be the average rate for which the farm would have qualified under both of these programs.

§ 728.407 Maximum diverted acres.

(a) The maximum number of acres which may be diverted from wheat on a farm shall be the larger of (1) the sum of the required minimum diversion determined in § 728.401(b)(2) and 50 percent of the farm allotment, or (2) 25 acres, but not to exceed the sum of the farm allotment and the required minimum diversion: *Provided*, That in the case of a farm which is participating in the CRP, CCP, or CAP, the total number of acres which may be diverted under this program, the upland cotton program, and the feed grain program, plus the acreage of all nonconserving crops on the farm other than approved crops on diverted acreage, shall in no event exceed the smallest number of acres of nonconserving crops permitted under the CRP, CCP, and CAP.

(b) Notwithstanding any other provision of this section, producers who only plant spring wheat shall be eligible to divert only the required minimum diversion determined in § 728.401(b)(2) unless such producers establish to the satisfaction of the county committee, in accordance with instructions issued by the Deputy Administrator, that they have made irrevocable plans for growing less than their wheat allotment.

§ 728.408 Notice of payment rate, projected yield, and conserving base

Each operator on a farm for which a wheat allotment is established will be notified in writing on Form ASCS-477-1 of the wheat allotment, farm projected yield, diversion payment rate, and conserving base. A copy of the ASCS-477-1 will be furnished upon request to each owner interested in the wheat crop on the farm.

§ 728.409 Intention to participate in the program.

(a) *Who may file.* A Form ASCS-477 must be filed by the operator of an eligible farm if he wishes to participate in the program.

(b) *Where to file.* Form ASCS-477 shall be filed with the office of the county committee for the county where the farm is located.

(c) *When to file.* Form ASCS-477 shall be filed not later than the date established by the Deputy Administrator, ASCS. Notwithstanding the foregoing, the closing date may be extended by the county committee if the producers on the farm establish to the satisfaction

of the county committee that they intended to participate in the program and their failure to file by such date was not due to the fault or negligence of the producers.

(d) *Contents.* The operator or owner shall provide on Form ASCS-477 the following information: The acreage which is intended to be diverted from the production of wheat for the farm for which the form is filed and the names of the producers entitled to share in diversion payments and the proportionate share of each. The operator shall also indicate if he intends to produce excess wheat or if he requests the establishment of an oats-rye base.

(e) *Withdrawal and revision.* The operator may withdraw Form ASCS-477 by filing a written notice of withdrawal of the form with the county committee on or before the closing date established under paragraph (c) of this section. If Form ASCS-477 is withdrawn, the producers on the farm may, not later than the closing date, file a new Form ASCS-477. If the farm is reconstituted or if a revised allotment or feed grain base notice is issued for any reason, the operator shall have 15 days after the mailing date of such notice of reconstitution or revised allotment or feed grain base to file a new Form ASCS-477.

§ 728.410 Oats-rye diversion payment; substitution of feed grains for wheat and wheat for feed grains, oats and rye.

Notwithstanding any other provision of the regulations in this subpart and Part 775 of this chapter, the following provisions shall be applicable:

(a) *Oats-rye diversion payment.* (1) On a farm participating in the wheat diversion program, an oats-rye base shall be established for the farm upon request of the farm operator. All the regulations governing the feed grain program shall apply separately for the purpose of determining eligibility for the oats-rye diversion payment except as otherwise provided herein. The preliminary oats-rye base determined for the farm shall be the average of the 1959 and 1960 acreage of oats and rye planted for harvest as grain, as adjusted in accordance with instructions issued by the Deputy Administrator to correct for abnormal factors affecting production, and to give due consideration to tillable acreage, crop-rotation practices, types of soil, soil and water conservation measures, and topography. The final oats-rye base shall be determined by multiplying the preliminary oats-rye base by the State wheat unit reduction factor that is applicable. For 1966, the State wheat unit reduction factors are: 90 percent for the States of Montana, North Dakota, Minnesota, South Dakota, and Iowa; 80 percent for the States of Washington, Oregon, Idaho, California, Wyoming, Colorado, Utah, Nevada, Arizona, and New Mexico; 70 percent for the States of Nebraska, Kansas, Oklahoma, Texas, and Missouri; and 85 percent for all other States.

(2) The minimum diversion acreage requirement in § 775.404(b)(2) of this

chapter shall apply separately to the total feed grain base and to the oats-rye base, and the maximum diversion acreage of oats and rye shall be 50 percent of the oats-rye base or 25 acres, whichever is greater: *Provided*, That the total acreage eligible for diversion from feed grains and oats and rye shall not exceed 50 percent of the combined feed grain and oats-rye bases or 25 acres, whichever is greater.

(3) The permitted acreage of oats and rye shall be the oats-rye base minus the stated intention for diversion of oats and rye. The permitted acreage of feed grains may be devoted to oats and rye and if any of the permitted acreage of feed grains is so devoted to oats and rye, payment for diversion for oats and rye and feed grains shall be made as provided in paragraph (c) of this section.

(4) The oats and rye rate of payment for additional diversion will be 25 percent of the farm diversion payment rate established for wheat under § 728.406.

(5) Price support payments shall not be made for oats and rye.

(6) The oats-rye base shall not be in effect if the total feed grain acreage exceeds the permitted acreage of feed grains.

(7) Upon request of the operator at any time, the oats-rye base shall not be in effect for the farm.

(b) *Substitution.* Feed grain acreage in excess of the permitted acreage of feed grains shall be considered as wheat acreage, wheat acreage in excess of the permitted acreage of wheat shall be considered as feed grain acreage or oats and rye acreage, and oats and rye acreage in excess of the permitted acreage of oats and rye shall be considered as wheat acreage and feed grain acreage: *Provided*, That if an oats-rye base is in effect for the farm, feed grain acreage in excess of the permitted acreage of feed grains shall not be considered as wheat acreage.

(c) *Diversion payment under substitution.* If the combined acreage of feed grains and oats and rye exceeds the sum of the permitted acreages of feed grains and oats and rye or if the acreage of wheat exceeds the permitted acreage of wheat, payment for diversion shall be made for the crops actually underplanted without regard to the stated intention for each commodity for a number of acres not to exceed the total acreage otherwise eligible for payment. If more than one commodity is actually underplanted, the total acreage otherwise eligible for payment shall be credited first to the commodity with the largest applicable payment rate to the extent of the actual underplanted acreage of such commodity, and the remaining acreage, if any, otherwise eligible for payment shall be credited to other commodities in high to low payment rate order to the extent of the actual underplanting of such commodities: *Provided*, That total diversion payment for barley, corn, and grain sorghums shall not be made for an acreage in excess of the total actual underplanted acreage of such crops.

(d) *Applicability.* This section shall be applicable only if the farm is in total

compliance with all the requirements of the regulations governing this program and with all the requirements of the regulations governing the feed grain program with the exception that the acreage of wheat, feed grains, or oats-rye may exceed the permitted acreage for the crop in accordance with an approved substitution under the terms of paragraph (b) of this section. The provisions of this section are not applicable if excess wheat produced on the farm is stored under the provisions of § 728.505, or the farm is complying with the malting barley exemption, § 775.429 of the regulations governing the feed grain program, Part 775 of this chapter.

§ 728.411 Advance payment.

Advance payment shall not be made available to participants in the wheat diversion program.

§ 728.412 Determination of compliance.

(a) Determination of the acreage of wheat and the acreage designated as diverted acreage shall be made in accordance with Part 718 of this chapter, as amended.

(b) A representative of the county or State committee or any authorized representative of the Secretary shall have the right at any reasonable time to enter a farm, concerning which representations have been made on any forms filed under the program in order to measure the acreage of wheat and the acreage which the operator designates as devoted to approved conservation uses on the farm, to examine any records pertaining thereto, and otherwise to determine the accuracy of a producer's representations and the performance of his obligations under the program.

§ 728.413 Diversion payment.

(a) Payments of any amounts due the producers on a farm shall be made after the farm operator certifies that the farm is in compliance with the requirements of the program by signing the appropriate space on Form ASCS-477 and the county committee determines that the producers and the farm are in compliance with such requirements. The signing of Form ASCS-477 by any producer or by the farm operator after May 1 of the year following the current year shall not be approved by the county committee unless prior approval of the State committee is obtained.

(b) Except as otherwise provided herein and in Part 791 of this chapter, as amended, no payment shall be made for a farm or to a producer when there is failure to comply fully with the requirements in this subpart. The total diverted acreage of wheat on the farm shall be determined by subtracting (1) the current year's wheat acreage on the farm, as defined in § 728.310, from (2) the sum of the current year's farm acreage allotment and the farm minimum diversion acreage determined under § 728.401(b)(2). The total diverted acreage on which payment shall be based shall be the smallest of:

(1) The total diverted acreage of wheat on the farm determined as provided above minus the minimum required diversion.

(2) The stated intention for diversion in excess of the minimum required diversion.

(3) The increased acreage devoted to approved conservation uses and substitute crops.

(4) The designated diverted acreage.

(5) If the farm is participating in the CRP, CCP, or CAP, the smallest number of acres of nonconserving crops permitted minus the acreage devoted to such crops other than approved crops on diverted acreage, and minus acreage diverted under the upland cotton program and the feed grain program.

(c) The amount of the earned diversion payment for the farm shall be computed by multiplying the total diverted acreage on which payment is based by the payment rate determined in accordance with § 728.406.

(d) The amount of the total earned diversion payment due each eligible producer under the program shall be determined by multiplying the total earned diversion payment for the farm by the producer's share of such payment.

(e) Notwithstanding any other provision of this subpart, if a producer declines, for personal reasons, to accept all or any part of his share of the payment computed for a farm in accordance with the provisions of this section, such payment or portion thereof shall not become available for any other producer on the farm.

(f) Diversion payments will be made by the issuance of negotiable Commodity Credit Corporation (CCC) sight drafts which may be redeemed in cash.

(g) In the event it is determined that a producer is not entitled to any payment received, he shall refund such payment with interest at the rate of 6 percent per annum from the issue date of the payment to the date it is refunded.

§ 728.414 Division of payment.

(a) Payments made under this program for acreage diverted shall be divided in such a way that all eligible producers will share in the payments on a fair and equitable basis. The names of all persons on the farm who would have had an interest as producers in the acreage of wheat diverted shall be entered on Form ASCS-477. If all such producers agree to their respective percentage shares of the payment and certify that their shares of the payment are fair and equitable, the division of payment so determined shall be approved by a representative of the county committee, subject to the provisions of §§ 728.507 and 728.508.

(b) The following factors should be given consideration in arriving at the division of the diversion payment:

(1) The basis on which producers would have shared in the production of the acreage of wheat diverted if wheat had been produced thereon;

(2) The savings or benefits accruing to each producer as a result of not producing the acreage of wheat diverted;

(3) The respective contributions of each producer to the establishment and maintenance of the conservation use on

the acreage designated as diverted from production; and

(4) The respective relationship of the diverted acreage and increased conservation acreage to the various ownership tracts comprising a farm.

(c) In those cases where a person who would have had an interest as a producer in the acreage of wheat diverted refuses or fails to sign an application for payment, the share of the payment to which he would otherwise be entitled shall be shown on Form ASCS-477. Payment shall not be made for the farm until the sum of the percentage shares equals 100 percent.

(d) If producers whose names are listed on Form ASCS-477 cannot agree on the division of the payment among eligible producers on the farm, the county committee will determine the division of payments among such producers on a fair and equitable basis in accordance with the factors provided in this section. Payments of amounts so determined shall be made to eligible producers upon their request.

§ 728.415 [Reserved]

§ 728.416 County projected yields and county rates used in determining diversion payment for the 1966 crop of wheat.

NOTE: For text of section, see 31 F.R. 181.

§ 728.417 Establishment of 1966 projected farm yields.

NOTE: For text of section, see 31 F.R. 193.

WHEAT CERTIFICATE PROGRAM

§ 728.500 Wheat certificate program—general.

(a) Under the wheat certificate program for 1966 through 1969, wheat marketing certificates are issued to producers who participate in the wheat diversion program to the extent provided herein. Domestic marketing certificates shall be issued for the wheat marketing allocation, representing wheat used for food products for consumption in the United States. Export marketing certificates shall be issued to eligible producers at the end of the marketing year on a pro rata basis if the total net proceeds from the sale of export marketing certificates during the marketing year exceeds the total amount of wheat export subsidies paid to exporters.

(b) For the wheat certificate program and in all instructions, forms, and documents in connection therewith, the words and phrases defined in § 728.310 shall have the meanings assigned to them therein unless the context or subject matter otherwise requires, except that "current year" shall mean the calendar year in which the marketing year with respect to which marketing certificates may be issued under this subpart begins.

§ 728.501 Requirements for eligibility.

(a) General: Any person who will share in the current year's crop of wheat or the proceeds thereof on a wheat farm which meets the requirements of paragraph (b) of this section and who meets the requirements of § 728.401(c) (2) and (3) shall receive marketing certificates

in an amount and manner specified in §§ 728.502 and 728.504.

(b) Farm requirements: A farm shall be eligible for wheat marketing certificates if producers on the farm file a Form ASCS-477 for the current year and comply with all of the regulations governing the wheat diversion program and this program. Notwithstanding the foregoing provisions of this paragraph, a producer on a wheat farm on which the acreage of wheat exceeds the farm allotment shall be eligible for wheat marketing certificates if (1) the operator files a Form ASCS-477 under the provisions of § 728.409 and indicates thereon his intention to produce excess wheat; (2) the acreage of wheat does not exceed the allotment by more than 50 percent; (3) an amount of wheat is stored as required under the provisions of § 728.505; (4) the producer meets the cross-compliance requirements of § 728.401(c); and (5) an acreage of cropland equal to the minimum diversion requirement determined under § 728.401(b) is devoted to one or more of the conservation uses specified in § 728.403 and the limitations on use of such acreage specified in § 728.402 are complied with and an acreage of cropland equal to the conserving base established for the farm under § 728.404 is devoted to one or more of the conservation uses specified in such section: *Provided*, That to the extent that such reduction may be necessary in order to produce the acreage of wheat in excess of the farm wheat acreage allotment permitted by subparagraph (2) of this paragraph for a farm otherwise meeting the requirements of this sentence, the acreages otherwise required to be devoted to conservation uses under subparagraph (5) of this paragraph may be reduced, first from the acreage required to be devoted to the uses specified in § 728.404 and then from the acreage required to be devoted to the uses specified in § 728.403. No producer shall be eligible to receive wheat marketing certificates with respect to any farm for any marketing year in which a marketing quota penalty is assessed for any commodity on such farm.

(c) Except as otherwise provided herein and in Part 791 of this chapter, as amended, no wheat marketing certificates shall be issued when there is a failure to comply fully with the regulations of this subpart.

§ 728.502 Issuance of certificates.

(a) *Domestic marketing certificates—*
(1) *Compliance requirements.* Issuance of domestic marketing certificates due the producers on a farm shall be made after the farm operator certifies that the farm is in compliance with the requirements of § 728.501 by signing Form ASCS-477 and the county committee determines that the producers and farms are in compliance with such requirements.

(2) *Amount of domestic marketing certificates.* The number of bushels for which domestic marketing certificates shall be issued to producers on an eligible farm shall be computed on Form ASCS-477 and shall be a number of

bushels which is equal to the smaller of (i) the farm wheat marketing allocation as determined under § 728.310(j) or (ii) the current year's wheat acreage as defined under § 728.310(i) multiplied by the projected yield determined under § 728.319 plus the amount of wheat stored under the provisions of §§ 728.107 and 728.505 which is released from storage during the marketing year on account of underplanting or underproduction. An acreage on the farm not planted to wheat because of drought, flood, or other natural disaster shall be deemed to be an actual acreage of wheat planted for harvest for the purposes of this section in accordance with instructions issued by the Deputy Administrator, provided such acreage is not subsequently planted to any other income-producing crops during such year. Producers on any farm who have planted not less than 90 percent of the acreage of wheat required to be planted in order to earn the full amount of marketing certificates for which the farm is eligible shall be deemed to have planted the entire acreage required to be planted for that purpose.

(3) *Value of domestic marketing certificates.* The face value per bushel of domestic marketing certificates shall be the amount by which the level of price support for wheat accompanied by domestic marketing certificates exceeds the level of price support for wheat not accompanied by certificates (noncertificate wheat).

(b) *Export marketing certificates.* Export marketing certificates shall be issued at the end of the marketing year on a pro rata basis to eligible producers. The value per bushel of export marketing certificates shall be an average of the total net proceeds from the sale of export marketing certificates during the marketing year after deducting the total amount of wheat export subsidies paid to exporters.

§ 728.503 Purchase of certificates by Commodity Credit Corporation.

Domestic or export certificates, legally held by any person, will be purchased by Commodity Credit Corporation at any time at face value.

§ 728.504 Division of certificates between producers.

(a) Wheat marketing certificates issued under § 728.502 shall be divided among producers on an eligible farm on the same basis as such producers share in the current year's wheat crop produced on the farm, or the proceeds therefrom, except that the State committee may approve a different division which is fair and equitable where it is determined that the distribution of crop plantings is abnormal in relation to past history of the farming operation, or is contrary to customary practice and except as provided in § 728.508.

(b) Certificates which producers receive, to which they are not entitled, shall be returned to the county committee or, if not returned, the value thereof shall be paid to the Commodity Credit Corporation.

§ 728.505 Storage of excess wheat.

(a) *Amount.* The amount of wheat required to be stored for the purpose of § 728.501(b) shall be an amount equal to twice the projected yield of wheat per acre established for the farm multiplied by the number of acres of such crop of wheat on the farm in excess of the farm acreage allotment for such crop unless a producer on the farm files an application for downward adjustment of excess within 60 days after the date the notice provided in paragraph (b) of this section is mailed from the county office. If the total actual production for the excess farm is established to the satisfaction of the county committee, the amount of wheat required to be stored shall be such actual production less the actual production of the farm wheat acreage allotment based upon the average yield per acre for the entire wheat acreage on the farm: *Provided*, That the amount of wheat required to be stored shall not be larger than the amount by which the actual production so established exceeds the normal production of the farm wheat acreage allotment.

(b) *Notice of excess.* As soon as practicable following the wheat disposal date provided in Part 718 of this chapter, as amended, producers on farms for which a timely intention to produce excess wheat was filed under § 728.501(b) and on which the wheat acreage exceeds the allotment by not more than 50 percent shall be notified of the amount of initial excess determined for such farms and of the storage requirements of this section.

(c) *Application.* Application for storage of excess wheat shall be filed in writing by any producer sharing in the wheat crop within 60 days after the date the notice of paragraph (b) of this section is mailed from the county office. In the case of farm storage, the producer shall be required to pay a service fee in an amount determined by the county committee to be sufficient to cover the cost of initial inspection and subsequent reinspections.

(d) *Storage requirements.* The wheat stored shall be equal to or better than the average quality of wheat produced on the excess farm. Excess wheat may be stored either (1) in an elevator or warehouse duly licensed and authorized to issue warehouse receipts under Federal or State laws, hereinafter referred to as "licensed storage": *Provided*, That if a State has no elevator or warehouse licensing law, warehouse receipts may be accepted from elevators or warehouses in such State unless the county committee and the State executive director determine that the elevators or warehouses are unreliable, such storage also to be referred to as "licensed storage," or (2) in any other place adapted to the storage of wheat, hereinafter referred to as "nonlicensed storage." In the case of licensed warehouse storage the producer shall remain liable for all warehouse storage charges, and in the case of unlicensed storage shall be responsible for maintaining quality and quantity.

(e) *Security for nonlicensed storage.* A corporate surety bond of indemnity in an amount not less than 150 percent of the value of certificates issued with respect to the excess farm in the year of excess, shall be executed and filed with the county office manager prior to the issuance of any marketing certificates for the farm. Each bond shall be subject to the conditions that the full amount computed under § 728.506 shall be paid at the time of the depleting of any amount stored which is not authorized under § 728.506 and if at any time any producer on the farm prevents the inspection of wheat so stored the entire amount computed under § 728.506 shall be paid. The principal amount of the bond shall not be reduced or the bond released until the entire amount of stored excess wheat is released as authorized by the county committee in § 728.506.

(f) *Security for licensed storage.* In the case where the total excess is stored in licensed warehouse storage, the warehouse receipt, properly endorsed, shall be deposited with the county office manager to be held in escrow. No bond is required.

(g) *Substitution.* Unlicensed or licensed stored wheat of any year's crop may be substituted for excess wheat in farm or warehouse storage provided that (1) prior approval for such substitution is obtained from the county committee, (2) the wheat to be used for substitution is in storage in accordance with the provisions of this section and is of equal or better quality than the excess wheat in storage, and (3) if unlicensed storage wheat is substituted for licensed storage wheat, the service fee provided for under paragraph (c) of this section is collected and a bond of indemnity has been filed in accordance with paragraph (e) of this section.

(h) *Commingling.* In the case of licensed storage, commingling of wheat shall be permissible. In the case of unlicensed storage, stored excess wheat may be commingled with excess wheat from another farm if the producers sharing in the excess wheat in storage are the same.

§ 728.506 Depletion of stored excess wheat.

(a) *Unauthorized.* Subject to the provisions of paragraph (b) of this section, at the time and to the extent of any depletion in the amount of wheat stored under § 728.505 except depletion under paragraphs (c) and (d) of this section or depletion resulting from some cause beyond the control of the producer, the producer shall pay an amount to the ASCS county office equal to one and one-half times the value of the wheat marketing certificates issued with respect to the farm for the year in which the wheat on the acreage in excess of the allotment was produced. If a producer having an interest in the excess wheat in storage no longer shares in the wheat crop on any farm in years subsequent to the year the stored excess was produced, such producer shall be relieved of paying the amount otherwise required to be paid

under this paragraph provided the right, title, and interest in his share of the excess wheat remaining in storage is delivered to the Secretary in accordance with paragraph (b) of this section.

(b) *Delivery to the Secretary.* The producer may be relieved of any further obligations with respect to wheat stored in a licensed warehouse by transferring his right, title, and interest with respect to the stored wheat to the Secretary by delivery of the warehouse receipt covering the amount of wheat stored to the ASCS county office in accordance with instructions issued by the Deputy Administrator. Such a producer shall be relieved of any further liability for warehouse storage charges.

(c) *Underplanting.* Whenever the wheat acreage of the then current crop of wheat on the farm is less than the farm acreage allotment and the conditions of paragraph (e) of this section are met, the total amount of wheat from any previous crops required to be stored under § 728.505 for such farm shall be reduced by that amount which is equal to the normal production of the number of acres by which the farm acreage allotment exceeds the wheat acreage: *Provided*, That if a producer having an interest in the excess wheat in storage no longer shares in the wheat crop on the farm, such producer may obtain the release of his share of the stored excess wheat by underplanting on any other farm in which he shares in the wheat crop. The amount so released shall be limited to the normal production of the underplanted acres multiplied by his percent share of wheat crop on the underplanted farm. For the purpose of this paragraph the acreage, if any, diverted from the production of wheat under the conservation reserve program, cropland conversion program, great plains conservation program, cropland adjustment program, or wheat diversion programs, or considered as planted to wheat for the purpose of receiving certificates under § 728.502(b), shall be considered wheat acreage. The acreage considered to be diverted from the production of wheat under a conservation reserve program contract shall be the acreage placed in the conservation reserve at the regular rate, not to exceed the amount by which the wheat acreage allotment for the farm exceeds the wheat acreage determined for such farm: *Provided*, That in the event the farm also has one or more other commodity allotments and the acreage placed in the conservation reserve at the regular rate is less than the sum of the amount by which each allotment (after release and before reapportionment, where applicable) exceeds the actual acreage determined for each such allotment crop on the farm, the acreage placed in the conservation reserve at the regular rate shall be prorated and credited to each allotment commodity. If the acreage placed in the conservation reserve at the regular rate is equal to or is in excess of the sum of the amount by which each allotment (after release and before reapportionment, where applicable) exceeds the actual acreage determined for each allotment crop on the

farm, no excess wheat may be removed from storage. The acreage diverted from wheat in order to carry out a great plains conservation program contract shall be determined by the county committee after consultation with the producer and the work unit conservationist. A producer shall not be entitled to remove excess wheat from storage under this paragraph by underplanting the allotment on Government-owned land under a lease restricting the production of wheat.

(d) *Underproduction.* Whenever the actual production of the wheat acreage is less than the normal production of the farm acreage allotment and the conditions of paragraph (e) of this section are met, the total amount of wheat from any previous crops required to be stored under this § 728.506 for such farm shall be reduced by that amount which together with the actual production of the then current crop will equal the normal production of the farm acreage allotment, less the normal production of the underplanted acreage for the farm which was or could have been determined under paragraph (c) of this section: *Provided*, That if a producer having an interest in the excess wheat in storage, no longer shares in the wheat crop on the farm, such producer may obtain the release of his share of the stored excess wheat by underproduction on any other farm on which he shares in the wheat crop to the extent of such determined underproduction, multiplied by his percent share of the wheat crop on the underproduced farm. For purposes of this paragraph, any acreage considered to be diverted from the production of wheat under the conservation reserve, cropland adjustment, cropland conversion, great plains conservation, wheat diversion, and wheat certificate programs shall be deemed to have produced the normal production of wheat when determining the actual production for the farm.

(e) *Conditions of release.* Release of stored excess wheat by the county committee under paragraphs (c) and (d) of this section is subject to the following conditions: (1) A producer having an interest in the excess wheat files a written request for release of stored excess on or before December 31 of the year of harvest in which the underplanting or underproduction occurred, (2) in the case of underproduction the producer shall establish actual production to the satisfaction of the county committee and if the county committee determines a farm and warehouse visit is necessary to verify production, the producer shall also be required to remit a service fee to cover cost of such visit, and (3) the required amount of excess wheat is in the storage at the time of application.

MISCELLANEOUS PROVISIONS

§ 728.507 Additional provisions and requirements relative to tenants and sharecroppers

(a) Form ASCS-477 shall not be approved by the county committee or diversion payments made or wheat marketing certificates issued for any individual

farm if the county committee determines that:

(1) The landlord or operator has not afforded his tenants and sharecroppers, if any, an opportunity to participate in the program;

(2) The landlord or operator has, in anticipation of or because of participating in the program, reduced the number of tenants and sharecroppers on the farm (if a tenant or sharecropper leaves the farm voluntarily, or for some reason other than being forced off the farm by the landlord or operator in anticipation of or because of participating in the program, the failure to replace such tenant or sharecropper shall not be considered as a reduction in anticipation of or because of participating in the program);

(3) There exists between the operator or landlord and any tenant or sharecropper any lease, contract, agreement or understanding unfairly exacted or required by the operator or landlord which was entered into in anticipation of participating in the program, the effect of which is:

(i) To force the tenant or sharecropper to pay over to the landlord or operator any payment earned by him under the program;

(ii) To change the status of any tenant or sharecropper so as to deprive him of any payment or right which he would otherwise have had under the program;

(iii) To reduce the size of the tenant's or sharecropper's producer unit; or

(iv) To increase the rent to be paid by the tenant or decrease the share of the crop or its proceeds to be received by the sharecropper.

(4) Any other scheme or device has been adopted for the purpose of depriving any tenant or sharecropper of the payment to which he would otherwise be entitled to receive under this program.

(b) The provisions of paragraph (a) (2) of this section shall not apply to a cash tenant, standing-rent tenant, or a fixed-rent tenant unless such tenant was living on the farm in the year immediately preceding the current year or received 50 percent or more of his income in such year from the farm.

(c) If any of the conditions set forth in paragraph (a) of this section are discovered after Form ASCS-477 is approved, the farm shall be ineligible for diversion payments and wheat marketing certificates except as provided herein and in Part 791 of this chapter, as amended.

§ 728.508 Successors-in-interest.

(a) In the case of the death, incompetency, or disappearance of any producer who is entitled to a diversion payment or wheat marketing certificates, the payment and marketing certificates due him shall be made to his successor, as determined in accordance with the regulations in Part 707 of this chapter, and any amendments thereto.

(b) When any person who would have had an interest as producer (herein called "predecessor") leaves the farm after Form ASCS-477 has been filed and is succeeded on the farm by another pro-

ducer (herein called "successor"), their share of the diversion payment shall be divided on a fair and equitable basis. If such persons are unable to agree to a division of the payment, the county committee shall determine the division, taking into consideration factors it deems pertinent. Notwithstanding the foregoing, if a tenant or sharecropper who would have had a share in the diversion payment leaves a farm after Form ASCS-477 has been filed for the farm, but before the final payment has been made and is not succeeded on the farm by another person, his name shall be included on Form ASCS-477 and the division of payment to which he is entitled shall be determined as provided in § 728.414.

(c) Notwithstanding any other provision of this subpart, if any person who has or would have an interest as producer of wheat on the farm (herein called "predecessor") leaves the farm after Form ASCS-477 has been filed and is succeeded on the farm by another producer (herein called "successor"), their share of the marketing certificates shall be divided on such basis as they agree is fair and equitable. If such persons are unable to agree to a division of the marketing certificates, the marketing certificates shall be issued to the producer who has the interest in the wheat crop at the time of harvest, and if the wheat crop is completely destroyed prior to harvest, the certificates shall be issued to the producer who has the interest at the time of destruction of the crop. However, if the marketing certificates are issued to the predecessor prior to notification to the county committee of such change of producers, marketing certificates shall not be issued to the successor unless such certificates are returned to the county committee, or if not returned, the value thereof is paid to Commodity Credit Corporation.

§ 728.509 Scheme or device and fraudulent representation.

(a) A producer who is determined by the State committee, or the county committee with the approval of the State committee, to have adopted any scheme or device which tends to defeat the purposes of the program shall not be entitled to receive diversion payments or wheat marketing certificates and shall refund any diversion payment received by him and return any certificates received by him, or pay the value thereof to the Commodity Credit Corporation.

(b) The making of a fraudulent representation by a person in the program documents or otherwise for the purpose of obtaining diversion payments or wheat marketing certificates shall render the person liable, aside from any additional liability under criminal and civil frauds statutes, for a refund or return of the diversion payments and certificates received by him with respect to which the fraudulent representation was made.

§ 728.510 Setoffs and assignments.

(a) *Producer indebtedness.* Setoffs against diversion payments and the value

of wheat marketing certificates which a producer is eligible to receive shall be made as provided in the regulations issued by the Secretary governing setoffs and withholdings, Part 13 of this title (29 F.R. 9425), and any amendments thereto.

(b) *Assignments.* The right to receive wheat marketing certificates and diversion payments under the regulations in this subpart may be assigned only to the Farmers Home Administration in accordance with instructions issued by the Deputy Administrator.

§ 728.511 Appeals.

(a) A producer may obtain reconsideration and review of determinations made under this subpart in accordance with the appeal regulations, Part 780 of this chapter, as amended.

(b) To the extent that a producer proves the actual yields for the farm for each of the 3 years immediately preceding the year in which the projected yield is determined, either prior to receipt of notice under § 728.408 or pursuant to paragraph (a) of this section, the yields so proven shall be used in establishing the yields: *Provided*, That the producer whose production records are used to prove yields on the farm shall be required to furnish production data for all other farms in the county or adjoining counties in which he had an interest in any of the years for which the yields are proven (unless there is conclusive evidence that the records presented are in fact for the specific farm), and such data shall be used in making determinations for such other farms in which the producer has an interest in the current year.

§ 728.512 Performance in reliance on advice or action of a representative of a county or State committee.

The provisions of Part 790 of this chapter relating to performance based upon action or advice of an authorized representative of the Secretary shall be applicable to this subpart.

§ 728.513 Delegation of authority.

No delegation herein to a State or county committee shall preclude the Administrator, ASCS, or his designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(The reporting and/or recordkeeping requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.)

Effective date. Date of publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on June 20, 1966.

E. A. JAENKE,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 66-6964; Filed, June 23, 1966; 8:51 a.m.]

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER G—DETERMINATION OF PROPORTIONATE SHARES

[§ 850.172, Amdt. 2; § 850.174, Amdt. 2; § 850.184, Amdt. 1]

PART 850—DOMESTIC BEET SUGAR PRODUCING AREA

Proportionate Shares for Farms, 1966 Crop

Pursuant to the provisions of section 302 of the Sugar Act of 1948, as amended, §§ 850.172 (30 F.R. 15403; 31 F.R. 2648); 850.174 (30 F.R. 15403; 31 F.R. 5816) and 850.184 (30 F.R. 15403), are amended as follows:

1. In § 850.172, paragraph (e) is amended by changing the date for Arizona from May 25, 1966, to July 1, 1966, by amending paragraph (f), and by adding a new paragraph (g) as follows:

§ 850.172 Requests for shares.

(e) Effective closing dates.

State	Closing Date
Arizona	July 1, 1966

(f) *Exceptions to closing date.* A request may be accepted after the effective closing date for consideration with respect to available acreage, if the State committee determines that the person requesting a share was prevented from filing by such date due to illness or other reason beyond his control. Requests may be accepted generally by the State committee after the effective closing date if the total acreage requested by such date by old producers is less than the acreage available for distribution (area allotment less set asides pursuant to § 850.173) to old producers within the allotment area.

(g) *Establishing shares to coincide with requested or planted acreages.*

(1) If the total acreage requested in an allotment area does not exceed the area allotment at the expiration of a reasonable time for the acceptance of requests generally following the closing date, the shares for both old and new producers in the allotment area may be established by the State committee so as to coincide with the requested acreages without carrying out the detailed procedure otherwise required under §§ 850.174, 850.176, 850.177, 850.178, and 850.180.

(2) If, after shares have been established and notices thereof furnished producers, it is determined by the State committee that the total acreage planted in any State does not exceed the allocation for the State, the proportionate shares for both old and new producer farms in such State may be revised by the State committee so as to coincide with the planted acreage on the farm: *Provided*, That if the county or State committee determines for a farm that

the acreage has not been timely reported in accordance with paragraph (e) of § 850.186, as required under Part 817 of this chapter, or was knowingly incorrectly reported by the farm operator and either such committee determines that the planted acres exceed the proportionate share for the farm, a proportionate share shall not be established to coincide with the planted acreage. A general notice (individually mailed) shall be furnished producers informing them that the proportionate shares for their farms have been revised to coincide with their respective planted acreages.

2. In § 850.174, paragraphs (b) (2) and (c) (2) are revised to read as follows:

§ 850.174 Establishment of farm bases.

(b) *Farm history area.* * * *
 (2) *Reconstituted farms.* The 1966-crop farm base for any old-producer farm with an accredited acreage record in the base period which is constituted differently than for the 1965 crop shall be determined by applying the 1965-crop formula to the accredited acreage record of such reconstituted farm during the base period. If a 1965-crop new-producer farm is subdivided, the 1966-crop farm base for each subdivision shall be the pro rata share of the 1965-crop share initially established for the farm, as adjusted by appeal, determined on the basis of the ratio of the suitable cropland for the production of sugarbeets in each subdivision. If all or a part of a 1965-crop new-producer farm is combined with all or a part of another 1965-crop new-producer farm, the 1966-crop farm base for the combined farm shall be the sum of the 1965-crop shares initially established for the farms as adjusted by appeals, or portions thereof determined on the basis of the ratio of suitable cropland for the production of sugarbeets in each subdivision. If all or a part of a 1965 new-producer farm is combined with all or a part of a farm having an accredited acreage record during the base period, a base shall be determined with respect to the land of the 1965 new-producer farm in accordance with the foregoing provisions of this subparagraph (2), and the 1966-crop farm base for the combined farm shall be the sum of the bases as determined for the component parts. If a 1965 new-producer farm is combined with land not having a record of sugarbeet production in the base period, the 1966-crop farm base for the combined farm shall be the 1965-crop share initially established for the 1965 new-producer farm as adjusted by appeal.

(c) *Personal history area.* * * *
 (2) *Reconstituted farms.* The 1966-crop farm base for any farm which is constituted differently than the operator's 1965 farm shall be determined by applying the 1965-crop formula to the accredited acreage record, except that in the Mendota, California, locality by applying the 1965-crop formula to the 1963, 1964, and 1965-crop acreage records. For any allotment area wherein no

credit is given in the formula to land history, the 1966-crop farm base for a farm operated by a person for whose 1965-crop farm a share was established shall be the 1965-crop share initially established as adjusted by appeal, notwithstanding the fact that the farm operated in 1966 is constituted differently than the farm operated by such person in 1965.

3. Paragraph (b) of § 850.184 is amended by adding the following at the end of subparagraphs (1) and (2):

§ 850.184 Redetermination of shares for reconstituted farms.

(b) *Non-reserve acreage farms.* * * *

(1) *Farm subdivided before planting.* * * * When a farm for which a 1965-crop new-producer farm share was established is subdivided, the 1966-crop share shall be prorated to the subdivisions on the basis of the ratio of suitable cropland for the production of sugarbeets in each subdivision. The established share for any such subdivision constituted as a separate farm shall be its portion of the 1966 share so determined.

(2) *Combined before planting.* * * * When a farm for which a 1965-crop new-producer share was established or part of such farm is combined with another farm prior to planting, the 1966-crop share established for the farm for which a 1965-crop new-producer share was established, or the portion determined for the part of such farm pursuant to subparagraph (1) of this paragraph shall be added to the share, if any, of the other component parts of the farm, as determined pursuant to this section and §§ 850.178 and 850.180 to establish a share for the combined farm: *Provided*, However, that if the farm for which a 1965-crop new-producer share was established or part thereof is combined with a 1966-crop new-producer farm the 1966-crop new-producer share shall be canceled and not included in the total share for the combined farm.

Statement of bases and considerations. This amendment extends the closing date for receiving requests for proportionate shares in Arizona from May 25, 1966, to July 1, 1966.

To eliminate much of the detail work involved in establishing shares, this amendment provides that each farm's share may be established at the requested acreage level in any allotment area wherein the total acreage requested does not exceed that available for distribution.

This amendment also makes provision for the method of establishing 1966-crop farm bases and redetermination of shares in certain cases when farms are constituted differently in 1966 than in 1965.

Accordingly, I hereby find and conclude that this amendment will effectuate the applicable provisions of the Sugar Act of 1948, as amended.

(Sec. 403, 61 Stat. 923; 7 U.S.C. 1153, secs. 301, 302, 61 Stat. 929, 930, as amended; 7 U.S.C. 1131, 1132, P.L. 89-311)

Effective date. Date of publication.
 Signed at Washington, D.C., on June 16, 1966.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 66-6920; Filed, June 23, 1966; 8:47 a.m.]

Title 12—BANKS AND BANKING
Chapter V—Federal Home Loan Bank Board

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM
 [No. 19,994]

PART 523—MEMBERS OF BANKS
Holdings of Cash and Obligations of the United States by Members

JUNE 20, 1966.

Resolved that, notice and public procedure having been duly afforded (31 F.R. 7354) and all relevant material presented or available having been considered by it, the Federal Home Loan Bank Board, upon the basis of such consideration and of determination by it of the advisability of amendment of § 523.12 of the regulations for the Federal Home Loan Bank System (12 CFR 523.12) to reduce the required liquidity for member institutions, and for the purpose of effecting such amendment, hereby amends said § 523.12 to read as follows, effective July 1, 1966.

§ 523.12 Holdings of cash and obligations of the United States by members.

No member insurance company shall make or purchase any loan, other than loans on the company's insurance policies, at any time when the aggregate of its cash and obligations of the United States is not at least equal to 7 percent of its policy reserve required by state law, and no other member shall make or purchase any loan, other than advances on the sole security of its withdrawable accounts, at any time when its cash and obligations of the United States are not at least equal to 7 percent of the obligation of the member on withdrawable accounts: *Provided*, That, until November 1, 1966, the foregoing figure of 7 percent may be reduced, but not below 6 percent, by the percentage that the maximum amount of net cash withdrawals from the opening of business on June 27, 1966, to the date of calculation is of the obligations of the member on withdrawable accounts at the opening of business on June 27, 1966. For the purposes of this section:

(a) A loan shall be deemed to have been made as of the date of the note or bond evidencing the same, and a loan shall be deemed to have been purchased as of the date of payment therefor;

(b) The term "cash" means cash on hand, unpledged deposits in a Federal Home Loan Bank or State bank perform-

ing similar reserve functions, and unpledged demand deposits in domestic banks, not under the control or in the possession of appropriate supervisory authority.

(c) The term "obligations of the United States" shall mean all unpledged evidences of indebtedness issued by the United States and all unpledged evidences of indebtedness issued by any agency or instrumentality of the United States which are by statute fully guaranteed as to principal and interest by the United States.

(Sec. 17, 47 Stat. 736, as amended; 12 U.S.C. 1437. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 66-6944; Filed, June 23, 1966;
8:49 a.m.]

[No. 19,996]

PART 530—BOARD RULINGS Liquidity Requirement; Deposits

JUNE 20, 1966.

Whereas, by Federal Home Loan Bank Board Resolution No. 19,994 this Board has amended § 523.12 of the regulations for the Federal Home Loan Bank System (12 CFR 523.12) to eliminate time deposits, other than time deposits in Federal Home Loan Banks and State banks performing similar reserve functions, from the definition of cash; and

Whereas said proposed amendment requires the rescission of § 530.1 of the regulations for the Federal Home Loan Bank System (12 CFR 530.1);

It is hereby resolved that the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of the rescission hereinafter set forth, and for the purpose of effecting such rescission, hereby rescinds § 530.1 of the regulations for the Federal Home Loan Bank System (12 CFR 530.1), effective July 1, 1966.

(Sec. 17, 47 Stat. 736, as amended; 12 U.S.C. 1437. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 66-6945; Filed, June 23, 1966;
8:49 a.m.]

[No. 19,997]

PART 531—STATEMENTS OF POLICY JUNE 20, 1966.

Resolved that, the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of revising and codifying its supplemental statement of policy on advances adopted by the Board on May 16, 1966, and duly published in the FEDERAL REGISTER on May 20, 1966 (31 F.R. 7360), and for the pur-

pose of effecting such revision and such codification hereby amends the regulations for the Federal Home Loan Bank System (12 CFR, Chapter V, Subchapter B) by adding at the end of said Subchapter B a new part, Part 531, to read as follows:

Sec.
531.1 [Reserved]
531.2 [Reserved]
531.3 Supplemental statement of policy on advances.

AUTHORITY: The provisions of this Part 531 issued under sec. 17, 47 Stat. 736, as amended; 12 U.S.C. 1437. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.

§ 531.1 [Reserved]

§ 531.2 [Reserved]

§ 531.3 Supplemental statement of policy on advances.

(a) The conditions prevailing in the economy and the savings and credit markets dictate policy responses by both the Federal Home Loan Bank System and all its member institutions. The objectives of the System remain unchanged, and the capacity of the System to achieve those objectives remain unquestioned. Nevertheless, the achievement of the objectives requires changes in procedure as economic conditions change.

(b) In the light of the current situation, the attention of the Federal home loan banks and their members is directed to the following major policy items:

(1) Advances for withdrawals may be made only on a 30-day basis, and may be renewed on a 30-day basis only to the extent that application of net savings receipts during such 30-day periods is insufficient for the repayment of the advances. In those cases where a Federal home loan bank is of the opinion that the administration of the preceding requirement would be simplified if a 90-day note were used, the bank may make withdrawal advances on 90-day notes, provided the note requires, or refers to a written agreement which requires, the member to repay at 30-day intervals that amount of the note which equals its gain in net savings during such 30-day interval. Such notes may be renewed on the same basis, to the extent that the recovery of savings, excluding any dividends credited, has not provided funds for repaying the advance.

(2) Member institutions should carefully regulate and control their outstanding commitments, including undisbursed loan proceeds, to levels not exceeding the total of the previous calendar 4 months loan repayments plus or minus their realized savings gains or losses for the same past 4 months. Moreover, if the judgment of the board of directors of an individual member institution indicates a probable reduction in the coming period of loan repayments, or a reduction in savings inflow, such judgments should promptly be reflected in a working down of such outstanding commitments. Insofar as maturing expansion advances are con-

cerned, member institutions with operations which are sound and which conform to outstanding policy directives governing the extension of advances can employ the proceeds from repayments on principal, income on earning assets, and proceeds from sales of loans or participations for lending in the mortgage market. For such institutions, repayment of maturing expansion advances will not be required out of these sources of funds. For all future commitments executed from this date forward management cannot expect the advance window to be ever open if management itself has failed to gear its commitment level to its actual cash flows. The extension of expansion credit is not appropriate merely because a member is below the 17½ percent ceiling.

(3) Expansion advances are not to be used as permanent additions to capital. Repayments should be obtained as feasible, particularly from continuous borrowers and those with high ratios of advances to savings. Such advances are to be utilized only for seasonal needs and to cover commitment requirements that have been maintained at realistic levels but where unexpected, adverse, reduced cash flows have developed. In addition, each Bank will, of course, make a case-by-case determination of a member's qualifications and the advisability of the amount of rollover of payments due on maturing expansion advances, giving due consideration to the member's compliance with policy directives, the member's net savings inflow, and relevant market conditions. Expansion advances or renewals should not be made unless the member is managing his cash flows so as to meet existing commitments. In no event, shall credit be extended in conflict with outstanding limitations based on scheduled items, or other restrictions.

(4) All loan officers of all regional banks are expected to examine each advance application in prudent detail. Previously established lines of credit certainly do not preclude such examination, nor acceptance, rejection or modification of the proposed loan application. This is especially true of expansion advances. Particular attention shall be given to the precise purposes of the proposed advance and the type of properties and transactions for which the funds are sought. Generally, such advances should not be employed to finance highly speculative ventures which would contribute to excesses in the housing inventory; to finance commercial, industrial or other residential property; or to refinance existing mortgages on all types of property in substantial volume.

(c) The Board will institute a reporting procedure to test the conformance of expansion advances to the foregoing principles.

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 66-6946; Filed, June 23, 1966;
8:49 a.m.]

[No. 19,998]

PART 531—STATEMENTS OF POLICY

Federal Home Loan Bank Credit for Member Institutions Located in California and Nevada

JUNE 20, 1966.

Resolved that, the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of revising and codifying its policy statement on Federal Home Loan Bank credit for member institutions located in California and Nevada, adopted by the Board on May 16, 1966, and duly published in the FEDERAL REGISTER on May 20, 1966 (31 F.R. 7361), and for the purpose of effecting such revision and such codification, hereby amends Part 531 of the regulations for the Federal Home Loan Bank System (12 CFR Part 531) by adding at the end of said Part 531 a new section, § 531.4, to read as follows:

§ 531.4 Federal Home Loan Bank credit for member institutions located in California and Nevada.

(a) The Federal Home Loan Bank Board has reviewed present conditions in the market in which savings and loan associations operate, their recent earnings, and their prospective yield on home mortgages. The Board has determined that associations in California and Nevada will not be restricted from obtaining advances for purposes other than meeting withdrawals merely because of (1) payment of dividends or interest at an annual rate of 5 percent on regular savings from July 1, 1966, if—

(i) Dividends or interest will not be compounded more frequently than quarterly, and

(ii) The funds are on hand at the close of the dividend or interest period,

and (2) offering a 3-year bonus plan at an aggregate rate not exceeding 5½ percent, if in a minimum amount of not less than \$5,000 and in at least \$1,000 multiples above such amount.

(b) This policy, however, does not apply to institutions which are presently restricted from obtaining advances under Federal Home Loan Bank Board Resolution No. 19,333, dated August 6, 1965, and published in the FEDERAL REGISTER on August 13, 1965 (30 F.R. 10124), as modified.

(Sec. 17, 47 Stat. 736, as amended; 12 U.S.C. 1437. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board,

[SEAL] HARRY W. CAULSEN,
Secretary.

[F. R. Doc. 66-6947; Filed, June 23, 1966; 8:49 a.m.]

[No. 19,999]

PART 531—STATEMENTS OF POLICY

Removal of Credit Restrictions—California

JUNE 20, 1966.

Resolved that, the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of stating and codifying its policy on the removal of credit restrictions imposed on certain institutions, and for the purpose of effecting such statement and such codification, hereby amends Part 531 of the regulations for the Federal Home Loan Bank System (12 CFR Part 531) by adding at the end of said Part 531 a new section, § 531.5, to read as follows:

§ 531.5 Removal of credit restrictions—California.

(a) Federal Home Loan Bank Board Resolution No. 19,333, dated August 6, 1965, provides that institutions which remain restricted as to advances as of July 1, 1965, or become restricted thereafter, will continue to be restricted for a period of from 6 months to 1 year after coming into conformity with the Board's requirements.

(b) The Board finds that, as a result of its Statement of Policy contained in Federal Home Loan Bank Board Resolution No. 19,898, dated May 16, 1966, as amended (§ 531.3), those institutions in California whose dividend rate was increased to 5 percent effective on dates prior to July 1, 1966, will, to that extent, come into conformity with Board requirements on July 1, 1966. The Board has determined that, if such institutions otherwise comply with all conditions of Resolution No. 19,898, the period of continuing restriction referred to in Resolution No. 19,333 for such institutions shall terminate on January 1, 1967.

(Sec. 17, 47 Stat. 736, as amended; 12 U.S.C. 1437. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board,

[SEAL] HARRY W. CAULSEN,
Secretary.

[F. R. Doc. 66-6948; Filed, June 23, 1966; 8:49 a.m.]

[No. 20,000]

PART 531—STATEMENTS OF POLICY

Continued Inclusion of Time Deposits as Cash

JUNE 20, 1966.

Resolved that the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of revising and codifying its statement of policy relating to the continued inclusion of time deposits as cash adopted by the Board on

May 16, 1966, and duly published in the FEDERAL REGISTER on May 20, 1966 (31 F.R. 7362), and for the purpose of effecting such revision and such codification, hereby amends Part 531 of the regulations for the Federal Home Loan Bank System (12 CFR Part 531) by adding, immediately after § 531.5, a new section, § 531.6, to read as follows:

§ 531.6 Continued inclusions of time deposits as cash.

(a) Under § 523.12(b) of this chapter of the regulations for the Federal Home Loan Bank System, "cash" is defined as cash on hand, unpledged deposits in a Federal Home Loan Bank or a State bank performing similar reserve functions, and unpledged demand deposits in banks not in the possession of appropriate supervisory authorities.

(b) Members of the Federal Home Loan Bank System had, under a former ruling of the Board, been permitted to count time deposits open account and time certificates of deposit as cash within specified limits.

(c) In the circumstances, the Board has determined, as a matter of policy, to allow time deposits open account and time certificates of deposits to be counted as cash according to the following schedule and extent:

(1) Time certificates of deposit made or renewed prior to May 20, 1966, may be counted as cash until July 1, 1967, or their expiration date (or first alternative maturity after September 30, 1966), whichever is earlier;

(2) Time certificates of deposit renewed between May 20, 1966, and September 30, 1966, for a period not in excess of ninety days may be counted as cash until the expiration of such renewal period;

(3) Time deposits open account subject to a notice period of not more than 30 days may be counted as cash until July 1, 1968; and

(4) No time deposit open account or deposit evidenced by a certificate of deposit shall be considered as cash unless (i) the association itself made the deposit in question, (ii) the deposit, together with all other time deposits of the association in the same bank, does not exceed the greater of one-fourth of one percent of such bank's total deposits as of the bank's last published statement of condition or \$10,000, and (iii) no consideration was received from a third party in connection with the making of the deposit.

(Sec. 17, 47 Stat. 736, as amended; 12 U.S.C. 1437. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board,

[SEAL] HARRY W. CAULSEN,
Secretary.

[F. R. Doc. 66-6949; Filed, June 23, 1966; 8:49 a.m.]

[No. 20,001]

**PART 531—STATEMENTS OF
POLICY**

Advances To Meet Net Withdrawals

JUNE 20, 1966.

Resolved that, notice and public procedure having been duly afforded (31 F.R. 7361) and all relevant material presented or available having been considered by it, the Federal Home Loan Bank Board, upon the basis of such consideration and of determination by it of the advisability of revising and codifying its statement of policy concerning advances to meet net withdrawals, adopted by the Board on May 16, 1966, and for the purpose of effecting such revision and such codification, hereby amends Part 531 of the regulations for the Federal Home Loan Bank System (12 CFR Part 531) by adding, immediately after § 531.6, a new section, § 531.7, to read as follows:

§ 531.7 Advances to meet net withdrawals.

(a) Amendments to §§ 523.12 and 545.8-2 of this chapter of the regulations for the Federal Home Loan Bank System and the rules and regulations for the Federal Savings and Loan System, respectively, permit members of the Bank System and Federal associations, respectively, to make or purchase loans until November 1, 1966, at a time when the institution's cash and obligations of the United States are reduced below 7 percent, but not below 6 percent, of the institution's obligation on withdrawable accounts. Such reduction may be as great as but no greater than net cash withdrawals at their maximum point in the period beginning June 27.

(b) The Federal Home Loan Bank Board has determined that a uniform procedure is necessary among the Federal Home Loan Banks with respect to making advances to Member institutions to meet net withdrawals and, therefore, directs each Federal Home Loan Bank not to make any advances after June 27, 1966, to meet net withdrawals of less than 1 percent of the obligation of any member on withdrawable accounts, as of June 27, 1966. Each Federal Home Loan Bank is directed to make withdrawal advances only to the extent necessary to meet net withdrawals in excess of the 1 percent absorbed by the institution. On November 1, 1966, a Bank may make advances in the amount necessary to restore a member's liquidity to the regulatory requirement of 7 percent then operative, less any net savings increase (in excess of dividends credited and of repayments of withdrawal advances subsequent to June 27) subsequent to the date of the lowest level of savings for the period from June 27 to November 1.

(Sec. 17, 47 Stat. 736, as amended; 12 U.S.C. 1437. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board.

[SEAL]

HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 66-6950; Filed, June 23, 1966;
8:50 a.m.]

**SUBCHAPTER C—FEDERAL SAVINGS AND
LOAN SYSTEM**

[No. 19,991]

PART 545—OPERATIONS

Bonus Accounts

JUNE 20, 1966.

Resolved that the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of amendment of § 545.3 of the rules and regulations for the Federal Savings and Loan System (12 CFR 545.3) as hereinafter set forth, and for the purpose of effecting such amendment, hereby amends said § 545.3, as follows, effective June 27, 1966.

Paragraph (b) of § 545.3, aforesaid, is hereby amended to read as follows:

§ 545.3 Bonus on monthly-payment and fixed-balance accounts.

(b) *Fixed-balance accounts.* The board of directors of a Federal association which has a charter in a form not inconsistent with the provisions of this section and which has bylaws which include the provisions of paragraph (e) of § 544.6 of this chapter may determine that, in addition to other earnings distributed on savings accounts, such association shall distribute a bonus on accounts of \$1,000 or such greater minimum amount which is an integral multiple of \$1,000 as may be determined in accordance with and subject to the provisions of this paragraph.

(1) Each such account shall be evidenced by a separate certificate issued in the determined amount or a greater amount which is an integral multiple of \$1,000;

(2) Each such certificate shall be in the form prescribed pursuant to paragraph (b) of § 545.2 and shall also bear on its face the words "A bonus is distributable on the amount of this certificate as provided in, and subject to, paragraph (b) of § 545.3 of the rules and regulations for the Federal Savings and Loan System for which purpose the beginning of the qualifying period of 36 months is _____";

(Date)

(3) While such a certificate remains outstanding, earnings, other than the bonus, shall be distributed at the regular distribution dates and the bonus on the amount maintained continuously for 36 months shall be distributed upon expiration of such period. Thereafter, earnings thereon, including any bonus, shall be distributed at the regular distribution dates;

(4) While such a certificate remains outstanding, prior to the expiration of the 36-month qualifying period, a reserve for the bonus shall be maintained and

appropriate credits and debits shall be made to such reserve as of the dates the Federal association regularly distributes earnings on its savings accounts.

(5) A Federal association may offer more than one bonus plan pursuant to this paragraph at any one time, but the board of directors may not fix a bonus rate in excess of one-half percent per annum for any such plan;

(6) Each member who holds a savings account at the date of determination with a balance of not less than the determined amount for a particular bonus plan adopted pursuant to this paragraph shall have the right for a reasonable period of time, which period shall be fixed by resolution of the board of directors and shall be not less than 3 months after the date of mailing, posting, or publishing of the written notice required by subparagraph (7) of this paragraph, to exchange all or any qualified portion of such savings account for one or more separate certificates issued pursuant to the provisions of this paragraph and dated as of the date of exchange;

(7) The written notice of a particular bonus plan shall set forth the plan adopted. Such Federal association shall give such notice within not more than 30 days after the effective date of adoption of the plan by at least one of the following means:

(i) Mailing postage prepaid to each member described in subparagraph (6) of this paragraph at the last address appearing on the books of such Federal association;

(ii) Posting in a conspicuous place in each of the offices of the association for so long as the association continues to offer the plan; or

(iii) Publishing in a newspaper printed in the English language and of general circulation in the city or county in which each office of the association is located;

(8) The board of directors of such Federal association may by resolution:

(i) Fix the maximum dollar amount which may be held by any one account holder at any one time pursuant to this paragraph, which maximum shall be applicable alike to each holder;

(ii) Discontinue the issuance of certificates pursuant to the provisions of this paragraph except to the extent that holders of savings accounts may exchange all or a qualified portion of their accounts in accordance with subparagraph (6) of this paragraph;

(iii) Reduce the rate or discontinue the distribution of any bonus on outstanding certificates issued under any bonus plan adopted pursuant to this paragraph by giving at least 30 days' written notice mailed to all holders of such certificates, but no such reduction or discontinuance shall be effective as to any certificate prior to the date as of which a bonus is next distributable on such certificate; and

(iv) Determine that if the association adopts a bonus plan pursuant to this paragraph which provides for a higher bonus rate than is provided by any existing bonus plan subject to this paragraph, the bonus on any account subject to such

existing bonus plan shall be computed at the higher bonus rate from the date of adoption of such higher-rate bonus plan if such existing bonus account meets the minimum amount required to qualify for the higher-rate bonus plan, and

(9) No bonus shall be distributed under this paragraph on any savings account on which a bonus is being distributed under any other provision of the association's charter or of this part.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

Resolved further that, as the foregoing amendment is designed to permit Federal savings and loan associations to adjust their operations as of the beginning of the next quarterly dividend period to changed economic conditions emerging during the current quarterly period, the Board hereby finds that notice and public procedure on the said amendment are impracticable under the provisions of § 508.12 of the general regulations of the Federal Home Loan Bank Board (12 CFR 508.12) and section 4(a) of the Administrative Procedure Act.

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 66-6951; Filed, June 23, 1966; 8:50 a.m.]

[No. 19,992]

PART 545—OPERATIONS

Distribution of Earnings at Variable Rates

JUNE 20, 1966.

Resolved that, notice and public procedure having been duly afforded (31 F.R. 7355) and all relevant material presented or available having been considered by it, the Federal Home Loan Bank Board, upon the basis of such consideration and of determination by it of the advisability of amendment of § 545.3-1 of the rules and regulations for the Federal Savings and Loan System (12 CFR 545.3-1) providing for the distribution of earnings by Federal savings and loan associations at variable rates, and for the purpose of effecting such amendment, hereby amends said § 545.3-1 as hereinafter set forth, effective July 1, 1966.

Subparagraph (2) of paragraph (b), and paragraph (g) of § 545.3-1, aforesaid, are hereby amended to read as follows:

§ 545.3-1 Distribution of earnings at variable rates.

(b) *Eligibility requirements.* . . .
(2) *Accounts evidenced by separate certificates.* A savings account which is evidenced by a separate certificate, as provided in paragraph (c) of this section, issued and dated on or after the date of such resolution, may receive earnings on the amount of such certificate at a rate higher than the regular rate, but not in excess of—

(i) 4¾ percent per annum if such account is maintained at not less than \$1,000 for a continuous period of not less than 6 months commencing on the date of such certificate; and

(ii) 5 percent per annum if such account is maintained at not less than \$1,000 for a continuous period of not less than 6 months, commencing on the date of such certificate, and, unless otherwise approved by the Board, in a Federal association which, as of December 31, 1965, distributed earnings on its savings accounts at a per annum rate of 4¾ percent or more.

No such certificate shall be issued pursuant to this subparagraph (2) for any amount that is not an integral multiple of \$1,000. If such savings account is evidenced by more than one separate certificate, the provisions of this subparagraph (2) shall be as fully applicable to each such certificate as if each such certificate evidenced a separate savings account.

(g) *Exception.* No Federal association may make or provide for any distribution of earnings pursuant to this section at any time unless its regular rate is 5 percent per annum or less.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 66-6952; Filed, June 23, 1966; 8:50 a.m.]

[No. 19,993]

PART 545—OPERATIONS

Cash and Government Obligations

JUNE 20, 1966.

Resolved that, notice and public procedure having been duly afforded (31 F.R. 7355) and all relevant material presented or available having been considered by it, the Federal Home Loan Bank Board, upon the basis of such consideration and of determination by it of the advisability of amendment of § 545.8-2 of the rules and regulations for the Federal Savings and Loan System (12 CFR 545.8-2) to reduce the required liquidity for Federal savings and loan associations, and for the purpose of effecting such amendment, hereby amends said § 545.8-2 to read as follows, effective July 1, 1966.

§ 545.8-2 Cash and Government obligations.

A Federal association shall not make or purchase any loan, other than advances on the sole security of its savings accounts, at any time when its cash and obligations of the United States are not at least equal to 7 percent of the association's capital: *Provided*, That, until November 1, 1966, the foregoing figure of 7 percent may be reduced, but not below 6 percent, by the percentage that the maximum amount of net cash withdrawals from the opening of business on

June 27, 1966, to the date of calculation is of the obligations of the member on withdrawable accounts at the opening of business on June 27, 1966. For the purposes of this section:

(a) A loan shall be deemed to have been made as of the date of the note or bond evidencing the same, and a loan shall be deemed to have been purchased as of the date of payment therefor;

(b) The term "cash" means cash on hand, unpledged deposits in a Federal Home Loan Bank or State bank performing similar reserve functions, and unpledged demand deposits in domestic banks, not under the control or in the possession of appropriate supervisory authority.

(c) The term "obligations of the United States" means all unpledged evidences of indebtedness issued by the United States and all unpledged evidences of indebtedness issued by any agency or instrumentality of the United States which are by statute fully guaranteed as to principal and interest by the United States.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 66-6953; Filed, June 23, 1966; 8:50 a.m.]

[No. 19,995]

PART 555—BOARD RULINGS

Certificates of Deposit

JUNE 20, 1966.

Whereas by Federal Home Loan Bank Board Resolution No. 19,993 this Board has amended § 545.8-2 of the rules and regulations for the Federal Savings and Loan System (12 CFR 545.8-2) to eliminate time deposits, other than time deposits in Federal Home Loan Banks and State banks performing similar reserve functions, from the definition of cash; and

Whereas said proposed amendment requires the rescission of § 555.10 of the rules and regulations for the Federal Savings and Loan System (12 CFR 555.10);

It is hereby resolved that the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of the rescission hereinafter set forth, and for the purpose of effecting such rescission, hereby rescinds § 555.10 of the rules and regulations for the Federal Savings and Loan System (12 CFR 555.10), effective July 1, 1966.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 66-6954; Filed, June 23, 1966; 8:50 a.m.]

RULES AND REGULATIONS

[No. 20,002]

PART 556—STATEMENTS OF POLICY

JUNE 20, 1966.

Resolved that the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of revising and codifying its statement of policy relating to the continued inclusion of time deposits as cash adopted by the Board on May 16, 1966, and duly published in the FEDERAL REGISTER on May 20, 1966 (31 F.R. 7362), and for the purpose of effecting such revision and such codification hereby amends the rules and regulations for the Federal Savings and Loan System (12 CFR, Chapter V, Subchapter C) by adding at the end of said Subchapter C a new part, Part 556 to read as follows:

§ 556.1 Continued inclusion of time deposits as cash.

(a) Under § 545.8-2(b) of this chapter of the rules and regulations for the Federal Savings and Loan System, "cash" is defined as cash on hand, unpledged deposits in a Federal Home Loan Bank or a State bank performing similar reserve functions, and unpledged demand deposits in banks not in the possession of appropriate supervisory authorities.

(b) Federal savings and loan associations had, under a former ruling of the Board, been permitted to count time deposits open account and time certificates of deposit as cash within specified limits.

(c) In the circumstances, the Board has determined, as a matter of policy, to allow time deposits open account and time certificates of deposits to be counted as cash according to the following schedule and extent:

(1) Time certificates of deposit made or renewed prior to May 20, 1966, may be counted as cash until July 1, 1967, or their expiration date (or first alternative maturity after September 30, 1966), whichever is earlier;

(2) Time certificates of deposit renewed between May 20, 1966, and September 30, 1966, for a period not in excess of ninety days may be counted as cash until the expiration of such renewal period;

(3) Time deposits open account subject to a notice period of not more than 30 days may be counted as cash until July 1, 1968; and

(4) No time deposit open account or deposit evidenced by a certificate of deposit shall be considered as cash unless (i) the association itself made the deposit in question, (ii) the deposit, together with all other time deposits of the association in the same bank, does not exceed the greater of one-fourth of 1 percent of such bank's total deposits as of the bank's last published statement of condition or \$10,000, and (iii) no consideration was received from a third party in connection with the making of the deposit.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 66-6955; Filed, June 23, 1966; 8:51 a.m.]

[No. FSLIC-2,632]

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

Slow Loans

JUNE 9, 1966.

Resolved that the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of amendment of § 561.16 of the Rules and Regulations for Insurance of Accounts (12 CFR 561.16) as hereinafter set forth, to provide specific treatment for advances by insured associations for real estate taxes, insurance premiums and similar purposes, and for the purpose of effecting such amendment, hereby amends said § 561.16, as follows, effective June 30, 1966.

Paragraph (e) of § 561.16 of the Rules and Regulations for Insurance of Accounts is hereby amended to read as follows:

§ 561.16 Slow loans.

(e) Any loan or land contract that has been modified or refinanced within the preceding 12 months while contractually delinquent, except a mortgage loan or land contract (1) more than 2 years old and less than 30 days (1 month) contractually delinquent at the time of the modification or refinancing and not previously modified or refinanced subsequent to January 1, 1964, or (2) modified or refinanced to provide for payment of real estate taxes, other governmental assessments, hazard insurance premiums, or water or sewer rent or charges, if provision is made for repayment within the succeeding 12 months of the funds so advanced.

(Secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

Resolved further that, as the foregoing amendment is designed to provide more appropriate treatment, commencing in this accounting period, for loans modified or refinanced for the payment of real estate taxes, other governmental assessments, hazard insurance premiums or water or sewer rent or charges, the Board hereby finds that notice and public procedure on the said amendment are unnecessary under the provisions of § 508.12 of the general regulations of the Federal Home Loan Bank Board (12 CFR 508.12) and section 4(a) of the Administrative Procedure Act, and, for the same reason, the Board hereby finds that postponement of the effective date under the provisions of § 508.14 of the general regulations of the Federal Home Loan Bank Board and section 4(c) of the Adminis-

trative Procedure Act is not required and the Board hereby provides that the above said amendment shall become effective as hereinbefore set forth.

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 66-6956; Filed, June 23, 1966; 8:51 a.m.]

[No. FSLIC-2,644]

PART 561—DEFINITIONS

Cash

JUNE 20, 1966.

Resolved that, notice and public procedure having been duly afforded (31 F.R. 7356) and all relevant material presented or available having been considered by it, the Federal Home Loan Bank Board, upon the basis of such consideration and of determination by it of the advisability of amendment of § 561.18 of the Rules and Regulations for Insurance of Accounts (12 CFR 561.18) and for the purpose of effecting such amendment, hereby amends said § 561.18 to read as follows, effective July 1, 1966:

§ 561.18 Cash.

The term "cash" means cash on hand, unpledged deposits in a Federal Home Loan Bank or State bank performing similar reserve functions, and unpledged demand deposits in domestic banks, not under the control or in the possession of appropriate supervisory authority.

(Secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 66-6957; Filed, June 23, 1966; 8:51 a.m.]

[No. FSLIC-2,643]

PART 563—OPERATIONS

Required Amounts and Maintenance of Federal Insurance Reserve

JUNE 20, 1966.

Resolved that, notice and public procedure having been duly afforded (31 F.R. 7356) and all relevant material presented or available having been considered by it, the Federal Home Loan Bank Board, upon the basis of such consideration and of determination by it of the advisability of amending § 563.13 of the Rules and Regulations for Insurance of Accounts (12 CFR 563.13) and for the purpose of effecting such amendment, hereby amends said § 563.13 as follows, effective July 1, 1966:

1. Paragraph (a) of § 563.13 of the Rules and Regulations for Insurance of Accounts is hereby amended by revoking subparagraph (3).

2. Subparagraph (1) of paragraph (b) of § 563.13 of the Rules and Regulations

for Insurance of Accounts is hereby amended to read as follows:

(b) *Semiannual credits.* (1) An insured institution shall not be required to make any credit to its Federal insurance reserve account under this paragraph at any time when its adjusted net worth is at least 10 percent of its specified assets at the close of the semiannual period.

3. Paragraph (b) of § 563.13 of the Rules and Regulations for Insurance of Accounts is hereby amended by revoking subparagraph (5).

4. Paragraph (b) of § 563.13 of the Rules and Regulations for Insurance of Accounts is hereby amended by adding, immediately after subparagraph (4), a new subparagraph, subparagraph (5), to read as follows:

(5) During the three semiannual periods commencing on and after July 1, 1966, the 10 percent of net income semiannual credit requirement in subparagraphs (2) and (3) of this paragraph shall be 5 percent of net income.

5. Paragraph (c) of § 563.13 of the Rules and Regulations for Insurance of Accounts is hereby amended to read as follows:

(c) *Limitations on payment of dividends or interest.* Any insured institution which has failed to meet the requirements of this section shall not declare, pay or advertise dividends or interest for the semiannual period subsequent to the immediately succeeding semiannual period, in excess of the amount approved by the Corporation, unless, in such immediately succeeding semiannual period, the institution has credited to its Federal insurance reserve account an amount equal to the total deficiency in required credits under paragraph (b) of this section plus the required credits thereunder for such period, and is in conformity with paragraph (a) of this section requirements at the end of such period.

(Secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

Resolved further that the Board hereby finds that it is desirable to have the effective date coincide with the beginning of the semiannual period utilized by the majority in number of insured institutions subject to the regulation and therefore finds that the regulation shall become effective as hereinabove noted.

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 66-6958; Filed, June 23, 1966; 8:51 a.m.]

[No. FSLIC-2,645]

PART 570—BOARD RULINGS
Cash

JUNE 20, 1966.

Whereas, by Federal Home Loan Bank Board Resolution No. FSLIC-2,644 this Board has amended § 561.18 of the Rules and Regulations for Insurance of Ac-

counts (12 CFR 561.18) to eliminate time deposits, other than time deposits in Federal Home Loan Banks and State banks performing similar reserve functions, from the definition of cash; and

Whereas said proposed amendment requires the rescission of § 570.1 of the Rules and Regulations for Insurance of Accounts (12 CFR 570.1);

It is hereby resolved that the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of the rescission hereinafter set forth, and for the purpose of effecting such rescission, hereby rescinds § 570.1 of the Rules and Regulations for Insurance of Accounts (12 CFR 570.1), effective July 1, 1966.

(Secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 66-6959; Filed, June 23, 1966; 8:51 a.m.]

[No. FSLIC-2,646]

PART 571—STATEMENTS OF POLICY
Continued Inclusion of Time Deposits As Cash

JUNE 20, 1966.

Resolved that the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of revising and codifying its statement of policy relating to the continued inclusion of time deposits as cash adopted by the Board on May 16, 1966, and duly published in the FEDERAL REGISTER on May 20, 1966 (31 F.R. 7362), and for the purpose of effecting such revision and such codification, hereby amends Part 571 of the rules and regulations for the Federal Savings and Loan Insurance Corporation (12 CFR Part 571) by adding, immediately after § 571.1 a new section, § 571.2, to read as follows:

§ 571.2 Continued inclusion of time deposits as cash.

(a) Under § 561.18 of this chapter of the Rules and Regulations for Insurance of Accounts, "cash" is defined as cash on hand, unpledged deposits in a Federal Home Loan Bank or a State bank performing similar reserve functions, and unpledged demand deposits in banks not in the possession of appropriate supervisory authorities.

(b) Insured institutions had, under a former ruling of the Board, been permitted to count time deposits open account and time certificates of deposit as cash within specified limits.

(c) In the circumstances, the Board has determined, as a matter of policy, to allow time deposit open account and time certificates of deposits to be counted as cash according to the following schedule and extent:

(1) Time certificates of deposit made or renewed prior to May 20, 1966, may be

counted as cash until July 1, 1967, or their expiration date (or first alternative maturity after September 30, 1966), whichever is earlier;

(2) Time certificates of deposit renewed between May 20, 1966, and September 30, 1966, for a period not in excess of ninety days may be counted as cash until the expiration of such renewal period;

(3) Time deposits open account subject to a notice period of not more than 30 days may be counted as cash until July 1, 1968; and

(4) No time deposit open account or deposit evidenced by a certificate of deposit shall be considered as cash unless (i) the association itself made the deposit in question, (ii) the deposit, together with all other time deposits of the association in the same bank, does not exceed the greater of one-fourth of one percent of such bank's total deposits as of the bank's last published statement of condition or \$10,000, and (iii) no consideration was received from a third party in connection with the making of the deposit.

(Secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Reorg. Plan No. 3, of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 66-6960; Filed, June 23, 1966; 8:51 a.m.]

[No. FSLIC-2647]

PART 571—STATEMENTS OF POLICY

Procedure and Policy Concerning Institutions Failing To Meet Requirements of Insurance Regulation 563.13

JUNE 20, 1966.

Resolved that, the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of revising and codifying its statement of procedure and policy concerning institutions failing to meet requirements of Insurance Regulation 563.13 adopted by the Board on February 23, 1966, and duly published in the FEDERAL REGISTER on March 1, 1966 (31 F.R. 3229), and for the purpose of effecting such revision and such codification, hereby amends Part 571 of the Rules and Regulations for Insurance of Accounts (12 CFR Part 571) by adding, immediately after § 571.2, a new section, § 571.3, to read as follows:

§ 571.3 Procedure and policy concerning institutions failing to meet requirements of Insurance Regulation 563.13.

Insurance Regulation 563.13 provides, among other things, that when an insured institution fails to make the required transfers to its reserves, such institution may not declare, advertise, or pay dividends, in the semiannual period subsequent to the immediately succeeding semiannual period, in

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excess of an amount approved by the Federal Savings and Loan Insurance Corporation. This provision of the regulation requires a review of those cases involving a failure to comply with the requirements of the regulation and a determination as to the course of action to be followed in each case. This statement of Board policy establishes the procedure to be followed in such cases and states the guidelines to be used in evaluating such institutions and recommending a specific course of action in each such case.

I. Procedure. The following procedure shall apply in all cases in which an institution has failed to meet the requirements of Insurance Regulation 563.13 for its most recent semiannual period. The appropriate supervisory agent for the Board shall give the board of directors of the institution written notice of the determination of a deficiency and the amount thereof within sixty (60) days after the institution has filed its semiannual report for that period. The written notice shall also contain such supervisory requests and recommendations for corrective action as may be appropriate to the situation and shall contain advice that until such time as the institution receives written notice of the Corporation's determination as to the amount of dividend or interest to be declared, advertised, or paid, the institution should not declare, advertise, or pay any dividends or interest for or during the semiannual period in which it may be subject to limitation by the Corporation.

The institution shall have fifteen (15) days from the date of the written notice from the supervisory agent in which to submit evidence of compliance with supervisory requests or recommendations or to submit any memoranda or other material relevant to the Board's determination as to the amount of dividend or interest to be declared, advertised, or paid.

The supervisory agent, after evaluation of the institution on the basis of the determinative factors set forth in the latter part of this statement and consideration of any corrective action taken and of any material submitted by the institution, shall make his recommendation of action to be taken. This recommendation, together with all relevant supporting data, shall be transmitted to the appropriate regional supervisor of the Board's Office of Examinations and Supervision.

The regional supervisor shall review the supervisory agent's evaluation and recommendation and any material submitted by the institution and shall make an independent evaluation sufficient to support his own recommendation of action to be taken. The evaluation, recommendations, and any supporting data shall be transmitted to the Director, Office of Examinations and Supervision, who will submit to the Board a recommendation for appropriate action.

The Board shall reach a decision as to the appropriate action to be taken, and written notice thereof shall be sent to the institution by the appropriate supervisory agent at least thirty (30) days before the end of the current semiannual period. If additional information is found necessary as to an association's operations or the conditions on which approval of a particular rate or amount of dividends or interest might be warranted, the association shall be so notified in a similar manner.

The institution shall have the right to submit to the Supervisory Agent a written petition for reconsideration, within fifteen (15) days from the date of the written notice of the Board's decision. If the institution decides to petition for reconsideration, it may submit with the petition additional memoranda or other relevant material for consideration by the Board. The Supervisory Agent shall make his recommendation with

respect to the matter and transmit it, together with the petition and any relevant supporting data, to his Regional Supervisor, who will make his own recommendation. The petition, recommendations, and any relevant supporting data shall be transmitted to the Director, Office of Examinations and Supervision, who will submit to the Board his own recommendation for appropriate action. The Supervisory Agent shall promptly notify the institution, in writing, of the action taken by the Board on the petition for reconsideration.

In cases where an institution has completely cured its deficiency, or where it has a relatively minor deficiency, scheduled items of less than 4 percent of specified assets, moderate expense ratios, and a dividend or interest rate not above that paid in the two preceding semiannual periods or not above that paid by a majority (in number) in its standard metropolitan statistical area (or community if not in a standard metropolitan statistical area), and if the Supervisory Agent has recommended that the dividend or interest rate not be adjusted, the appropriate Regional Supervisor, if he concurs in such recommendation, has the authority, delegated by the Board, to determine that rate adjustment is not required.

If the Supervisory Agent so recommends, and the Regional Supervisor concurs in such recommendation, the Regional Supervisor is authorized to determine that rate adjustment is not required in the case of any institution which at any semiannual closing on or after June 30, 1966, fails to meet the semiannual credit requirements of paragraph (b) of Insurance Regulation 563.13, if the total credits made by such institution during that semiannual period would have met the credit requirements of paragraph (b) of Insurance Regulation 563.13 as amended effective July 1, 1966.

II. Evaluation—A. Basic policy. In the evaluation of insured institutions which have failed to meet the requirements of Insurance Regulation 563.13 and in making recommendations for specific courses of action to be employed, all parties will be guided by the principle embodied in section 403(b) of Title IV of the National Housing Act, namely, that the Federal Savings and Loan Insurance Corporation has the right and the duty to require insured institutions to establish and maintain adequate reserves before paying dividends.

The fact that an adjustment in dividend rate might place an institution below the level paid by others does not, in and of itself, constitute adequate grounds for not recommending an adjustment.

No dividend, either cash or stock, on permanent reserve or guarantee stock should be declared by an institution which fails to meet its reserve requirements.

B. Principal determinative factors. It is not possible or feasible to identify or to state categorically or inflexibly all of the criteria or considerations which anyone could or would use in all instances in making a determination as to the need for a specific course of action. Many varied factors must be considered, separately and in context, and in the light of operations of each individual institution. However, the following areas of operation by an insured institution should be of paramount concern, and essential facts and information with respect thereto should in large measure constitute the basis for recommending a specific course of action.

1. Minimum adjustment for institution which could have met requirement. An institution which, after having been advised that it could have met the regulatory requirement by transfer from an existing eligible source, failed to take such action shall be considered for adjustment of its rate to a

point at least 0.10 percent below the rate last paid by the institution.

2. Extent of failure. An institution which failed by only a minor extent to make the required transfer would obviously be a likely candidate for more favorable consideration. However, such a minor failure may not always, of itself, establish valid grounds for a favorable recommendation. In any event, a major effort should be made to secure correction of the cause of minor failures, so as to avoid further deterioration.

3. Soundness of operation. It is the view of the Board that soundly operated institutions will meet changing demand-supply conditions by making timely and necessary adjustments in operating policies and practices. An above-average amount of scheduled items, in many institutions, is a reflection of the failure to adjust lending to more moderate rates of overall growth or demand for housing. Consequently, scheduled items are considered to be an important factor in evaluating the soundness of operations.

An institution's ratio of scheduled items to total assets as compared to national averages must be an important factor in any evaluation. The accumulation of an above-average amount of scheduled items should raise serious doubt as to the advisability of permitting unrestricted competition for additional funds.

It is recognized that there may be special situations peculiar to a few areas, and these should be covered by qualitative comment. However, weak or deteriorating economic conditions are not of themselves a valid reason for recommending against dividend rate adjustment, since such conditions strongly suggest that an institution may not be able to employ funds it receives in a sound, economical manner.

4. Economy of operation. The less economical an institution's operation, the less able it is to comply with the reserve regulation and the more likely it is to accumulate scheduled items by the adoption of unsound policies and practices.

The ratio of expenses to average total assets as compared to a national average, with allowance for size and age, is an important factor in the evaluation of an institution's economy of operation.

It is recognized that during the three-year period following insurance of accounts an institution having less than \$5 million in savings may have special problems with respect to its expense ratio, and these factors should be covered by qualitative comments.

5. Dividend rate practices. Dividend rate practices are considered to be a major factor in an evaluation since a high dividend rate can preclude adequate reserve allocations, thus running counter to the basic principle that an insured institution has an obligation to provide reserves satisfactory to the Insurance Corporation before paying dividends. Furthermore, there is a close association between high dividend rates and higher than average scheduled items.

An institution which fails to make its required reserve allocations in the two semiannual periods following an increase in dividend rate will not be awarded any significant degree of consideration for rate continuance, since the increased rate will be regarded as a substantial contributory factor in the inability to make the required allocations.

If an institution is paying a dividend at a rate above that paid by a majority in its standard metropolitan statistical area, or community (if not in a standard metropolitan statistical area), it is the Board's view that such institution should be considered most seriously for rate adjustment.

6. Other considerations. While the condition and operations of an institution as measured by the factors set out above would

generally be determinative for the purposes of this program, the identification of those matters should not be construed as excluding the consideration of other matters, separately or in context with one or more of the factors stated above, which also may be indicative of the need for limiting an institution's pursuit of additional funds.

Among other considerations to which careful attention should be given are heavy promotional activity, rapid growth, pursuit of high-yield assets, large ratios of construction loans accompanied by high foreclosure rates or scheduled items, and weak or declining reserve positions.

(Secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 66-6961; Filed, June 23, 1966; 8:51 a.m.]

Title 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Power Commission

SUBCHAPTER B—REGULATIONS UNDER THE FEDERAL POWER ACT

[Docket No. R-303; Order 323]

PART 4—LICENSES, PERMITS, AND DETERMINATION OF PROJECT COSTS

Hydroelectric License Applications; Exhibit Relating to Protection and Enhancement of Fish and Wildlife Resources

JUNE 17, 1966.

On April 19, 1966, the Commission issued a notice of proposed rule making in this proceeding (31 F.R. 6379, Apr. 27, 1966), wherein it proposed to amend Part 4, Regulations Under the Federal Power Act (18 CFR 4.41) to provide that an exhibit setting forth matters related to the conservation and enhancement of fish and wildlife resources affected by the project be filed as part of license applications for proposed projects of more than 2,000 horsepower installed capacity, and constructed projects for which a new license is sought under section 15 of the Federal Power Act.

The exhibit will help expedite the processing of applications by identifying potential problems with respect to fish and wildlife resources and suggesting possible solutions thereto upon the filing of an application. It will also facilitate the Commission's compliance with the requirements of the Fish and Wildlife Coordination Act (16 U.S.C. secs. 661-666c) for consultation with the U.S. Fish and Wildlife Service, Department of the Interior and appropriate State fish and wildlife agencies on the conservation and enhancement of fish and wildlife resources affected by a project.

We received 32 responses to the notice: 23 of these¹ expressed unqualified approval of the proposed rule, and 1 opposed its adoption as unnecessarily duplicative of existing requirements.² The balance,³ while generally supporting the rule, expressed certain reservations and suggested various modifications which we shall deal with below.

The Southern California Edison Co., as well as the Montana Power Co., point to the possible duplication in Exhibit S of materials already required in Exhibit R. Although the subject of recreational facilities may relate to fish and wildlife, the problems relating to fish and wildlife obviously go far beyond those involved in a recreational plan and should be dealt with separately. Moreover, the conservation and enhancement of fish and wildlife is considered separately in legislation on this subject (16 U.S.C. 661-666c). We shall, however, provide that matters covered in Exhibit R need only be included in Exhibit S by reference.

Colorado Wildlife Federation, Inc., indicated its support for the rule so long as it is supplemental to the Fish and Wildlife Coordination Act and not in lieu of it. In this regard, we wish to make clear that the requirement for Exhibit S is not intended to supersede the provisions of the Coordination Act. It will, however, facilitate the Commission's compliance with those provisions. The Colorado Federation also suggested the addition of language to include areas affected by the project as well as those within the project boundary, in the preparation of Exhibit S. It is not our intention to exclude from consideration in the preparation of Exhibit S, fish and wildlife resources affected by the project which are outside of the project bound-

ary, e.g. hatcheries and releases for downstream fish resources. We are modifying the language of the proposed amendment to clarify this point.

The Puget Sound Power & Light Co. objects to the portion of the proposed rule which would require an applicant to consider the enhancement of fish and wildlife resources, in addition to conservation, in the preparation of Exhibit S, asserting that (1) it is contrary to the established policy of providing solely for the conservation of fish and wildlife resources; (2) it shifts the responsibility for enhancement from the public in general to ratepayers of the licensee thereby imposing on them a financial burden for a function not properly chargeable to them; and (3) it would be difficult for a licensee to determine in advance the extent to which it would have to pay for the improvement of fish and wildlife resources. We do not agree that an applicant should limit itself to the consideration of conservation of existing fish and wildlife resources in the preparation of Exhibit S. While our prime objective is, of course, the conservation of fish and wildlife resources which may be affected by a hydroelectric project, it would indeed be shortsighted to overlook opportunities which may present themselves for enhancing such resources or to fail to require potential licensees to give consideration to these matters in the course of preparing their applications. In response to its second contention, where the enhancement of fish and wildlife resources is feasible in connection with the conservation of such resources, the licensee may be required to bear necessary costs therefor as it does all other reasonable costs associated with the project as licensed by the Commission under section 10(a) of the Federal Power Act. As for determining in advance the cost for improving fish and wildlife resources, we are providing in the rule that Applicants furnish cost estimates, as part of the exhibit, with respect to all improvements proposed by the applicant. These estimates would not necessarily include those improvements which may be prescribed during the term of the license.

The State of California-Resources Agency, Department of Fish and Game in its comment on the proposed rule has made several suggestions, one of which also raises the subject of enhancement of fish and wildlife resources. Contrary to the position of Puget Sound Power & Light Co., it urges that the matter of enhancement be emphasized. It cites as an example the Yuba River Project (FPC Project No. 2246) which incorporates features which will rehabilitate a significant salmon run. We believe that the language of the rule adopted will satisfactorily alert applicants to the importance of giving consideration to enhancement of fish and wildlife resources in developing the exhibit. California makes another suggestion similar to that made by the Colorado Wildlife Federation, with respect to the affect of a project upon fish and wildlife resources outside of the project area. As stated above, we have adopted this suggestion.

¹ (1) State of New Hampshire, Fish and Game Department; (2) State of Montana, Department of Fish and Game; (3) State of Minnesota, Department of Conservation; (4) State of Idaho, Fish and Game Department; (5) International Association of Game, Fish and Conservation Commissioners; (6) Wildlife Management Institute; (7) Medical College of South Carolina; (8) Federated Sportsmen's Clubs of New Hampshire, Inc.; (9) City of Seattle, Department of Lighting; (10) Department of the Interior; (11) Arizona Game Protective Association; (12) Oklahoma Resorts, Inc.; (13) Pennsylvania Power & Light Co.; (14) The High Rock Lake Association; (15) Sport Fishing Institute; (16) City of Tacoma, Wash., Department of Public Utilities; (17) Director, Marine Biological Laboratory, Woods Hole, Mass.; (18) State of Alabama, Department of Conservation; (19) Massachusetts Wildlife Federation; (20) Commonwealth of Pennsylvania, Department of Forests and Waters; (21) South Carolina Wildlife Federation; (22) State of North Carolina Wildlife Resources Commission; and (23) The Wilderness Society.

² The Montana Power Co.
³ The Izaak Walton League of America; (2) Colorado Wildlife Federation, Inc.; (3) Puget Sound Power & Light Co.; (4) State of California Resources Agency, Department of Fish and Game; (5) Southern California Edison Co.; (6) Pacific Power & Light Co.; (7) Forest Service, U.S. Department of Agriculture; and (8) State of Colorado Department of Game, Fish and Parks.

The California Department in its comments suggests that the potential applicants be required as part of the Exhibit S report to set forth detailed proposals considered necessary by the Department of the Interior or appropriate state fish and wildlife agencies as well as by the applicant itself. We do not believe it would be appropriate to thus convert the proposed Exhibit S to a joint proposal by the potential applicant and the appropriate Federal and State agencies or to require such applicant to include initially plans to which it does not subscribe. We have provided that the exhibit is to be prepared on the basis of studies made by the applicant after consultation and in cooperation with the appropriate Federal and State authorities and that the report contain a specific statement of the nature of this consultation and cooperation. In addition, the Exhibit S submitted by the applicant will be referred to the appropriate Federal and State agencies for their own comment pursuant to the provisions of the Fish and Wildlife Coordination Act and our rules and regulations (18 CFR 1.37, 4.31) thereby bringing the views of all concerned before the Commission for consideration. We believe that such a procedure rather than one requiring the applicants to speak for the agencies will provide the most appropriate way for achieving best results in this difficult area.

The California Department also contends that the rule as proposed leaves doubt as to whether the applicant is fully responsible for the necessary study costs and suggests a clarifying change of appropriate language to make clear that the applicant is responsible for conducting or having conducted the studies upon which the exhibit must be based. We do not believe that any hard and fast rule should be adopted on this subject. The rule places an obligation upon the applicant to insure that the exhibit is based on adequate studies and an applicant may make equitable arrangements with fish and wildlife agencies to prepare appropriate studies for it, if they are willing to make such studies. In other cases, however, the applicant may retain fish and wildlife staff or consultants to help it develop plans for this aspect of its potential project and the fish and wildlife agencies may see fit to make independent studies. We believe we would not encourage the most comprehensive planning if we attempted to prescribe a single mode of arrangement by rule.

In addition, the California Department urges that the requirement for Exhibit S be made applicable to minor projects. We believe that there may be merit to this suggestion, however, before making any determination thereon we shall solicit additional comments in a supplementary rule making proceeding, while adopting the rule with respect to major license projects at this time.

The Forest Service, in addition to suggesting that the rule not be limited in applicability to the project area, a sug-

gestion with which we have already indicated our concurrence, recommends that consultation with the Forest Service be required where National Forest land is involved and suggests additional language to effect this. We believe that such consultation would serve a useful purpose and we shall amend the proposed rule accordingly.

State of Colorado, Department of Game, Fish and Parks in its comments proposes that the rule be made applicable to projects of 1,000 horsepower or more. As indicated above, we shall consider this matter in a supplementary rule making proceeding. The Colorado Department further proposes that an applicant transmit a complete set of plans, included in the Exhibit S, to the State Fish and Wildlife agency 1 year prior to a hearing upon the application. Such a requirement, in our view, would not be feasible. The rule as proposed requires applicant to consult with State agencies in the preparation of the exhibit. Such consultation, presumably, would take place well in advance of the filing of an application and a considerable period of time before a hearing, if any, would be held upon the application. Moreover, it should be noted that this Commission, upon the filing of the application would submit the Exhibit S to the appropriate State agencies for recommendations pursuant to the Fish and Wildlife Coordination Act and our rules. We have already indicated our agreement with another suggestion by the Colorado Department with respect to the applicability of Exhibit S outside of project areas.

The Izaak Walton League of America suggests that the proposed Rule be broadened to include a requirement for detailed information about project effects on outdoor recreation resources in general. The impact of a project upon the general recreation resources of an area would more appropriately be considered by an applicant in the preparation of Exhibit R which deals with the development of recreational resources. Exhibit S is intended to apply solely to fish and wildlife resources.

In its comment the Pacific Power & Light Co. recommends that it be made clear that Exhibit S contain the specific plan for conservation, including functional designs, if such plan and designs have been prepared. We believe this is made clear by the rule. However, Pacific's primary concern seems to be that a solution of all of the fish and wildlife problems may not be available prior to the filing of an application for license. The rule contemplates a reasonable attempt to solve such problems prior to the filing of the application. As for the company's suggestion that, where a preliminary permit has been issued, Exhibit S include the results of the work required to be done with regard to conservation issues by the preliminary permit, we do not believe that any distinction is required, with respect to Exhibit S, between those applicants holding preliminary permits and those who do not. In both instances the Commission would be equally

concerned with the substance of the exhibit prepared in accordance with the rule.

The Commission finds: The amendment of §§ 4.31, 4.41, and 4.50 is necessary and appropriate for the purposes of carrying out the provisions of the Federal Power Act.

The Commission, acting pursuant to the provisions of the Federal Power Act, as amended, particularly sections 4(e), 9, 10(a), 10(d), and 309 thereof (41 Stat. 1065, 1068; 49 Stat. 858; 16 U.S.C. 797(e), 802, 803, 825h), orders:

(A) Part 4, Subchapter B, Chapter I, Title 18 of the Code of Federal Regulations is amended as follows:

(1) Section 4.41 is amended by adding a new Exhibit S to read as follows:

§ 4.41 Required exhibits.

Exhibit S. A report on the effect, if any, of the project upon the fish and wildlife resources in the project area or in other areas affected by the project and proposals for measures considered necessary to conserve and, if practicable, to enhance fish and wildlife resources affected by the project. The exhibit shall include functional design drawings of any fish ladders proposed to be constructed in compliance with section 18 of the Federal Power Act, such other facilities or developments as may be necessary for the protection, conservation, improvement and mitigation of losses of fish and wildlife resources in accordance with section 10(a) of the Act, and cost estimates for such facilities and developments. The Applicant shall prepare this exhibit on the basis of studies made after consultation and in cooperation with the U.S. Fish and Wildlife Service, Department of the Interior, and appropriate state fish and wildlife agencies and in the case of public lands, advise Federal Agencies having jurisdictional responsibilities therefor of its proposed plans. The exhibit shall include a statement on the nature and extent of applicant's consultation and cooperation with the above agencies. To the extent those aspects of fish and wildlife related to recreation are covered in Exhibit R, a specific reference to Exhibit R will suffice.

(2) In order to provide an exception to the requirement for an Exhibit S with respect to applications for certain constructed projects, § 4.50 is amended by adding the following new paragraph:

§ 4.50 Contents.

Exhibit S. This exhibit shall not be required for license applications on constructed projects, except with respect to applications for licenses under section 15 of the Federal Power Act.

(Secs. 4(e), 9, 10(a), 10(d), 41 Stat. 1065, 1068; sec. 309, 49 Stat. 858; 16 U.S.C. 797(e), 802, 803, 825h)

§ 4.31 [Amended]

(3) In order to conform § 4.31, *Acceptance for Filing or Rejection of Applications*, to the amendment of § 4.41 prescribed in subparagraph (1), and Order 260-A, 28 F.R. 4092, as amended by Order 292, 30 F.R. 523, the third sentence of § 4.31 is amended deleting "and O," and inserting in lieu thereof "O, R, and S,".

(B) These amendments shall become effective August 1, 1966.

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

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66-6909; Filed, June 23, 1966;
8:46 a.m.]

Title 24—HOUSING AND HOUSING CREDIT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development

PART 0—STANDARDS OF CONDUCT

Pursuant to and in accordance with sections 201 through 209 of Title 18 of the United States Code, Executive Order 11222 of May 8, 1965 (30 F.R. 6469), and Title 5, Chapter I, Part 735 of the Code of Federal Regulations, Part 0 is added to Subtitle A of Title 24 of the Code of Federal Regulations, reading as follows:

Subpart A—General Provisions

- Sec. 0.735-101 Purpose.
- 0.735-102 Definitions.
- 0.735-103 Interpretation and advisory service.
- 0.735-104 Notification to employees and special Government employees.
- 0.735-105 Remedial action.
- 0.735-106 Interest of employee's or special Government employee's relatives.

Subpart B—Conduct and Responsibilities of Employees

- 0.735-201 Basic principle.
- 0.735-202 Gifts, entertainment, and favors.
- 0.735-203 Outside activity.
- 0.735-204 Financial interests.
- 0.735-205 Personal real estate transactions.
- 0.735-206 Use of inside information.
- 0.735-207 Intermediaries and product recommendations.
- 0.735-208 Membership in organizations.
- 0.735-209 Use of Government property.
- 0.735-210 Indebtedness.
- 0.735-211 Gambling, betting, and lotteries.
- 0.735-212 General conduct; and conduct prejudicial to the Government.

Subpart C—Conduct and Responsibilities of Special Government Employees

- 0.735-301 Use of Government employment.
- 0.735-302 Use of inside information.
- 0.735-303 Coercion.
- 0.735-304 Gifts, entertainment, and favors.
- 0.735-305 Applicability of other provisions.

Subpart D—Miscellaneous Statutory Provisions

- 0.735-401 Applicable statutory provisions.

Subpart E—Statements of Employment and Financial Interests

- 0.735-501 Submission of statements.
- 0.735-502 Supplementary statements.
- 0.735-503 Information not known by employees.
- 0.735-504 Information prohibited.
- 0.735-505 Review of statements.
- 0.735-506 Confidentiality of statements.
- 0.735-507 Effect of employee's statements on other requirements.
- 0.735-508 Specific provisions for special Government employees.

Appendix—List of Positions Subject to Subpart E.

AUTHORITY: The provisions of this Part 0 issued under E.O. 11222 of May 8, 1965, 30 F.R. 6469, 3 CFR, 1965 Supp.; 5 CFR 735.104.

Subpart A—General Provisions

§ 0.735-101 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of public confidence. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. To accord with these concepts, this part sets forth the Department's regulations prescribing standards of conduct and responsibilities, and governing statements of employment and financial interests for employees and special Government employees.

§ 0.735-102 Definitions.

(a) "Department" means the Department of Housing and Urban Development.

(b) "Employee" means an officer or employee of the Department, but does not include a special Government employee.

(c) "Special Government employee" means an officer or employee of the Department appointed to serve with or without compensation, for not more than 130 consecutive days during any period of 365 days, on a full-time, part-time, or intermittent basis, and who is retained, designated, appointed, or employed as a special Government employee under the provisions of section 202 of Title 18 of the United States Code.

(d) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(e) "Outside employment" means all gainful employment other than the performance of official duties. It includes, but is not limited to, working for another employer, the management or operation of a private business for profit (including personally owned businesses, partnerships, corporations, and other business entities), and other self-employment.

§ 0.735-103 Interpretation and advisory service.

(a) *Department counselor.* The General Counsel is designated Counselor for the Department and shall serve as the Department's designee to the Civil Service Commission on matters covered by this part. He shall be responsible for coordinating the Department's counseling services and for assuring that counseling and interpretations on questions of conflicts of interest and other matters covered by this part are available to designated deputy counselors. He may form ad hoc committees to evaluate the effectiveness of the standards, or to consider any new or unusual question arising from their application.

(b) *Deputy counselors.* Such deputy counselors as may be required shall be designated to give authoritative advice and guidance to current and prospective employees and special Government employees on questions of conflicts of interest and on other matters covered by this part.

§ 0.735-104 Notification to employees and special Government employees.

The provisions of this part and all revisions thereof shall be brought to the attention of and made available to:

(a) Each employee and special Government employee at the time of issuance and at least annually thereafter;

(b) Each new employee and special Government employee at the time of employment.

§ 0.735-105 Remedial action.

A violation of this part by an employee or special Government employee may be cause for remedial or disciplinary action. Such action may include, but is not limited to:

- (a) Changes in assigned duties;
- (b) Divestment by the employee or special Government employee of his conflicting interest;
- (c) Disciplinary action, including separation, which may be in addition to any penalty prescribed by law; or
- (d) Disqualification for a particular assignment.

Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

§ 0.735-106 Interests of employee's or special Government employee's relatives.

For the purposes of this part, the interest of a spouse, minor child, or a blood relative who is a full-time resident of an employee's or special Government employee's immediate household is considered to be an interest of the employee or special Government employee.

Subpart B—Conduct and Responsibilities of Employees

§ 0.735-201 Basic principle.

(a) Each employee must realize that the Government's basic and controlling purpose in employing him is the public interest, rather than his private or personal interest, and that he can never have a right of tenure that transcends the public good. He can properly be a Government employee only as long as it remains in the public interest for him to be one. Public trust and confidence in the integrity of the Government are paramount.

(b)(1) This basic principle applies with special force and effect in the Department of Housing and Urban Development, which deals directly with important segments of the public, and whose success depends upon public trust and confidence in its actions. The official actions of the Department often have a direct bearing upon the financial and other interests of individuals, firms, and institutions with which it does business. Furthermore, the effective accomplish-

ment of the Department's mission is significantly dependent upon a public image that engenders confidence in the Department's integrity. Accordingly, the avoidance of any involvement that tends to damage that image is a responsibility of exceptional importance for all employees who participate in or influence official operating determinations that affect the interests of those with whom the Department does business.

(2) If there is knowledge of an employee's involvement in or association with circumstances reasonably construed to reduce public confidence in the acts or determinations of the Department, such knowledge may be sufficient cause for the initiation of action adverse to the employee. Employees, therefore, are alerted to the gravity with which the Department will view any such involvement, especially if it has to do with conflicts of interest or the compromise of integrity—whether real or only apparent.

§ 0.735-202 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Department;

(2) Conducts operations or activities that are regulated by the Department; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) The prohibitions of paragraph (a) of this section do not apply to:

(1) The acceptance of customary business services from banks or other financial institutions if such services are obtained under terms and conditions available to the general public;

(2) Obvious family or personal relationships, such as those between the employee and his parents, children, or spouse, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(3) The acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) An employee shall avoid any action, whether or not specifically prohibited by the regulations in this part, which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality; or

(5) Making a Government decision outside official channels.

(d) An employee shall not solicit contributions from another employee for a gift, or make a donation as a gift, when such gift is for an employee in a superior official position. An employee in a superior official position shall not accept a gift presented as a contribution from employees receiving less salary than himself.

(e) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by law.

§ 0.735-203 Outside activity.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of his duties and responsibilities as an employee of the Department. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, a conflict of interest;

(2) Employment which tends to impair his mental or physical capacity to perform his official duties and responsibilities in an acceptable manner;

(3) Activities that may be construed by the public to be the official acts of the Department;

(4) Activities that establish relationships or property interests that may result in a conflict between his private interests and his official duties; and

(5) Employment that may involve the use of information secured as a result of employment in the Department to the detriment of the Department or the public interest, or that may give preferential treatment to any person, corporation, public agency, or group.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government (18 U.S.C. 209).

(c) Full-time employees and part-time employees with a regularly scheduled tour of duty must obtain the prior approval of a designated personnel officer before engaging in outside employment in the following categories:

(1) Employment related to or similar to the substantive programs conducted by any part of the Department. This includes but is not limited to the broad fields of real estate, mortgage lending, property insurance, construction, construction financing, and land and real estate planning.

(2) Employment in the same professional field as that of the individual's official position.

(3) Employment with any person, firm, or other private organization having business either directly or indirectly with the Department.

(4) Employment by State, local, or other governmental body.

(d) No full-time employee or part-time employee with a regularly scheduled tour of duty shall maintain a publicly listed place of business without the prior approval of a designated personnel officer.

(e) Except for employees subject to the requirements of Subpart E of this part, approvals required by paragraphs (c) and (d) of this section shall be requested on Form HUD-843, Request for Authorization to Engage in Outside Employment and/or Statement of Financial Interests. All pertinent facts regarding the proposed employment, such as the name of the employer, the nature of the work to be performed, and the amount of time involved, shall be set forth.

(f) (1) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, Executive order, or this part. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of his employment by the Department, except when that information has been made available to the general public or will be made available on request, or when the Secretary or his designee gives written authorization for the use of non-public information on the basis that the use is in the public interest.

(2) An employee may use his name and title in connection with articles for publication which bear upon his work in the Department only if he obtains the approval of a designated personnel officer.

(g) This section does not preclude an employee from:

(1) Accepting bona fide reimbursement, unless prohibited by law, for actual expenses for travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, an employee may not be reimbursed, and payment may not be made on his behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits.

(2) Participating in the affairs of or accepting an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

(3) Participating in the activities of National or State political parties not proscribed by law.

§ 0.735-204 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts, or appears to conflict, with his official duties and responsibilities.

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his employment by the Department.

(3) Acquire securities issued by the Federal National Mortgage Association.

(4) Acquire ownership of stock or other interest in a rental project financed with an FHA insured mortgage as long as the insurance is in force.

(5) Acquire ownership of FHA debentures or certificates of claim.

(6) Acquire interest in a cooperative or condominium housing project financed under the National Housing Act if the interest is not for obtaining a home for himself or his family.

(7) Be an officer or director of any organization which is an FHA approved mortgagee or lending institution or which services mortgages or other securities for the Department. An employee may hold stock or shares in such organizations provided his official duties are such that the holding will not create or tend to create a conflict of interest. The prohibitions of this paragraph do not apply to Federal Credit Unions that have been approved as Title I lending institutions.

(8) Participate directly or indirectly in any real estate activities for speculative purposes as distinguished from bona fide investment purposes.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Department so long as it is not prohibited by law, Executive Order 11222, or this part.

§ 0.735-205 Personal real estate transactions.

(a) Because the operations of the Department are directly related to individual real estate transactions, all Department employees must exercise the utmost care in the handling of their personal real estate activities. Employees must therefore report to a designated personnel officer the following types of personal real estate transactions (if the transaction involves FHA mortgage insurance, the report shall be filed at the time the application for such insurance is filed; other types of transactions shall be reported at the time of consummation of the transaction):

(1) Any purchase or sale of real property in which an employee has an interest.

(2) Any Title I property improvement loan obtained by the employee or in which he has a financial interest. In such case the employee must report the name of the lending institution and a description of the improvements being financed.

(3) Any interest in a cooperative or condominium housing project financed under the National Housing Act if it involves a home for himself or his family.

(b) In addition to the reporting requirements of paragraph (a) of this section, employees shall report all real estate holdings other than those held as personal residences.

(c) Except for employees subject to the requirements of Subpart E of this part, reports required by paragraphs (a) and (b) of this section shall be filed on Form HUD-843, Request for Authorization to Engage in Outside Employment and/or Statement of Financial Interests.

§ 0.735-206 Use of inside information.

Except as provided in § 0.735-203(f), no employee shall give or use inside information acquired by means of his position to advance any private interest, particularly the private interests of himself, his family, associates, or friends. For the purpose of this section "inside information" means information obtained under Government authority but which has not become part of the body of public information.

§ 0.735-207 Intermediaries and product recommendations.

No employee shall recommend or suggest the use of any particular or identified nongovernmental intermediary to deal with the Department nor shall he recommend any device or product tested by or for, or used by, the Department, except as required by his official duties.

§ 0.735-208 Membership in organizations.

(a) An employee may not, in his official capacity as an officer or employee of the Department, serve as a member of a non-Federal or private organization except where express statutory authority exists, or statutory language necessarily implies such authority. However, an employee may serve in an individual capacity as a member of a non-Federal or private organization, provided that:

(1) His membership does not violate the restrictions noted in § 0.735-203; and

(2) His official title or organization connection is not shown on any listing or presented in any activity of the organization in such a manner as to imply that he is acting in his official capacity.

(b) An employee may be designated to serve as a liaison representative of the Department to a non-Federal or private organization provided that:

(1) The activity relates to the work of the Department.

(2) The employee does not participate by vote in the policy determinations of the organization.

(3) The Department is in no way bound by any vote or action taken by the organization.

§ 0.735-209 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of Department property of any kind, including property leased to the Department, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him.

§ 0.735-210 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law, such as Federal, State, and local taxes. For the purpose of this section, "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which the Department determines does not, under the circumstances, reflect ad-

versely on the Government as his employer. In the event of a dispute between an employee and an alleged creditor, this section does not require the Department to determine the validity or the amount of the disputed debt.

§ 0.735-211 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or leased property or while on duty for the Department, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a number slip or ticket.

§ 0.735-212 General conduct; and conduct prejudicial to the Government.

(a) Each employee shall conduct himself in a manner that facilitates the effective accomplishment of the work of the Department, observing at all times the requirements of courtesy, consideration, and promptness in dealing with the public and with persons or firms having business with the Department;

(b) An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

Subpart C—Conduct and Responsibilities of Special Government Employees

§ 0.735-301 Use of Government employment.

A special Government employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

§ 0.735-302 Use of inside information.

(a) A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(b) Special Government employees may teach, lecture, or write in a manner consistent with the provisions of § 0.735-203(f).

§ 0.735-303 Coercion.

A special Government employee shall not use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

§ 0.735-304 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, a special Government

employee, while so employed or in connection with his employment, shall not receive or solicit from a person having business with the Department anything of monetary value as a gift, gratuity, loan, entertainment, or favor for himself or another person, particularly one with whom he has family, business, or financial ties.

(b) The exceptions of § 0.735-202(b), which are applicable to employees, are also applicable to special Government employees.

§ 0.735-305 Applicability of other provisions.

(a) Each special Government employee is subject to the provisions of §§ 0.735-201, 0.735-208 through 0.735-212, and 0.735-508.

(b) Each special Government employee shall acquaint himself with each statute listed in Subpart D of this part.

Subpart D—Miscellaneous Statutory Provisions

§ 0.735-401 Applicable statutory provisions.

Each employee shall acquaint himself with each statute that relates to his ethical and other conduct as an employee of the Department and of the Government. The attention of each employee is directed to the following statutory provisions:

(a) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the "Code of Ethics for Government Service".

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 118p, 118r).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 640).

(h) The prohibition against the misuse of a Government vehicle (5 U.S.C. 78(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (5 U.S.C. 637).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibition against proscribed political activities—The Hatch Act (5 U.S.C. 1181), and 18 U.S.C. 602, 603, 607, and 608.

Subpart E—Statements of Employment and Financial Interests

§ 0.735-501 Submission of statements.

(a) Not later than 90 days after the effective date of this part, each employee occupying a position designated in the Appendix shall submit to the reviewing official specified in § 0.735-505, Form HUD-844, Statement of Employment and Financial Interests.

(b) Each employee who enters on duty after the effective date of this part in a position designated in the Appendix shall submit to the reviewing official specified in § 0.735-505 a statement not later than 30 days after his entrance on duty or 90 days after the effective date of this part, whichever is later.

(c) Additions to, deletions from, and other amendments of the list of positions in the Appendix may be made from time to time as necessary to carry out the purpose of the law, Executive Order 11222, and Part 735 of the Civil Service Commission Regulations (5 CFR Part 735). Such amendments are effective upon actual notification to the incumbents. The amended list shall be submitted at least annually for publication in the FEDERAL REGISTER.

§ 0.735-502 Supplementary statements.

(a) Changes in, or additions to, the information contained in an employee's statement shall be reported to the appropriate reviewing official in a supplementary statement at the end of the quarter in which the change occurs. Interim memoranda reports shall be filed if required to meet the prior approval provisions of § 0.735-203 (c) and (d), or the requirements of § 0.735-205 (a) concerning the timely reporting of real estate transactions. Financial interests or employment acquired during a quarter, but disposed of or terminated before the end of such quarter, shall constitute changes or additions to be reported at the end of such quarter. Quarters end March 31, June 30, September 30, and December 31. If there are no changes or additions in a quarter, a negative report is not required. However, for the purpose of annual review, a supplementary statement, negative or otherwise, is required as of June 30 of each year.

(b) A supplementary statement shall be submitted on Form HUD-844, and

shall be designated "Supplementary". A supplementary statement shall furnish all information required by an initial statement and by appropriate notation, shall indicate any changes in, or additions to the information set out in the employee's initial statement or last supplementary statement.

§ 0.735-503 Information not known by employees.

If any information required to be included on a statement or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

§ 0.735-504 Information prohibited.

This subpart does not require an employee to report information relating to his connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement.

§ 0.735-505 Review of statements.

(a) Employees reporting directly to the Secretary shall submit their statements directly to the Secretary for review; employees reporting directly to the Under Secretary shall submit their statements directly to the Under Secretary for review.

(b) Employees reporting directly to Assistant Secretaries shall submit their statements directly to the appropriate Assistant Secretary for review; employees reporting directly to the General Counsel shall submit their statements directly to the General Counsel for review.

(c) Employees not included in paragraph (a) or (b) of this section shall submit their statements directly to the appropriate Deputy Counselor.

(d) When a statement submitted under paragraph (b) or (c) of this section, or information from other sources, indicates a conflict between the interest of an employee and the performance of his official duties, and when the conflict or appearance of conflict cannot be resolved by the reviewing official, he shall report the information concerning the conflict or appearance of conflict to the Secretary through the Counselor. The employee concerned shall be given an opportunity to explain the conflict or appearance of conflict before any required remedial action is initiated.

§ 0.735-506 Confidentiality of statements.

After the review process has been completed, the statements submitted under § 0.735-505 shall be promptly forwarded to the personnel office having custody of the employee's official personnel file. The statements shall be held in con-

fidence and retained in limited access files. Information from a statement may not be disclosed except as the Secretary or his designee, or the Civil Service Commission may determine for good cause shown.

§ 0.735-507 Effect of employee's statements on other requirements.

The statements and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order or regulation.

§ 0.735-508 Specific provisions for special Government employees.

(a) Except as provided in paragraph (c) of this section, each special Government employee shall submit to the reviewing official specified in § 0.735-505, Form HUD-844-A, Statement of Employment and Financial Interests, not later than the time of his employment. He shall keep his statement current throughout his employment with the Department by the submission of supplementary statements.

(b) The provisions of §§ 0.735-503, 0.735-504, 0.735-506, and 0.735-507 are applicable to a special Government employee who is required to file a statement.

(c) The Secretary or his designee may waive the provisions of this section in the case of a special Government employee who is not a consultant or an expert when it is determined that the duties of the position held by the special Government employee are of a nature and at such level of responsibility that the submission of a statement is not necessary to protect the integrity of the Government. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those terms by Chapter 304 of the Federal Personnel Manual.

This part was approved by the Civil Service Commission on May 17, 1966.

Effective date. This part shall be effective as of June 24, 1966.

ROBERT C. WEAVER,
*Secretary of Housing and
Urban Development.*

APPENDIX—LIST OF POSITIONS SUBJECT TO
SUBPART E

Officers and employees in the following positions are subject to the provisions of Subpart E of this part:

(a) Employees paid at a level of the Federal Executive Salary Schedule established by the Federal Executive Salary Act of 1964, as amended, except the Secretary, who is subject to separate reporting requirements under section 401 of Executive Order 11222;

(b) Employees in grade GS-16 or above of the General Schedule established by the Classification Act of 1949, as amended, or in comparable or higher positions not subject to that Act; and

(c) Employees in the following positions:

OFFICE OF THE SECRETARY

Departmental:
Administrative Assistant to the Secretary.

Director, Low-Income Housing Demonstration Staff, Office of Program Policy.

Director, Division of Research Development, Office of Program Policy.

Director, Equal Opportunity Standards and Regulations Staff.

Deputy Director, Compliance Division.
Field Supervisory Investigators, Compliance Division.

Director, Audit Division, Office of Administration.

Deputy Director, Audit Division, Office of Administration.

Field Supervisory Auditors, Audit Division, Office of Administration.

Director, Division of Finance and Accounts, Office of Administration.

Deputy Director, Division of Finance and Accounts, Office of Administration.

Director, Division of General Services, Office of Administration.

Director, Property Management and Procurement Branch, Division of General Services, Office of Administration.

Field:
Deputy Regional Administrator.
Regional Director of Administration.

Director, Division of Community Facilities.
Deputy Director, Division of Community Facilities.

Director, Division of Urban Renewal.
Deputy Director, Division of Urban Renewal.

Director, Northwest Operations.
Deputy Director, Northwest Operations.

Regional Counsel.
Chief, Real Estate Disposition, Division of Urban Renewal.

Chief, Real Estate Acquisition, Division of Urban Renewal.

ASSISTANT SECRETARY FOR MORTGAGE CREDIT AND FEDERAL HOUSING COMMISSIONER

Federal Housing Administration

Departmental:
Director of Compliance Coordination.
Director of Examination and Audit.
Director, Audit Division.

Director, Division of General Services.
Deputy Director, Division of General Services.

Chief, Procurement and Property Section, Division of General Services.

Director, Community Disposition Staff.
Deputy Director, Community Disposition Staff.

Field Office Director, Community Disposition Staff.

Field:
Multifamily Housing Representative.
Director, Insuring Office.

Deputy Director, Insuring Office.
Assistant Director (Chief of Operations).
Chief Underwriter.

State Director (New York).
Assistant State Director.

Federal National Mortgage Association

Departmental:
Vice President.
Loan Manager.
Secretary-Treasurer.
Controller.

Director of Examination and Audit.
Field:
Agency Manager.
Assistant Agency Manager.

ASSISTANT SECRETARY FOR METROPOLITAN DEVELOPMENT

Departmental:
Director, Urban Planning Assistance Branch, Office of Planning Standards and Coordination.

Director, Division of Academic Facilities, Office of Technical Services.
Land and Facilities Development Administration:

Director, Division of Senior Citizens Housing.

Director, Division of Public Facilities Grants.

Director, Division of Public Facilities Loans.

Director, Division of Land Development.
Director, Division of College Housing.
Director, Finance Standards Staff.

Deputy Director, Finance Standards Staff.
Urban Transportation Administration:

Positions at GS-15.

URBAN RENEWAL ADMINISTRATION

Departmental:
Director, Demonstration Program Branch.
Deputy Assistant Commissioner, Rehabilitation and Codes.

PUBLIC HOUSING ADMINISTRATION

Departmental:
Director, Office Services Branch.
Financing Officer.

Field:
Regional Director.

[F.R. Doc. 66-6930; Filed, June 23, 1966; 8:48 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service,
Department of the Treasury

[T.D. 6837]

SUBCHAPTER A—INCOME TAX

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

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

PART 301—PROCEDURE AND ADMINISTRATION

Treatment of Employee Stock Options and Purchase Plans

On December 19, 1964, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under sections 402, 421 through 425, 691, 1012, 1014, 6039, 6071, and 6091 of the Internal Revenue Code of 1954, and the Procedure and Administration Regulations (26 CFR Part 301) under sections 6652 and 6678 of the Internal Revenue Code of 1954, in order to conform to section 221 of the Revenue Act of 1964 (78 Stat. 63), was published in the FEDERAL REGISTER (29 F.R. 18063). Paragraphs (e) (1) and (f) (3) of § 1.423-2, as set forth in paragraph 7 of the appendix to the notice of proposed rule making, are hereby withdrawn. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed (except pars. (e) (1) and (f) (3) of § 1.423-2) is hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. Section 1.421-1(g) as set forth in paragraph 5 of the notice of proposed rule making is revised.

PAR. 2. Section 1.421-7, as set forth in paragraph 7 of the notice of proposed rule making, is changed by revising paragraphs (c) (2), (d), (e) (1), and (h) (2), (3), and (4).

PAR. 3. Section 1.421-8, as set forth in paragraph 7 of the notice of proposed rule making, is changed by revising para-

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graph (b) (1) and by adding new paragraphs (d) and (e).

PAR. 4. Section 1.422-1 as set forth in paragraph 7 of the notice of proposed rule making, is changed by revising paragraph (b) (2) and example (2) of paragraph (b) (3).

PAR. 5. Section 1.422-2, as set forth in paragraph 7 of the notice of proposed rule making, is changed by revising paragraphs (a) (1) (i) and (ii), (b) (1), (2), and (3), (e) (2) (ii), (f) (1) (iii), and (f) (3) (i), by adding examples (8) and (9) to paragraph (f) (4) and by revising paragraph (h) (1) (i).

PAR. 6. Section 1.423-2, as set forth in paragraph 7 of the notice of proposed rule making, is changed by revising paragraphs (c) (1), (3), and (4), (e) (1) and (f) (3).

PAR. 7. Section 1.424-2, as set forth in paragraph 7 of the notice of proposed rule making, is changed by revising paragraphs (a) (2) (iv), (a) (4), (b) (1) (iii), and paragraph (d) (3) (i) and (ii).

PAR. 8. Section 1.425-1, as set forth in paragraph 7 of the notice of proposed rule making, is changed by revising paragraph (c) (2), by adding a new example (6) to paragraph (c) (3) and by revising paragraphs (e) (5) (iii) and (e) (6).

PAR. 9. Section 1.691(c)-1, as set forth in paragraph 8 in the notice of proposed rule making, is changed by revising paragraph (c) (1).

PAR. 10. Section 1.6039-1, as set forth in paragraph 12 of the notice of proposed rule making, is changed by revising paragraphs (a), (b) (1), (b) (2), (b) (5), (c) (1), and (d).

PAR. 11. Section 1.6039-2, as set forth in paragraph 12 of the notice of proposed rule making, is changed by revising paragraph (a).

PAR. 12. Paragraph (c) of § 1.6071-1, as set forth in paragraph 13 of the notice of proposed rule making, is changed by adding new subparagraph (14).

PAR. 13. Paragraph (b) of § 1.6091-1, as set forth in paragraph 14 of the notice of proposed rule making, is changed by adding new subparagraph (14).

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

Approved: June 20, 1966.

STANLEY S. SURREY,
Assistant Secretary of
the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) under sections 402, 421 through 425, 691, 1012, 1014, 6039, 6071, and 6091 of the Internal Revenue Code of 1954, and the Procedure and Administration Regulations (26 CFR Part 301) under sections 6652, and 6678 of the Internal Revenue Code of 1954, to section 221 of the Revenue Act of 1964 (78 Stat. 63), such regulations are amended as follows:

PARAGRAPH 1. Section 1.402(a) is amended by revising section 402(a) (3) (B) and by adding a historical note. These amended and added provisions read as follows:

§ 1.402(a) Statutory provisions; taxability of beneficiary of employees' trust; exempt trust.

Sec. 402. Taxability of beneficiary of employees' trust—(a) Taxability of beneficiary of exempt trust. * * *

(3) Definitions. * * *
(B) The term "securities of the employer or subsidiary corporation (as defined in subsections (e) and (f) of section 425) of the corporation" include securities of a parent employer corporation.

[Sec. 402(a) as amended by sec. 4(c), Self-Employed Individuals Tax Retirement, Act 1962 (78 Stat. 825); sec. 221(c) (1), Rev. Act 1964 (78 Stat. 75)]

PAR. 2. Paragraph (b) (1) (ii) of § 1.402(a)-1 is amended to read as follows:

§ 1.402(a)-1 Taxability of beneficiary under a trust which meets the requirements of section 401(a).

(b) Distributions including securities of the employer corporation—(1) In general. * * *

(ii) For purposes of section 402(a) and of this section, the term "securities" means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form, and the term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of section 425) of the employer corporation.

PAR. 3. The center heading "Miscellaneous Provisions" which immediately precedes § 1.421 is revised to read as follows:

CERTAIN STOCK OPTIONS

PAR. 4. Section 1.421 is amended by revising the heading thereof, by revising section 421 (including the heading), and by revising the historical note at the end thereof. These amended provisions and historical note read as follows:

§ 1.421 Statutory provisions; general rules.

Sec. 421. General rules—(a) Effect of qualifying transfer. If a share of stock is transferred to an individual in a transfer in respect of which the requirements of section 422(a), 423(a), or 424(a) are met—

(1) Except as provided in section 422(c) (1), no income shall result at the time of the transfer of such share to the individual upon his exercise of the option with respect to such share;

(2) No deduction under section 162 (relating to trade or business expenses) shall be allowable at any time to the employer corporation, a parent or subsidiary corporation of such corporation, or a corporation issuing or assuming a stock option in a transaction to which section 425(a) applies, with respect to the share so transferred; and

(3) No amount other than the price paid under the option shall be considered as received by any of such corporations for the share so transferred.

(b) Effect of disqualifying disposition. If the transfer of a share of stock to an individual pursuant to his exercise of an option would otherwise meet the requirements of section 422(a), 423(a), or 424(a) except that there is a failure to meet any of the holding

period requirements of section 422(a) (1), 423(a) (1), or 424(a) (1), then any increase in the income of such individual or deduction from the income of his employer corporation for the taxable year in which such exercise occurred attributable to such disposition, shall be treated as an increase in income or a deduction from income in the taxable year of such individual or of such employer corporation in which such disposition occurred.

(c) Exercise by estate—(1) In general. If an option to which this part applies is exercised after the death of the employee by the estate of the decedent, or by a person who acquired the right to exercise such option by bequest or inheritance or by reason of the death of the decedent, the provisions of subsection (a) shall apply to the same extent as if the option had been exercised by the decedent, except that—

(A) The holding period and employment requirements of sections 422(a), 423(a), and 424(a) shall not apply, and

(B) Any transfer by the estate of stock acquired shall be considered a disposition of such stock for purposes of sections 423(c) and 424(c) (1).

(2) Deduction for estate tax. If an amount is required to be included under section 422(c) (1), 423(c), or 424(c) (1) in gross income of the estate of the deceased employee or of a person described in paragraph (1), there shall be allowed to the estate or such person a deduction with respect to the estate tax attributable to the inclusion in the taxable estate of the deceased employee of the net value for estate tax purposes of the option. For this purpose, the deduction shall be determined under section 691(c) as if the option acquired from the deceased employee were an item of gross income in respect of the decedent under section 691 and as if the amount includible in gross income under section 422(c) (1), 423(c), or 424(c) (1) were an amount included in gross income under section 691 in respect of such item of gross income.

(3) Basis of shares acquired. In the case of a share of stock acquired by the exercise of an option to which paragraph (1) applies—

(A) The basis of such share shall include so much of the basis of the option as is attributable to such share; except that the basis of such share shall be reduced by the excess (if any) of (i) the amount which would have been includible in gross income under section 422(c) (1), 423(c), or 424(c) (1) if the employee had exercised the option on the date of his death and had held the share acquired pursuant to such exercise at the time of his death, over (ii) the amount which is includible in gross income under such section; and

(B) The last sentence of sections 422(c) (1), 423(c), and 424(c) (1) shall apply only to the extent that the amount includible in gross income under such sections exceeds so much of the basis of the option as is attributable to such share.

[Sec. 421 as amended by sec. 1, Act of February 11, 1958 (Pub. Law 85-320, 72 Stat. 4); sections 25 and 26, Technical Amendments Act 1958 (72 Stat. 1623, 1624); sec. 221(a), Rev. Act 1964 (78 Stat. 63)]

PAR. 5. Section 1.421-1 is amended by revising the heading thereof, and by adding a new paragraph (g) at the end thereof. These revised and added provisions read as follows:

§ 1.421-1 Effective dates and meaning and use of certain terms.

(g) Effective dates. Sections 1.421-1 through 1.421-5 are applicable only to options granted after February 26, 1945,

and before January 1, 1964, and all references therein to sections of the Code are to the Internal Revenue Code of 1954, before the amendments made by section 221 of the Revenue Act of 1964 (78 Stat. 63). Section 1.421-6 is applicable only to options granted on or after February 26, 1945, and all references to sections of the Code are to the Internal Revenue Code of 1954, as amended. Sections 1.421-7 and 1.421-8 are applicable only to options granted after December 31, 1963, and all references therein to sections of the Code are to the Internal Revenue Code of 1954, as amended.

PAR. 6. Section 1.421-6 is amended by revising paragraphs (a) (1), (d) (7), and (f) thereof. These amended provisions read as follows:

§ 1.421-6. Options to which section 421 does not apply.

(a) *Scope of section.* (1) If an employer or other person grants to an employee or other person for any reason connected with the employment of such employee an option to purchase stock of the employer or other property, and if section 421 is not applicable, then this section shall apply. This section will apply, for example, when an option is not a qualified or restricted stock option at the time it is granted or an option granted under an employee stock purchase plan, or when an option is modified so that it no longer qualifies as such an option, or when there is a disqualifying disposition of stock acquired by the exercise of such an option so that section 421 does not apply. When an option is granted for any reason connected with the employment of an employee, this section applies, if section 421 does not apply, irrespective of whether the option is granted by the employer, by a parent or subsidiary of the employer, by a stockholder of any of such corporations, or by any other person, and irrespective of whether the option is granted to the employee, to a member of his family, or to any other person, and irrespective of whether the option is to purchase the stock of the employer, the stock of the parent or subsidiary of the employer, the stock of any other corporation, or to purchase any other property. In addition, § 1.61-15 makes the rules of this section applicable in determining the time when certain other options result in the realization of income and the amount of such income.

(d) Options without a readily ascertainable fair market value.

(7) Notwithstanding the other provisions of this paragraph, if this section is applicable because of a disqualifying disposition of stock acquired by the exercise of a qualified or restricted stock option, or acquired by the exercise of an option granted under an employee stock purchase plan, the taxable year of the employee for which he is required to include in his gross income the compensation resulting from such option is determined under section 421(b) and paragraph (b) of § 1.421-8 (or, in the case of taxable years ending before January 1, 1964, under section 421(f) and paragraph (e)

of § 1.421-5) and, in the case of a disqualifying disposition of a share of stock acquired by the exercise of a qualified stock option, the amount of such compensation shall be subject to the limitation provided by section 422(c)(4) and paragraph (b) of § 1.422-1.

(f) *Deductions.* If the employer grants an option to which this section applies, the employer of the employee in connection with whose employment the option is granted is considered to have paid compensation to such employee at the same time and in the same amount as such employee is considered under paragraph (c) or (d) of this section to have realized compensation. The deductibility of the amount considered so paid is determined under section 162 or other provision of the Code which is applicable to such a payment. Whether such amount may be deducted in the taxable year considered so paid, or whether such amount is a capital expenditure which is not deductible or which may be amortized, depends upon the nature of the transaction involved and the facts and circumstances of each case. If this section is applicable because of a disqualifying disposition of stock acquired by the exercise of a qualified or restricted stock option, or acquired by the exercise of an option granted under an employee stock purchase plan, the employer's taxable year for which such compensation is deductible is determined under section 421(b) and paragraph (b) of § 1.421-8 (or, in the case of taxable years ending before January 1, 1964, under section 421(f) and paragraph (e) of § 1.421-5).

PAR. 7. There are inserted immediately after § 1.421-6 the following new sections:

§ 1.421-7. Meaning and use of certain terms.

(a) *Option.* (1) For purposes of sections 421 through 425, the term "option" includes the right or privilege of an individual to purchase stock from a corporation by virtue of an offer of the corporation continuing for a stated period of time, whether or not irrevocable, to sell such stock at a price determined under paragraph (e) of this section, such individual being under no obligation to purchase. Such right or privilege, when granted, must be evidenced in writing. The individual who has such right or privilege is referred to as the optionee and the corporation offering to sell stock under such an arrangement is referred to as the optionor. While no particular form of words is necessary, the written option should express, among other things, an offer to sell at the option price and the period of time during which the offer shall remain open.

(2) An option may be granted as part of or in conjunction with an employee stock purchase plan or subscription contract. See section 423.

(3) An arrangement between a corporation and an employee may involve more than one option. For example, if a corporation on June 1, 1964, grants to

an employee the right to purchase 1,000 shares of its stock on or after June 1, 1965, another 1,000 shares on or after June 1, 1966, and a further 1,000 shares on or after June 1, 1967, all shares to be purchased before June 1, 1968, provided the employee at the time of exercise of any of the purchase rights is employed by the corporation, such an arrangement will be construed as the grant to the employee on June 1, 1964, of three options, each for the purchase of 1,000 shares. However, if a corporation grants to an employee on January 1, 1965, the right to purchase 1,000 shares of its stock at \$65 per share during 1965, or at \$75 per share during 1966, or at \$85 per share during 1967, such an arrangement will be construed as the grant to the employee on January 1, 1965, of but one option for the purchase of 1,000 shares, which ceases to be outstanding when fully exercised at the price in effect at the time of exercise.

(b) *Statutory options.* (1) The term "statutory option", used for purposes of convenience hereinafter in this section and in §§ 1.421-8 through 1.425-1, means a qualified stock option, as defined by section 422(b) and § 1.422-2; an option granted under an employee stock purchase plan, as defined by section 423(b) and § 1.423-2; and a restricted stock option, as defined in section 424(b) and § 1.424-2.

(2) An option may qualify as a statutory option only if the option is not transferable (other than by will or by the laws of descent and distribution) by the individual to whom it is granted, and is exercisable, during the lifetime of such individual, only by him. See sections 422(b)(6), 423(b)(9), and 424(b)(2). Accordingly, an option which is transferable by the individual to whom it is granted during his lifetime, or is exercisable during such individual's lifetime by another person, is not a statutory option. However, in case the option or the plan under which the option was granted contains a provision permitting the individual to whom the option was granted to designate the person who may exercise the option after his death, neither such provision, nor a designation pursuant to such provision, disqualifies the option as a statutory option.

(3) (i) The determination of whether an option is a statutory option is made as of the date such option is granted. An option which is a statutory option when granted does not lose its character as such an option by reason of subsequent events, and an option which is not a statutory option when granted does not become such an option by reason of subsequent events. See, however, paragraph (e) of § 1.425-1, relating to modification, extension, or renewal of an option.

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

Example (1). S-1 Corporation is a subsidiary of S Corporation which, in turn, is a subsidiary of P Corporation. On June 1, 1964, P grants to an employee of P a statutory option to purchase a share of stock of S-1. On January 1, 1965, S sells a portion of the S-1 stock which it owns to an unre-

lated corporation and, as of that date, S-1 ceases to be a subsidiary of S. On May 1, 1965, while still employed by P, the employee exercises his option to purchase a share of S-1 stock. Section 421 applies to such exercise.

Example (2). Assume P grants an option to an employee under the same facts as in example (1) above, except that on June 1, 1964, S-1 is not a subsidiary of either S or P. Such option is not a statutory option on June 1, 1964. On January 1, 1965, S purchases from an unrelated corporation a sufficient number of shares of S-1 stock to make S-1, as of that date, a subsidiary of S. On May 1, 1965, while still employed by P, the employee exercises his option to purchase a share of S-1 stock. The employee has not exercised a statutory option.

(c) Time and date of granting option.

(1) For purposes of sections 421 through 425, the words "the date of the granting of the option" and "the time such option is granted", and similar phrases refer to the date or time when the corporation completes the corporate action constituting an offer of stock for sale to an individual under the terms and conditions of a statutory option. Ordinarily, if the corporate action contemplates an immediate offer of stock for sale to an individual or to a class including such individual, or contemplates a particular date on which such offer is to be made, the time or date of the granting of the option is the time or date of such corporate action if the offer is to be made immediately, or the date contemplated as the date of the offer, as the case may be. However, an unreasonable delay in the giving of notice of such offer to the individual or to the class will be taken into account as indicating that the corporation contemplated that the offer was to be made at the subsequent date on which such notice is given.

(2) If the corporation imposes conditions on the granting of an option (as distinguished from conditions governing the exercise of the option), such conditions shall be given effect in accordance with the intent of the corporation. However, under section 425(1), if the grant of an option is subject to approval by stockholders, the date of grant of the option shall be determined as if the option had not been subject to such approval. A condition which does not require corporate action, such as the approval of, or registration with, some regulatory or governmental agency, for example, a stock exchange or the Securities and Exchange Commission, is ordinarily considered a condition upon the exercise of the option unless the corporate action clearly indicates that the option is not to be granted until such condition is satisfied. If an option is granted to an individual upon the condition that such individual will become an employee of the corporation granting the option or of a related corporation, such option is not granted prior to the date the individual becomes such an employee.

(3) In general, conditions imposed upon the exercise of an option will not operate to make ineffective the granting of the option. For example, on June 1, 1964, the A Corporation grants to X, an employee, an option to purchase 5,000 shares of the corporation's stock, exer-

cisable by X on or after June 1, 1965, provided he is employed by the corporation on June 1, 1965, and provided that A's profits during the fiscal year preceding the year of exercise exceed \$200,000. Such an option is granted to X on June 1, 1964, and will be treated as outstanding as of such date.

(d) Stock and voting stock. For purposes of sections 421 through 425, the term "stock" means capital stock of any class, including voting or nonvoting common or preferred stock. Except as otherwise provided, the term includes both treasury stock and stock of original issue. Special classes of stock authorized to be issued to and held by employees are within the scope of the term "stock" as used in such sections, provided such stock otherwise possesses the rights and characteristics of capital stock. For purposes of determining what constitutes voting stock in ascertaining whether a plan has been approved by stockholders or whether the limitations pertaining to voting power contained in sections 422(b)(7), 423(b)(3) and 424(b)(3) and the regulations thereunder have been met, stock which does not have voting rights until the happening of an event, such as the default in the payment of dividends on preferred stock, is not voting stock until the happening of the specified event. Moreover, stock which does not possess a general voting power, and may vote only on particular questions, is not voting stock. However, if such stock is entitled to vote on whether a stock option plan is to be adopted, it is voting stock for the purpose of ascertaining whether the plan has been approved by the shareholders.

(e) Option price. (1) For purposes of sections 421 through 425, the term "option price" or "price paid under the option" means the consideration in money or other property which, pursuant to the terms of the option, is the price at which the stock subject to the option is purchased. The term "option price" does not include amounts paid as interest under a deferred payment arrangement or treated as unstated interest under section 483 and the regulations thereunder. Thus, for example, section 483 is applicable in determining whether the pricing requirements of section 422(b)(4), 423(b)(6), 424(b)(1), or 424(c) are met and is applicable in determining the basis of any stock acquired pursuant to the exercise of a statutory option. However, with respect to statutory options granted prior to January 1, 1965, the determination of whether the applicable pricing requirements are met shall be made without regard to section 483, but section 483 shall be taken into consideration in determining basis for purposes of determining gain or loss.

(2) In the case of a statutory option, any reasonable valuation method may be used for the purpose of determining whether at the time the option is granted the option price satisfies the pricing requirements of section 422(b)(4) (relating to qualified stock options), section 423(b)(6) (relating to employee stock purchase plans), or section 424(b)(1) (relating to restricted stock options),

whichever is applicable, with respect to the stock subject to the option. Such methods include the valuation methods described in § 20.2031-2 of this chapter (Estate Tax Regulations).

(f) Exercise. For purposes of sections 421 through 425, the term "exercise", when used in reference to an option, means the act of acceptance by the optionee of the offer to sell contained in the option. In general, the time of exercise is the time when there is a sale or a contract to sell between the corporation and the individual. A promise to pay the option price does not constitute an exercise of the option unless the optionee is subject to personal liability on such promise. An agreement or undertaking by the employee to make payments under an employee stock purchase plan does not constitute the exercise of an option so long as the payments made remain subject to withdrawal by the employee.

(g) Transfer. For purposes of sections 421 through 425, the term "transfer", when used in reference to the transfer to an individual of a share of stock pursuant to his exercise of a statutory option, means the transfer of ownership of such share, or the transfer of substantially all the rights of ownership. Such transfer must, within a reasonable time, be evidenced on the books of the corporation.

(h) Employment relationship. (1) Section 421 is applicable to the exercise of a statutory option only if at the time the option is granted, the optionee is an employee of the corporation granting the option, or a related corporation of such corporation, unless the option has been assumed or a new option has been issued in its place under section 425(a). In case of such an assumption or issuance, the optionee must, at the time of such assumption or issuance, be an employee of the corporation so assuming or issuing the option, or a related corporation of such corporation. The determination of whether the optionee is an employee at the time the option is granted (or at the time of the assumption or issuance under section 425(a)) will be made in accordance with the rules contained in section 3401(c) and the regulations thereunder. As to the granting of an option conditioned upon employment, see paragraph (c)(2) of this section. A statutory option must be granted for a reason connected with the individual's employment by the corporation or by its related corporation.

(2) In order to qualify for the special tax treatment of section 421, in addition to meeting the requirements of subparagraph (1) of this paragraph, an individual exercising a qualified stock option or an option granted under an employee stock purchase plan must, at all times during the period beginning with the date of the granting of such option and ending at the time of such exercise or on the day 3 months before the date of such exercise, be an employee of either the corporation granting such option, a related corporation of such corporation, or a corporation or a related corporation of such corporation issuing or assuming a

stock option in a transaction to which section 425(a) applies. For this purpose, the employment relationship in respect of an option granted in accordance with the requirements of subparagraph (1) of this paragraph will be treated as continuing intact while the individual is on military or sick leave if the period of such leave does not exceed 90 days, or, if longer, so long as the individual's right to reemployment with the corporation granting the option (or a related corporation of such corporation, or a corporation or a related corporation of such corporation issuing or assuming a stock option in a transaction to which sec. 425(a) applies) is guaranteed either by statute or by contract. Where the period of military or sick leave exceeds 90 days and where the individual's right to reemployment is not guaranteed either by statute or by contract, the employment relationship will be deemed to have terminated on the 91st day of such leave.

(3) For purposes of determining whether an individual meets the requirements of this paragraph, the term "employer corporation", as used in section 425 (e) and (f), shall be read as "grantor corporation" or "corporation issuing or assuming a stock option in a transaction to which section 425(a) is applicable", as the case may be. For purposes of the employment requirement, a corporation employing an optionee is considered a related corporation if it was a parent or subsidiary of the corporation granting or assuming the option during the entire portion of the requisite period of employment during which it was the employer of such optionee.

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

Example (1). On June 1, 1964, X Corporation granted a statutory option to A, an employee of X Corporation, to purchase a share of X stock. On February 1, 1965, X sold the plant where A was employed to M Corporation, an unrelated corporation, and A was employed by M. If A exercises his statutory option on June 1, 1965, section 421 is not applicable to such exercise, because on June 1, 1965, A is not employed by the corporation which granted the option or by a related corporation of such corporation, nor was he employed by any of such corporations within 3 months before June 1, 1965.

Example (2). Assume the facts to be the same as in example (1), except that when A was employed by M Corporation, the option to purchase X stock was terminated and was replaced by an option to buy M stock in such circumstances that M Corporation is treated as a corporation issuing an option under section 425(a). If A exercises the option to purchase the share of M stock on June 1, 1965, section 421 is applicable for A is then employed by a corporation which issued an option under section 425(a).

Example (3). E is an employee of P Corporation. On June 1, 1964, P grants E a statutory option to purchase a share of P stock. On June 1, 1965, P acquires 100 percent of the stock of S Corporation; on such date S becomes a subsidiary of P. On July 1, 1965, E ceases to be employed by P and becomes employed by S. On October 10, 1965, while still employed by S, E exercises his option to buy P stock. Since E was at all times during the requisite period of employment an employee of either P, the corporation granting the option, or S, a subsidiary of the grantor during the period in which such corporation was E's employer, section 421 is applicable to the exercise of the option.

Example (4). Assume the same facts as in example (3) except assume that at the time E became an employee of S Corporation, S assumed E's option to purchase P stock under section 425(a). Section 421 is applicable to E's exercise of his option to buy P stock.

Example (5). M Corporation grants a qualified stock option to E, an employee of such corporation. E is an officer in a reserve Air Force unit. E goes on military leave with his unit for 3 weeks. Regardless of whether E is an employee of M within the meaning of section 3401(c) and the regulations thereunder during such 3-week period, E's employment relationship with M is treated as uninterrupted during the period of E's military leave.

Example (6). Assume the same facts as in example (5) and assume further that E's active duty status is extended indefinitely, but that E has an employment contract with M which provides that upon the termination of any military duty E may be required to serve. E will be entitled to reemployment with M or a parent or subsidiary of M. E exercises his M option while on active military duty. Irrespective of whether E is an employee of M within the meaning of section 3401(c) and the regulations thereunder at the time of such exercise or within 3 months before such exercise, section 421 can apply to such exercise.

Example (7). X Corporation grants a qualified stock option to A, an employee of X Corporation, whose employment contract provides that in the event of illness, A's right to reemployment with X, or a parent or subsidiary of X, will continue for 1 year after the time A becomes unable to perform his duties for X. A falls ill for 90 days. For purposes of section 422(a)(2), A's employment relationship with X will be treated as uninterrupted during the 90-day period. If A's incapacity extends beyond 90 days, then, for purposes of section 422(a)(2), A's employment relationship with X will be treated as continuing uninterrupted until A's reemployment rights terminate. Under section 422(a)(2), A has 3 months in which to exercise his qualified stock option after his employment relationship with X (and its parent and subsidiary corporation) is terminated.

(1) *Related corporation.* The term "related corporation", used for purposes of convenience in this section and §§ 1.421-8 through 1.425-1, means a corporation which is a parent or subsidiary corporation (as defined by section 425 (e) and (f) and the regulations thereunder).

§ 1.421-3 General rules.

(a) *Effect of qualifying transfer.* (1) If a share of stock is transferred to an individual pursuant to his exercise of a statutory option, and if the requirements of section 422(a) (relating to qualified stock options), section 423(a) (relating to employee stock purchase plans), or section 424(a) (relating to restricted stock options), whichever is applicable, are met, then—

(1) Except as provided in section 422 (c) (1) (relating to exercise of option when price is less than value of stock), and paragraph (e) (2) of § 1.422-2, no income shall result at the time of the transfer of such share to the individual upon his exercise of the option with respect to such share;

(ii) No deduction under section 162 or the regulations thereunder (relating to trade or business expenses) shall be allowable at any time to the employer corporation, a related corporation of such corporation, or a corporation issuing or assuming a stock option in a transaction to which section 425(a) and paragraph (a) of § 1.425-1 (relating to corporate reorganizations, liquidations, etc.) applies, with respect to the share so transferred; and

(iii) No amount other than the price paid under the option shall be considered as received by any of such corporations for the share so transferred.

(2) For the purpose of this paragraph, each share of stock transferred pursuant to a statutory option is treated separately. For example, if an individual, while employed by a corporation granting him a statutory option, exercises the option with respect to part of the stock covered by the option, and if such individual exercises the balance of the option more than three months after leaving such employment, the application of section 421 to the stock obtained upon the earlier exercise of the option is not affected by the fact that the income taxes of the employer and the individual with respect to the stock obtained upon the later exercise of the option are not determined under section 421.

(b) *Effect of disqualifying disposition.* (1) The disposition of a share of stock, acquired by the exercise of a statutory option before the expiration of the applicable holding period as determined under section 422(a)(1), 423 (a)(1), or 424(a)(1), makes section 421 inapplicable to the transfer of such share. The income attributable to such transfer shall be treated by the individual as income received in the taxable year in which such disposition occurs. Similarly, a deduction under section 162 attributable to the transfer of the share of stock pursuant to the exercise of the option shall be allowable for the taxable year in which such disposition occurs to the employer corporation, its parent or subsidiary corporation or a corporation issuing or assuming a stock option in a transaction to which section 425(a) applies. In such cases, no amount shall be treated as income, and no amount shall be allowed as a deduction, for any taxable year other than the taxable year in which the disposition occurs. If the stock was transferred pursuant to the exercise of the option in a taxable year other than the taxable year of the disposition, the amount of the deduction shall be determined as if the employee had been paid compensation at the time provided in paragraph (d) of § 1.421-6.

(2) Section 421 is not made inapplicable by a transfer before the expiration of the applicable holding period as determined under section 422(a)(1), 423(a)(1), or 424(a)(1), if such transfer is not a disposition of the stock as defined in section 425(c) and paragraph (c) of § 1.425-1, for example, a transfer from the decedent to his estate or a transfer by bequest or inheritance. Similarly, a disposition by the executor, administrator, heir, or legatee is not a disposition by

the decedent. In case a statutory option is exercised by the estate of the individual to whom the option was granted, or by a person who acquired the option by bequest or inheritance or by reason of the death of such individual, see paragraph (c) of this section.

(3) For special rules relating to a disqualifying disposition of a share of stock acquired by the exercise of a qualified stock option, see paragraph (b) of § 1.422-1.

(c) *Exercise by estate.* (1) If a statutory option is exercised by the estate of the individual to whom the option was granted, or by any person who acquired such option by bequest or inheritance or by reason of the death of such individual, section 421(a) applies to such exercise in the same manner as if such option had been exercised by such deceased individual. Consequently, except as provided by section 422(c)(1) and paragraph (e)(2) of § 1.422-2, neither the estate nor such person is required to include any amount in gross income as a result of a transfer of stock pursuant to such exercise of the option. Nor does section 421(a) become inapplicable if such executor, administrator, or person disposes of the stock so acquired before the expiration of the applicable holding period as determined under section 422(a)(1), 423(a)(1), or 424(a)(1). This special rule does not affect the applicability of section 1222, relating to what constitutes a short-term and long-term capital gain or loss. The executor, administrator, or such person need not exercise the option within three months after the death of the individual to whom the option was granted for section 421(a) to be applicable. However, the exercise of the option must be pursuant to the terms of the option, and any change in the terms of the option is subject to the rules of paragraph (e) of § 1.425-1, relating to the modification, extension, or renewal of the option. Section 421(a) is applicable even though such executor, administrator, or person is not employed by the corporation granting the option, or a related corporation, either when the option is exercised or at any time. However, section 421(a) is not applicable to an exercise of the option by the estate or by such person, unless the individual to whom the option was granted met the employment requirements of section 422(a)(2), 423(a)(2), or 424(a)(2), whichever is applicable, either at the time of his death or within three months before such time. If the option is exercised by a person other than the executor or administrator, or other than a person who acquired the option by bequest or inheritance or by reason of the death of such deceased individual, section 421(a) is not applicable to the exercise. For example, if the option is sold by the estate, section 421(a) does not apply to an exercise of the option by such buyer; but if the option is distributed by the administrator to an heir as part of the estate, section 421(a) is applicable to an exercise of the option by such heir.

(2) Any transfer by the estate, whether a sale, a distribution of assets,

or otherwise, of the stock acquired by its exercise of the option under this paragraph is a disposition of the stock. Therefore, if section 423(c), or 424(c)(1) is applicable, the estate must include an amount as compensation in its gross income. Similarly, if section 423(c) or 424(c)(1) is applicable in case of an exercise of the option under this paragraph by a person who acquired the option by bequest or inheritance or by reason of the death of the individual to whom the option was granted, there must be included in the gross income of such person an amount as compensation, either when such person disposes of the stock, or when he dies owning the stock.

(3) (i) If, under section 422(c)(1), 423(c), or 424(c)(1), an amount is required to be included in the gross income of the estate or of such person, the estate or such person shall be allowed a deduction as a result of the inclusion of the value of the option in the estate of the individual to whom the option was granted. Such deduction shall be computed under section 691(c) by treating the option as an item of gross income in respect of a decedent under section 691 and by treating the amount required to be included in gross income under section 422(c)(1), 423(c), or 424(c)(1), as an amount included in gross income under section 691 in respect of such item of gross income. No such deduction shall be allowable with respect to any amount other than an amount includible under section 422(c)(1), 423(c), or 424(c)(1). For the rules relating to the computation of a deduction under section 691(c), see § 1.691(c)-1.

(ii) The application of subdivision (i) may be illustrated by the following example:

Example. On June 1, 1964, E was granted an option under an employee stock purchase plan to purchase for \$85 one share of the stock of his employer. On such day, the fair market value of such stock was \$100 per share. E died on February 1, 1966, without having exercised such option. The option was, however, exercisable by his estate, and for purposes of the estate tax was valued at \$30. On March 1, 1966, the estate exercised the option, and on March 15, 1966, sold for \$150 the share of stock so acquired. For its taxable year including March 15, 1966, the estate is required by sections 421(c)(1)(B) and 423(c) to include in its gross income as compensation the amount of \$15. During such taxable year, no amounts of income were properly paid, credited, or distributable to the beneficiaries of the estate. However, under section 421(c)(2), the estate is entitled to a deduction determined in the following manner. E's estate includes no other items of income in respect of a decedent referred to in section 691(a), and no deductions referred to in section 691(b), so that the value for estate tax purposes of the option, \$30, is also the net value of all items of income in respect of the decedent. The estate tax attributable to the inclusion of the option in the estate of E is \$10. Since \$15, the amount includible in gross income by reason of sections 421(c)(1)(B) and 423(c), is less than the value for estate tax purposes of the option, only $\frac{1}{10}$ of the estate tax attributable to the inclusion of the option in the estate is deductible; that is, $\frac{1}{10}$ of \$10, or \$5. No deduction under section 421(c)(2) is allowable with respect to any capital gain.

(4) (i) In the case of an employee dying before January 1, 1957, the basis of any share of stock acquired by the exercise of a restricted stock option under this paragraph, determined under section 1011, shall be increased by an amount equal to the amount includible as compensation in his gross income under section 424(c)(1). The basis of the share shall not be increased by reason of the inclusion of the value of the restricted stock option in the estate for estate tax purposes.

(ii) (a) In the case of an employee dying after December 31, 1956, the basis of any share of stock acquired by the exercise of an option under this paragraph, determined under section 1011, shall be increased by an amount equal to the portion of the basis of the option attributable to such share. For example, if a statutory option to acquire 10 shares of stock has a basis of \$100, the basis of one share acquired by a partial exercise of the option, determined under section 1011, would be increased by $\frac{1}{10}$ th of \$100, or \$10. The option acquires a basis, determined under section 1014(a), only if the transfer of the share pursuant to the exercise of such option qualifies for the special tax treatment provided by section 421(a). To the extent the option is so exercised, in whole or in part, it will acquire a basis equal to its fair market value at the date of the employee's death or, if an election is made under section 2032, its value at its applicable valuation date. In certain cases, the basis of the share is subject to the adjustments provided by (b) and (c) of this subdivision, but such adjustments are only applicable in the case of an option which is subject to section 422(c)(1), 423(c), or 424(c)(1).

(b) If the amount which would have been includible in gross income under section 422(c)(1), 423(c), or 424(c)(1) had the employee exercised the option on the date of his death and held the share at the time of his death exceeds the amount which is includible in gross income under such section, the basis of the share, determined under (a) of this subdivision, shall be reduced by such excess. For example, if \$15 would have been includible in the gross income of the employee had he exercised the option and held such share at the time of his death, and only \$10 is includible under section 422(c)(1), 423(c), or 424(c)(1), the basis of the share, determined under (a) of this subdivision, would be reduced by \$5. For purposes of determining the amount which would have been includible in gross income under section 422(c)(1), 423(c), or 424(c)(1), if the employee had exercised the option and held such share at the time of his death, the amount which would have been paid for the share shall be computed as if the option had been exercised on the date the employee died.

(c) If the amount includible in gross income under section 422(c)(1), 423(c), or 424(c)(1), exceeds the portion of the basis of the option attributable to the share, the basis of the share, determined under (a) of this subdivision, shall be increased by such excess. Thus, if \$15

is includible in gross income under such section, and the basis of the option with respect to the share is \$10, the basis of the share, determined under (a) of this subdivision, will be increased by \$5.

(iii) If a statutory option is not exercised by the estate of the individual to whom the option was granted, or by the person who acquired such option by bequest or inheritance or by reason of the death of such individual, the option shall be considered to be property which constitutes a right to receive an item of income in respect of a decedent to which the rules of sections 691 and 1014(c) apply.

(iv) The application of this subparagraph may be illustrated by the following examples:

Example (1). On June 1, 1955, the X Corporation granted to E, an employee, a restricted stock option to purchase a share of X Corporation's stock for \$85. The fair market value of the X Corporation stock on such date was \$100 per share. On June 1, 1956, E died. The fair market value of X Corporation stock on such date exceeded \$100 per share and the fair market value of the option on the applicable valuation date was \$35. On August 1, 1964, the estate of E exercised the option and sold the share of X Corporation stock at a time when the fair market value of the share was \$90. The estate is required by section 424(c)(1) to include \$5 in its gross income as compensation. Since E died before January 1, 1957, the basis of the share is \$90 (the \$85 paid for the stock plus the \$5 includible in gross income as compensation), and the basis of the share is not increased by reason of the inclusion of the value of the option in the estate of E (see section 1014(d) (as in effect with respect to taxable years ending before January 1, 1957)). Thus, no gain or loss is realized on the disposition of the share since the basis of the share is equal to the sale price.

Example (2). On June 1, 1964, the X Corporation granted to E, an employee, an option under its employee stock purchase plan to purchase a share of X Corporation stock for \$85. The fair market value of X Corporation stock on such date was \$100 per share. On June 1, 1966, E died. The fair market value of X Corporation stock on such date exceeded \$100 per share and the fair market value of the option on the applicable valuation date was \$35. On August 1, 1966, the estate of E exercised the option and sold the share of X Corporation stock at a time when the fair market value of the share was \$120. The basis of the share is \$120 (the \$85 paid for the stock plus the \$35 basis of the option). When the share is sold for \$120, the estate is required to include \$15 in its gross income as compensation. Since \$15 would have been includible in E's gross income if he had exercised the option and held such share at the time of his death, subdivision (ii)(b) of this subparagraph does not apply. Moreover, since the \$15 includible in the gross income of the estate does not exceed the basis of the option (\$35), subdivision (ii)(c) of this subparagraph does not apply. Since the basis of the stock and the sale price are the same, no gain or loss is realized by the estate on the disposition of the share.

Example (3). Assume the same facts as in example (2), except that the fair market value of the share of stock at the time of its sale was \$90. The basis of the share, determined under subdivision (ii)(a) of this subparagraph, is \$120 (the \$85 paid for the stock plus the \$35 basis of the option). When the share is sold for \$90, the estate is

required to include \$5 in its gross income as compensation. If the employee had exercised the option and held the share at the time of his death, \$15 would have been includible in gross income as compensation for the taxable year ending with his death. Since such amount exceeds by \$10 the amount which the estate is required to include in its gross income, subdivision (ii)(b) of this subparagraph applies, and the basis of the share (\$120), determined under subdivision (ii)(a) of this subparagraph is reduced by \$10. Accordingly, the basis is \$110, and a capital loss of \$20 is realized on the disposition of the share.

Example (4). Assume the same facts as in example (2), except that the fair market value of the option on the applicable valuation date was \$5, and that the fair market value of X Corporation stock on the date the employee died did not exceed \$100. The basis of the share, determined under subdivision (ii)(a) of this subparagraph, is \$90 (the \$85 paid for the stock plus the \$5 basis of the option). When the share is sold for \$120, the estate is required to include \$15 in its gross income as compensation. Since such amount exceeds by \$10 the basis of the option, subdivision (ii)(c) of this subparagraph applies, and the basis of the share (\$90), determined under subdivision (ii)(a) of this subparagraph, is increased by \$10. Accordingly, the basis is \$100 and a capital gain of \$20 is realized on the disposition of the share.

Example (5). Assume the same facts as in example (2), except that on June 1, 1966, the date the employee died, the fair market value of X Corporation stock was \$98, and that on June 1, 1967, the alternate valuation date, the fair market value of the stock had declined substantially, and the fair market value of the option was \$5. On August 1, 1967, the estate of E exercised the option and sold the share when its fair market value was \$92. The basis of the share, determined under subdivision (ii)(a) of this subparagraph, is \$90 (the \$85 paid for the stock plus the \$5 basis of the option). When the share is sold for \$92, the estate is required to include \$7 in its gross income as compensation. Since \$13 would have been includible in E's gross income if he had exercised the option and held such share at the time of his death, subdivision (ii)(b) of this subparagraph applies, and the basis of the share (\$90), determined under subdivision (ii)(a) of this subparagraph, is reduced by \$6 to \$84. Furthermore, since the \$7 that the estate is required to include in its gross income when the share is sold for \$92 exceeds by \$2 the basis of the option, subdivision (ii)(c) of this subparagraph applies, and the basis of the share (\$84), determined under subdivision (ii)(a) and (ii)(b) of this subparagraph, is increased by \$2. Accordingly, the basis is \$86 and a capital gain of \$6 is realized on the disposition of the share.

(d) *Exercise by deceased employee during lifetime.* If a statutory option is exercised by an individual to whom the option was granted and the individual dies before the expiration of the applicable holding period as determined under section 422(a)(1), 423(a)(1), or 424(a)(1), section 421(a) does not become inapplicable if the executor or administrator of the estate of such individual, or any person who acquired such stock by bequest or inheritance or by reason of the death of such individual, disposes of such stock before the expiration of such applicable holding period. This rule does not affect the applicability of section 1222, relating to what constitutes a short-term and long-term capital gain or loss.

(e) *Incorporation by reference.* Any requirement that an option expressly contain or state a prescribed limitation or term will be considered met if such limitation or term is set forth in a statutory option plan and is incorporated by reference by the option. Thus, if a statutory option plan expressly provides that no option granted thereunder shall be exercisable after five years from the date of grant, and if an option granted thereunder expressly provides that the option is granted subject to the terms and limitations of such plan, the option will be regarded as being, by its terms, not exercisable after the expiration of 5 years from the date such option is granted.

§ 1.422 Statutory provisions; qualified stock options.

Sec. 422. *Qualified stock options*—(a) *In general.* Subject to the provisions of subsection (c)(1), section 421(a) shall apply with respect to the transfer of a share of stock to an individual pursuant to his exercise of a qualified stock option if—

(1) No disposition of such share is made by such individual within the 3-year period beginning on the day after the day of the transfer of such share, and

(2) At all times during the period beginning with the date of the granting of the option and ending on the day 3 months before the date of such exercise, such individual was an employee of either the corporation granting such option, a parent or subsidiary corporation of such corporation, or a corporation or a parent or subsidiary corporation of such corporation issuing or assuming a stock option in a transaction to which section 425(a) applies.

(b) *Qualified stock option.* For purposes of this part, the term "qualified stock option" means an option granted to an individual after December 31, 1963 (other than a restricted stock option granted pursuant to a contract described in section 424(c)(3)(A)), for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations, but only if—

(1) The option is granted pursuant to a plan which includes the aggregate number of shares which may be issued under options, and the employees (or class of employees) eligible to receive options, and which is approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted;

(2) Such option is granted within 10 years from the date such plan is adopted, or the date such plan is approved by the stockholders, whichever is earlier;

(3) Such option by its terms is not exercisable after the expiration of 5 years from the date such option is granted;

(4) Except as provided in subsection (c)(1), the option price is not less than the fair market value of the stock at the time such option is granted;

(5) Such option by its terms is not exercisable while there is outstanding (within the meaning of subsection (c)(2)) any qualified stock option (or restricted stock option) which was granted, before the granting of such option, to such individual to purchase stock in his employer corporation or in a corporation which (at the time of the granting of such option) is a parent or subsidiary corporation of the employer corporation, or in a predecessor corporation of any of such corporations;

(6) Such option by its terms is not transferable by such individual otherwise than by will or the laws of descent and distribu-

tion, and is exercisable, during his lifetime, only by him; and

(7) Such individual, immediately after such option is granted, does not own stock possessing more than 5 percent of the total combined voting power or value of all classes of stock of the employer corporation or of its parent or subsidiary corporation; except that if the equity capital of such corporation or corporations (determined at the time the option is granted) is less than \$2,000,000, then, for purposes of applying the limitation of this paragraph, there shall be added to such 5 percent the percentage (not higher than 5 percent) which bears the same ratio to 5 percent as the difference between such equity capital and \$2,000,000 bears to \$1,000,000.

(c) *Special rules*—(1) *Exercise of option when price is less than value of stock.* If a share of stock is transferred pursuant to the exercise by an individual of an option which fails to qualify as a qualified stock option under subsection (b) because there was a failure in an attempt, made in good faith, to meet the requirement of subsection (b) (4), the requirement of subsection (b) (4) shall be considered to have been met, but there shall be included as compensation (and not as gain upon the sale or exchange of a capital asset) in his gross income for the taxable year in which such option is exercised, an amount equal to the lesser of—

(A) 150 percent of the difference between the option price and the fair market value of the share at the time the option was granted, or

(B) The difference between the option price and the fair market value of the share at the time of such exercise.

The basis of the share acquired shall be increased by an amount equal to the amount included in his gross income under this paragraph in the taxable year in which the exercise occurred.

(2) *Certain options treated as outstanding.* For purposes of subsection (b) (5)—

(A) Any restricted stock option which is not terminated before January 1, 1965, and

(B) Any qualified stock option granted after December 31, 1963,

shall be treated as outstanding until such option is exercised in full or expires by reason of the lapse of time. For purposes of the preceding sentence, a restricted stock option granted before January 1, 1964, shall not be treated as outstanding for any period before the first day on which (under the terms of such option) it may be exercised.

(3) *Options granted to certain shareholders.* For purposes of subsection (b) (7)—

(A) The term "equity capital" means—

(i) In the case of one corporation, the sum of its money and other property (in an amount equal to the adjusted basis of such property for determining gain), less the amount of its indebtedness (other than indebtedness to shareholders), and

(ii) In the case of a group of corporations consisting of a parent and its subsidiary corporations, the sum of the equity capital of each of such corporations adjusted, under regulations prescribed by the Secretary or his delegate, to eliminate the effect of intercorporate ownership and transactions among such corporations;

(B) The rules of section 425(d) shall apply in determining the stock ownership of the individual; and

(C) Stock which the individual may purchase under outstanding options shall be treated as stock owned by such individual.

If an individual is granted an option which permits him to purchase stock in excess of the limitation of subsection (b) (7) (determined by applying the rules of this paragraph), such option shall be treated as meeting the requirement of subsection (b) (7) to

the extent that such individual could, if the option were fully exercised at the time of grant, purchase stock under such option without exceeding such limitation. The portion of such option which is treated as meeting the requirement of subsection (b) (7) shall be deemed to be that portion of the option which is first exercised.

(4) *Certain disqualifying dispositions where amount realized is less than value at exercise.* If—

(A) An individual who has acquired a share of stock by the exercise of a qualified stock option makes a disposition of such share within the 3-year period described in subsection (a) (1), and

(B) Such disposition is a sale or exchange with respect to which a loss (if sustained) would be recognized to such individual,

then the amount which is includible in the gross income of such individual, and the amount which is deductible from the income of his employer corporation, as compensation attributable to the exercise of such option shall not exceed the excess (if any) of the amount realized on such sale or exchange over the adjusted basis of such share.

(5) *Certain transfers by insolvent individuals.* If an insolvent individual holds a share of stock acquired pursuant to his exercise of a qualified stock option, and if such share is transferred to a trustee, receiver, or other similar fiduciary, in any proceeding under the Bankruptcy Act or any other similar insolvency proceeding, neither such transfer nor any other transfer of such share for the benefit of his creditors in such proceeding, shall constitute a "disposition of such share" for purposes of subsection (a) (1).

(6) *Application of subsection (b) (5) where options are for stock of same class in same corporation.* The requirement of subsection (b) (5) shall be considered to have been met in the case of any option (referred to in this paragraph as "new option") granted to an individual if—

(A) The new option and all outstanding options referred to in subsection (b) (5) are to purchase stock of the same class in the same corporation, and

(B) The new option by its terms is not exercisable while there is outstanding (within the meaning of paragraph (2)) any qualified stock option (or restricted stock option) which was granted, before the granting of the new option, to such individual to purchase stock in such corporation at a price (determined as of the date of grant of the new option) higher than the option price of the new option.

[Sec. 422 as added by sec. 221(a), Rev. Act 1964 (78 Stat. 63)]

§ 1.422-1 Qualified stock options—general rules.

(a) *Applicability of section 421(a).*

(1) (i) Subject to the provisions of section 422(c) (1), the special rules of income tax treatment provided in section 421(a) are applicable with respect to the transfer of a share of stock to an individual pursuant to his exercise of a qualified stock option provided that the following conditions are satisfied—

(a) The individual must make no disposition of such share before the expiration of the 3-year period beginning on the day after the day of the transfer of such share, and

(b) At all times during the period beginning with the date of the granting of the option and ending on the day 3 months before the date of such exercise, the individual was an employee of either the corporation granting the option, a

related corporation of such corporation, or a corporation or a related corporation of such corporation issuing or assuming a stock option in a transaction to which section 425(a) applies.

(ii) For rules relating to the requisite employment relationship, see paragraph (h) of § 1.421-7.

(2) (i) An exception to the holding period requirement of section 422(a) (1) is provided with respect to certain transfers by insolvent individuals. If an insolvent individual holds a share of stock acquired pursuant to his exercise of a qualified stock option, and if such share is transferred to a trustee, receiver, or other similar fiduciary in any proceeding under the Bankruptcy Act or any other similar insolvency proceeding (such as an assignment for the benefit of creditors, a composition, etc.), neither such transfer, nor any other transfer of such share for the benefit of the insolvent individual's creditors in such proceeding shall constitute a disposition of such share for the purpose of section 422(a) (1). For the purpose of this subparagraph, an individual is an insolvent only if his liabilities exceed his assets, or if he is unable to satisfy his liabilities as they become due.

(ii) Notwithstanding that a transfer by the trustee or other fiduciary is not treated as a disposition for the purpose of section 422(a) (1), such transfer may constitute a sale or exchange for purposes of recognizing capital gain or loss with respect to the share so transferred. For example, if the trustee transfers the share to a creditor in the insolvency proceeding in complete or partial satisfaction of such creditor's claim against the insolvent individual, capital gain or loss must be recognized by the insolvent individual to the extent of the difference between the fair market value of the share on the date of such transfer and the adjusted basis of such share. To the extent any transfer by the trustee or other fiduciary (other than a transfer back to the insolvent individual) is not for the exclusive benefit of the creditors in such insolvency proceeding, such transfer will be treated as a disposition for purposes of section 422(a) (1). Similarly, if the trustee or other fiduciary transfers the share back to the insolvent individual, any subsequent disposition of the share which is not made in respect of the insolvency proceeding and for the exclusive benefit of the creditors in such proceeding will be treated as a disposition for purposes of section 422(a) (1).

(b) *Failure to satisfy holding period.*

(1) The special tax treatment of section 421(a) is not applicable with respect to the transfer of a share of stock pursuant to the exercise of a qualified stock option if the individual disposes of the share before the expiration of the 3-year period beginning on the day after the day of the transfer of such share to him. For general rules relating to the effect of such a disqualifying disposition, see section 421(b) and paragraph (b) of § 1.421-8. For definition of the term "disposition", see section 425(c) and paragraph (c) of § 1.425-1.

(2) If an individual who has acquired a share of stock by the exercise of a qualified stock option makes a disqualifying disposition of such share, and if such disposition is a sale or exchange with respect to which a loss (if sustained) would be recognized to the individual, then, under section 422(c)(4), the amount includible in the gross income of such individual, and deductible from the income of his employer corporation, its parent or subsidiary corporation or a corporation issuing on assuming an option in a transaction to which section 425(a) applies, as compensation attributable to the exercise of such option, shall not exceed the excess (if any) of the amount realized on such sale or exchange over the adjusted basis of such share. Thus, the limitation does not apply when the disqualifying disposition is a sale described in section 1091 (relating to loss from wash sales of stock or securities), a gift, or a sale described in section 267(a)(1) (relating to sales between related persons), since a loss sustained in any such transaction would not be recognized. Subject to the limitation provided by section 422(c)(4) and this subparagraph, the amount of compensation attributable to the exercise of the option is determined under § 1.421-6 and paragraph (b) of § 1.421-8.

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

Example (1). On June 1, 1964, X Corporation grants a qualified stock option to A, an employee of X Corporation, entitling A to purchase one share of X Corporation stock. On June 1, 1965, A exercises his option and the share of X Corporation stock is transferred to him on June 10, 1965. In order to meet the 3-year holding period requirement of section 422(a)(1), A must not dispose of the share acquired by exercise of his qualified stock option before June 11, 1968.

Example (2). Assume the same facts as in example (1) and assume further that the option price was \$100, the fair market value of X Corporation stock on June 1, 1964, and that the fair market value of X Corporation stock was \$200 on June 1, 1965, the date of exercise. A makes a disposition by selling his share on June 1, 1967, for \$250. Under § 1.421-6 (relating to options to which sec. 421 does not apply) the amount of compensation attributable to A's exercise is \$100 (the difference between the fair market value of the share at the date of exercise, \$200, and the amount paid for the share, \$100). Because the amount realized, \$250, is greater than the value of the stock at exercise, section 422(c)(4) does not apply and thus does not affect the amount includible as compensation in A's gross income and deductible by X. A must include in his gross income for the taxable year in which the sale occurred \$100 as compensation and \$50 as capital gain (\$250, the amount realized from the sale, less A's basis of \$200, the \$100 paid for the share plus the \$100 increase in basis resulting from the inclusion of that amount in A's gross income as compensation attributable to the exercise of the option). For its taxable year in which the disqualifying disposition occurs, X Corporation is allowed a deduction of \$100 for compensation attributable to A's exercise of the qualified stock option.

Example (3). Assume the same facts as in example (2), except that A sells the share for \$150. Under section 422(c)(4), A must in-

clude only \$50 (the excess of the amount realized on such sale, \$150, over the adjusted basis of the share, \$100) in his gross income as compensation attributable to the exercise of his qualified stock option instead of the \$100 which otherwise would have been includible as compensation under § 1.421-6. A realizes no capital gain or loss as a result of the sale, since his basis for the share is \$150 (the \$100 which he paid for the share, plus the \$50 increase in basis resulting from the inclusion of that amount in A's gross income as compensation attributable to the exercise of the option). For its taxable year in which the disqualifying disposition occurs, X Corporation is allowed a deduction of \$50 for compensation attributable to A's exercise of the qualified stock option.

Example (4). Assume the same facts as in example (2), except that A sells the share for \$50. The limitation of section 422(c)(4) applies and A is not required to include any amount in gross income as compensation attributable to the exercise of his qualified stock option. A is allowed a capital loss of \$50 (the difference between the amount realized on the sale, \$50, and the adjusted basis of the share, \$100). X Corporation is not allowed any deduction for compensation attributable to A's exercise of the qualified stock option and disqualifying disposition.

Example (5). Assume the same facts as in example (3) except that A sells the share to his son for \$150. Under section 267, a loss sustained in such a sale would not be recognized. Therefore, the limitation of section 422(c)(4) does not apply. Accordingly, under § 1.421-6, A must include \$100 (the difference between the fair market value of the share at the date of exercise, \$200, and the amount paid for the share, \$100) in his gross income as compensation attributable to the exercise of his qualified stock option in the taxable year in which the disqualifying disposition occurred. A will recognize no capital gain or loss on the transaction. X Corporation will be allowed a \$100 deduction for compensation paid to A in its taxable year in which the disqualifying disposition occurred.

Example (6). Assume the same facts as in example (3) except assume that, as a result of the failure of a good-faith attempt to set the option price at the fair market value of X Corporation stock on the date of grant, the option price was set at \$90 instead of \$100. Under section 422(c)(1), A includes \$15 (the lesser of 150 percent of the difference between the option price, \$90, and the fair market value of the share at grant, \$100; or the difference between the option price, \$90, and the fair market value of the share at exercise, \$200) in his gross income as compensation in the year of exercise. Under section 421(a)(2), X Corporation is allowed no deduction at such time. Upon his sale of the share, A will include \$45 (the excess of the amount realized on such sale, \$150, over the adjusted basis of the share, \$105 (\$90, the option price, plus \$15, the amount included in A's gross income as compensation at exercise)) in his gross income as compensation attributable to his exercise in the taxable year in which the disqualifying disposition occurs. A will have no capital gain or loss as a result of such sale. Under section 422(c)(4), X Corporation will be allowed a deduction of \$45 as compensation attributable to A's exercise, in the taxable year of A's disqualifying disposition.

§ 1.422-2 Qualified stock options defined.

(a) *Qualified stock option defined.*
 (1) (i) The term "qualified stock option" means an option which meets the requirements of section 422(b)(1) through (7) and this section. Section 422(b)(1)

requires that a qualified stock option be granted pursuant to a plan which meets certain requirements. See paragraph (b) of this section. However, options granted after December 31, 1963, and before January 1, 1965, need not be granted under an option plan to be qualified stock options. See paragraph (b)(4) of this section. Section 422(b)(2) provides that in order for an option to be a qualified stock option it must be granted within 10 years of the adoption of the plan or the date of stockholder approval, whichever is earlier. In order to grant qualified stock options after the expiration of such 10-year period, a new plan must be adopted and approved. See paragraph (c) of this section. A new plan may retain all of the terms of the old plan or may include new terms. Paragraphs (3) through (6) of section 422(b) establish certain requirements which must be met by the terms of a qualified stock option. An option which, when granted, does not by its terms meet these requirements cannot be a qualified stock option. See paragraphs (d) through (g) of this section. However, if the terms of an option granted after December 31, 1963, are amended before January 1, 1965, to permit the option to satisfy the requirements of section 422(b)(3), (4), or (5), such amendment will be given retroactive effect. See paragraphs (d)(2), (e)(3), and (f)(3)(ii) of this section. In addition, if the terms of an option are amended at any time to permit such option to meet the requirement of section 422(b)(6), such amendment will be given retroactive effect. See section 425(h)(3)(B) and paragraph (e)(5)(ii) of § 1.425-1. Section 422(b)(7) bars the grant of a qualified stock option to any employee whose stock ownership exceeds the limits provided by such section. To the extent the grant of an option entitles the employee to purchase stock in excess of such limitation, the option cannot be a qualified stock option. See paragraph (h) of this section.

(ii) The determination of whether a particular option is a qualified stock option is made at the time such option is granted. Accordingly, except as is otherwise specifically provided by sections 421 through 425 and the regulations thereunder, events subsequent to the grant of an option cannot affect the status of the option. For example, an option which is granted to an employee whose stock ownership exceeds the limitation provided by section 422(b)(7) is not a qualified stock option when granted and can never become a qualified stock option, irrespective of whether the individual's stock ownership is within such limitation at the time such option is exercised.

(2) Section 422 and this section do not apply to an option which is a restricted stock option.

(b) *Option plan.* (1) A qualified stock option granted after December 31, 1964, must be granted pursuant to a plan which is approved by the stockholders of the granting corporation within 12 months before or after the date the plan is adopted. The approval of the stock-

holders must comply with all applicable provisions of the corporate charter and bylaws, and the law of the State of incorporation and must represent the express consent of stockholders holding at least a majority of the voting stock of the corporation voting in person or by proxy at a duly held stockholders' meeting. Thus, if neither the charter, bylaws or applicable State law prescribes the degree of stockholder approval required for the granting of qualified options, the approval of stockholders holding a majority of the voting stock of the corporation voting at a duly held meeting will suffice. However, if the applicable law requires that stockholders holding two-thirds of the voting stock must approve the granting of such options, such two-thirds requirement must be met.

(2) The plan required by section 422 must be approved within 12 months before or after the date the plan is adopted. Ordinarily, a plan is adopted when approved by the board of directors and the date of such board action will be the reference point for determining whether stockholder approval comes within the 12-month period. However, if the board's action is subject to a condition, such as shareholder approval, or the happening of a particular event, the plan is adopted on the date the condition is met or the event occurs, unless the board's resolution fixes the date of approval as the date of the board's action.

(3) The plan as adopted and approved must designate the aggregate number of shares which may be issued under the plan and the employees or class of employees eligible to receive options under the plan. A plan which merely provides that the number of shares which may be issued under options shall not exceed a stated percentage of the shares outstanding at the time of each offering or grant under the plan will not satisfy the requirement that the plan state the aggregate number of shares which may be issued under options. However, the maximum number of shares which may be issued under the plan may be stated in terms of a percentage of either the authorized, issued or outstanding shares at the date of the adoption of the plan. The requirement that the plan as adopted and approved must indicate the class of employees (or the employees) eligible to receive options will be considered satisfied by a general designation of the class of employees eligible to receive options under the plan. Thus, such designations as "key employees of the grantor corporation", "all salaried employees of the grantor corporation and its subsidiaries, including subsidiaries which become such after adoption of the plan" or "all employees of the corporation" will meet this requirement. Moreover, this requirement will be considered satisfied although the board of directors or another group is given authority to select the particular employees who are to receive options from a described class and to determine the number of shares to be optioned to each such employee. The provisions relating to the aggregate number of shares to be

issued under the plan and the class of employees (or the employees) eligible to receive options under the plan, are the only provisions of a stock option plan which require stockholder approval for purposes of section 422(b)(1). Any increase in the aggregate number of shares which may be issued under the plan (other than an increase merely reflecting a change in capitalization such as a stock dividend or stock split-up), or change in the designation of the employees or class of employees eligible to receive options under the plan will be considered as the adoption of a new plan requiring stockholder approval within the prescribed 12-month period. Any other changes in the terms of a qualified stock option plan may be made without such changes being considered the adoption of a new plan. An option intended by the grantor corporation to be a qualified option will be treated as having been issued pursuant to a plan notwithstanding that the terms of the option conflict with certain terms of the plan unless such option is issued to an employee not eligible to receive options under the plan or options have been issued on stock in excess of the aggregate number of shares which may be issued under the plan. A stock option plan which otherwise meets the requirements of section 422(b)(1) and this paragraph may be availed of for the granting of qualified stock options although the adoption and approval of such plan occurred before January 1, 1964.

(4) In the case of an option granted after December 31, 1963, and before January 1, 1965, section 422(b)(1) and (2), and this paragraph do not apply. Thus, an option granted during the calendar year 1964, which meets the requirements of section 422(b)(3) through (7), will be a qualified stock option irrespective of whether such option is granted pursuant to a plan; or, if granted pursuant to a plan, irrespective of whether such option was granted within 10 years from the date such plan was adopted or approved by shareholders, and irrespective of whether such plan specifies the employees or class of employees to whom options may be granted or the number of shares which may be granted under options.

(c) *Duration of plan.* A qualified stock option must be granted within 10 years from the date the option plan (required by section 422(b)(1) and paragraph (b) of this section) is adopted, or the date such plan is approved by the stockholders, whichever is earlier. Thus, a plan for the granting of qualified stock options expires 10 years after the adoption or approval of such plan, whichever is earlier. This is equally true whether the adoption or approval occurred before January 1, 1964 (as in the case of a restricted stock option plan which met the requirement of section 422(b)(1) when adopted and approved), or after such date. For example, a restricted stock option plan which was adopted June 1, 1958, and approved August 1, 1956, and which otherwise met the requirements of section 422(b)(1) and paragraph (b) of this section may be availed

of for the granting of qualified stock options only through May 31, 1966, after which date the plan will expire for purposes of section 422(b)(1) and (2).

(d) *Period for exercising options.* (1) A qualified stock option by its terms must not be exercisable after the expiration of 5 years from the date the option is granted. Except as provided by subparagraph (2) of this paragraph, an option which does not contain such a provision when granted cannot be a qualified stock option.

(2) An exception to the requirement of section 422(b)(3) and this paragraph is provided in the case of options granted after December 31, 1963, and before January 1, 1965. If, at the time of grant, such an option did not contain the provision required by section 422(b)(3) and this paragraph, the option may be amended before January 1, 1965, to add such a provision and such amendment will not be treated as a modification under section 425(h)(1) or § 1.425-1. Furthermore, the amendment will be considered as retroactive to the date of grant of the option and will in no way affect such grant.

(e) *Option price.* (1) In general, the option price of a qualified stock option must not be less than the fair market value of the stock subject to the option at the time the option is granted. For general rules relating to the option price see paragraph (e) of § 1.421-7. For rules relating to the determination of when an option is granted, see paragraph (c) of § 1.421-7. The option price may be determined in any manner so long as the minimum price possible under the terms of the option cannot (except as provided by section 422(c)(1) and subparagraph (2) of this paragraph) be less than the fair market value of the stock at the date of grant.

(2) (i) Under section 422(c)(1), if a share of stock is transferred to an individual pursuant to his exercise of an option which fails to qualify as a qualified stock option because there was a failure of an attempt, made in good faith, to meet the requirements of section 422(b)(4) and subparagraph (1) of this paragraph, the requirements of such section and subparagraph shall be considered to have been met. However, in such a case there shall be included as compensation (and not as gain upon the sale or exchange of a capital asset) in the gross income of the individual for his taxable year in which such option is exercised, an amount equal to the lesser of—(a) 150 percent of the difference between the option price and the fair market value of the stock at the time the option was granted, or (b) the difference between the option price and the fair market value of the stock at the time of such exercise. The basis of the stock acquired shall be increased by an amount equal to the amount included in the gross income of the individual.

(ii) Whether there was a good-faith attempt to set the option price at not less than the fair market value of the stock subject to the option at the time the option was granted depends on the facts

and circumstances surrounding the case. For example, in the case of a publicly held stock which was actively traded in an established market at the time the option was granted, determining the fair market value of such stock by any reasonable method using market quotations would establish that a good-faith attempt to meet the requirements of section 422(b)(4) and this paragraph was made. On the other hand, in the case of a stock which is not publicly traded, if it is shown, for example, that the fair market value of the stock at the date of grant was based upon an average of the fair market values as of such date set forth in the opinions of completely independent and well-qualified experts, such a showing will establish that there was a good-faith attempt to meet the requirements of section 422(b)(4) and this paragraph. However, amounts treated as unstated interest under section 483 and the regulations thereunder, if attributable to the exercise of options granted after December 31, 1964, and amounts paid as interest under a deferred payment arrangement are not includible as part of the "option price". See paragraph (e)(1) of § 1.421-7. In the case of an option granted after July 1, 1966, an attempt to set the option price at not less than fair market value will not be regarded as made in good faith where an adjustment of the option price to allow for the application of section 483 results in the option price being lower than the fair market value on which the option price was based.

(3) A further exception to the requirement of section 422(b)(4) and subparagraph (1) of this paragraph is provided in the case of options granted after December 31, 1963, and before January 1, 1965. An amendment to the terms of such an option made before January 1, 1965, to satisfy the requirements of section 422(b)(4) and subparagraph (1) of this paragraph will not be considered a modification for purposes of section 425(h) and § 1.425-1. Furthermore, the amendment will be considered as retroactive to the date of grant of the option, and will in no way affect such grant.

(f) *Prior outstanding options.* (1) (i) Section 422(b)(5) provides that a qualified stock option must, by its terms, not be exercisable while there is outstanding any qualified or restricted stock option which was granted, before the granting of the new qualified stock option, to the individual to purchase stock in his employer corporation, or in a corporation which, at the time of the granting of the new qualified stock option, is a parent or subsidiary corporation of the employer corporation, or a predecessor corporation of any of such corporations. Thus, in general, under section 422(b)(5), a qualified stock option must not be exercisable until all qualified and restricted stock options which were previously granted to the individual by the grantor corporation, or by related or predecessor corporations, have been exercised in full or have expired solely by reason of the lapse of time. The limitation of section 422(b)(5) applies irre-

spective of whether the transfer of stock pursuant to such prior outstanding restricted or qualified stock options can qualify for the special tax treatment of section 421. The exercisability of a qualified stock option is not affected by options which are not qualified or restricted stock options.

(ii) If the new qualified stock option being granted to the individual, and all the outstanding qualified and restricted stock options previously granted to the individual, are to purchase stock of the same class in the same corporation, section 422(c)(6) provides that the requirement of section 422(b)(5) will be considered to have been met if the new option by its terms is not exercisable while there is outstanding (within the meaning of section 422(c)(2)) any such previously granted option with an option price (determined as of the date of grant of the new option) higher than the option price of the new option. Thus, a qualified stock option to which section 422(c)(6) applies may be exercisable without regard to a prior outstanding option to purchase stock of the same class in the same corporation, if the option price payable under such prior outstanding option is not greater than the price of the new option.

(iii) The restriction imposed by section 422(b)(5) (or sec. 422(c)(6)(B)) must be set forth in the terms of the option unless the individual in fact has no prior outstanding qualified or restricted stock options (or restricted stock options previously granted which will become outstanding at a future time) to purchase stock of the grantor corporation, a related corporation, or a predecessor corporation of any of such corporations, at the time the new qualified stock option is granted. An option which incorporates by reference the provision of a plan containing the restrictions required by section 422(b)(5) (or 422(c)(6)(B)) will be treated as an option which by its terms sets forth such restrictions. Except as provided by this subdivision, if an option is granted which does not contain the restriction imposed by section 422(b)(5), either expressly or by incorporation by reference, such option cannot be a qualified stock option, irrespective of whether such restriction is in fact complied with at the time the option is exercised, and irrespective of whether the plan under which the option is granted contains the restriction required by section 422(b)(5). If the terms of an option granted after December 31, 1963, and before January 1, 1965, are amended before January 1, 1965, to satisfy the requirements of this subdivision, the amendment will not be considered a modification for purposes of section 425(h) and § 1.425-1, the amendment will be considered as retroactive to the date of grant of the option, and the amended option will be treated as an outstanding qualified stock option as of the date of the original grant.

(2) For purposes of section 422(b)(5) and this paragraph, the term "predecessor corporation" means a corporation which was a party to a transaction described in section 425(a) (irrespective of

whether a substitution or assumption under such section was in fact effected) with the grantor corporation, or a corporation which, at the time the new qualified stock option is granted, is a related corporation of the grantor corporation, or a predecessor corporation of any of such corporations.

(3) (i) Except as is otherwise provided by this subparagraph, for purposes of section 422(b)(5), a qualified or restricted stock option is treated as outstanding according to its original terms until such option is exercised in full or expires by reason of the lapse of time. Thus, for example, if an option outstanding according to its terms for 5 years is revised to shorten to 1 year the period during which it may be exercised, such option is treated as outstanding for 5 years from the original date of grant for purposes of section 422(b)(5), notwithstanding the revision. If any portion of such an option is not exercised, such portion will be treated as outstanding until the expiration of the maximum period for which such portion, according to the terms of the option when granted, could have been exercised under any circumstances. A qualified or restricted stock option previously held by an individual and replaced in a transaction to which section 425(a) applies will not thereafter be treated as outstanding. However, if a qualified or restricted stock option is modified and under section 425(h) such modification is considered as the granting of a new option (even though for other purposes only one option is regarded as being in existence), the original qualified or restricted stock option continues for the purposes of section 422(b)(5) to be outstanding, and may prevent an exercise of the new qualified or restricted stock option until the original option has, by its original terms, expired.

(ii) A restricted stock option granted before January 1, 1964, will not be treated as outstanding for any period before the first day on which (under the terms of such option) it may be exercised. If such an option is exercisable in installments, each installment will be treated as a separate option for purposes of this rule, with each installment becoming outstanding as of the first day it becomes exercisable under the terms of the option. However, this special rule does not affect the date on which the option is treated as granted. Thus, such a restricted stock option affects the exercise of a qualified stock option granted subsequent to the grant of such a restricted stock option to the extent the qualified stock option is not exercised before the restricted stock option becomes outstanding. See example (7) under subparagraph (4) of this paragraph.

(iii) A restricted stock option terminated before January 1, 1965, will not be treated as outstanding irrespective of the reason for which such option was terminated. If, under this subdivision, the number of shares subject to a restricted stock option is reduced, such option will be treated as outstanding for purposes of section 422(b)(5) only with respect to such reduced number of shares.

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

Example (1). S Corporation is a subsidiary of P Corporation. In 1963 E was an employee of S Corporation and was granted a restricted stock option by S to buy S stock. In June of 1964 E left S and became an employee of X Corporation, where he was granted a qualified stock option to purchase X stock. X Corporation is neither a related nor predecessor corporation of P or S. On June 1, 1965, E leaves X to become an employee of P Corporation, and on such date E is granted a qualified stock option by P to purchase P stock. E's restricted stock option to buy S stock was not cancelled during 1964, and both his restricted stock option on S stock and his qualified stock option on X stock are outstanding on June 1, 1965, when E is granted a qualified stock option to purchase P stock. In order to meet the requirement of section 422(b)(5), E's qualified stock option on P stock must, by its terms, not be exercisable until E's restricted stock option on S stock is exercised in full or expires solely by reason of the lapse of time.

Example (2). E is an employee of P Corporation. E holds a restricted stock option granted June 1, 1963, and a qualified stock option granted June 1, 1965. Both options were granted to him by P to purchase P stock. E has been granted no other qualified or restricted stock options by P, a related corporation, or a predecessor corporation of any of such corporations. The price payable under E's restricted stock option as of June 1, 1965, is \$100; the option price of E's qualified stock option is \$90. On June 1, 1966, P grants another qualified stock option to E to purchase P stock at \$95. Under section 422(b)(5) and (c)(6), neither of E's qualified stock options may be exercisable until E's restricted stock option is exercised in full or expires solely by reason of the lapse of time. Assuming the restricted stock option is fully exercised on June 1, 1967, E will be free to exercise either his 1965 or 1966 qualified stock option.

Example (3). Assume the same facts as in example (2). On November 30, 1964, P cancels E's restricted stock option and in exchange therefor issues a qualified stock option to E in place of the cancelled restricted stock option. For purposes of section 422(b)(5), E's restricted stock option is treated as terminated and no longer outstanding as of such date, and will not affect the exercise of E's 1964, 1965, or 1966 qualified stock options. The qualified stock option issued in place of E's restricted stock option will be treated as outstanding for purposes of section 422(b)(5) as of November 30, 1964.

Example (4). Assume the same facts as in example (3) except assume that the cancellation of the restricted stock option takes place on November 30, 1965, and that the new option is a qualified stock option as of such date. Assume further that the option prices are as follows:

Restricted stock option	\$100
Qualified stock option (granted June 1, 1965)	90
Qualified stock option (granted November 30, 1965, upon cancellation of restricted stock option)	85
Qualified stock option (granted June 1, 1966)	95

and that each qualified stock option runs 5 years from grant, and that the restricted stock option, according to its terms when granted, would have expired solely by reason of the lapse of time at the close of business on May 31, 1969. Under section 422(b)(5), and (c)(2) and (6), E's restricted stock option is treated as outstanding according to its original terms when granted, and E can-

not exercise any of his qualified stock options until June 1, 1969 (the first day after the expiration of the original period for which E's restricted stock option was granted). On June 1, 1969, E's June 1, 1965, qualified stock option will be fully exercisable. E's November 30, 1965, qualified stock option will not be exercisable until after the full exercise or expiration of E's June 1, 1965, qualified stock option. The exercise of E's June 1, 1966, qualified stock option is barred only by E's restricted stock option. Thus, upon the expiration of E's restricted stock option, E is free to exercise either his June 1965 qualified stock option, or his June 1966 qualified stock option, while the exercise of his November 1965 qualified stock option must await the full exercise or expiration of his June 1965 qualified stock option.

Example (5). Assume the same facts as in example (4). On June 1, 1968, P Corporation sells all of its assets to M Corporation, and on such date E becomes an employee of M Corporation. Assume further that M Corporation substitutes new options to purchase M stock for the P options held by E, in a transaction to which section 425(a) applies. For purposes of section 422(b)(5), each M Corporation option received by E in substitution of a P Corporation option will be treated as outstanding to the same extent and in the same manner as the P option which it replaces. Thus, none of the M options received by E in substitution for his qualified stock options on P stock may be exercisable before June 1, 1969, and the M option issued in substitution for E's November 1965, qualified stock option may be exercisable only after the full exercise or expiration of the M option issued in substitution for E's June 1, 1965, option on P stock. If, in 1969, E is granted another qualified stock option by M Corporation, such qualified stock option will be subject to the qualified stock options granted by M to E in 1968 in substitution for E's qualified stock options to purchase P stock. The qualified stock options to purchase P stock which were replaced by M in the transaction to which section 425(a) applied will not be treated as outstanding for any purpose under section 422(b)(5).

Example (6). Assume the same facts as in example (5) except assume that M does not effect a substitution or assumption of E's P Corporation qualified stock options under section 425(a). Although P is neither a parent nor subsidiary of M, for purposes of section 422(b)(5), P is a predecessor corporation of M Corporation. Accordingly, any qualified stock options granted to E by M (or its parent or subsidiary corporations, or a predecessor corporation of any of such corporations) must, by their terms, not be exercisable until the expiration of the option periods for all of E's qualified and restricted stock options granted to E by P Corporation. Section 422(c)(6) cannot apply to permit E to exercise his M options before the expiration of the option periods of his P options because not all of E's qualified and restricted stock options which are outstanding (within the meaning of section 422(c)(2)) are to purchase stock of the same class in the same corporation.

Example (7). F is an employee of N Corporation. Prior to January 1, 1964, N granted a restricted stock option to F to purchase 100 shares of N Corporation stock at a price of \$100 per share. The option is exercisable in installments as follows: 20 shares on or after June 1, 1965; another 40 shares on or after June 1, 1967; and the last 40 shares on or after June 1, 1969. Under section 422(c)(2), each installment of F's restricted stock option will be treated as becoming outstanding as of the first day on which such installment may be exercised. Thus, under the facts given, any qualified stock options

granted to F by N Corporation to purchase N stock at less than \$100 per share will be affected by F's restricted stock option as follows: Before June 1, 1965, F may exercise such qualified stock options without regard to his restricted stock option; between May 31, 1965, and June 1, 1967, F may exercise such qualified stock options only after the full exercise of the first installment of his restricted stock option; between May 31, 1967, and June 1, 1969, F may exercise such qualified stock options only after the full exercise of the first and second installments of his restricted stock option; after May 31, 1969, F may exercise such qualified stock options only after the full exercise or expiration of all installments of his restricted stock option.

Example (8). F is an employee of N Corporation. On January 1, 1966, N grants F a qualified option to purchase 100 shares of N Corporation stock at a price of \$100 a share at any time prior to January 1, 1971. The stock is then selling at \$100 a share. On January 1, 1967, when the stock was selling at \$95 a share, N modified the option to permit F to exercise the option at any time prior to January 1, 1972. Under section 425(h) N's modification is treated as the granting of a new option to F. Although for other purposes F, after the modification, has one option to purchase 100 shares of N Corporation stock at a price of \$100 a share at any time prior to January 1, 1972, for purposes of section 422(b)(5), F is regarded as having two options, an "original" option to purchase 100 shares at \$100 a share prior to January 1, 1971, and a modified option to purchase 100 shares at \$100 a share prior to January 1, 1972. If the terms of the modified option include the language of section 422(c)(6)(B), so that section 422(b)(5) does not apply, the modified option will be exercisable immediately as there is no prior outstanding option to purchase stock at a higher price.

Example (9). F is an employee of N Corporation. On January 1, 1966, N grants F a qualified option to purchase 100 shares of N Corporation stock at a price of \$100 a share at any time prior to January 1, 1971. The stock is then selling at \$100 a share. On January 1, 1967, when the stock was selling at \$95 a share, N modified the option to permit F to purchase 100 shares of N Corporation stock at a price of \$95 a share and to exercise the option at any time prior to January 1, 1972. Under section 425(h) N's modification is treated as the granting of a new option to F. Although for other purposes F, after the modification, has one option to purchase 100 shares of N Corporation at a price of \$95 a share at any time prior to January 1, 1972, for purposes of section 422(b)(5), F is regarded as having two options. Thus, F may not exercise the modified option until January 1, 1971, as until that date, the original option is regarded as outstanding. If the option period had not been extended, F would never have been able to exercise the modified option because of the limitation of section 422(b)(5) and the existence, for the purposes of that section, of a prior outstanding option having the same expiration date as the new option.

(g) *Restriction on transferability.* A qualified stock option must, by its terms, not be transferable by the individual to whom it is granted otherwise than by will or the laws of descent and distribution, and must be exercisable, during the lifetime of such individual, only by him. For general rules relating to the restriction on transferability required by section 422(b)(6), see paragraph (b)(2) of § 1.421-7. For a limited exception to the requirement of section 422(b)(6), see section 425(h)(3).

(h) *Options granted to certain shareholders.* (1) (i) In general, an option is not a qualified stock option to the extent that, immediately after such option is granted, the optionee owns stock possessing more than 5 percent of the total combined voting power or value of all classes of stock of the employer corporation, or a related corporation of such corporation. Section 422(c)(3) provides that, in applying the limitation of section 422(b)(7), the rules of section 425(d) (relating to attribution of stock ownership) shall apply in determining the stock ownership of the individual, and stock which the individual may purchase under outstanding options (whether or not such options qualify for the special tax treatment afforded by section 421(a)) shall be treated as stock owned by the individual. An option is outstanding for purposes of sections 422(b)(7) and 422(c)(3) although under its terms it may be exercised only in installments or after the expiration of a fixed period of time. The rules of section 422(c)(2) which are applied in determining whether an option is outstanding for purposes of section 422(b)(5) do not apply with respect to section 422(b)(7) and paragraph (c)(3).

(ii) The determination of the percentage of the total combined voting power or value of all classes of stock of his employer corporation (or a related corporation of such corporation) that is owned by the individual is made by comparing the voting power or value of the shares owned (or treated as owned) by the individual to the aggregate voting power or value of all shares actually issued and outstanding immediately after the grant of the option to such individual. The aggregate voting power or value of all shares actually issued and outstanding immediately after the grant of the option does not include the voting power or value of treasury shares or shares authorized for issue under outstanding options held by the individual or any other person.

(2) If an individual is granted an option which permits him to purchase stock in excess of the limitation of section 422(b)(7) (determined by applying the rules of section 422(c)(3) and this paragraph), such option shall be treated as meeting the requirement of section 422(b)(7) to the extent that such individual could, if the option were exercised in full at the time of grant, purchase stock under such option without exceeding such limitation. If shares in excess of the number allowable under section 422(b)(7) are transferred to the individual under an option, such shares will not be treated as transferred pursuant to the exercise of a qualified stock option, irrespective of whether the stock ownership of the individual at the time of such transfer exceeds the limitation of section 422(b)(7). The shares purchased under an option described in this subparagraph which will be treated as shares transferred pursuant to the exercise of a qualified stock option will be the first shares acquired under the option. If more shares are acquired in any one exercise of the option than can qualify as

being transferred pursuant to the exercise of a qualified stock option under the rules of section 422(b)(7) and this paragraph, the individual must designate which shares are to be treated as having been transferred pursuant to the exercise of a qualified stock option.

(3) (i) If at the time the option is granted the combined equity capital of the employer corporation and its related corporations does not exceed \$2,000,000, the 5-percent limitation of section 422(b)(7) is increased by adding to such 5 percent the percentage (not higher than 5 percent) which bears the same ratio to 5 percent as the difference between such combined equity capital and \$2,000,000 bears to \$1,000,000. Thus, if the employer corporation and its related corporations have combined equity capital of \$1,000,000 or less, an employee may be granted a qualified stock option so long as the value or voting power of the stock owned (or treated as owned) by such employee does not exceed 10 percent of the total combined voting power or value of all classes of stock of any of such corporations.

(ii) (a) Section 422(c)(3) provides that the term "equity capital" means, in the case of one corporation, the sum of its money and other property (in an amount equal to the adjusted basis of such property for determining gain), less the amount of its indebtedness (other than indebtedness to shareholders). In the case of a group of corporations consisting of a parent and its subsidiary corporations, the term "equity capital" means the sum of the equity capital of each of such corporations adjusted in the manner provided by (b) of this subdivision.

(b) In determining the equity capital of a corporation which is a member of a group of corporations consisting of a parent and its subsidiary corporations, the following adjustments shall be made:

(i) The sum of the money and other property (in an amount equal to the adjusted basis of such property for determining gain) of such corporation shall be reduced by the amount included in the equity capital of such corporation in respect of: stock owned by such corporation in any other corporation in the group; cash, property, or services due such corporation by any other corporation in the group; inventory owned by such corporation, to the extent the adjusted basis (for determining gain) of such inventory includes profits realized by any other corporation in the group; and fixed assets owned by such corporation, to the extent the adjusted basis (for determining gain) of such fixed assets includes profits realized by any other corporation in the group; and

(ii) The total indebtedness of such corporation which is taken into account in determining its equity capital shall be reduced by the amount of such indebtedness which is owed to any other corporation in the group.

In making the reductions required by this subdivision, no adjustments shall be made to reflect any minority interest in intercompany profits, indebtedness, or

stock ownership; and no reduction is required to be made in respect of amounts representing profits in the inventory or fixed assets of a corporation arising from intercompany transactions which occurred before such corporation became a member of the group.

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

Example (1). E, an employee of M Corporation, owns 6,000 shares of the common stock of M Corporation, the only class of M stock outstanding. M has 100,000 shares of its common stock outstanding. M's equity capital (as defined by section 422(c)(3) and this paragraph) exceeds \$2,000,000. Since E owns 6 percent of the combined voting power or value of all classes of M Corporation stock, M cannot grant a qualified stock option to E. Any option granted to E which purports to be a qualified stock option will be treated as a compensatory option, and as such, subject to the rules of § 1.421-6 of the regulations. If E's father and brother each owned 3,000 shares of M stock, and E owned no M stock in his own name, the result in this case would be the same, since under section 425(d) a person is treated as owning stock held by his father and his brother. Similarly, the result would be the same if, instead of actually owning 6,000 shares, E merely held an option on 6,000 shares of M stock, irrespective of whether the transfer of stock under such option could qualify for the special tax treatment of section 421, since section 422(c)(3)(C) provides that stock which the individual may purchase under outstanding options shall be treated as stock owned by such individual.

Example (2). Assume the same facts as in example (1) and assume further that M is a subsidiary corporation of P Corporation. Irrespective of whether E owns any P stock, and irrespective of the amount of P's equity capital or number of P shares outstanding, E cannot receive a qualified stock option from P. This results from E's ownership of more than 5 percent of the total combined voting power of all classes of stock of a subsidiary of P Corporation, i.e., M Corporation. Thus, an individual who owns (or is treated as owning) stock in excess of the limitation of section 422(b)(7), in any corporation in a group of corporations, consisting of a parent and its subsidiary corporations, cannot receive a qualified stock option from any corporation in the group.

Example (3). F is an employee of R Corporation. R's equity capital is in excess of \$2,000,000. R has only one class of stock, of which 100,000 shares are issued and outstanding. Assuming F owns no stock in R or in any parent or subsidiary of R for purposes of section 422(b)(7), R can grant a qualified stock option to F for 5,000 shares, since immediately after the grant of the option F will be treated as owning 5,000 shares of a total of 100,000 shares actually issued and outstanding at such time. The 5,000 shares which F will be treated as owning by reason of section 422(c)(3)(C) will not be added to the 100,000 shares actually issued and outstanding immediately after the grant for purposes of determining whether F's stock ownership exceeds the limitation of section 422(b)(7).

Example (4). Assume the same facts as in example (3) and assume further that on June 1, 1965, R grants F an option, purporting to be a qualified stock option, for 5,200 shares at an option price of \$100 per share, the fair market value of R stock on such date. This option will only be a qualified stock option to the extent of 5,000 shares. Assume R transfers 5,000 shares to F pursuant to F's partial exercise of the option. Such transfer

can qualify for the special tax treatment of section 421. However, no further transfer of shares pursuant to an exercise of this option can qualify for the special tax treatment of section 421, since the option was not a qualified stock option when granted to the extent it covered more than 5,000 shares. This is true although F's stock ownership immediately after the transfer of the 5,000 shares to him does not exceed the 5-percent limitation of section 422(b)(7), since F owns only 5,200 shares (5,000 shares outright, plus 200 shares by reason of section 422(c)(3)(C)) of a total 105,000 shares actually issued and outstanding (the 100,000 shares issued and outstanding when the option was granted to F, plus an additional 5,000 shares issued and outstanding as a result of F's exercise).

Example (5). E is an employee of P Corporation. P owns 60 percent in value of the stock of S Corporation, and P and S have combined equity capital (as defined by section 422(c)(3)(A)(ii) and subparagraph (3) of this paragraph) of \$1,600,000. Since the combined equity capital of P and S is less than \$2,000,000, there may be added to the 5-percent limitation of section 422(b)(7) the additional percentage which bears the same proportion to 5 percent as the difference between the combined equity capital of P and S and \$2,000,000 (\$2,000,000 minus \$1,600,000, or \$400,000) bears to \$1,000,000. Accordingly, there may be added to the 5-percent limitation of section 422(b)(7) an additional 2 percent (\$400,000 is to \$1,000,000, as 2 percent is to 5 percent), resulting in a limitation of 7 percent (5 percent plus 2 percent) for purposes of section 422(b)(7). Thus, an option which otherwise meets the requirements of section 422(b) and which is granted to E by P or S to purchase the stock of either of such corporations will meet the requirement of section 422(b)(7) to the extent that, immediately after such option is granted, E will not own (or be treated as owning) stock in either P or S possessing more than 7 percent of the total combined voting power or value of all classes of the stock of either of such corporations which is actually issued and outstanding at such time. If, at the time the option is granted, E owns stock possessing more than 7 percent of the total combined voting power or value of the stock of either P or S, the option could not qualify as a qualified stock option, irrespective of which corporation's stock was the subject of the option.

§ 1.423 Statutory provisions; employee stock purchase plans.

Sec. 423. Employee stock purchase plans—

(a) **General rule.** Section 421(a) shall apply with respect to the transfer of a share of stock to an individual pursuant to his exercise of an option granted after December 31, 1963 (other than a restricted stock option granted pursuant to a plan described in section 424(c)(3)(B)), under an employee stock purchase plan (as defined in subsection (b)), if—

(1) No disposition of such share is made by him within 2 years after the date of the granting of the option nor within 6 months after the transfer of such share to him; and

(2) At all times during the period beginning with the date of the granting of the option and ending on the day 3 months before the date of such exercise, he is an employee of the corporation granting such option, a parent or subsidiary corporation of such corporation, or a corporation or a parent or subsidiary corporation of such corporation issuing or assuming a stock option in a transaction to which section 425(a) applies.

(b) **Employee stock purchase plan.** For purposes of this part, the term "employee stock purchase plan" means a plan which meets the following requirements:

(1) The plan provides that options are to be granted only to employees of the employer corporation or of its parent or subsidiary corporation to purchase stock in any such corporation;

(2) Such plan is approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted;

(3) Under the terms of the plan, no employee can be granted an option if such employee, immediately after the option is granted, owns stock possessing 5 percent or more of the total combined voting power or value of all classes of stock of the employer corporation or of its parent or subsidiary corporation. For purposes of this paragraph, the rules of section 425(d) shall apply in determining the stock ownership of an individual, and stock which the employee may purchase under outstanding options shall be treated as stock owned by the employee;

(4) Under the terms of the plan, options are to be granted to all employees of any corporation whose employees are granted any of such options by reason of their employment by such corporation, except that there may be excluded—

(A) Employees who have been employed less than 2 years,

(B) Employees whose customary employment is 20 hours or less per week,

(C) Employees whose customary employment is for not more than 5 months in any calendar year, and

(D) Officers, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees;

(5) Under the terms of the plan, all employees granted such options shall have the same rights and privileges, except that the amount of stock which may be purchased by any employee under such option may bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of employees, and the plan may provide that no employee may purchase more than a maximum amount of stock fixed under the plan;

(6) Under the terms of the plan, the option price is not less than the lesser of—

(A) An amount equal to 85 percent of the fair market value of the stock at the time such option is granted, or

(B) An amount which under the terms of the option may not be less than 85 percent of the fair market value of the stock at the time such option is exercised;

(7) Under the terms of the plan, such option cannot be exercised after the expiration of—

(A) Five years from the date such option is granted if, under the terms of such plan, the option price is to be not less than 85 percent of the fair market value of such stock at the time of the exercise of the option, or

(B) 27 months from the date such option is granted, if the option price is not determinable in the manner described in subparagraph (A);

(8) Under the terms of the plan, no employee may be granted an option which permits his rights to purchase stock under all such plans of his employer corporation and its parent and subsidiary corporations to accrue at a rate which exceeds \$25,000 of fair market value of such stock (determined at the time such option is granted) for each calendar year in which such option is outstanding at any time. For purposes of this paragraph—

(A) The right to purchase stock under an option accrues when the option (or any portion thereof) first becomes exercisable during the calendar year;

(B) The right to purchase stock under an option accrues at the rate provided in the option, but in no case may such rate exceed \$25,000 of fair market value of such stock

(determined at the time such option is granted) for any one calendar year; and

(C) A right to purchase stock which has accrued under one option granted pursuant to the plan may not be carried over to any other option; and

(9) Under the terms of the plan, such option is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him.

For purposes of paragraphs (3) to (9), inclusive, where additional terms are contained in an offering made under a plan, such additional terms shall, with respect to options exercised under such offering, be treated as a part of the terms of such plan.

(c) **Special rule where option price is between 85 percent and 100 percent of value of stock.** If the option price of a share of stock acquired by an individual pursuant to a transfer to which subsection (a) applies was less than 100 percent of the fair market value of such share at the time such option was granted, then, in the event of any disposition of such share by him which meets the holding period requirements of subsection (a), or in the event of his death (whenever occurring) while owning such share, there shall be included as compensation (and not as gain upon the sale or exchange of a capital asset) in his gross income, for the taxable year in which falls the date of such disposition or for the taxable year closing with his death, whichever applies, an amount equal to the lesser of—

(1) The excess of the fair market value of the share at the time of such disposition or death over the amount paid for the share under the option, or

(2) The excess of the fair market value of the share at the time the option was granted over the option price.

If the option price is not fixed or determinable at the time the option is granted, then for purposes of this subsection, the option price shall be determined as if the option were exercised at such time. In the case of the disposition of such share by the individual, the basis of the share in his hands at the time of such disposition shall be increased by an amount equal to the amount so includible in his gross income.

[Sec. 423 as added by sec. 221(a), Rev. Act 1964 (78 Stat. 63)]

§ 1.423-1 Applicability of section 421 (a).

(a) **General rule.** Subject to the provisions of section 423(c) and paragraph (k) of this section, the special rules of income tax treatment provided in section 421(a) apply with respect to the transfer of a share of stock to an individual pursuant to his exercise of an option granted after December 31, 1963, under an employee stock purchase plan provided that the following conditions are satisfied—

(1) The individual must make no disposition of such share within 2 years from the date of the granting of the option, nor within 6 months after the transfer of such share to him; and

(2) At all times during the period beginning with the date of the granting of the option and ending on the day three months before the date of such exercise, the individual must be an employee of either the corporation granting the option, a related corporation of such corporation, or a corporation or a related corporation of such corporation issuing or assuming a stock option in a transaction to which section 425(a) applies.

(b) *Cross-references.* For rules relating to the employment relationship, see paragraph (h) of § 1.421-7. For rules relating to the effect of a disqualifying disposition, see section 421(b) and paragraph (b) of § 1.421-8. For definition of the term "disposition", see section 425(c) and paragraph (c) of § 1.425-1.

§ 1.423-2 Employee stock purchase plan defined.

(a) *In general.* (1) The term "employee stock purchase plan" means a plan which meets the requirements of paragraphs (1) through (9) of section 423(b). If the terms of the plan do not satisfy the requirements of paragraphs (3) through (9) of section 423(b), such requirements may be satisfied by the terms of an offering made under such plan. However, in such a case, such requirements will be treated as satisfied only with respect to options exercised under such offering.

(2) The determination of whether a particular option is an option granted under an employee stock purchase plan is made at the time such option is granted. If the terms of an option are inconsistent with the terms of the employee stock purchase plan or an offering under such a plan, the option will not be treated as granted under an employee stock purchase plan. If such an option is granted to an employee who is entitled to the grant of an option under the terms of the plan or offering, and such employee is not granted an option under such offering which qualifies as an option granted under an employee stock purchase plan, such offering will not meet the requirements of section 423(b)(4).

(4) Accordingly, none of the options granted under such offering will be eligible for the special tax treatment of section 423(b)(4). If such an option is granted to an individual who is not entitled to the grant of an option under the terms of the plan or offering, such option will not be treated as an option granted under an employee stock purchase plan, and the grant of the option will not disqualify the plan or the options granted under such plan or offering. For example, an option granted to an individual who is ineligible to receive an option under an employee stock purchase plan by reason of his ownership of 5 percent or more of the voting power or value of the stock of the grantor corporation (or a related corporation of such corporation), will not be treated as an option granted under an employee stock purchase plan, and the grant of such an option will not disqualify options granted under such plan from the special tax treatment of section 421. If all the options granted under an offering do not give the respective optionees the same rights and privileges, none of the options granted under such offering will be treated as having been granted under an employee stock purchase plan. If, at the time an option is granted, it qualifies as an option granted under an employee stock purchase plan, but the terms of the option are not in fact met, the option will not qualify for the special tax treat-

ment of section 421. However, the failure of such an option to qualify for the special tax treatment of section 421, will not disqualify other options granted under the plan.

(b) *Options restricted to employees.* An employee stock purchase plan must provide that options are to be granted only to employees of the employer corporation or of its related corporations to purchase stock in any such corporation. If such a provision is not included in the terms of the plan, the plan will not be an employee stock purchase plan and options granted under such plan will not qualify for the special tax treatment of section 421. For rules relating to the employment requirement, see paragraph (h) of § 1.421-7.

(c) *Stockholder approval.* (1) An employee stock purchase plan must be approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted. The approval of the stockholders must comply with all applicable provisions of the corporate charter and bylaws, and the law of the State of incorporation and must represent the express consent of stockholders holding at least a majority of the voting stock of the corporation voting in person or by proxy at a duly held stockholders' meeting. Thus, if neither the charter, bylaws or applicable State law prescribes the degree of stockholder approval required for the granting of qualified options, the approval of stockholders holding a majority of the voting stock of the corporation voting at a duly held meeting will suffice. However, if the applicable State law requires that stockholders holding two-thirds of the voting stock must approve the granting of such options, such two-thirds requirement must be met.

(2) The plan required by section 423 must be approved within 12 months before or after the date the plan is adopted. Ordinarily, a plan is adopted when approved by the board of directors and the date of such board action will be the reference point for determining whether stockholder approval comes within the 12-month period.

(3) The plan as adopted and approved must designate the aggregate number of shares which may be issued under the plan, and the corporations or class of corporations whose employees will be offered options under such plan. A plan which merely provides that the number of shares which may be issued under options shall not exceed a stated percentage of the shares outstanding at the time of each offering or grant under the plan will not satisfy the requirement that the plan state the aggregate number of shares which may be issued under options. However, the maximum number of shares which may be issued under the plan may be stated in terms of a percentage of either the authorized, issued or outstanding shares at the date of the adoption of the plan. The provisions relating to the aggregate number of shares to be issued under the plan and the employees (or class of employees) eligible to receive options under the plan,

are the only provisions of a stock option plan which require stockholder approval for purposes of section 423(b)(1).

(4) Any increase in the aggregate number of shares which may be issued under the plan (other than an increase merely reflecting a change in capitalization such as a stock dividend or stock split-up) will be treated as the adoption of a new plan requiring approval of the stockholders within 12 months of such adoption. Similarly, a change in the designation of corporations whose employees may be offered options under the plan will be treated as the adoption of a new plan requiring stockholder approval unless the plan provides that designations of participating corporations may be made from time to time from among a group consisting of the grantor corporation and its parent or subsidiary corporations. The group from among which such changes and designations are permitted without additional stockholder approval may include corporations having become parents or subsidiaries of the grantor after the adoption and approval of the plan. Any other changes in the terms of an employee stock purchase plan may be made without such changes being considered the adoption of a new plan.

(5) A plan which otherwise meets the requirements of section 423(b) and this section may be used as an employee stock purchase plan although the adoption and approval of such plan occurred before January 1, 1964.

(d) *Options granted to certain shareholders.* (1) An employee stock purchase plan must by its terms provide that no employee can be granted an option if such employee, immediately after the option is granted, owns stock possessing 5 percent or more of the total combined voting power or value of all classes of stock of the employer corporation or its parent or subsidiary corporation. In determining whether the stock ownership of an employee equals or exceeds this 5 percent limit, the rules of section 425(d) (relating to attribution of stock ownership) shall apply, and stock which the employee may purchase under outstanding options (whether or not such options qualify for the special tax treatment afforded by section 421(a)) shall be treated as stock owned by the employee. An option is outstanding for purposes of section 423(b)(3) although under its terms it may be exercised only in installments or after the expiration of a fixed period of time. If an option is granted to an individual whose stock ownership (as determined under this paragraph for purposes of section 423(b)(3)) exceeds the limitation of section 423(b)(3), no portion of such option will be treated as having been granted under an employee stock purchase plan.

(2) The determination of the percentage of the total combined voting power or value of all classes of stock of his employer corporation (or a related corporation of such corporation) that is owned by the individual is made by comparing the voting power or value

of the shares owned (or treated as owned) by the individual to the aggregate voting power or value of all shares actually issued and outstanding immediately after the grant of the option to such individual. The aggregate voting power or value of all shares actually issued and outstanding immediately after the grant of the option does not include the voting power or value of treasury shares or shares authorized for issue under outstanding options held by the individual or any other person.

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

Example (1). E, an employee of M Corporation, owns 6,000 shares of the common stock of M Corporation, the only class of M stock outstanding. M has 100,000 shares of its common stock outstanding. Since E owns 6 percent of the combined voting power or value of all classes of M Corporation stock, M cannot grant an option to E under M's employee stock purchase plan. If E's father and brother each owned 3,000 shares of M stock and E owned no M stock in his own name, the result in this case would be the same, since under section 425(d) a person is treated as owning stock held by his father and his brother. Similarly, the result would be the same if, instead of actually owning 6,000 shares, E merely held an option on 6,000 shares of M stock, irrespective of whether the transfer of stock under such option could qualify for the special tax treatment of section 421, since section 423(b)(3) provides that stock which the employee may purchase under outstanding options shall be treated as stock owned by such employee.

Example (2). Assume the same facts as in example (1) and assume further that M is a subsidiary corporation of P Corporation. Irrespective of whether E owns any P stock, E cannot receive an option from P under P's employee stock purchase plan since he owns 5 percent of the total combined voting power of all classes of stock of a subsidiary of P Corporation, i.e., M Corporation. Thus, an individual who owns (or is treated as owning) stock in excess of the limitation of section 423(b)(3), in any corporation in a group of corporations, consisting of a parent and its subsidiary corporations, cannot receive an option under an employee stock purchase plan from any corporation in the group.

Example (3). F is an employee of R Corporation. R has only one class of stock, of which 100,000 shares are issued and outstanding. Assuming F owns no stock in R or in any parent or subsidiary of R for purposes of section 423(b)(3), R can grant an option to F under its employee stock purchase plan for 4,999 shares, since immediately after the grant of the option, F would not own 5 percent or more of the combined voting power or value of all classes of R stock actually issued and outstanding at such time. The 4,999 shares which F would be treated as owning under section 423(b)(3) would not be added to the 100,000 shares actually issued and outstanding immediately after the grant for purposes of determining whether F's stock ownership exceeds the limitation of section 423(b)(3).

Example (4). Assume the same facts as in example (3) and assume further that on June 1, 1965, R grants F an option, purportedly under its employee stock purchase plan, for 5,000 shares. No portion of this option will be treated as granted under an employee stock purchase plan.

(e) *Employees covered by plan.* (1) [Reserved]

(2) For purposes of section 423(b)(3) the existence of the employment relationship between an individual and the corporation participating under the plan will be determined under paragraph (h) of § 1.421-7 (relating to employment relationship).

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

Example (1). M Corporation has a stock purchase plan which meets all the requirements of section 423(b) except that by its terms, options are not required to be granted to employees whose weekly rate of pay is less than \$100. As a matter of corporate practice, M grants options under its plan to all employees, irrespective of their weekly rate of pay. M's plan is not an employee stock purchase plan.

Example (2). Assume the same facts as in example (1) and assume further that the first offering under M's plan provides by its terms that options will be granted to all employees of M Corporation. With respect to options exercised under such offering the terms of such offering will be treated as part of the terms of M's plan. Accordingly, stock transferred pursuant to options exercised under such offering will be treated as stock transferred pursuant to the exercise of options granted under an employee stock purchase plan for purposes of section 421.

(f) *Equal rights and privileges.* (1) An employee stock purchase plan must, by its terms, provide that all employees granted options under such plan shall have the same rights and privileges; however, a plan will not fail to satisfy this requirement merely because the amount of stock which may be purchased by any employee under such plan is determined on the basis of a uniform relationship to the total compensation, or the basic or regular rate of compensation of employees, or because the plan provides that no employee may purchase more than a maximum amount of stock fixed under the plan. Thus, the provisions applying to one option under an offering (such as the provisions relating to the method of payment for the stock and the determination of the purchase price per share) must apply to all other options under such offering in the same manner. If all the options granted under a plan or offering do not, by their terms, give the respective optionees the same rights and privileges, none of such options shall be treated as having been granted under an employee stock purchase plan for purposes of section 421.

(2) The requirements of section 423(b)(5) and this paragraph do not prevent the maximum amount of stock which an employee may purchase from being determined on the basis of a uniform relationship to the total compensation, or the basic or regular rate of compensation, of all employees. For example, if an employee stock purchase plan provides that the maximum amount of stock which each employee may purchase under the offering is one share for each \$100 of annual gross pay, options granted under such offering will be treated as meeting the requirement of section 423(b)(5). However, such a provision must not exclude employees from participation under the plan or offering. For example, a plan which provides for

the grant of options based on one share for each \$100 of annual gross pay in excess of \$10,000 will not meet the requirements of section 423(b)(5).

(3) [Reserved]

(g) *Option price.* (1) An employee stock purchase plan must, by its terms, provide that the option price will not be less than the lesser of—

(i) An amount equal to 85 percent of the fair market value of the stock at the time such option is granted, or

(ii) An amount which under the terms of the option may not be less than 85 percent of the fair market value of the stock at the time such option is exercised.

For definition of the term "option price", and general rules relating to such term, see paragraph (e) of § 1.421-7. For rules relating to the determination of when an option is granted, see paragraph (c) of § 1.421-7. Any option which does not meet the minimum pricing requirements of section 423(b)(6) and this paragraph will not be treated as granted under an employee stock purchase plan irrespective of whether the plan itself or the offering satisfies such requirements. If such an option is granted to an employee who is entitled to the grant of an option under the terms of the plan or offering, and such employee is not granted an option under such offering which qualifies as an option granted under an employee stock purchase plan, such offering will not meet the requirements of section 423(b)(4). Accordingly, none of the options granted under such offering will be eligible for the special tax treatment of section 423(b)(4).

(2) The option price may be stated either as a percentage or as a dollar amount. If the option price is stated as a dollar amount, the requirement of section 423(b)(6) and this paragraph can only be met by a plan or offering in which the price is fixed at not less than 85 percent of the fair market value of the stock at the time the option is granted. If the fixed price is less than 85 percent of the fair market value of the stock at grant, the option cannot meet the requirement of section 423(b)(6) even if a decline in the fair market value of the stock results in such fixed price being not less than 85 percent of the fair market value of the stock at the time the option is exercised, since such a result was not certain to occur under the terms of the option.

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

Example (1). M Corporation has an employee stock purchase plan which provides that the option price will be 85 percent of the fair market value of the stock at grant, or 85 percent of the stock at exercise, whichever amount is the lesser. Upon the exercise of an option issued under M's plan, M agrees to accept an amount which is less than the minimum amount allowable under the terms of such plan. Notwithstanding that the option was issued under an employee stock purchase plan, the transfer of stock pursuant to the exercise of such option does not satisfy the requirement of section 423(b)(6) and cannot qualify for the special tax treatment of section 421.

Example (2). Assume the same facts as in example (1) and assume further that at the time of grant, the fair market value of M Corporation stock is \$100 per share and that the option price is set at 85 percent of the fair market value of M stock at exercise, but not less than \$80 per share. The option satisfies the requirement of section 422(b)(6), and can qualify for the special tax treatment of section 421.

Example (3). Assume the same facts as in example (2), except assume that the option price is set at 85 percent of the fair market value of M stock at exercise, but not more than \$80 per share. This option cannot satisfy the requirement of section 423(b)(6) irrespective of whether, at the time the option is exercised, 85 percent of the fair market value of M stock is \$80 or less.

(h) *Option period.* An employee stock purchase plan must, by its terms, provide that options granted under such plan cannot be exercised after the expiration of 27 months from the date of grant unless, under the terms of such plan, the option price is to be not less than 85 percent of the fair market value of the stock at the time of the exercise of the option. If the option price is to be not less than 85 percent of the fair market value of the stock at the time the option is exercised, then the option period provided under the plan must not exceed 5 years from the date of grant. If the requirement of section 423(b)(7) is not met by the terms of the plan or offering, options issued under such plan or offering will not be treated as options granted under an employee stock purchase plan irrespective of whether such options, by their terms, are exercisable beyond the period allowable under section 423(b)(7) and this paragraph. An option which provides that the option price is to be not less than 85 percent of the fair market value of the stock at exercise may have an option period of 5 years irrespective of whether the fair market value of the stock at exercise is more or less than the fair market value of such stock at grant. However, if the option provides that the option price is to be 85 percent of the fair market value of the stock at exercise, but not more than some other fixed amount, then irrespective of the price paid on exercise, the option period must not be more than 27 months.

(i) *Restriction on amount of optioned stock.* (1) Under section 423(b)(8), an employee stock purchase plan must, by its terms, provide that no employee may be permitted to purchase stock under all the employee stock purchase plans of his employer corporation and its related corporations at a rate which exceeds \$25,000 in fair market value of such stock (determined at the time the option is granted) for each calendar year in which any such option granted to such individual is outstanding at any time. In applying the limitation of section 423(b)(8) —

(i) The right to purchase stock under an option is deemed to accrue when the option (or any portion thereof) first becomes exercisable during the calendar year;

(ii) The right to purchase stock under an option accrues at the rate provided in the option, but in no case may such rate

exceed \$25,000 of fair market value of such stock (determined at the time such option is granted) for any one calendar year; and

(iii) A right to purchase stock which has accrued under one option granted pursuant to the plan may not be carried over to any other option.

If an option is granted under an employee stock purchase plan which satisfies the requirement of section 423(b)(8), but such option gives the optionee the right to buy stock in excess of the maximum rate allowable under such section and this paragraph, no portion of such option will be treated as having been granted under an employee stock purchase plan. Furthermore, if the option was granted to an employee entitled to the grant of an option under the terms of the plan or offering, and such employee is not granted an option under such offering which qualifies as an option granted under an employee stock purchase plan, such offering will not meet the requirements of section 423(b)(4). Accordingly, none of the options granted under such offering will be eligible for the special tax treatment of section 421.

(2) The limitation of section 423(b)(8) and this paragraph applies only to options granted under employee stock purchase plans and does not limit the amount of stock which an employee may purchase under qualified stock options (as defined in section 422(b)), restricted stock options (as defined in section 424(b)), or any other stock options (except those to which section 423 applies). Stock purchased under options to which section 423 does not apply will not limit the amount which an employee may purchase under an employee stock purchase plan, except for purposes of the 5-percent stock ownership provision of section 423(b)(3).

(3) Under the limitation of section 423(b)(8), an individual may purchase up to \$25,000 of stock (based on the fair market value of such stock at the time the option was granted) in each calendar year during which an option granted to such individual under an employee stock purchase plan is outstanding. Alternatively, an individual may purchase more than \$25,000 of stock (based on the fair market value of such stock at the time the option was granted) in a calendar year, so long as the total amount of stock which he purchases does not exceed \$25,000 in fair market value of such stock (determined at the time the option was granted) for each calendar year in which the option was outstanding. If in any calendar year the individual holds two or more outstanding options granted under employee stock purchase plans of his employer corporation, or a related corporation of such corporation, his purchases of stock attributable to such year under all such options must not exceed \$25,000 in fair market value of such stock (determined at the time such options were granted). Under an employee stock purchase plan, an individual may not purchase stock in anticipation that the option will be outstanding for some future year. Thus, the individual may

purchase only the amount of stock which does not exceed the limitation of section 423(b)(8) for the year of the purchase and for preceding years during which the option was outstanding. Thus, the amount of stock which may be purchased under an option depends on the number of years in which the option is actually outstanding. The amount of stock which may be purchased under an employee stock purchase plan may not be increased by reason of the failure to grant an option in an earlier year under such plan, or by reason of the failure to exercise an earlier option. For example, if an option is granted to an individual and expires without having been exercised at all, the failure to exercise the option does not increase the amount of stock which such individual may be permitted to purchase under an option granted in a year following the year of such expiration. If an option granted under an employee stock purchase plan is outstanding in more than one calendar year, stock purchased pursuant to the exercise of such an option will be applied first, to the extent allowable under section 423(b)(8) and this paragraph, against the \$25,000 limitation for the earliest year in which such option was outstanding, then, against the \$25,000 limitation for each succeeding year, in order. For example, if an individual purchases \$60,000 in fair market value of stock (determined at the time the option was granted) by the exercise of an option granted under an employee stock purchase plan of his employer corporation, and if such option was outstanding in 3 calendar years, then \$25,000 in fair market value of such stock (determined at the time the option was granted) will be attributed to the first calendar year in which such option was outstanding, another \$25,000 in fair market value of such stock will be attributed to the second calendar year in which such option was outstanding, and the remaining \$10,000 in fair market value of such stock will be attributed to the last calendar year in which such option was outstanding. Thus, the individual may receive a right under another option granted under such employee stock purchase plan (or under an employee stock purchase plan of a parent or subsidiary corporation of his employer corporation) entitling him to purchase another \$15,000 in fair market value of such stock (determined as of the date such option is granted) for such last calendar year.

(4) The application of section 423(b)(8) and this paragraph may be illustrated by the following examples:

Example (1). Assume that P Corporation maintains an employee stock purchase plan and that E is employed by P. On June 1, 1964, P grants E an option under the plan to purchase a total of 750 shares of P stock at \$85 per share. On such date, the fair market value of P stock is \$100 per share. The option provides that it cannot be exercised after May 31, 1966. Under section 423(b)(8), the option must not permit E to purchase more than 250 shares of P stock during the calendar year 1964, since 250 shares are equal to \$25,000 in fair market value of P stock determined at the time of grant. During the

calendar year 1965, E may purchase under such option an amount of P stock equal to the difference between \$50,000 in fair market value of P stock (determined at the time the option was granted) and the fair market value of P stock (determined at the time of grant of the option) purchased during 1964. During the calendar year 1966, E may purchase an amount of P stock equal to the difference between \$75,000 in fair market value of such stock (determined at the time of grant of the option) and the total amount of the fair market value of such stock (determined at the time of grant of the option) purchased under such option during the calendar years 1964 and 1965. E may purchase \$25,000 of stock for the year 1964 and \$25,000 of stock for the year 1966, although the option was outstanding for only a part of each of such years. However, E may not be granted another option under an employee stock purchase plan of P or a related corporation to purchase stock of any of such corporations during the calendar years 1964, 1965, and 1966, so long as the option granted June 1, 1964, is outstanding. If this option permitted E to purchase only \$15,000 of P's stock for each year it is outstanding, then E could be granted another option by P, or by a related corporation, in 1964, permitting him to purchase an additional \$10,000 of stock for each year it is outstanding.

Example (2). Assume the same facts as in example (1), and assume further that the option granted to E in 1964 is terminated in 1965 without any part of such option having been exercised, and that subsequent to such termination and during 1965, E is granted another option under P's employee stock purchase plan. Under such option, E may be permitted to purchase \$25,000 of stock for 1965. On the other hand, if, in 1966, E exercised the option granted to him in 1964 and purchased 600 shares of P stock, 500 shares, the maximum amount of stock which could have been purchased in 1965 under the option, is treated as having been purchased for the years 1964 and 1965. Thus, only 100 shares of the stock are treated as having been purchased for 1966, and E may be permitted under the new option to purchase for 1966 stock having a fair market value of \$15,000 at the time the new option is granted.

(j) *Restriction on transferability.* An employee stock purchase plan must, by its terms, provide that options granted under such plan are not transferable by the optionee otherwise than by will or the laws of descent and distribution, and must be exercisable, during his lifetime, only by him. For general rules relating to the restriction on transferability required by section 423(b)(9), see paragraph (b)(2) of § 1.421-7. For a limited exception to the requirement of section 423(b)(9), see section 425(h)(3).

(k) *Special rule where option price is between 85 percent and 100 percent of value of stock.* (1) (i) If all the conditions necessary for the application of section 421(a) exist, section 423(c) provides additional rules which are applicable in cases where, at the time the option is granted, the option price per share is less than 100 percent (but not less than 85 percent) of the fair market value of such share. In such case, upon the disposition of such share by the individual after the expiration of the 2-year and the 6-month holding periods, or upon his death while owning such share (whether occurring before or after the expiration of such periods), there shall be included in the individual's gross income as compensation (and not as gain upon the

sale or exchange of a capital asset) the lesser of—

(a) The amount, if any, by which the price paid under the option was exceeded by the fair market value of the share at the time the option was granted, or

(b) The amount, if any, by which the price paid under the option was exceeded by the fair market value of the share at the time of such disposition or death.

For purposes of applying the rules of section 423(c) and this paragraph, if the option price is not fixed or determinable at the time the option is granted, the option price will be computed as if the option had been exercised at such time. The amount of compensation resulting from the application of section 423(c) and this paragraph shall be included in the individual's gross income for the taxable year in which the disposition occurs, or for the taxable year closing with his death, whichever event results in the application of section 423(c).

(ii) The application of the special rules provided in section 423(c) shall not affect the rules provided in section 421(a) with respect to the individual exercising the option, the employer corporation, or its parent or subsidiary corporation. Thus, notwithstanding the inclusion of an amount as compensation in the gross income of an individual, as provided in section 423(c), no income results to the individual at the time the stock is transferred to him, and no deduction under section 162 is allowable at any time to the employer corporation or its parent or subsidiary with respect to such amount.

(iii) If, during his lifetime, the individual exercises an option granted under an employee stock purchase plan, but such individual dies before the stock is transferred to him pursuant to his exercise of the option, the transfer of such stock to the individual's executor, administrator, heir, or legatee is deemed, for the purpose of sections 421 and 423, to be a transfer of the stock to the individual exercising the option and a further transfer by reason of death from such individual to his executor, administrator, heir, or legatee.

(2) If the special rules provided in section 423(c) are applicable to the disposition of a share of stock by an individual, the basis of such share in the individual's hands at the time of such disposition, determined under section 1011, shall be increased by an amount equal to the amount includible as compensation in his gross income under section 423(c). However, the basis of a share of stock acquired after the death of an employee by the exercise of an option granted to such employee under an employee stock purchase plan shall be determined in accordance with the rules of section 421(c) and paragraph (c) of § 1.421-8. If the special rules provided in section 423(c) are applicable to a share of stock upon the death of an individual, the basis of such share in the hands of the estate or the person receiving the stock by bequest or inheritance shall be determined under section 1014, and shall not be increased by reason of the inclusion upon the decedent's

death of any amount in his gross income under section 423(c). See example (9) of this paragraph with respect to the determination of basis of the share in the hands of a surviving joint owner.

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

Example (1). On June 1, 1964, the X Corporation grants to E, an employee, an option under X's employee stock purchase plan to purchase a share of X Corporation's stock for \$85. The fair market value of the X Corporation stock on such date is \$100 per share. On June 1, 1965, E exercises the option and on that date the X Corporation transfers the share of stock to E. On January 1, 1967, E sells the share for \$150, its fair market value on that date. E makes his income tax return on the basis of the calendar year. The income tax consequences to E and X Corporations are as follows: (i) compensation in the amount of \$15 is includible in E's gross income for 1967, the year of the disposition of the share. The \$15 represents the difference between the option price (\$85) and the fair market value of the share on the date the option was granted (\$100), since such value is less than the fair market value of the share on the date of disposition (\$150). For the purpose of computing E's gain or loss on the sale of the share, E's cost basis of \$85 is increased by \$15, the amount includible in E's gross income as compensation. Thus, E's basis for the share is \$100. Since the share was sold for \$150, E realizes a gain of \$50, which is treated as long-term capital gain; (ii) the X Corporation is entitled to no deduction under section 162 at any time with respect to the share transferred to E.

Example (2). Assume the same facts as in example (1), except assume that E sells the share of X Corporation stock on January 1, 1968, for \$75, its fair market value on that date. Since \$75 is less than the option price (\$85), no amount in respect of the sale is includible as compensation in E's gross income for 1968. E's basis for determining gain or loss on the sale is \$85. Since E sold the share for \$75, E realized a loss of \$10 on the sale, which loss is treated as a long-term capital loss.

Example (3). Assume the same facts as in example (1), except assume that the option provides that the option price shall be 90 percent of the fair market value of the stock on the day the option is exercised. On June 1, 1965, when the option is exercised, the fair market value of the stock is \$120 per share so that E pays \$108 for the share of the stock. Compensation in the amount of \$10 is includible in E's gross income for 1967, the year of the disposition of the share. This is determined in the following manner: The excess of the fair market value of the stock at the time of the disposition (\$150) over the price paid for the share (\$108) is \$42; and the excess of the fair market value of the stock at the time the option was granted (\$100) over the option price, computed as if the option had been exercised at such time (\$90), is \$10. Accordingly, \$10, the lesser, is includible in gross income. In this situation, E's cost basis of \$108 is increased by \$10, the amount includible in E's gross income as compensation. Thus, E's basis for the share is \$118. Since the share was sold for \$150, E realizes a gain of \$32, which is treated as long-term capital gain.

Example (4). Assume the same facts as in example (1), except assume that instead of selling the share on January 1, 1967, E makes a gift of the share on that day. In such case, \$15 is includible as compensation in E's gross income for 1967. E's cost basis of \$85 is increased by \$15, the amount includible

ble in E's gross income as compensation. Thus, E's basis for the share is \$100, which becomes the donee's basis, as of the time of the gift, for determining gain or loss.

Example (5). Assume the same facts as in example (2) except assume that instead of selling the share on January 1, 1968, E makes a gift of the share on that date. Since the fair market value of the share on that day (\$75) is less than the option price (\$85), no amount in respect of the disposition by way of gift is includible as compensation in E's gross income for 1968. E's basis for the share is \$85, which becomes the donee's basis, as of the time of the gift, for the purpose of determining gain. The donee's basis for the purpose of determining loss, determined under section 1015(a), is \$75 (fair market value of the share at the date of gift).

Example (6). Assume the same facts as in example (1), except assume that after acquiring the share of stock on June 1, 1965, E dies on August 1, 1966, at which time the share has a fair market value of \$150. Compensation in the amount of \$15 is includible in E's gross income for the taxable year closing with his death, such \$15 being the difference between the option price (\$85) and the fair market value of the share when the option was granted (\$100), since such value is less than the fair market value at date of death (\$150). The basis of the share in the hands of E's estate is determined under section 1014 without regard to the \$15 includible in the decedent's gross income.

Example (7). Assume the same facts as in example (6), except assume that E dies on August 1, 1965, at which time the share has a fair market value of \$150. Although E's death occurred within six months after the transfer of the share to him, the income tax consequences are the same as in example (6).

Example (8). Assume the same facts as in example (1), except assume that the share of stock was issued in the names of E and his wife jointly with right of survivorship, and that E and his wife sold the share on June 15, 1966, for \$150, its fair market value on that date. Compensation in the amount of \$15 is includible in E's gross income for 1966, the year of the disposition of the share. The basis of the share in the hands of E and his wife for the purpose of determining gain or loss on the sale is \$100, that is, the cost of \$85 increased by the amount of \$15 includible as compensation in E's gross income. The gain of \$50 on the sale is treated as long-term capital gain, and is divided equally between E and his wife.

Example (9). Assume the same facts as in example (1), except assume that the share of stock was issued in the names of E and his wife jointly with right of survivorship, and that E predeceased his wife on August 1, 1966, at which time the share had a fair market value of \$150. Compensation in the amount of \$15 is includible in E's gross income for the taxable year closing with his death. See example (6). The basis of the share in the hands of E's wife as survivor is determined under section 1014 without regard to the \$15 includible in the decedent's gross income.

Example (10). Assume the same facts as in example (9), except assume that E's wife predeceased him on July 1, 1966. Section 423(c) does not apply in respect of her death. Upon the subsequent death of E on August 1, 1966, the income tax consequences in respect of E's taxable year closing with the date of his death, and in respect of the basis of the share in the hands of his estate, are the same as in example (6). If E had sold the share on July 15, 1966 (after the death of his wife), for \$150, its fair market value at that time, the income tax consequences would be the same as in example (1).

§ 1.424 Statutory provisions; restricted stock options.

Sec. 424. Restricted stock options—(a) In general. Section 421(a) shall apply with respect to the transfer of a share of stock to an individual pursuant to his exercise after 1949 of a restricted stock option, if—

- (1) No disposition of such share is made by him within 2 years from the date of the granting of the option nor within 6 months after the transfer of such share to him, and
- (2) At the time he exercises such option—

(A) He is an employee of either the corporation granting such option, a parent or subsidiary corporation of such corporation, or a corporation or a parent or subsidiary corporation of such corporation issuing or assuming a stock option in a transaction to which section 425(a) applies, or

(B) He ceased to be an employee of such corporations within the 3-month period preceding the time of exercise.

(b) **Restricted stock option.** For purposes of this part, the term "restricted stock option" means an option granted after February 26, 1945, and before January 1, 1964 (or, if it meets the requirements of subsection (c)(3), an option granted after December 31, 1963), to an individual, for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations, but only if—

(1) At the time such option is granted—

(A) The option price is at least 85 percent of the fair market value at such time of the stock subject to the option, or

(B) In the case of a variable price option, the option price (computed as if the option had been exercised when granted) is at least 85 percent of the fair market value of the stock at the time such option is granted;

(2) Such option by its terms is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him;

(3) Such individual, at the time the option is granted, does not own stock possessing more than 10 percent of the total combined voting power of all classes of stock of the employer corporation or of its parent or subsidiary corporation. This paragraph shall not apply if at the time such option is granted the option price is at least 110 percent of the fair market value of the stock subject to the option, and such option either by its terms is not exercisable after the expiration of 5 years from the date such option is granted or is exercised within one year after August 16, 1954. For purposes of this paragraph, the provisions of section 425(d) shall apply in determining the stock ownership of an individual; and

(4) Such option by its terms is not exercisable after the expiration of 10 years from the date such option is granted, if such option has been granted on or after June 22, 1954.

(c) **Special rules—(1) Options under which option price is between 85 percent and 95 percent of value of stock.** If no disposition of a share of stock acquired by an individual on his exercise after 1949 of a restricted stock option is made by him within 2 years from the date of the granting of the option nor within 6 months after the transfer of such share to him, but, at the time the restricted stock option was granted, the option price (computed under subsection (b)(1)) was less than 95 percent of the fair market value at such time of such share, then, in the event of any disposition of such share by him, or in the event of his death (whenever occurring) while owning such share, there shall be included as compensa-

tion (and not as gain upon the sale or exchange of a capital asset) in his gross income, for the taxable year in which falls the date of such disposition or for the taxable year closing with his death, whichever applies—

(A) In the case of a share of stock acquired under an option qualifying under subsection (b)(1)(A), an amount equal to the amount (if any) by which the option price is exceeded by the lesser of—

(i) The fair market value of the share at the time of such disposition or death, or

(ii) The fair market value of the share at the time the option was granted; or

(B) In the case of stock acquired under an option qualifying under subsection (b)(1)(B), an amount equal to the lesser of—

(i) The excess of the fair market value of the share at the time of such disposition or death over the price paid under the option, or

(ii) The excess of the fair market value of the share at the time the option was granted over the option price (computed as if the option had been exercised at such time).

In the case of a disposition of such share by the individual, the basis of the share in his hands at the time of such disposition shall be increased by an amount equal to the amount so includible in his gross income.

(2) **Variable price option.** For purposes of subsection (b)(1), the term "variable price option" means an option under which the purchase price of the stock is fixed or determinable under a formula in which the only variable is the fair market value of the stock at any time during a period of 6 months which includes the time the option is exercised; except that in the case of options granted after September 30, 1958, such term does not include any such option in which such formula provides for determining such price by reference to the fair market value of the stock at any time before the option is exercised if such value may be greater than the average fair market value of the stock during the calendar month in which the option is exercised.

(3) **Certain options granted after December 31, 1963.** For purposes of subsection (b), an option granted after December 31, 1963, meets the requirements of this paragraph if granted pursuant to—

(A) A binding written contract entered into before January 1, 1964, or

(B) A written plan adopted and approved before January 1, 1964, which (as of January 1, 1964, and as of the date of the granting of the option)—

(i) Met the requirements of paragraphs (4) and (5) of section 423(b), or

(ii) Was being administered in a way which did not discriminate in favor of officers, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees.

[Sec. 424 as added by sec. 221(a), Rev. Act 1964 (78 Stat. 63)]

§ 1.424-1 Applicability of section 421 (a).

(a) **In general.** (1) Subject to the provisions of section 424(c), the special rules of income tax treatment provided in section 421(a) apply with respect to the transfer of a share of stock to an individual pursuant to his exercise after 1949 of a restricted stock option provided that—

(i) The individual makes no disposition of such share within 2 years from the date of the granting of the option, nor within 6 months after the transfer of such share to him; and

(ii) At the time he exercised such option—

(a) The individual is an employee of either the corporation granting the option, a related corporation of such corporation, or a corporation or a related corporation of such corporation issuing or assuming a stock option in a transaction to which section 425(a) applies, or

(b) The individual ceased to be an employee of such corporations within the 3-month period preceding the time of such exercise.

(2) For general rules relating to the employment relationship, see paragraph (h) of § 1.421-7. For rules relating to the employment relationship when there has been a transaction described in section 425(a) (relating to corporate reorganizations, liquidations, etc.) see § 1.425-1. For rules relating to the effect of a disqualifying disposition, see section 421(b) and paragraph (b) of § 1.421-8. For definition of the term "disposition", see section 425(c) and paragraph (c) of § 1.425-1.

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

Example (1). On June 1, 1958, X Corporation grants a restricted stock option to A, an employee of X Corporation, to purchase a share of X stock. A continues to be employed by X Corporation until February 1, 1964, when X sells the plant where A is employed to M Corporation, an unrelated corporation. On such date, A becomes employed by M. A continues to be employed by M Corporation until June 1, 1964, when A exercises his option on X Corporation. Section 421 is not applicable to this exercise, because on June 1, 1964, A was not employed by the corporation which granted the option or by a related corporation of such corporation, nor was he employed by any of such corporations within three months before June 1, 1964.

Example (2). Assume the facts to be the same as in example (1), except that when A was employed by M Corporation, the option to purchase X stock was terminated, and was replaced by an option to buy M stock in such circumstances that M Corporation is treated as a corporation issuing an option under section 425(a). If A exercises the option to purchase the share of M stock on June 1, 1964, section 421 is applicable, for A is then employed by a corporation which issued an option under section 425(a).

Example (3). Assume that P Corporation owns all of the stock of S Corporation and grants a restricted stock option to E, an employee of S Corporation. If E exercises the option, section 421 is applicable since E is employed by a corporation which is a subsidiary of the corporation which granted the restricted stock option.

§ 1.424-2 Restricted stock option.

(a) *Restricted stock option defined.* (1) A "restricted stock option" is an option granted after February 26, 1945, and before January 1, 1964 (or, if it meets the requirements of section 424(c) (3), an option granted after December 31, 1963), to an individual, for any reason connected with his employment by a corporation, if granted by the employer corporation or a related corporation, to purchase stock of any such corporations, but, except in the case of options described in subparagraph (2) of this paragraph, only if—

(i) At the time such option is granted the option price is at least 85 percent of the fair market value at such time of the stock subject to the option;

(ii) Such option by its terms is not transferable by such individual otherwise than by will or by the laws of descent and distribution, and is exercisable, during his lifetime, only by him;

(iii) Such individual, at the time the option is granted, does not own stock possessing more than 10 percent of the total combined voting power of all classes of stock either of the employer corporation or of its parent or subsidiary corporation; and

(iv) In the case of options granted after June 21, 1954, such option by its terms is not exercisable after the expiration of ten years from the date on which such option was granted.

For purposes of applying the rule of subdivision (i) of this subparagraph to a variable price option (as defined by section 424(c) (2) and paragraph (c) of this section) under which the option price is determined by a formula described in paragraph (c) of this section, the option price shall, notwithstanding any provision of the option, be computed as if such option is exercised on the day when it is granted. For example, if on June 15, 1959, an option is granted providing that the option price shall be \$10 under the average fair market value of the stock during the month in which the option is exercised or the average fair market value of the stock during the preceding month, whichever is lower, and if on June 15, 1959, the value of the stock subject to the option is \$100 a share, to determine if the option meets the requirement of subdivision (i) of this subparagraph, it is necessary to determine the average fair market value of the stock during the months of May and June 1959. If such lower average fair market value is \$95 or more, the option meets the requirement of subdivision (i) of this subparagraph.

(2) Regardless of the extent to which the individual to whom the option is granted owns stock of either the employer corporation, or of a related corporation, an option is a restricted stock option if—

(i) Such option is granted after February 26, 1945, to such individual, for any reason connected with his employment by a corporation, if granted by the employer corporation or a related corporation, to purchase stock of any of such corporations;

(ii) At the time such option is granted the option price is at least 110 percent of the fair market value at such time of the stock subject to the option;

(iii) Such option by its terms is not transferable by such individual otherwise than by will or by the laws of descent and distribution, and is exercisable, during his lifetime, only by him; and

(iv) Such option by its terms is not exercisable after the expiration of 5 years from the date on which such option was granted or is exercised within 1 year after August 16, 1954.

(3) In determining the amount of stock owned by an individual for the purpose of applying the 10 percent test of section 424(b) (3), the rules of section 425(d) (relating to attribution of stock ownership) shall apply. See § 1.425-1.

(4) For general rules relating to the employment relationship, see paragraph (h) of § 1.421-7. For general rules relating to the restriction on transferability required by section 424(b) (2) and this paragraph, see paragraph (b) (2) of § 1.421-7. For modification of certain options so as to conform to the requirement of section 424(b) (2), see section 425(h) (3).

(b) *Special rule where option price is between 85 percent and 95 percent of value of stock.* (1) (i) If all the conditions necessary for the application of section 421(a) exist, section 424(c) (1) provides additional rules which are applicable in cases where, at the time the restricted stock option is granted, the option price per share is less than 95 percent (but not less than 85 percent) of the fair market value of such share. In such case, upon the disposition of such share by the individual after the expiration of the 2-year and the 6-month holding periods, or upon his death while owning such share (whether occurring before or after the expiration of such periods), there shall be included in the individual's gross income as compensation (and not as gain upon the sale or exchange of a capital asset) an amount determined in the following manner. If, at the time the option was granted, the option price was fixed or determinable, and was at least 85 percent of the fair market value of the stock subject to such option, such amount shall be the amount, if any, by which the option price is exceeded by the lesser of the fair market value of the share at the time the option was granted or the fair market value of the share at the time of such disposition or death. However, in the case of a variable price option (as defined by section 424(c) (2) and paragraph (c) of this section) under which the option price (computed as if the option had been exercised when granted) at the time the option was granted was at least 85 percent of the fair market value of the stock subject to such option, such amount shall be whichever of the following amounts is the lesser:

(a) The excess of the fair market value of the share at the time of such disposition or death over the price paid under the option, or

(b) The excess of the fair market value of the share at the time the option was granted over the option price, computed as if the option had been exercised at such time.

The amount of such compensation shall be included in the individual's gross income for the taxable year in which the disposition occurs or for the taxable year closing with his death, whichever event results in the application of section 424(c) (1) and this paragraph.

(ii) The application of the special rules provided in section 424(c) shall not affect the rules provided in section

421(a) with respect to the individual exercising the option, the employer corporation, or a related corporation. Thus, notwithstanding the inclusion of an amount as compensation in the gross income of an individual, as provided in section 424(c)(1), no income results to the individual at the time the stock is transferred to him, and no deduction under section 162 is allowable at any time to the employer corporation or a related corporation with respect to such amount.

(iii) If the individual exercises a restricted stock option during his lifetime and dies before the stock is transferred to him pursuant to his exercise of the option, the transfer of such stock to the individual's executor, administrator, heir, or legatee is deemed, for the purpose of section 421, to be a transfer of the stock to the individual exercising the option and a further transfer by reason of death from such individual to his executor, administrator, heir, or legatee.

(2) If the special rules provided in section 424(c) are applicable to the disposition of a share of stock by an individual, the basis of such share in the individual's hands at the time of such disposition, determined under section 1011, shall be increased by an amount equal to the amount includible as compensation in his gross income under section 424(c)(1). However, in the case of a share of stock acquired by the exercise of a restricted stock option after the death of the employee to whom the option was granted, the basis of such share shall be determined in accordance with the rules of section 421(c) and paragraph (c) of § 1.421-8. If the special rules provided in section 424(c)(1) are applicable to a share of stock upon the death of an individual, the basis of such share in the hands of the estate or the person receiving the stock by bequest or inheritance shall be determined under section 1014, and shall not be increased by reason of the inclusion upon the decedent's death of any amount in his gross income under section 424(c)(1). See example (9) of this paragraph with respect to the determination of basis of the share in the hands of a surviving joint owner.

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

Example (1). On June 1, 1959, the X Corporation grants to E, an employee, a restricted stock option to purchase a share of X Corporation's stock for \$85. The fair market value of the X Corporation stock on such date is \$100 per share. On June 1, 1965, E exercises the option and on that date the X Corporation transfers the share of stock to E. On January 1, 1967, E sells the share for \$150, its fair market value on that date. E makes his income tax return on the basis of the calendar year. The income tax consequences to E and X Corporation are as follows: (i) Compensation in the amount of \$15 is includible in E's gross income for 1967, the year of the disposition of the share. The \$15 represents the difference between the option price (\$85) and the fair market value of the share on the date the option was granted (\$100), since such value is less than the fair market value of the share on the date of disposition (\$150). For the purpose of computing E's gain or loss on the

sale of the share, E's cost basis of \$85 is increased by \$15, the amount includible in E's gross income as compensation. Thus, E's basis for the share is \$100. Since the share which is treated as long-term capital gain; was sold for \$150, E realizes a gain of \$50, (ii) the X Corporation is entitled to no deduction under section 162 at any time with respect to the share transferred to E.

Example (2). Assume the same facts as in example (1), except assume that E sells the share of X Corporation stock on January 1, 1968, for \$75, its fair market value on that date. Since \$75 is less than the option price (\$85), no amount in respect of the sale is includible as compensation in E's gross income for 1968. E's basis for determining gain or loss on the sale is \$85. Since E sold the share for \$75, E realized a loss of \$10 on the sale, which loss is treated as a long-term capital loss.

Example (3). Assume the same facts as in example (1), except assume that the option provides that the option price shall be 90 percent of the fair market value of the stock on the day the option is exercised. On June 1, 1965, when the option is exercised, the fair market value of the stock is \$120 per share so that E pays \$108 for the share of stock. Compensation in the amount of \$10 is includible in E's gross income for 1967, the year of the disposition of the share. This is determined in the following manner. The excess of the fair market value of the stock at the time of the disposition (\$150) over the price paid for the share (\$108) is \$42; and the excess of the fair market value of the stock at the time the option was granted (\$100) over the option price, computed as if the option had been exercised at such time (\$90), is \$10. Accordingly, \$10, the lesser, is includible in gross income. In this situation, E's cost basis of \$108 is increased by \$10, the amount includible in E's gross income as compensation. Thus, E's basis for the share is \$118. Since the share was sold for \$150, E realizes a gain of \$32, which is treated as long-term capital gain.

Example (4). Assume the same facts as in example (1), except assume that instead of selling the share on January 1, 1967, E makes a gift of the share on that day. In such case, \$15 is includible as compensation in E's gross income for 1967. E's cost basis of \$85 is increased by \$15, the amount includible in E's gross income as compensation. Thus, E's basis for the share is \$100, which becomes the donee's basis, as of the time of the gift, for determining gain or loss.

Example (5). Assume the same facts as in example (2) except assume that instead of selling the share on January 1, 1968, E makes a gift of the share on that date. Since the fair market value of the share on that day (\$75) is less than the option price (\$85), no amount in respect of the disposition by way of gift is includible as compensation in E's gross income for 1968. E's basis for the share is \$85, which becomes the donee's basis, as of the time of the gift, for the purpose of determining gain. The donee's basis for the purpose of determining loss, determined under section 1015(a), is \$75 (fair market value of the share at the date of gift).

Example (6). Assume the same facts as in example (1), except assume that after acquiring the share of stock on June 1, 1965, E dies on August 1, 1966, at which time the share has a fair market value of \$150. Compensation in the amount of \$15 is includible in E's gross income for the taxable year closing with his death, such \$15 being the difference between the option price (\$85) and the fair market value of the share when the option was granted (\$100), since such value is less than the fair market value at date of death (\$150). The basis of the share in the hands of E's estate is determined under section 1014 without regard to the \$15 includible in the decedent's gross income.

Example (7). Assume the same facts as in example (6), except assume that E dies on August 1, 1965, at which time the share has a fair market value of \$150. Although E's death occurred within six months after the transfer of the share to him, the income tax consequences are the same as in example (6).

Example (8). Assume the same facts as in example (1), except assume that the share of stock was issued in the names of E and his wife jointly with right of survivorship, and that E and his wife sold the share on June 15, 1966, for \$150, its fair market value on that date. Compensation in the amount of \$15 is includible in E's gross income for 1966, the year of the disposition of the share. The basis of the share in the hands of E and his wife for the purpose of determining gain or loss on the sale is \$100, that is, the cost of \$85 increased by the amount of \$15 includible as compensation in E's gross income. The gain of \$50 on the sale is treated as long-term capital gain, and is divided equally between E and his wife.

Example (9). Assume the same facts as in example (1), except assume that the share of stock was issued in the names of E and his wife jointly with right of survivorship, and that E predeceased his wife on August 1, 1966, at which time the share had a fair market value of \$150. Compensation in the amount of \$15 is includible in E's gross income for the taxable year closing with his death. See example (6). The basis of the share in the hands of E's wife as survivor is determined under section 1014 without regard to the \$15 includible in the decedent's gross income.

Example (10). Assume the same facts as in example (9), except assume that E's wife predeceased him on July 1, 1966. Section 424(c) does not apply in respect of her death. Upon the subsequent death of E on August 1, 1966, the income tax consequences in respect of E's taxable year closing with the date of his death, and in respect of the basis of the share in the hands of his estate, are the same as in example (6). If E had sold the share on July 15, 1966 (after the death of his wife), for \$150, its fair market value at that time, the income tax consequences would be the same as in example (1).

(c) *Variable price option defined.* (1) For purposes of section 424 and this section, the term "variable price option" means an option under which the option price is determined by a formula in which the only variable is the fair market value of the stock at any time during a period of six consecutive months which includes the day on which such option is exercised. Except as provided in subparagraph (2) of this paragraph, such formula may provide for determining such price by reference to such value on any particular day in such 6-month period, or by reference to an average value of the stock over either the whole of such 6-month period or over any shorter period included in such 6-month period. Such 6-month period may begin with, end with, or in any other manner span the day on which such option is exercised. Such formula may also depend upon factors other than such value of the stock, but such other factors must not be variable and must be fixed in the option when granted. For example, such formula may provide that the option price shall be 85 percent of the value of the stock on the day the option is exercised, but such price shall not be less than \$85, nor more than \$110. Another

example of a formula which meets the requirements of this paragraph is a provision that the option price shall be 95 percent of the fair market value of the stock on the day the option is exercised but not more than \$95. However, the requirements of this paragraph are not met by a formula which provides that if the profits of the employer for the year do not exceed \$100,000, the option price shall be \$15 under the fair market value of the stock the option is exercised, but if such profits exceed \$100,000, the option price shall be \$20 under such value of the stock. For an example of how to determine whether an option which contains a formula meeting the requirements of this paragraph also meets the requirement that the option price must be at least 85 percent of the fair market value of the stock at the time the option is granted, see paragraph (a) (1) of § 1.424-2.

(2) In the case of an option granted after September 30, 1958, the term "variable price option" does not include any option in which the formula provides for determining the option price by reference to the fair market value of the stock at any time before the option is exercised if such value may be greater than the average fair market value of the stock during the calendar month in which the option is exercised. Whether an option meets the requirement of this paragraph shall be determined solely by reference to the terms of the option, and the circumstances existing at the time the option is granted or exercised are immaterial. Thus, an option, granted after September 30, 1958, and containing a pricing formula which takes into consideration the value of the stock at any time before the option is exercised, is subject to the new limitation and does not meet the requirement of this paragraph, even though the option price is not actually based upon such prior fair market value either at the time the option is exercised or at the time the option price is computed as if it were exercised for the purpose of applying the 85 percent test of section 424(b) (1). For example, a formula which provides that the option price is to be 45 percent of the fair market value of the stock 30 days before the date on which the option is exercised, but not more than \$85, will not qualify under this paragraph since under this formula the price may be determinable by reference to a higher prior value. On the other hand, a formula which provides that the option price is to be 90 percent of the average value of the stock during the month the option is exercised or the average value of the stock during the preceding month, whichever is lower, will qualify. In the case of an option granted after September 30, 1958, the only way that a formula which provides for determining the option price by reference to the fair market value of the stock at a time before the option is exercised can come within the requirement of this paragraph is to provide that the option price is to be determined by reference to such fair market value only if such fair market value is not greater than the average fair mar-

ket value of the stock during the month in which the option is exercised. If under the terms of an option the price is to be determined by reference to the fair market value of the stock at a time before the option is exercised, whether such value is higher or lower than the average fair market value of the stock during the month the option is exercised, such option will not be considered a restricted stock option since the option price may be based upon the prior value of the stock when such value exceeds the average fair market value of the stock during the month the option is exercised. However, if an option provides for determining the option price by reference to a prior fair market value of the stock only when such value is lower than such average value of the stock, such option can qualify as a restricted stock option. The average fair market value of the stock during the month in which the option is exercised means such value during the calendar month the option is exercised and not merely during a 30- or 31-day period including the time the option is exercised. To compute the average fair market value of the stock for the month, it will be necessary to ascertain the fair market value of the stock for each day during the month, including those days which are not business days. In ascertaining the fair market value of the stock for each day, the generally accepted principles for ascertaining such value will be applied.

(d) *Certain options granted after December 31, 1963.* (1) In general, the term "restricted stock option" means only a stock option which is granted after February 26, 1945, and before January 1, 1964, and which meets the requirements of section 424(b) and paragraph (a) of this section. However, section 424(c) (3) provides that if an option is granted after December 31, 1963, and such option meets the requirements of section 424(b) and this section, the option will be treated as a restricted stock option, provided such option is granted pursuant to—

(i) A binding written contract entered into before January 1, 1964, or

(ii) A written plan adopted and approved before January 1, 1964, which (as of January 1, 1964, and as of the date of the granting of the option) —

(a) Met the requirements of section 423(b) (4) and (5) and paragraphs (e) and (f) of § 1.423-2 (relating to employees covered by the plan, and equal rights and privileges, respectively), or

(b) Was being administered in a way which did not discriminate in favor of officers, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees.

In determining whether an option is granted pursuant to a plan described in subdivision (ii) of this subparagraph, the terms of any written offering that was made on or before January 1, 1964, will be treated as a part of the terms of the plan.

(2) For purposes of section 424(c) (3) (A) and this paragraph, a binding writ-

ten contract means only a written contract under which the employee has an enforceable right to compel the grant or modification (as defined by section 425 (h) and paragraph (e) of § 1.425-1) of a restricted stock option, or to obtain damages upon the breach of such contract. A contract which provides that the individual's right to a restricted stock option is contingent upon the happening of an event (including the passage of time) may satisfy the requirements of section 424(c) (3) (A). However, if the event itself, or the determination of whether the event has occurred, rests with the board of directors or any other individual or group (other than an arbitrator), the contract will not be treated as giving the employee an enforceable right for purposes of section 424(c) (3) (A) or this paragraph.

(3) (i) For purposes of applying section 424(c) (3) (B) with respect to options granted after December 31, 1963, and before October 1, 1967, the adoption and approval of a plan required by such section and this paragraph will be deemed to have occurred if the plan was adopted and approved on or before December 31, 1963, in the manner required by the applicable law of the State of incorporation. Thus, an option granted within such period pursuant to a restricted stock option plan which was not approved by the stockholders of the grantor corporation, but which was adopted by an authorized executive committee and approved by the board of directors of the grantor corporation before January 1, 1964, will meet the requirements of section 424(c) (3) (B) relating to adoption and approval, provided that the granting of options pursuant to such a plan is not contrary to the applicable State law. However, with respect to options granted on or after October 1, 1967, the approval required by section 424(c) (3) (B) must comply with all applicable provisions of the corporate charter and bylaws and the law of the State of incorporation and must represent the express consent of stockholders holding at least a majority of the voting stock of the corporation voting in person or by proxy at a duly held stockholders' meeting. The plan as adopted and approved must designate the aggregate number of shares which may be issued under the plan, and the corporations or class of corporations whose employees may be offered options under such plan. A plan which merely provides that the number of shares which may be issued under options shall not exceed a stated percentage of the shares outstanding at the time of each offering or grant under the plan will not satisfy the requirement that the plan state the aggregate number of shares which may be issued under options. However, the maximum number of shares which may be issued under the plan may be stated in terms of a percentage of either the authorized, issued or outstanding shares at the date of the adoption of the plan. Any increase in the aggregate number of shares which may be issued under the plan (other than an increase merely re-

fecting a change in capitalization such as a stock dividend or stock split-up) will be treated as the adoption of a new plan requiring stockholder approval. Similarly, a change in the designation of corporations whose employees may be offered options under the plan will be treated as the adoption of a new plan requiring stockholder approval unless the plan provides that designations of participating corporations may be made from time to time from among a group consisting of the grantor corporation and its parent or subsidiary corporations. The group from among which such changes and designations are permitted without additional stockholder approval may include corporations having become parents or subsidiaries of the grantor after the adoption and approval of the plan. Any other changes in the terms of a restricted stock option plan may be made without such changes being considered the adoption of a new plan.

(ii) A plan may qualify under section 424(c) (3) (B) (i) and paragraph (1) (ii) (b) of this paragraph even though coverage thereunder is limited to employees who have either reached a designated age or have been employed for a designated number of years, or who are employed in certain designated departments or are in other classifications, provided that the effect of coverage of such employees does not discriminate in favor of officers, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees. Furthermore, a plan (which is not otherwise discriminatory) will not be considered discriminatory merely because options are granted only to full-time employees (rather than employees working 20 hours per week or more), or because employees with less than 6 months employment per taxable year are omitted (rather than employees whose annual employment is for not more than 5 months per taxable year).

(4) An option issued or assumed in a transaction to which section 425(a) applies is treated as a continuation of the option previously held by such individual. Accordingly, if the option previously held by the individual was a restricted stock option (whether or not such restricted stock option was granted before, on, or after December 31, 1963), the option received in the transaction to which section 425(a) applies will be treated as a restricted stock option irrespective of whether such option meets the requirements of section 424(c) (3).

§ 1.425 Statutory provisions; definitions and special rules.

Sec. 425. *Definitions and special rules—*
 (a) *Corporate reorganizations, liquidations, etc.* For purposes of this part, the term "issuing or assuming a stock option in a transaction to which section 425(a) applies" means a substitution of a new option for the old option, or an assumption of the old option, by an employer corporation, or a parent or subsidiary of such corporation, by reason of a corporate merger, consolidation, acquisition of property or stock, separation, reorganization, or liquidation, if—

(1) The excess of the aggregate fair market value of the shares subject to the option immediately after the substitution or as-

sumption over the aggregate option price of such shares is not more than the excess of the aggregate fair market value of all shares subject to the option immediately before such substitution or assumption over the aggregate option price of such shares, and

(2) The new option or the assumption of the old option does not give the employee additional benefits which he did not have under the old option.

For purposes of this subsection, the parent-subsidiary relationship shall be determined at the time of any such transaction under this subsection.

(b) *Acquisition of new stock.* For purposes of this part, if stock is received by an individual in a distribution to which section 305, 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies, and such distribution was made with respect to stock transferred to him upon his exercise of the option, such stock shall be considered as having been transferred to him on his exercise of such option. A similar rule shall be applied in the case of a series of such distributions.

(c) *Disposition—*(1) *In general.* Except as provided in paragraph (2), for purposes of this part, the term "disposition" includes a sale, exchange, gift, or a transfer of legal title, but does not include—

(A) A transfer from a decedent to an estate or a transfer by bequest or inheritance;

(B) An exchange to which section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies; or

(C) A mere pledge or hypothecation.

(2) *Joint tenancy.* The acquisition of a share of stock in the name of the employee and another jointly with the right of survivorship or a subsequent transfer of a share of stock into such joint ownership shall not be deemed a disposition, but a termination of such joint tenancy (except to the extent such employee acquires ownership of such stock) shall be treated as a disposition by him occurring at the time such joint tenancy is terminated.

(d) *Attribution of stock ownership.* For purposes of this part, in applying the percentage limitations of sections 422(b) (7), 423(b) (3), and 424(b) (3)—

(1) The individual with respect to whom such limitation is being determined shall be considered as owning the stock owned, directly or indirectly, by or for his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(2) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust, shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries.

(e) *Parent corporation.* For purposes of this part, the term "parent corporation" means any corporation (other than the employer corporation) in an unbroken chain of corporations ending with the employer corporation if, at the time of the granting of the option, each of the corporations other than the employer corporation owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(f) *Subsidiary corporation.* For purposes of this part, the term "subsidiary corporation" means any corporation (other than the employer corporation) in an unbroken chain of corporations beginning with the employer corporation if, at the time of the granting of the option, each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(g) *Special rule for applying subsections (e) and (f).* In applying subsections (e) and (f) for purposes of section 422(a) (2), 423(a) (2), and 424(a) (2), there shall be substituted for the term "employer corporation" wherever it appears in subsections (e) and (f) the term "grantor corporation", or the term "corporation issuing or assuming a stock option in a transaction to which section 425(a) applies", as the case may be.

(h) *Modification, extension, or renewal of option—*(1) *In general.* For purposes of this part, if the terms of any option to purchase stock are modified, extended, or renewed, such modification, extension, or renewal shall be considered as the granting of a new option.

(2) *Special rules for sections 423 and 424 options.* (A) In the case of the transfer of stock pursuant to the exercise of an option to which section 423 or 424 applies and which has been so modified, extended, or renewed, then, except as provided in subparagraph (B), the fair market value of such stock at the time of the granting of such option shall be considered as whichever of the following is the highest:

(i) The fair market value of such stock on the date of the original granting of the option,

(ii) The fair market value of such stock on the date of the making of such modification, extension, or renewal, or

(iii) The fair market value of such stock at the time of the making of any intervening modification, extension, or renewal.

(B) Subparagraph (A) shall not apply with respect to a modification, extension, or renewal of a restricted stock option before January 1, 1964 (or after December 31, 1963, if made pursuant to a binding written contract entered into before January 1, 1964), if the aggregate of the monthly average fair market values of the stock subject to the option for the 12 consecutive calendar months before the date of the modification, extension, or renewal, divided by 12, is an amount less than 80 percent of the fair market value of such stock on the date of the original granting of the option or the date of the making of any intervening modification, extension, or renewal, whichever is the highest.

(3) *Definition of modification.* The term "modification" means any change in the terms of the option which gives the employee additional benefits under the option, but such term shall not include a change in the terms of the option—

(A) Attributable to the issuance or assumption of an option under subsection (a);

(B) To permit the option to qualify under sections 422(b) (6), 423(b) (9), and 424(b) (2); or

(C) In the case of an option not immediately exercisable in full, to accelerate the time at which the option may be exercised.

If a restricted stock option is exercisable after the expiration of 10 years from the date such option is granted, subparagraph (B) shall not apply unless the terms of the option are also changed to make it not exercisable after the expiration of such period.

(i) *Stockholder approval.* For purposes of this part, if the grant of an option is subject to approval by stockholders, the date of grant of the option shall be determined as if the option had not been subject to such approval.

(j) *Cross references.* For provisions requiring the reporting of certain acts with respect to a qualified stock option, options granted under employer stock purchase plans, or a restricted stock option, see section 6039.

[Sec. 425 as added by sec. 221(a), Rev. Act 1964 (78 Stat. 63)]

§ 1.425-1 Definitions and special rules applicable to statutory options.

(a) *Corporate reorganizations, liquidations, etc.* (1) (i) The term "issuing or assuming a stock option in a transaction to which section 425(a) applies" means, for purposes of sections 421 through 425, a substitution of a new option for an old option, or an assumption of such old option, by an employer corporation, or a related corporation of such corporation, by reason of a corporate transaction (as defined by subdivision (ii) of this subparagraph), if—

(a) The excess of the aggregate fair market value of the shares subject to the option immediately after the substitution or assumption over the aggregate option price of such shares is not more than the excess of the aggregate fair market value of all shares subject to the option immediately before such substitution or assumption over the aggregate option price of such shares, and

(b) The new option or the assumption of the old option does not give the employee additional benefits which he did not have under the old option.

(ii) For purposes of this section, the term "corporate transaction" means any merger of a corporation into another corporation, any consolidation of two or more corporations into another corporation, any purchase or acquisition of property or stock by any corporation, any separation of a corporation (including a spin-off or other distribution of stock or property by a corporation), any reorganization of a corporation (whether or not such reorganization comes within the definition of such term in section 368), or any partial or complete liquidation by a corporation, if such action by such corporation results in a significant number of employees being transferred to a new employer or discharged, or in the creation or severance of a parent-subsidiary relationship.

(2) (i) A change in the terms of an option attributable to the issuance or assumption of an option by reason of a corporate transaction (as defined under section 425 (a) and subparagraph (1) (ii) of this paragraph) is not a modification of such option. See section 425(h) (3) and paragraph (e) of this section. Thus, section 425(a), in effect, provides rules under which a new employer, or a parent or subsidiary of a new employer, may by reason of a corporate transaction assume a statutory option granted by the former employer or parent or subsidiary thereof, or issue a new statutory option in place of the option granted by the former employer or parent or subsidiary thereof, without having such assumption or substitution being considered as a modification of the option. For example, section 425(a) may apply where there is a merger of X Corporation into Y Corporation and Y Corporation wishes to employ the employees of X Corporation and to assume statutory options which had been granted to them by their former employer, X Corporation. Another example is where X Corporation forms a new subsidiary, Y Corporation, and transfers to it certain assets and employees, and where Y Cor-

poration wishes to grant to such employees a statutory option to purchase its stock in place of the statutory option which they had to purchase stock of X Corporation.

(ii) Section 425(a) also provides rules under which a new parent or subsidiary corporation of the employer corporation may by reason of a corporate transaction assume a statutory option granted by the employer or parent or subsidiary thereof, or issue a new statutory option in place of the option granted by the employer or parent or subsidiary thereof, without having such assumption or substitution considered a modification of the option. Section 425(a) may apply, for example, where X Corporation acquires a new subsidiary, Y Corporation, by purchase of stock and desires to grant to the employees of Y Corporation a statutory option to buy stock of X Corporation in place of a statutory option which they have to purchase the stock of Y Corporation.

(iii) Section 425(a) applies only when the assumption or substitution occurs by reason of a corporate transaction as defined in this paragraph. Thus, section 425(a) may apply where as a result of a corporate transaction a statutory option can no longer be exercised, or if exercised, section 421 would not apply (see the first example in subdivision (i) of this subparagraph). Moreover, section 425(a) may apply in any case where the reason for the assumption or substitution grows out of a corporate transaction even though there could have been a valid exercise under section 421 of the original option (see the second example in subdivision (i) of this subparagraph and the example in subdivision (ii) of this subparagraph). However, a corporation which has issued an option may not substitute a new option for such option under section 425(a). See, however, paragraph (e) of this section.

(3) For section 425(a) to apply, it is not necessary to show that the corporation assuming or substituting the option is under an obligation to do so. In fact, section 425(a) may apply where the option which is being assumed or replaced expressly provides that it will terminate upon the occurrence of certain corporate transactions. However, section 425(a) cannot be applied to revive a statutory option which, for reasons not related to the corporate transaction, expires before it can properly be assumed or replaced under section 425(a). For section 425(a) to apply, the assumed or substituted option must qualify as a statutory option.

(4) (i) Section 425(a) does not apply if the terms of the assumed or substituted option confer on the employee more favorable benefits than he had under the old option. Section 425(a) can apply to a corporate transaction only if, on a share by share comparison, the ratio of the option price to the fair market value of the stock subject to the option immediately after the substitution or assumption is no more favorable to the optionee than the ratio of the option price to the fair market value of the stock subject to the old option immediately before such substitution or assumption. The

number of shares subject to an option issued or assumed may be adjusted to compensate for any change in the aggregate spread between the aggregate option price and the aggregate fair market value of the stock subject to the option immediately after the substitution or assumption as compared to the aggregate spread between the option price and the aggregate fair market value of the stock subject to the option immediately before such substitution or assumption. Such an adjustment will not prevent section 425(a) from applying to such substitution or assumption.

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

Example (1). On June 1, 1965, P Corporation acquires 100 percent of the stock of S Corporation and on such date S becomes a subsidiary of P Corporation. Also on such date, P Corporation substitutes a qualified stock option to purchase P stock for a qualified stock option to purchase S stock held by E, an employee of S. Assume that E's S option had 3 years to run on the date of the substitution. If the P option granted to E in substitution for his S option runs for more than 3 years from the date of the substitution, section 425(a) cannot apply, since the effect of such an option would be to give E an additional benefit which he did not enjoy under his S option.

Example (2). E is an employee of S Corporation. E holds a qualified stock option which was granted to him by S to purchase 60 shares of S stock at \$12 per share. On June 1, 1967, S Corporation is merged into P Corporation, and on such date P substitutes a qualified stock option to purchase P stock for E's qualified stock option to purchase S stock. Immediately before the substitution, the fair market value of S stock was \$32 per share; immediately after the substitution, the fair market value of P stock is \$24 per share. The new option entitles E to buy P stock at \$9 per share. Since on a share by share comparison the ratio of the new option price (\$9 per share) to the fair market value of P stock immediately after the substitution (\$24 per share) is not more favorable to E than the ratio of the old option price (\$12 per share) to the fair market value of S stock immediately before the substitution (\$32 per share) ($9/24 = 12/32$) the requirement of subparagraph (4) (i) of this paragraph is met. The number of shares subject to E's option to purchase P stock is set at 80. Since the excess of the aggregate fair market value over the aggregate option price of the stock subject to E's old option to purchase S stock, $1,200 (80 \times \$24 \text{ minus } 80 \times \$9)$, is not greater than the excess of the aggregate fair market value over the aggregate option price of the stock subject to E's old option to purchase S stock, $1,200 (60 \times \$32 \text{ minus } 60 \times \$12)$, the requirement of subparagraph (1) (i) (a) of this paragraph is met. Thus, section 425(a) may apply to the substitution.

Example (3). Assume the same facts as in example (2), except assume that the fair market value of S stock immediately before the substitution was \$8 per share and that the option price was \$10 per share, and that the fair market value of P stock immediately after the substitution is \$12 per share. P sets the new option price at \$15 per share. Since on a share by share comparison the ratio of the new option price (\$15 per share) to the fair market value of P stock immediately after the substitution (\$12 per share) is not more favorable to E than the ratio of the old option price (\$10 per share) to the fair market value of S stock immediately before the substitution (\$8 per share)

($\frac{15}{2}=7\frac{1}{2}$), the requirement of subparagraph (4)(i) of this paragraph is met. Assume further that the number of shares subject to E's P option is set at 20 as compared to 60 shares under E's old option to buy S stock. Immediately after the substitution, 2 shares of P stock are worth \$24, which is what 3 shares of S stock were worth immediately before the substitution ($2 \times \$12 = 3 \times \8). Thus, to completely replace E's S option, E should have received an option to purchase 40 shares of P stock, i.e., 2 shares of P for each 3 shares of S which E could have purchased under his old option ($\frac{2}{3} = 40\%$). Since E's new option covers 20 shares of P stock, it is clear that P has replaced only $\frac{1}{2}$ of E's stock option. The portion of E's stock option which was not replaced by P is an outstanding stock option to purchase stock of a predecessor corporation of P Corporation for purposes of section 422(b)(5) and (c)(2).

(5) For the purpose of applying section 425(a), the assumption or substitution shall be considered to occur at the time that the optionee would, except for section 425(a), be considered to have been granted the option which the employer corporation, or parent or subsidiary thereof, is issuing or assuming. An assumption or substitution which occurs by reason of a corporate transaction may occur before or after the corporate transaction.

(6) In order to have a substitution of an option under section 425(a) the optionee must, in connection with the corporate transaction, lose his rights under the old option. There cannot be a substitution of a new option for an old option within the meaning of section 425(a) if it is contemplated that the optionee may exercise both the old option and the new option. It is not necessary, however, to have a complete substitution of a new option for the old option. However, if the old option was a qualified or restricted stock option, any portion of such option which is not substituted or assumed in a transaction to which section 425(a) applies will be treated as an outstanding option to purchase stock of a predecessor corporation of the new employer or grantor corporation. See section 422(b)(5) and (c)(2) and paragraph (f) of § 1.422-2. For example, assume that X Corporation forms a new corporation, Y Corporation, by a transfer of certain assets and distributes the stock of Y Corporation to the shareholders of X Corporation. Assume further that E, an employee of X Corporation, is thereafter an employee of both X Corporation and Y Corporation. Y Corporation wishes to substitute an option to purchase some of its stock for the statutory option which E has, entitling him to purchase 100 shares of the stock of X Corporation. The option to purchase the stock of X Corporation, at \$50 a share, was granted when the stock had a fair market value of \$50 a share, and the stock was worth \$100 a share just before the distribution of the new corporation's stock to the shareholders of X Corporation. The stock of X Corporation and of Y Corporation is worth \$50 a share just after such distribution, which also is the time of the substitution. On these facts an option to purchase 200 shares of stock of

Y Corporation at \$25 a share could be given to the employee in complete substitution for the old option. It would also be permissible to give the employee an option to purchase 100 shares of stock of Y Corporation at \$25 a share in substitution for his right to purchase 50 of the shares covered by the old option. However, if the option to purchase X stock was a qualified or restricted stock option, then to the extent the old option is not assumed or a new option issued in substitution therefor in a transaction to which section 425(a) applies, such old option will be treated as an outstanding option under section 422(c)(2) for purposes of section 422(b)(5). See paragraph (f) of § 1.422-2.

(7) Any reasonable methods may be used to determine the fair market value of the stock subject to the option immediately before the assumption or substitution and the fair market value of the stock subject to the option immediately after the assumption or substitution. Such methods include the valuation methods described in § 20.2031-2 of this chapter (the Estate Tax Regulations). In the case of stock listed on a stock exchange, the fair market value may be based on the last sale before and the first sale after the assumption or substitution if such sales clearly reflect the fair market value of the stock, or may be based upon an average selling price during a longer period, such as the day or week before, and the day or week after, the assumption or substitution. If the stocks are not listed, or if they are newly issued, it will be reasonable to base the determination on experience over even longer periods. In the case of a merger, consolidation, or other reorganization which is arrived at by arm's-length negotiations, the fair market value of the stocks subject to the option before and after the assumption or substitution may be based upon the values assigned to the stock for purposes of the reorganization. For example, if in the case of a merger the parties treat each share of the merged company as being equal in value to a share of the surviving company, it will be reasonable to assume that the stocks are of equal value so that the substituted option may permit the employee to purchase at the same price one share of the surviving company for each share he could have purchased of the merged company.

(8) For the purpose of applying section 425(a) and this paragraph, the determination of whether the parent-subsidary relationship exists shall be based upon circumstances existing immediately after the corporate transaction.

(b) *Acquisition of new stock.* (1) Section 425(b) provides that the rules provided by sections 421 through 425 which are applicable with respect to stock transferred to an individual upon his exercise of an option, shall likewise be applicable with respect to stock acquired by a distribution or an exchange to which section 305, 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies. Stock so acquired shall, for purposes of sections 421

through 425, be considered as having been transferred to the individual upon his exercise of the option. A similar rule shall be applied in the case of a series of such acquisitions. With respect to such acquisitions, section 425(b) does not make inapplicable any of the provisions of section 305, 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036).

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

Example. If, with respect to stock transferred pursuant to the timely exercise of a statutory option, there is a distribution of new stock to which section 305(a) is applicable, and if there is a disposition of such new stock before the expiration of the applicable holding period required with respect to the stock originally acquired pursuant to the exercise of such option, such disposition makes section 421 inapplicable to the transfer of the original stock pursuant to the exercise of the option to the extent that the disposition effects a reduction of the individual's total interest in the old and new stock. However, if the new stock, as well as the old stock, is not disposed of before the expiration of the holding period required with respect to the original stock acquired pursuant to the exercise of the option, the special tax treatment provided by section 421 is applicable to both the original shares and the shares acquired by virtue of the distribution to which section 305(a) applies.

(c) *Disposition of stock.* (1) For purposes of sections 421 through 425, the term "disposition" includes a sale, exchange, gift, or any transfer of legal title, but does not include—

(i) A transfer from a decedent to his estate or a transfer by bequest or inheritance; or

(ii) An exchange to which is applicable section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036); or

(iii) A mere pledge or hypothecation. However, a disposition of the stock pursuant to a pledge or hypothecation is a disposition by the individual, even though the making of the pledge or hypothecation is not such a disposition.

(2) A share of stock acquired by an individual pursuant to the exercise of a statutory option is not considered disposed of by the individual if such share is taken in the name of the individual and another person jointly with right of survivorship, or is subsequently transferred into such joint ownership, or is retransferred from such joint ownership to the sole ownership of the individual. However, any termination of such joint ownership (other than a termination effected by the death of a joint owner) is a disposition of such share, except to the extent the individual reacquires ownership of the share. For example, if such individual and his joint owner transfer such share to another person, the individual has made a disposition of such share. Likewise, if a share of stock held in the joint names of such individual and another person is transferred to the name of such other person, there is a disposition of such share by the individual. If an individual exercises a statutory option and a share of stock is trans-

ferred to another or is transferred to such individual in his name as trustee for another, the individual has made a disposition of such share. However, a termination of joint ownership resulting from the death of one of the owners is not a disposition of such share. For determination of basis in the hands of the survivor where joint ownership is terminated by the death of one of the owners, see section 1014.

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

Example (1). On June 1, 1964, the X Corporation grants to E, an employee, a qualified stock option to purchase 100 shares of X Corporation stock at \$100 per share, the fair market value of X Corporation stock on that date. On June 1, 1965, while employed by X Corporation, E exercises the option in full and pays X Corporation \$10,000, and on that day X Corporation transfers to E 100 shares of its stock having a fair market value of \$12,000. Before June 1, 1968, E makes no disposition of the 100 shares so purchased. E realizes no income on June 1, 1968, with respect to the transfer to him of the 100 shares of X Corporation stock. X Corporation is not entitled to any deduction at any time with respect to its transfer to E of the stock. E's basis for such 100 shares is \$10,000.

Example (2). Assume the same facts as in example (1), except assume that on August 1, 1968, three years and two months after the transfer of the shares to him, E sells the 100 shares of X Corporation stock for \$13,000 which is the fair market value of the stock on that date. For the taxable year in which the sale occurs, E realizes a gain of \$3,000 (\$13,000 minus E's basis of \$10,000), which is treated as long-term capital gain.

Example (3). Assume the same facts as in example (2), except assume that on August 1, 1968, E makes a gift of the 100 shares of Y Corporation stock to his son. Such disposition results in no realization of gain to E either for the taxable year in which the option is exercised or the taxable year in which the gift is made. E's basis of \$10,000 becomes the donee's basis for determining gain or loss.

Example (4). Assume the same facts as in example (1), except assume that on May 1, 1968, two years and 11 months after the transfer of the shares to him, E sells the 100 shares of X Corporation stock for \$13,000. The special rules of section 421(a) are not applicable to the transfer of the stock by X Corporation to E, because disposition of the stock was made by E within three years from the date the shares were transferred to him.

Example (5). Assume the same facts as in example (1), except assume that E dies on September 1, 1965, owning the 100 shares of X Corporation stock acquired by him pursuant to his exercise on June 1, 1965, of the qualified stock option. On the date of death, the fair market value of the stock is \$12,500. No income is realized by E by reason of the transfer of the 100 shares to his estate. If the stock is valued as of the date of E's death for estate tax purposes, the basis of the 100 shares in the hands of the executor is \$12,500.

Example (6). Assume the same facts as in example (1), except assume that on June 1, 1965, when the option is exercised by E the 100 shares are transferred by X to E and his wife W, as joint owners with right of survivorship, and that E dies on July 1, 1965. Neither the transfer into joint ownership nor the termination of such joint ownership by E's death is a disposition. Because E has made no disqualifying disposi-

tion of the shares, section 421(a) is applicable and E realizes no income at death with respect to the shares even though he held the stock less than 3 years after the transfer of the shares to him pursuant to his exercise of a qualified stock option. See paragraph (b)(2) of § 1.421-8.

(d) *Attribution of stock ownership.* Section 425(d) provides that in determining the amount of stock owned by an individual for purposes of applying the percentage limitations of section 422(b)(7), 423(b)(3), and 424(b)(3), stock of the employer corporation or of a related corporation which is owned (directly or indirectly) by or for such individual's brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants, shall be considered as owned by such individual. Also, for such purpose, if a domestic or foreign corporation, partnership, estate, or trust owns (directly or indirectly) stock of the employer corporation or of its parent or subsidiary, such stock shall be considered as being owned proportionately by or for the shareholders, partners, or beneficiaries of the corporation, partnership, estate, or trust.

(e) *Modification, extension, or renewal of option.* (1) Section 425(h) provides the rules for determining whether a share of stock transferred to an individual upon his exercise of an option, after the terms thereof have been modified, extended, or renewed, is transferred pursuant to the exercise of a statutory option. Such rules and the rules of this section are applicable to modifications, extensions, or renewals (or to changes which are not treated as modifications) of an option in any taxable year of the optionee which begins after December 31, 1963, except that section 425(h)(1) and this paragraph shall not apply to any change made before January 1, 1965, in the terms of an option granted after December 31, 1963, to permit such option to meet the requirements of section 422(b)(3), (4), or (5), and the regulations thereunder. See paragraphs (d), (e), and (f), of § 1.422-2, relating to period for exercising options, option price, and prior outstanding options, respectively, in the case of qualified stock options.

(2) Any modification, extension, or renewal of the terms of an option to purchase stock shall be considered as the granting of a new option.

(3) Except as otherwise provided in subparagraph (4) of this paragraph, in case of a modification, extension, or renewal of an option, the highest of the following values shall be considered to be the fair market value of the stock at the time of the granting of such option for purposes of applying the rules of sections 423(b)(6), and 424(b)(1)—

(i) The fair market value on the date of the original granting of the option,

(ii) The fair market value on the date of the making of such modification, extension, or renewal, or

(iii) The fair market value at the time of the making of any intervening modification, extension, or renewal.

(4) (i) In the case of a modification, extension, or renewal of a restricted stock option before January 1, 1964 (or

after December 31, 1963, if made pursuant to a binding written contract entered into before January 1, 1964), the rules of subparagraph (3) of this paragraph do not apply if the aggregate of the monthly average fair market values of the stock subject to the option for the 12 consecutive calendar months preceding the month in which the modification, extension, or renewal occurs, divided by 12, is an amount less than 80 percent of the fair market value of such stock on the date of the original granting of the option or the date of the making of any intervening modification, extension, or renewal, whichever is the highest. In such case, any modification, extension, or renewal of the option is treated as the granting of a new option but only the fair market value of the stock subject to the option at the time of the modification, extension, or renewal is considered in determining whether the option is a restricted stock option. In the case of stocks listed on a stock exchange, the average fair market value of the stock for any month may be determined by adding the highest and lowest quoted selling prices during such month and dividing the sum by two. The method used for determining the average fair market value of the stock for any month must be used for all twelve months, except where it is shown that such method cannot be used for any month or does not clearly reflect the average fair market value of the stock for any such month.

(ii) The application of subdivision (i) of this subparagraph may be illustrated by the following example:

Example. On June 1, 1962, a restricted stock option was granted to purchase before July 1, 1965, a share of stock for \$85. The fair market value of such stock on June 1, 1962, was \$100. On June 15, 1963, when the fair market value of the stock is \$60, such option is extended so that it is exercisable at any time before July 1, 1966, at \$55 a share. The average fair market value of the stock subject to the option for each of the 12 calendar months preceding June 1963, is as follows:

1962		1963	
June	\$100	January	\$90
July	90	February	80
August	80	March	70
September	70	April	60
October	80	May	60
November	80		
December	90		

The aggregate of such values is \$950. When this sum is divided by 12, the result is \$79.17, which is an amount less than 80 percent of the fair market value of the stock (\$100) when the option was granted. Accordingly, when the option is extended on June 15, 1963, the option price could have been reduced as low as \$51 (85 percent of the fair market value of the stock on such day) without disqualifying the option as a restricted stock option. If the aggregate fair market values of the stock so ascertained had amounted to \$960 or more, the rules of subparagraph (3) of this paragraph would have been applicable with the result that any reduction in the option price would have disqualified the option as a restricted stock option.

(5) (i) The time or date when an option is modified, extended, or renewed

shall be determined, insofar as applicable, in accordance with the rules governing determination of the time or date of granting an option provided in paragraph (c) of § 1.421-7. For purposes of sections 421 through 425, the term "modification" means any change in the terms of the option which gives the optionee additional benefits under the option. For example, a change in the terms of the option, which shortens the period during which the option is exercisable, is not a modification. However, a change which provides more favorable terms for the payment for the stock purchased under the option, is a modification. Where an option is amended solely to increase the number of shares subject to the option, such increase shall not be considered as a modification of the option, but shall be treated as the grant of a new option for the additional shares.

(ii) (a) A change in the number or price of the shares of stock subject to an option merely to reflect a stock dividend, or stock split-up, is not a modification of the option.

(b) A change in the number or price of the shares of stock subject to an option to reflect a corporate transaction (as defined by paragraph (a)(1)(ii) of this section) is not a modification of the option provided that the excess of the aggregate fair market value (determined immediately after such corporate transaction) of the shares subject to the option immediately after such change over the aggregate new option price of such shares is not more than the excess of the aggregate fair market value of the shares subject to the option immediately before the transaction over the aggregate former option price of such shares, and provided that the option after such change does not give the employee additional benefits which he did not have before such change. The ratio of the option price immediately after the change to the fair market value of the stock subject to the option immediately after the corporate transaction must not be more favorable to the optionee on a share by share comparison than the ratio of the old option price to the fair market value of the stock subject to the option immediately before such transaction. A reduction in the option price of an option, other than as specifically provided for in this section, is a modification of such option.

(c) The application of (b) of this subdivision may be illustrated by the following example:

Example. E, an employee of P Corporation, holds a qualified stock option granted to him by P to buy 90 shares of P stock at \$36 per share. P Corporation is a party to a corporate transaction (as defined by paragraph (a)(1)(ii) of this section) which results in a decline in the fair market value of P stock. Immediately before such transaction the fair market value of P stock was \$64 per share. Immediately after such transaction, the fair market value of P stock is \$48 per share. Two weeks after such transaction, P proposes to amend E's option in order to reflect the decline in the fair market value of P stock attributable to the transaction. At such time, the fair market value

of P stock is \$50 per share. However, since the change was not made at the time of the transaction, the fair market value of P stock at the time of the change is irrelevant for purposes of determining whether the change comes under the rule of (b) of this subdivision. P changes the terms of E's option to lower the option price to \$27 per share and to increase the number of shares subject to the option to 120. No other terms of the option are changed. The aggregate fair market value (determined immediately after the corporate transaction) of the shares subject to the option immediately after the change is \$5,760 ($\48×120). The aggregate option price of the shares subject to the option immediately after the change is \$3,240 ($\27×120). Thus, the excess of such fair market value over such option price is \$2,520 ($\$5,760 - \$3,240$). The aggregate fair market value of the stock subject to the option immediately before the corporate transaction is \$5,760 ($\64×90). The aggregate option price for the stock subject to the option immediately before the change is \$3,240 ($\36×90). Thus, the excess of such fair market value over such option price is \$2,520 ($\$5,760 - \$3,240$). Accordingly, the excess after the change does not exceed the excess before the corporate transaction. Moreover, the ratio of the option price immediately after the change ($\$27$ per share) to the fair market value of P stock immediately after the transaction ($\$48$ per share) is not more favorable to E on a share by share comparison than the ratio of the old option price ($\$36$ per share) to the fair market value of P stock immediately before the transaction ($\$64$) ($27/48 = 36/64$). For purposes of section 425(h), the changes made do not confer additional benefits on E which he did not have before the change. Accordingly, the changes do not constitute a modification of E's option.

(iii) Any change in the terms of an option for the purpose of qualifying the option as a statutory option grants additional benefits and, therefore, is a modification. However, if the terms of an option are changed to provide that the optionee cannot transfer the option except by will or by the laws of descent and distribution in order to meet the requirements of section 422(b)(6), 423(b)(9), or 424(b)(2), such change is not a modification, provided that in any case where the purpose of the change is to meet the requirements of section 424(b)(2) the option is at the same time changed so that it is not exercisable after the expiration of ten years from the date the option was granted. Where an option is not immediately exercisable in full, a change in the terms of such option to accelerate the time at which the option (or any portion thereof) may be exercised is not a modification for purposes of section 425(h) and this section. A modification results where an option is revised to insert the language required by section 422(c)(6)(B).

(iv) An extension of an option refers to the granting by the corporation to the optionee of an additional period of time within which to exercise the option beyond the time originally prescribed. A renewal of an option is the granting by the corporation of the same rights or privileges contained in the original option on the same terms and conditions. The rules of this paragraph apply as well to successive modifications, extensions, and renewals.

(6) A statutory option may, as a result of a modification, extension, or renewal, thereafter cease to be a statutory option, or any option may, by modification, extension, or renewal, thereafter become a statutory option. Moreover, a qualified option after a modification may not be exercisable in accordance with its terms because of the requirements of section 422(b)(5) and section 422(c)(6). See paragraph (f)(3)(i) of § 1.422-2 and examples (8) and (9) of paragraph (f)(4) of § 1.422-2.

(7) The application of this paragraph may be illustrated by the following examples:

Example (1). On June 1, 1964, the X Corporation grants to an employee an option under X's employee stock purchase plan to purchase 100 shares of the stock of X Corporation at \$90 per share, such option to be exercised on or before June 1, 1966. At the time the option is granted, the fair market value of the X Corporation stock is \$100 per share. On February 1, 1965, before the employee exercises the option, X Corporation modifies the option to provide that the price at which the employee may purchase the stock shall be \$80 per share. On February 1, 1965, the fair market value of the X Corporation stock is \$90 per share. Under section 425(h), the X Corporation is deemed to have granted an option to the employee on February 1, 1965. Such option shall be treated as an option to purchase at \$80 per share 100 shares of stock having a fair market value of \$100 per share, that is, the higher of the fair market value of the stock on June 1, 1964, or on February 1, 1965. The exercise of such option by the employee after February 1, 1965, is not the exercise of a statutory option.

Example (2). On June 1, 1964, the X Corporation grants to an employee an option under X's employee stock purchase plan to purchase 100 shares of X Corporation stock at \$90 per share, exercisable after December 31, 1965, and on or before June 1, 1966. On June 1, 1964, the fair market value of X Corporation's stock is \$100 per share. On February 1, 1965, X Corporation modifies the option to provide that the option shall be exercisable on or before September 1, 1966. On February 1, 1965, the fair market value of X Corporation stock is \$110 per share. Under section 425(h), X Corporation is deemed to have granted an option to the employee on February 1, 1965, to purchase at \$90 per share 100 shares of stock having a fair market value of \$110 per share, that is, the higher of the fair market value of the stock on June 1, 1964, or on February 1, 1965. The exercise of such option by the employee is not the exercise of a statutory option.

Example (3). The facts are the same as in example (1), except that the employee exercised the option to the extent of 50 shares on January 15, 1965, before the date of the modification of the option. Any exercise of the option after February 1, 1965, the date of the modification, is not the exercise of a statutory option. See example (1) in this subparagraph. The exercise of the option on January 15, 1965, pursuant to which 50 shares were acquired, is the exercise of a statutory option.

Example (4). On June 1, 1964, the X Corporation grants to an employee an option to purchase 100 shares of the stock of X Corporation at \$80 per share, such option to be exercised on or before June 1, 1966. At the time the option is granted, the fair market value of the X Corporation stock is \$100 per share. On February 1, 1965, before the employee exercises the option, the X Corporation modifies the option to provide that the number of shares of stock which the em-

ployee may purchase at \$80 per share will be 250. On February 1, 1965, the fair market value of X Corporation stock is \$80 per share. Under these facts, the X Corporation has granted two options, one option (not a statutory option) with respect to 100 shares having been granted on June 1, 1964, and the other option (a qualified stock option) with respect to the additional 150 shares having been granted on February 1, 1965. In the absence of facts identifying which option is exercised first, the employee will be deemed to have exercised the options in the order in which they were granted.

PAR. 8. Section 1.691(c) is amended by revising section 691(c)(2)(B) and by adding a historical note. These amended and added provisions read as follows:

§ 1.691(c) Statutory provisions; recipients of income in respect of decedents; deduction for estate tax.

Sec. 691. *Recipients of income in respect of decedents.* * * *

(c) *Deduction for estate tax.* * * *
(2) *Method of computing deduction.* * * *
(B) The net value for estate tax purposes of all the items described in subsection (a)(1) shall be the excess of the value for estate tax purposes of all the items described in subsection (a)(1) over the deductions from the gross estate in respect of claims which represent the deductions and credit described in subsection (b). Such net value shall be determined with respect to the provisions of section 421(c)(2), relating to the deduction for estate tax with respect to stock options to which part II of subchapter D applies.

[Sec. 691(c) as amended by sec. 221(c)(2), Rev. Act 1964 (78 Stat. 75)]

PAR. 9. Paragraph (c)(1) and example (1) of paragraph (d) of § 1.691(c)-1 are amended to read as follows:

§ 1.691(c)-1 Deduction for estate tax attributable to income in respect of a decedent.

(c) *Amounts deemed to be income in respect of a decedent.* * * *

(1) The value for estate tax purposes of stock options in respect of which amounts are includible in gross income under section 421(b) (prior to amendment by section 221(a) of the Revenue Act of 1964), in the case of taxable years ending before January 1, 1964, or under section 422(c)(1), 423(c), or 424(c)(1), whichever is applicable, in the case of taxable years ending after December 31, 1963. See section 421(d)(6) (prior to amendment by sec. 221(a) of the Revenue Act of 1964), in the case of taxable years ending before January 1, 1964, and section 421(c)(2), in the case of taxable years ending after December 31, 1963.

(d) *Examples.* * * *

Example (1). X, an attorney who kept his books by use of the cash receipts and disbursements method, was entitled at the date of his death to a fee for services rendered in a case not completed at the time of his death, which fee was valued in his estate at \$1,000, and to accrued bond interest, which was valued in his estate at \$500. In all, \$1,500 was included in his gross estate in respect of income described in section 691(a)(1). There were deducted as claims against his estate \$150 for business expenses for

which his estate was liable and \$50 for taxes accrued on certain property which he owned. In all, \$200 was deducted for claims which represent amounts described in section 691(b) which are allowable as deductions to his estate or to the beneficiaries of his estate. His gross estate was \$185,000 and, considering deductions of \$15,000 and an exemption of \$60,000, his taxable estate amounted to \$110,000. The estate tax on this amount is \$23,700 from which is subtracted a \$75 credit for State death taxes leaving an estate tax liability of \$23,625. In the year following the closing of X's estate, the fee in the amount of \$1,200 was collected by X's son, who was the sole beneficiary of the estate. This amount was included under section 691(a)(1)(C) in the son's gross income. The son may deduct, in computing his taxable income for such year, \$260 on account of the estate tax attributable to such income, computed as follows:

(1) (i) Value of income described in section 691(a)(1) included in computing gross estate.....	\$1,500
(ii) Deductions in computing gross estate for claims representing deductions described in section 691(b).....	200
(iii) Net value of items described in section 691(a)(1).....	1,300
(2) (i) Estate tax.....	23,625
(ii) Less: Estate tax computed without including \$1,300 (item (1)(iii)) in gross estate.....	23,235
(iii) Portion of estate tax attributable to net value of items described in section 691(a)(1).....	390
(3) (i) Value in gross estate of items described in section 691(a)(1) received in taxable year (fee).....	1,000
(ii) Value in gross estate of all income items described in section 691(a)(1) (item (1)(i)).....	1,500
(iii) Part of estate tax deductible on account of receipt of \$1,200 fee (1,000/1,500 of \$390).....	260

Although \$1,200 was later collected as the fee, only the \$1,000 actually included in the gross estate is used in the above computations. However, to avoid distortion, section 691(c) provides that if the value included in the gross estate is greater than the amount finally collected, only the amount collected shall be used in the above computations. Thus, if the amount collected as the fee were only \$500, the estate tax deductible on the receipt of such amount would be 500/1,500 of \$390, or \$130. With respect to taxable years ending before January 1, 1964, see paragraph (d)(3) of § 1.421-5 for a similar example involving a restricted stock option. With respect to taxable years ending after December 31, 1963, see paragraph (c)(3) of § 1.421-8 for a similar example involving a stock option subject to the provisions of part II of subchapter D.

PAR. 10. Paragraph (d) of § 1.1012-1 is amended to read as follows:

§ 1.1012-1 Basis of property—cost.

(d) *Special rules.* For special rules for determining the basis for gain or loss in the case of vessels acquired through the Maritime Commission (or its successor), see sections 510 and 511 of the Merchant Marine Act of 1936 (46 U.S.C. 1160, 1161). For special rules for determining the unadjusted basis of property recovered in respect of war losses, see sec-

tion 1336. For special rules with respect to taxable years beginning before January 1, 1964, for determining the basis for gain or loss in the case of a disposition of a share of stock acquired pursuant to the timely exercise of a restricted stock option where the option price was between 85 percent and 95 percent of the fair market value of the stock at the time the option was granted, see paragraph (b) of § 1.421-5. See sections 423(c)(1) or 424(c)(1), whichever is applicable, for special rules with respect to taxable years ending after December 31, 1963 for determining the basis for gain or loss in the case of the disposition of a share of stock acquired pursuant to the timely exercise of a stock option described in such sections. See section 422(c)(1) for special rule with respect to taxable years ending after December 31, 1963, for determining the basis for gain or loss in the case of an exercise of a qualified stock option.

PAR. 11. Paragraph (c) of § 1.1014-1 is amended to read as follows:

§ 1.1014-1 Basis of property acquired from a decedent.

(c) *Property to which section 1014 does not apply.* Section 1014 shall have no application to the following classes of property:

(1) Property which constitutes a right to receive an item of income in respect of a decedent under section 691; and
(2) Restricted stock options described in section 421 which the employee has not exercised at death if the employee died before January 1, 1957. In the case of employees dying after December 31, 1956, see paragraph (d)(4) of § 1.421-5. In the case of employees dying in a taxable year ending after December 31, 1963, see paragraph (c)(4) of § 1.421-8 with respect to an option described in part II of subchapter D.

PAR. 12. There are inserted immediately after § 1.6038-2 the following new sections:

§ 1.6039 Statutory provisions; returns required in connection with certain stock options.

Sec. 6039. *Information required in connection with certain options—(a) Requirement of reporting.* Every corporation—

(1) Which in any calendar year transfers a share of stock to any person pursuant to such person's exercise of a qualified stock option or a restricted stock option, or
(2) Which in any calendar year records (or has by its agent recorded) a transfer of the legal title of a share of stock—

(A) Acquired by the transferor pursuant to his exercise of an option described in section 423(c) (relating to special rule where option price is between 85 percent and 100 percent of value of stock), or

(B) Acquired by the transferor pursuant to his exercise of a restricted stock option described in section 424(c)(1) (relating to options under which option price is between 85 percent and 95 percent of value of stock),

shall, for such calendar year, make a return at such time and in such manner, and setting forth such information, as the Secretary or his delegate may by regulations prescribe. For purposes of the preceding sentence, any option which a corporation treats as a qualified stock option, a restricted stock option, or

an option granted under an employee stock purchase plan, shall be deemed to be such an option. A return is required by reason of a transfer described in paragraph (2) of a share only with respect to the first transfer of such share by the person who exercised the option.

(b) *Statements to be furnished to persons with respect to whom information is furnished.* Every corporation making a return under subsection (a) shall furnish to each person whose name is set forth in such return a written statement setting forth such information as the Secretary or his delegate may by regulations prescribe. The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made.

(c) *Identification of stock.* Any corporation which transfers any share of stock pursuant to the exercise of an option described in subsection (a) (2) shall identify such stock in a manner adequate to carry out the purposes of this section.

(d) *Cross references.* For definition of—

- (1) The term "qualified stock option", see section 422(b).
- (2) The term "employee stock purchase plan", see section 423(b).
- (3) The term "restricted stock option", see section 424(b).

[Sec. 6039 as added by sec. 221(b)(1), Rev. Act 1964 (78 Stat. 73)]

§ 1.6039-1 Information returns required of corporations with respect to certain stock option transactions occurring on or after January 1, 1964.

(a) *Requirement of return under section 6039(a)(1).* Every corporation which transfers stock to any person pursuant to such person's exercise on or after January 1, 1964, of a qualified stock option described in section 422(b), or a restricted stock option described in section 424(b), shall make, for each calendar year in which such a transfer occurs, an information return on Form 3921 with respect to each transfer made during such year. The return shall include the following information:

- (1) The name, address and employer identification number of the corporation transferring the stock;
- (2) The name, address, and identifying number of the person to whom the share or shares of stock were transferred;
- (3) The name and address of the corporation the stock of which is the subject of the option (if other than the corporation transferring the stock);
- (4) The date the option was granted;
- (5) The date the shares were transferred to the person exercising the option;
- (6) The fair market value of the stock at the time the option was exercised;
- (7) The number of shares of stock transferred pursuant to the option;
- (8) The type of option under which the transferred shares were acquired; and
- (9) Such other information as may be required by the return or by the instructions issued with respect thereto.

(b) *Requirement of return under section 6039(a)(2).* (1) Every corporation which records, or has by its agent recorded, a transfer of the title to stock acquired by the transferor pursuant to

his exercise on or after January 1, 1964, of—

(i) An option granted under an employee stock purchase plan which meets the requirements of section 423(b), and with respect to which the special rule of section 423(c) applied, or

(ii) A restricted stock option which meets the requirements of section 424(b), and with respect to which the special rule of section 424(c)(1) applies,

shall make, for each calendar year in which such a recorded transfer of title to such stock occurs, an information return on Form 3922 with respect to each transfer containing the information required by subparagraph (2) of this paragraph.

(2) The return required by subparagraph (1) of this paragraph shall contain the following information:

- (i) The name and address of the corporation whose stock is being transferred;
- (ii) The name, address, and identifying number of the transferor;
- (iii) The date such stock was transferred to the transferor;
- (iv) The number of shares to which title is being transferred; and
- (v) The type of option under which the transferred shares were acquired.

(3) If the return required by this paragraph is made by the authorized "transfer agent" of the corporation, it shall be deemed to have been made by the corporation. The term "transfer agent", as used in this paragraph, means any designee authorized to keep the stock ownership records of a corporation and to record a transfer of title of the stock of such corporation on behalf of such corporation.

(4) Where a corporation is required by this paragraph to make an information return for the calendar year, such return will only have to supply information relating to the first recorded transfer of title to the share or shares of stock. Thus, for example, if the owner has record title to a share or shares of stock transferred to a recognized broker or financial institution and the stock is subsequently sold by such broker or institution (on behalf of the owner) the corporation is only required to report information relating to the transfer of record title to the broker or financial institution. Similarly, a return is required when a share of stock is transferred by the optionee to himself and another person (or persons) as joint tenants, tenants by the entirety or tenants in common. However, when stock is originally issued to the optionee and another person (or persons) as joint tenants, or as tenants by the entirety, and a stock certificate was not previously actually issued to the optionee as a sole owner, the return required by this paragraph shall be made (at such time and in such manner as is provided by this section with respect to a transfer by the optionee) in respect of the first transfer of the title to such stock by the optionee.

(5) Every corporation which transfers any share of stock pursuant to the exercise of an option described in this para-

graph shall identify such stock in a manner sufficient to enable the accurate reporting of the transfer of record title to such shares. Such identification may be accomplished by assigning to the certificates of stock issued pursuant to the exercise of such options a special serial number, or color.

(c) *Time, place, and manner of filing.*

(1) The returns on Forms 3921 and 3922 required by section 6039(a)(1) and (2) and paragraphs (a) and (b) of this section shall be filed as attachments to a summary report on Form 4067 which must be signed by the person required to file the returns or its duly authorized agent. With respect to returns on Form 3921, the summary report on Form 4067 shall indicate the number of returns filed, the number of shares transferred pursuant to exercise of options, the dates on which the options exercised were offered or granted, the fair market value of shares subject to option on such dates, the method by which such value was determined, the type of options under which the transferred shares were acquired, and such other information as may be required by the form or by the instructions issued with respect thereto. With respect to returns on Form 3922, the summary report on Form 4067 shall indicate the number of returns filed, the number of shares transferred, the type of options under which the transferred shares were acquired and such other information as may be required by the form or by the instructions issued with respect thereto. The summary report on Form 4067 and the attached returns on Forms 3921 and 3922 required for any calendar year shall be filed on or before February 28 of the following year with any of the Internal Revenue Service Centers.

(2) If a return is made by the authorized "transfer agent" of the corporation, as described in paragraph (b)(3) of this section, it shall be filed with the district director for the district where the income tax return of the principal corporation is filed after the close of the calendar year for which the return is required, but on or before February 28th of the following calendar year.

(3) For provisions relating to the extension of time for filing the returns required by this section, see § 1.6081-1.

(4) For provisions relating to the time for performance of an act when the last day prescribed for performance falls on Saturday, Sunday, or a legal holiday, see § 301.7503-1 of this chapter (Regulations on Procedure and Administration).

(d) *Stock to which this section applies.* The rules of this section shall apply to any full share of stock acquired pursuant to the exercise of any qualified or restricted stock option, or any option granted under an employee stock purchase plan, irrespective of whether the transfer of stock pursuant to such exercise qualified for the special tax treatment of section 421 and the regulations thereunder. In addition, the rules of paragraph (b) of this section shall apply to any full shares of stock received in respect of stock which was originally acquired pursuant to the exercise of an option described in the preceding sen-

tence. See section 425(b). For definitions of the terms "exercise" and "transfer" see paragraphs (f) and (g) of § 1.421-7. A return is required under paragraph (b) of this section irrespective of whether the transfer of title constitutes a disposition of such stock as defined by section 425(c).

§ 1.6039-2 Statements to persons with respect to whom information is furnished.

(a) *Requirement and form of statement.* Every corporation required to make a return on Form 3921 or 3922 under section 6039(a) and § 1.6039-1 shall furnish to each person whose identifying number is (or should be) shown on such return a written statement containing the information required to be shown on such return. This requirement may be met by furnishing a copy of the appropriate return to such person. A statement shall be considered to be furnished to a person within the meaning of this section if it is mailed to such person at his last known address.

(b) *Time for furnishing statements—*
(1) *In general.* Each statement required by this section to be furnished to any person for a calendar year shall be furnished to such person on or before January 31 of the year following the year for which the statement is required.

(2) *Extension of time.* For good cause shown upon written application of the corporation required to furnish statements under this section, the district director may grant an extension of time not exceeding 30 days in which to furnish such statements. The application shall be addressed to the district director with whom the income tax returns of the applicant-corporation are filed and shall contain a full recital of the reasons for requesting the extension to aid the district director in determining the period of the extension, if any, which will be granted. Such a request in the form of a letter to the district director signed by the applicant (or its agent) will suffice as an application. The application shall be filed on or before the date prescribed in subparagraph (1) of this paragraph for furnishing the statements required by this section.

(3) *Last day for furnishing statement.* For provisions relating to the time for performance of an act when the last day prescribed for performance falls on Saturday, Sunday, or a legal holiday, see § 301.7503-1 of this chapter (Regulations on Procedure and Administration).

(c) *Penalty.* For provisions relating to the penalty provided for failure to furnish a statement under this section, see § 301.6678-1 of this chapter (Regulations on Procedure and Administration).

PAR. 13. Paragraph (c) of § 1.6071-1 is amended to read as follows:

§ 1.6071-1 Time for filing returns and other documents.

(c) *Time for filing certain information returns.* (1) For provisions relating to the time for filing returns of partnership income, see paragraph (e) (2) of § 1.6031-1.

(2) For provisions relating to the time for filing information returns by banks with respect to common trust funds, see § 1.6032-1.

(3) For provisions relating to the time for filing information returns by certain organizations exempt from taxation under section 501(a), see paragraph (e) of § 1.6033-1.

(4) For provisions relating to the time for filing returns by trusts claiming charitable deductions under section 642(c), see paragraph (c) of § 1.6034-1.

(5) For provisions relating to the time for filing information returns by officers, directors, and shareholders of foreign personal holding companies, see §§ 1.6035-1 and 1.6035-2.

(6) For provisions relating to the time for filing information returns with respect to certain stock option transactions, see paragraph (c) of § 1.6039-1.

(7) For provisions relating to the time for filing information returns by persons making certain payments, see § 1.6041-6.

(8) For provisions relating to the time for filing information returns regarding payments of dividends, see paragraph (d) of § 1.6042-1, and paragraph (c) of § 1.6042-2 (relating to returns for calendar years after 1962).

(9) For provisions relating to the time for filing information returns by corporations with respect to contemplated dissolution or liquidations, see paragraph (a) of § 1.6043-1.

(10) For provisions relating to the time for filing information returns by corporations with respect to distributions in liquidation, see paragraph (a) of § 1.6043-2.

(11) For provisions relating to the time for filing information returns with respect to payments of patronage dividends, see paragraph (b) of § 1.6044-1, and paragraph (d) of § 1.6044-2 (relating to returns for calendar years after 1962).

(12) For provisions relating to the time for filing information returns with respect to formation or reorganization of foreign corporations, see § 1.6046-1.

(13) For provisions relating to the time for filing information returns regarding certain payments of interest, see paragraph (c) of § 1.6049-1.

(14) For provisions relating to the time for filing information returns with respect to payment of wages in the form of group-term life insurance, see paragraph (b) of § 1.6052-1.

PAR. 14. Paragraph (b) of § 1.6091-1 is amended to read as follows:

§ 1.6091-1 Place for filing returns or other documents.

(b) *Place for filing certain information returns.* (1) For the place for filing returns of partnership income, see paragraph (e) (1) of § 1.6031-1.

(2) For the place for filing information returns by banks with respect to common trust funds, see § 1.6032-1.

(3) For the place for filing information returns by certain organizations exempt from taxation under section 501(a), see paragraph (e) of § 1.6033-1.

(4) For the place for filing information returns by trusts claiming charitable deductions under section 642(c), see paragraph (c) of § 1.6034-1.

(5) For the place for filing information returns by officers, directors, and shareholders of foreign personal holding companies, see paragraph (d) of § 1.6035-1 and paragraph (d) of § 1.6035-2.

(6) For the place for filing information returns relating to certain stock option transactions, see paragraph (c) of § 1.6039-1.

(7) For the place for filing returns of information reporting certain payments on Forms 1099 and 1096, see § 1.6041-6.

(8) For the place for filing returns of information regarding payments of dividends, see paragraph (d) of § 1.6042-1 and paragraph (c) of § 1.6042-2 (relating to returns for calendar years after 1962).

(9) For the place for filing information returns by corporations relating to contemplated dissolution or liquidation, see paragraph (a) of § 1.6043-1.

(10) For the place for filing information returns by corporations relating to distributions in liquidation, see paragraph (a) of § 1.6043-2.

(11) For the place for filing returns of information regarding payments of patronage dividends, see paragraph (b) of § 1.6044-1, and paragraph (d) of § 1.6044-2 (relating to returns for calendar years after 1962).

(12) For the place for filing information returns relating to formation or reorganization of foreign corporations, see paragraph (e) of § 1.6046-1.

(13) For the place for filing information returns regarding certain payments of interest, see paragraph (c) of § 1.6049-1.

(14) For the place for filing information returns with respect to payment of wages in the form of group-term life insurance, see paragraph (b) of § 1.6052-1.

PAR. 15. Section 301.6652 is amended by revising section 6652(a), and by adding a historical note. These amended and added provisions read as follows:

§ 301.6652 Statutory provisions; failure to file certain information returns.

Sec. 6652. *Failure to file certain information returns—*(a) *Returns relating to payments of dividends, etc., and certain transfers of stock.* In the case of each failure—

(1) To file a statement of the aggregate amount of payments to another person required by section 6042(a) (1) (relating to payments of dividends aggregating \$10 or more), section 6044(a) (1) (relating to payments of patronage dividends aggregating \$10 or more), or section 6049(a) (1) (relating to payments of interest aggregating \$10 or more),

(2) To make a return required by section 6039(a) (relating to reporting information in connection with certain options) with respect to a transfer of stock or a transfer of legal title to stock, or

(3) To make a return required by section 6052(a) (relating to reporting payment of wages in the form of group-term life insurance) with respect to group-term life insurance on the life of an employee, on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful ne-

glect, there shall be paid (upon notice and demand by the Secretary or his delegate and in the same manner as tax), by the person failing to file a statement referred to in paragraph (1) or failing to make a return referred to in paragraph (2) or (3), \$10 for each such failure, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed \$25,000.

[Sec. 6652 as amended by sec. 85, Technical Amendments Act 1958 (72 Stat. 1664); sec. 19(d), Rev. Act 1962 (76 Stat. 1057); sec. 221(b)(2), Rev. Act 1964 (78 Stat. 74)]

PAR. 16. The last sentence of paragraph (a)(1) of § 301.6652-1 is revised, and paragraphs (c), (d) and (e) of § 301.6652-1 are deleted, and new paragraphs (c), (d), (e), (f) and (g) are added thereto. These revised and added provisions read as follows:

§ 301.6652-1 Failure to file certain information returns.

(a) *Returns with respect to payments made in calendar years after 1962—(1) Payments of dividends, interest, or patronage dividends aggregating \$10 or more.* In the case of each failure to file a statement required by—

(i) Section 6042(a)(1), relating to information returns with respect to payments of dividends aggregating \$10 or more in a calendar year, in effect with respect to payments made after December 31, 1962.

(ii) Section 6044(a)(1), relating to information returns with respect to certain payments by cooperatives aggregating \$10 or more in a calendar year, in effect with respect to payments made on or after the first day of the first taxable year of the cooperative beginning after December 31, 1962, with respect to patronage occurring on or after such first day, or

(iii) Section 6049(a)(1), relating to information returns with respect to payments of interest aggregating \$10 or more in a calendar year, in effect with respect to payments made after December 31, 1962, and the regulations under such section, within the time prescribed for filing such statement (determined with regard to any extension of time for filing), there shall be paid by the person failing to so file the statement \$10 for each such statement not so filed. However, the total amount imposed on the delinquent person for all such failures under section 6652(a) and this section during any calendar year shall not exceed \$25,000.

(c) *Returns with respect to reporting payments of wages in the form of group-term life insurance provided in a calendar year after December 31, 1963.* In the case of each failure to file a return required by section 6052(a), relating to reporting payment of wages in the form of group-term life insurance provided for any employee on his life in a calendar year after December 31, 1963, and the regulations under such section, within the time prescribed for filing such return (determined with regard to any extension of time for filing), there shall be paid by the person failing to

so file such return \$10 for each such return not so filed. However, the total amount imposed on the delinquent person for all such failures under section 6652(a) and this section during any calendar year shall not exceed \$25,000.

(d) *Returns with respect to transfer of stock or record title thereto pursuant to options exercised on or after January 1, 1964.* In the case of each failure to file a statement of the transfer of stock or of record title thereto as required by section 6039(a) and the regulations under such section within the time prescribed for filing such statement (determined with regard to any extension of time for filing), there shall be paid by the corporation failing to so file such statement, \$10 for each such statement not so filed. However, the total amount imposed on the delinquent corporation for all such failures under section 6652(a) and this section during any calendar year shall not exceed \$25,000.

(e) *Manner of payment.* The penalty imposed under section 6652 and this section on any person shall be paid in the same manner as tax upon the issuance of a notice and demand therefor.

(f) *Showing of reasonable cause.* The penalty imposed by section 6652 shall not apply with respect to a failure to file a statement within the time prescribed if it is established to the satisfaction of the district director or the director of the regional service center that such failure was due to reasonable cause and not to willful neglect. An affirmative showing of reasonable cause must be made in the form of a written statement, containing a declaration that it is made under the penalties of perjury, setting forth all the facts alleged as a reasonable cause.

(g) *Alcohol and tobacco taxes.* For penalties for failure to file certain information returns with respect to alcohol and tobacco taxes, see, generally, subtitle E of the Code.

PAR. 17. Section 301.6678 is amended by revising section 6678 and by adding a historical note. These amended and added provisions read as follows:

§ 301.6678 Statutory provisions; failure to furnish certain statements.

Sec. 6678. *Failure to furnish certain statements.* In the case of each failure to furnish a statement under section 6039(b), 6042(c), 6044(e), 6049(c) and 6052(b) on the date prescribed therefor to a person with respect to whom a return has been made under section 6039(a), 6042(a)(1), 6044(a)(1), 6049(a)(1), or 6052(a), respectively, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Secretary or his delegate and in the same manner as tax), by the person failing to so furnish the statement, \$10 for each such statement not so furnished, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed \$25,000.

[Sec. 6678 as added by sec. 19(e), Rev. Act 1962 (76 Stat. 1058) and as amended by secs. 204(c)(2), 221(b)(3), Rev. Act 1964 (78 Stat. 37, 75)]

PAR. 18. Paragraph (a) of § 301.6678-1 is amended by adding thereto new subparagraphs (4) and (5). These added provisions read as follows:

§ 301.6678-1 Failure to furnish statements.

(a) *In general.* * * *

(4) Under section 6039(b) and § 1.6039-2 to a person with respect to whom a return has been made under section 6039(a), relating to information returns with respect to certain stock option transactions occurring in a calendar year, or

(5) Under section 6052(b) and § 1.6052-2 to a person with respect to whom a return has been made under section 6052(a), relating to information returns with respect to payment of wages in the form of group-term life insurance provided for an employee on his life.

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

[F.R. Doc. 66-6923; Filed, June 23, 1966; 8:47 a.m.]

Title 46—SHIPPING

Chapter IV—Federal Maritime Commission

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES

[General Order 15; Amdt. I]

PART 533—FILING OF TARIFFS BY TERMINAL OPERATORS

Compliance

On October 5, 1965, the Federal Maritime Commission published in the FEDERAL REGISTER final rules governing the filing of tariffs by terminal operators (30 F.R. 12681). The rules provided that terminal operators were required to comply with the rules within 180 days from the effective date of the rules. Thereafter, certain railroads which operate terminal facilities petitioned the U.S. Court of Appeals for the District of Columbia Circuit to review the rules, alleging inter alia that the rules were invalid because the Commission was attempting to exercise jurisdiction committed by Congress to the Interstate Commerce Commission. The railroads apparently construed the Commission's notice promulgating the rules as evidence of an intent by the Commission to regulate the regulations and practices of terminal facilities insofar as cargo carried to or from piers by railroads is concerned, and since the Interstate Commerce Commission regulates the rates, regulations and practices of terminal facilities utilized by and for rail traffic, the railroads anticipated the exercise of concurrent jurisdiction by the two agencies, something they assert is prohibited by section 33 of the Shipping Act, 1933.

Following the filing of the petition to review in the court of appeals, we postponed the effective date of the rules until the court disposed of the review suit (31 F.R. 2429). On March 9, 1966, the railroads, the Federal Maritime Commission, and the United States moved the court of appeals to stay all proceedings in the case until May 16,

1966, in order to allow the Interstate Commerce Commission opportunity to consider the problems raised by the case and determine whether or not it should intervene. On March 18, 1966, the court granted the motion to stay. Subsequently, we proposed certain changes in the rules and in our opinion promulgating the rules to the Interstate Commerce Commission in order to satisfy the objection of that Commission. The Interstate Commerce Commission agreed that the changes satisfied their objection, and, accordingly, we moved the court of appeals on May 18, 1966, for leave to amend the rules. On June 13, 1966 the court granted the motion—

conditioned upon (1) the Commission's issuance of the amended order within 15 days from the date of this order and (2) the Commission's agreement to stay the effectiveness of its order pending final disposition of this case in this court. * * *

We accept those conditions.

In promulgating the rules in question, the Federal Maritime Commission did not intend to decide the question of whether it has jurisdiction over regulations and practices of railroad-operated terminals insofar as cargo carried to or from the piers by railroads is concerned. In promulgating the rules, the Federal Maritime Commission is simply requiring that railroad-operated terminals which handle cargo delivered by modes of transportation other than rail, file with this Commission all separately stated terminal rates and rules and regulations affecting those rates.

A reading of our opinion promulgating the rules under review indicates to us that it is susceptible of an interpretation that we asserted jurisdiction to regulate regulations and practices relating to rail traffic.

The following portion of our opinion provides the basis for that interpretation:

Specific charges for marine terminal services performed in connection with cargo moving on common carriers by water, however, are subject to Federal Maritime Commission jurisdiction. If the function is of a marine terminal nature, no matter what the identity of the person performing such function, it is subject to Federal Maritime Commission jurisdiction. If the Commission were to regulate only the services performed by railroad marine terminals in connection with truck traffic, and not regulate identical services performed for rail traffic, the door would be open to discrimination by railroads against truck cargo in favor of their own rail cargo.

We hereby strike the foregoing quotation from our previous opinion.

Additionally, we think that any burden on the railroads resulting from duplication of tariff filings will be greatly minimized by the following change. We are allowing terminal operators who file tariffs with the Interstate Commerce Commission to file with us copies of those tariffs rather than requiring them to prepare new tariffs for filing only with us. Many of the railroads have been following this procedure in the past

even though there have not been any formal requirements relating to tariff filings with this Commission.

Therefore, pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 1003) and sections 17, 21, and 43 of the Shipping Act, 1916 (46 U.S.C. 816, 820, and 841a), § 533.5 of Title 46, CFR, is hereby amended by the addition of the following sentence:

§ 533.5 Compliance with this part and other terminal tariff filing requirements.

* * * Terminal Operators who file tariffs with the Interstate Commerce Commission pursuant to statute or rule of that Commission may satisfy the requirements of this part by filing with the Federal Maritime Commission a copy of any such tariff filed with the Interstate Commerce Commission.

The Commission is of the opinion that the notice and public procedure afforded by section 4(a) of the Administrative Procedure Act (5 U.S.C. 1003) are unnecessary in this instance, as this amendment clarifies the intent of the original order and relieves restrictions imposed by the rules as originally issued. In accordance with our notice issued previously and as recited above, the effective date of these rules is postponed pending disposition by the Court of Appeals of the review suit now pending.

By the Commission.

[SEAL]

THOMAS LISI,
Secretary.

[F.R. Doc. 66-6929; Filed, June 23, 1966;
8:48 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. 983-A]

PART 95—CAR SERVICE

Distribution of Boxcars

At a session of the Interstate Commerce Commission, Railroad Safety and Service Board, held in Washington, D.C., on the 20th day of June A.D. 1966.

Upon further consideration of Service Order No. 983 (31 F.R. 6060, 7469) and good cause appearing therefor:

It is ordered, That:

Section 95.983 *Distribution of Boxcars*, be and it is ordered vacated and set aside.

(Secs. 1, 12, 15, 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, 17(2). Interprets or applies secs. 1(10-17), 15(4), 40 Stat. 101, as amended 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), 17(2))

It is further ordered, That this order shall become effective at 11:59 p.m., June 21, 1966; that copies of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and

per diem agreement under the terms of that agreement; and that notice of the order shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Safety and Service Board.

[SEAL]

H. NEIL GARSON,
Secretary.

[F.R. Doc. 66-6932; Filed, June 23, 1966;
8:48 a.m.]

[Rev. S.O. 985-A]

PART 95—CAR SERVICE

Distribution of Boxcars

At a session of the Interstate Commerce Commission, Railroad Safety and Service Board, held in Washington, D.C., on the 20th day of June A.D. 1966.

Upon further consideration of Revised Service Order No. 985 (31 F.R. 7468, 8064) and good cause appearing therefor:

It is ordered, That:

Section 95.985 *Distribution of boxcars*, be and it is ordered vacated and set aside.

(Secs. 1, 12, 15, 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, 17(2). Interprets or applies secs. 1(10-17), 15(4), 40 Stat. 101, as amended 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), 17(2))

It is further ordered, That this order shall become effective at 11:59 p.m., June 21, 1966; that copies of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of the order shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Safety and Service Board.

[SEAL]

H. NEIL GARSON,
Secretary.

[F.R. Doc. 66-6933; Filed, June 23, 1966;
8:48 a.m.]

[S.O. 986]

PART 95—CAR SERVICE

Distribution of Boxcars

At a session of the Interstate Commerce Commission, Railroad Safety and Service Board, held in Washington, D.C., on the 21st day of June A.D., 1966.

It appearing, that there is presently a shortage of boxcars to meet current requirements on the railroads named in paragraph (a) herein; that forthcoming grain harvests will further greatly deplete an inadequate supply of boxcars; that prompt and uninterrupted movement of grains from farms to terminals is essential to prevent spoilage and con-

sequent great economic loss; that continued movement of grains from terminals to markets and to ports is essential for the national economy and to enable the nation to meet its foreign aid commitments; that these railroads must also continue to furnish boxcars to shippers of other commodities in order to prevent the closing of industries and unemployment of their personnel; that present regulations and practices with respect to the use, supply, control, movement, distribution, exchange, interchange, and return of boxcars owned by these railroads are ineffective. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 95.986 Service Order 986.

(a) Distribution of boxcars; application:

(1) This section shall apply to boxcars owned by the railroads listed below:

- Chicago & North Western Railway Co.,
- Chicago, Milwaukee, St. Paul & Pacific Railroad Co.,
- Great Northern Railway Co.,
- Northern Pacific Railway Co.,
- Soo Line Railroad Co.,
- Union Pacific Railroad Co.

(2) The term "boxcars" as used in this section means plain unequipped boxcars of fifty feet six inches or less inside length.

(3) The provisions of this section shall apply to intrastate, interstate, and foreign commerce.

(b) Each common carrier by railroad subject to the Interstate Commerce Act shall observe, enforce, and obey the following rules, regulations, and practices with respect to its car service:

(1) Withdraw all boxcars described in paragraph (a) of this section from distribution and return to owners empty except as otherwise provided in subparagraphs (2), (3), (4), and (5) of this paragraph.

(2) Boxcars defined in paragraph (a) of this section available empty at a station other than a junction with the owner may be loaded to stations on or via the owner, or to any station which is closer to the owner than the point where loaded.

(3) Boxcars defined in paragraph (a) of this section available empty at a junction with the owner must be delivered to the owner at that junction, either loaded or empty.

(4) Boxcars defined in paragraph (a) of this section may not be backhauled, or held empty more than 24 hours awaiting placement for loading for the purpose of obtaining a load as authorized in subparagraphs (2) and (3) of this paragraph.

(5) A carrier named in paragraph (a) of this section will handle boxcars of other carriers named in that section under the provisions of subparagraphs

(1), (2), (3), and (4) of this paragraph and of paragraph (c) of this section.

(c) No common carrier by railroad subject to the Interstate Commerce Act shall accept from shipper any boxcar defined in paragraph (a) of this section for movement contrary to the provisions of paragraph (b) of this section.

(d) Effective date: This section shall become effective at 12:01 a.m., July 1, 1966.

(e) Expiration date: This section shall expire at 11:59 p.m., July 31, 1966, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, 17(2). Interprets or applies secs. 1(10-17), 15(4), 40 Stat. 101, as amended 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), 17(2))

It is further ordered, That a copy of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Safety and Service Board.

[SEAL] H. NEIL GARSON, Secretary.

[F.R. Doc. 66-6934; Filed, June 23, 1966; 8:48 a.m.]

Title 50—WILDLIFE AND FISHERIES

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

SUBCHAPTER B—HUNTING AND POSSESSION OF WILDLIFE

PART 10—MIGRATORY BIRDS

Hunting Seasons for Puerto Rico and Virgin Islands

On page 7479 of the FEDERAL REGISTER of May 24, 1966, there was published a notice of proposed rule making to issue regulations governing the hunting of doves and pigeons in Puerto Rico and the Virgin Islands.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed regulations.

No objections have been received and the proposed regulations are hereby adopted without change and are set forth below.

§ 10.52 Migratory game bird hunting seasons for Puerto Rico and the Virgin Islands.

Subject to the applicable provisions of the preceding sections of this part, the open seasons (dates inclusive), the shooting hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) Puerto Rico.

	Doves (all species) (singly or in the aggregate)	Pigeons (all species) (singly or in the aggregate)
Daily bag limit...	15	8 ¹
Possession limit...	15	8 ¹
Open season dates.	July 2 to Sept. 18, 1966.	July 2 to Sept. 18, 1966.
Shooting hours....	One-half hour before sunrise until sunset.	

¹ On Mona Island the daily bag and possession limit on pigeons is 15, singly or in the aggregate of all species.

(b) Virgin Islands.

	Doves (all species) (singly or in the aggregate)	Pigeons ¹ (red-neck only)
Daily bag limit...	10	5
Possession limit...	10	10
Open season dates.	July 15 to Sept. 1, 1966.	July 15 to Sept. 1, 1966.
Shooting hours....	One-half hour before sunrise until sunset.	

¹ Closed season on all species of pigeons except those known locally as red-neck pigeons.

Effective date. These regulations shall be effective as of June 27, 1966.

JOHN S. GOTTSCHALK, Director, Bureau of Sport Fisheries and Wildlife.

JUNE 24, 1966.

[F.R. Doc. 66-6837; Filed, June 23, 1966; 8:45 a.m.]

SUBCHAPTER C—THE NATIONAL WILDLIFE REFUGE SYSTEM

PART 32—HUNTING

Montezuma National Wildlife Refuge, New York

On page 7061 of the FEDERAL REGISTER of May 13, 1966, there was published a notice of a proposed amendment to § 32.11 and 32.21 of Title 50, Code of Federal Regulations. The purpose of this amendment is to provide for public hunting of migratory game birds and upland game on Montezuma National Wildlife Refuge, N.Y., as legislatively permitted.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections with respect to the proposed amendment. No comments, suggestions, or objections have been received. The proposed amendment is hereby adopted without change.

Since this amendment benefits the public by relieving existing restrictions on hunting, it shall become effective upon publication in the FEDERAL REGISTER. (Sec. 10, 45 Stat. 1224; 16 U.S.C. 715i and sec. 4, 48 Stat. 451, as amended, 16 U.S.C. 713d.)

1. Section 32.11 is amended by the addition of the following area as one where hunting of migratory game birds is authorized:

§ 32.11 List of open areas; migratory game birds.

* * * * *

RULES AND REGULATIONS

NEW YORK

MONTEZUMA NATIONAL WILDLIFE REFUGE

* * * * *

2. Section 32.21 is amended by the addition of the following area as one where hunting of upland game is authorized:

§ 32.21 List of open areas; upland game.

NEW YORK

MONTEZUMA NATIONAL WILDLIFE REFUGE

* * * * *

JOHN S. GOTTSCHALK,
Director.

JUNE 16, 1966.

[F.R. Doc. 66-6918; Filed, June 23, 1966;
8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 26]

RESTRICTED OR PROHIBITED ACTS

Use of Artificial Lights on Refuges

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the Migratory Bird Conservation Act of February 18, 1929, as amended (45 Stat. 1222; 16 U.S.C. 715), and other acts (R.S. 161, as amended, sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, secs. 4, 2, 48 Stat. 402, as amended 1270, sec. 4, 76 Stat. 654; 5 U.S.C. 22, 16 U.S.C. 685, 725, 690d, 664; 16 U.S.C. 460k.), it is proposed to amend 50 CFR 26.11 as set forth below. The purpose of this amendment is to allow the use of spotlights for the hunting of certain species such as raccoons and opossums on areas within the National Wildlife Refuge System. It has been determined that this use will aid in the proper control of these animals on areas where they interfere with the management of migratory birds.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment to the Director, Bureau of Sport Fisheries and Wildlife, Washington, D.C., 20240, within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

1. Section 26.11 is amended to read as follows:

§ 26.11 Artificial lights.

No person shall use or direct the rays of a spotlight or other artificial light, or automotive headlights for the purpose of spotting, locating or taking any animal within the boundaries of any wildlife refuge area or along rights-of-way for public or private roads within a wildlife refuge area, except under the provisions of this subchapter.

JOHN S. GOTTSCHALK,
Director.

JUNE 20, 1966.

[F.R. Doc. 66-6917; Filed, June 23, 1966; 8:47 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and
Conservation Service

[7 CFR Part 725]

FLUE-CURED TOBACCO

Notice of Determinations To Be Made With Respect to Regulations Pertaining to Farm Acreage Allotments and Farm Marketing Quotas for the 1966-67 and Subsequent Marketing Years

Pursuant to the authority contained in applicable provisions of the Agricultural Adjustment Act of 1938, as amended and supplemented, the Department is preparing to revise and consolidate the regulations for the establishing of farm acreage allotments and marketing quotas, the issuance of marketing cards, the identification of marketings of tobacco, the collection and refund of penalties, and the records and reports incident thereto for flue-cured tobacco on an acreage-poundage basis. The revised regulations will apply to the 1966-67 and subsequent marketing years, except that regulations issued for flue-cured tobacco on an acreage-poundage basis contained in Part 724 of this chapter shall remain in full force and effect with respect to the establishment of acreage allotments and farm marketing quotas for the 1966-67 marketing year.

The purpose of revising the regulations is to separate the regulations pertaining to flue-cured tobacco, which are on an acreage-poundage basis, from the regulations for other kinds of tobacco, which are on an acreage basis. This revision will involve the use of a separate part for flue-cured tobacco. Changes are also being made in provisions for the issuance of marketing cards and in the provisions relating to records and reports in order to facilitate the automated procedure being adopted. Other changes are for clarification purposes.

Prior to the issuance of the proposed regulations, any data, views or recommendations pertaining thereto which are submitted to the Director, Farmer Programs Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C., 20250, will be given consideration, provided such submissions are post-marked not later than 15 days from the date of publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner

convenient to the public business (7 CFR 1.27(b)).

It is proposed that the regulations be as follows:

PART 725—FLUE-CURED TOBACCO

Subpart—Flue-Cured Tobacco, 1966-67 and Subsequent Marketing Years

GENERAL

Sec.	
725.50	Basis and purpose.
725.51	Definitions.
725.52	Location of farm for administrative purposes.
725.53	Extent of determinations, computations, and rule for rounding fractions.
725.54	Supervisory authority of ASC State Committee.
725.55	Instructions and forms.
ACREAGE ALLOTMENTS, HISTORY ACREAGE AND YIELDS FOR OLD FARMS	
725.56	Determination of preliminary farm acreage allotments.
725.57	Determination of preliminary farm yields.
725.58	Determination of effective farm acreage allotments.
725.59	Determination of farm yields.
725.60	Determination of effective farm marketing quotas.
725.61	Determination of undermarketings and overmarketings for farms with Conservation Reserve contracts, Cropland Conversion Program agreements, or land covered by a Cropland Adjustment Program agreement.
725.62	Determination of undermarketings and overmarketings for allotments while in eminent domain pool.
725.63	Determination of allotments and yields for divided farms.
725.64	Determination of allotments and yields for combined farms.
725.65	Determination of undermarketings and overmarketings for reconstituted farms.
725.66	Correction of errors and adjusting inequities in acreage allotments for old farms.
725.67	Time for making reduction of acreage allotment for violation of the marketing quota regulations.
725.68	Allotments and yields for farms acquired under right of eminent domain.
725.69	Determination of acreage allotments for new farms.
725.70	Approval of allotments and marketing quotas, and notices to farm operators.
725.71	Application for review.
725.72	Lease and transfer of tobacco marketing quotas.
725.73	Determining tobacco history acreages.
725.74	Transfer of farm marketing quotas.
725.75-725.84	(Reserved).
725.85	Identification of kinds of tobacco.
725.86	Disposition of tobacco produced on excess acres.
725.87	Issuance of marketing cards.

MARKETING AND OTHER DISPOSITION OF
TOBACCO AND PENALTIES

Sec.	
725.88	Debt stamping and replacing marketing cards.
725.89	Invalid cards.
725.90	Misuse of marketing card.
725.91	Identification of producer marketings.
725.92	Rate of penalty.
725.93	Persons to pay penalty.
725.94	Penalties considered to be due from warehouseman, dealers, buyers, and others excluding producer.
725.95	Producers penalties; false identification; failure to account; cancelled allotments.
725.96	Payment of penalty.
725.97	Request for return of penalty.
725.98	Producers' records and reports.
725.99	Warehouseman's records and reports.
725.100	Dealers' records and reports.
725.101	Dealers exempt from regular records and reports.
725.102	Records and reports of truckers and persons redrying, prizing or stemming tobacco and storage firms.
725.103	Separate records and reports from persons engaged in more than one business.
725.104	Failure to keep records and make reports or making false report or record.
725.105	Duties of Flue-Cured Tobacco Cooperative Stabilization Corporation (Record Center).
725.106	Examination of records and reports.
725.107	Length of time records and reports are to be kept.
725.108	Information confidential.
725.109	Determination of discount varieties.

Authority: §§ 725.50 to 725.109, inclusive, issued under sections 301, 313, 314, 316, 317, 363, 372-375, 377, 378, 52 Stat. 38, as amended, 45, as amended, 48, as amended, 75 Stat. 469, as amended, 79 Stat. 66, 52 Stat. 63, as amended, 65-66, as amended, section 401, 63 Stat. 1054, as amended, sections 106, 112, 125, 70 Stat. 191, 195, 198, as amended, section 16(e), 76 Stat. 606; 7 U.S.C. 1301, 1313, 1314, 1314b, 1314c, 1363, 1372-1375, 1377, 1378, 1421, 1813, 1824, 1836, 16 U.S.C. 590p(e).

§ 725.50 Basis and purpose.

The regulations contained in §§ 725.50 through 725.109 are issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.), and are applicable to flue-cured tobacco for the 1966-67 and subsequent marketing years. They govern the establishment of farm acreage allotments and marketing quotas, the issuance of marketing cards, the identification of marketings of tobacco, the collection and refund of penalties, and the keeping of records and making of reports incident thereto, except that the provisions of Part 724 of this chapter shall continue to apply to the establishment of farm acreage allotments and marketing quotas for the 1966 crop of flue-cured tobacco. The applicability of the regulations for any marketing year subsequent to the 1966-67 marketing year is contingent upon the proclamation of a national marketing quota for such year pursuant to section 312(a) of the Act.

§ 725.51 Definitions.

As used in this subpart and in all instructions, forms, and documents in con-

nection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires. References contained herein to other parts of this chapter or title shall be construed as references to such parts and any amendments now in effect or later issued.

The following words or phrases are defined in Parts 718 or 719 of this chapter and shall have the meanings assigned to them by such regulations: "County committee", "County office manager", "community committee", "current year", "Department", "Deputy Administrator", "Director", "farm", "Federally-owned land", "operator", "person", "preceding year", "producer", "representative of the county committee", "representative of the State committee", "Secretary", "State committee", and "State executive director".

(a) *Act*. The Agricultural Adjustment Act of 1938, as amended.

(b) *Auction sale*. A marketing of tobacco by a sale at public auction through a warehouse in the regular course of business, including sale of all lots or baskets of tobacco at public auction in sequence at a given time.

(c) *Base period*. The 5 calendar years immediately preceding the year for which farm acreage allotments are currently being established.

(d) *Buyers corrections account*. The warehouse account of tobacco purchased at auction by the buyer, but not delivered to the buyer, or any tobacco returned by the buyer because of rejection by the buyer, lost ticket, or any other valid reason, which is turned back to the warehouseman and supported by an adjustment invoice from the buyer. This account shall include the pounds and amounts deducted resulting from short baskets and short weights, and pounds and amounts added resulting from long baskets and long weights, which buyers debit or credit to the warehouseman and support with adjustment invoices.

(e) *Community average yield*. The average yield in the community as determined by averaging the yields per acre for the 3 highest years of the 5 years 1959 to 1963, inclusive, except that if the yield for any of the 3 highest years is less than 80 percent of the average for the 3 years then that year or years shall be eliminated and the average of the remaining years shall be the community average yield.

(f) *Current year*. The calendar year for which acreage allotments are being established, or tobacco history acreage and yields are being determined, or the farm is being considered under the provisions of the marketing quota program.

(g) *Dealer or buyer*. A person who engages to any extent in acquiring or selling tobacco in the form normally marketed by producers.

(h) *Director*. The Director, or Acting Director, Farmer Programs Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(i) *Effective farm acreage allotment*. The allotment determined under § 725.58.

(j) *Effective farm marketing quota*. The quota determined under § 725.60.

(k) *Excess tobacco for a farm*. The excess tobacco on a farm for the current year shall be the quantity of tobacco marketed in the current marketing year after 110 percent of the effective farm marketing quota has been marketed.

(l) *Farm acreage allotment*. The acreage determined by multiplying the preliminary farm acreage allotment by the national acreage factor.

(m) *Farm marketing quota*. The pounds determined by multiplying the farm acreage allotment by the farm yield.

(n) *Farm yield*—(1) *Old farm*. The farm yield for an old farm is that yield determined as provided in § 725.59.

(2) *New farm*. The farm yield for a new farm is that yield determined as provided in § 725.59.

(o) *Floor sweepings*. Scraps or leaves of tobacco which accumulate on the warehouse floor in the regular course of business.

(p) *Leaf account tobacco*. All tobacco purchased or otherwise acquired by or for the account of a warehouse, including floor sweepings and tobacco from the buyers corrections account, and sales and resales of such tobacco.

(q) *Market*. The disposition of tobacco in raw or processed form by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos. "Marketing" and "marketed" shall have corresponding meanings to the term "market."

(r) *Marketing recorder or field assistant*. Any employee of the United States Department of Agriculture, or any employee of an Agricultural Stabilization and Conservation Service (ASCS) county office, whose duties involve the preparation and handling of the records and reports pertaining to the identification of marketings of tobacco, and shall include any other person authorized on MQ-78, Warehouse Organization and Authorization to Issue Memoranda of Sale, to perform such duties in the absence of a marketing recorder.

(s) *Marketing year*. The period beginning July 1 of the year in which the tobacco is produced and ending June 30 of the following year.

(t) *New farm*. A farm for which a tobacco allotment is established in the current year and for which there is no tobacco history acreage in the base period.

(u) *Nonauction sale*. Any first marketing of tobacco other than by a sale at auction.

(v) *Old farm*. A farm on which there is tobacco history acreage in one or more years of the base period.

(w) *Overmarketings*. The pounds by which the pounds marketed exceed the effective farm marketing quota.

(x) *Pound*. That amount of tobacco which, if weighed in its unstemmed form and in the condition in which it is usually marketed by producers, would equal one pound standard weight.

(y) *Preceding year*. The calendar year immediately preceding the year for which the allotments and quotas are es-

established, or the marketing year preceding the marketing year for which the allotments and quotas are established.

(z) *Preliminary farm acreage allotment.* The preceding year's farm acreage allotment for a farm which has tobacco history acreage in the base period.

(aa) *Preliminary farm yield.* The yield determined for a farm as provided in § 725.57.

(bb) *Resale.* The disposition by sale, barter, exchange, or gift inter vivos, of tobacco which has been marketed previously.

(cc) *Sale day.* The period at the end of which the warehouseman bills to buyers the tobacco purchased by them during such period.

(dd) *Scrap tobacco.* The residue which accumulates in the course of preparing tobacco for market, consisting chiefly of portions of tobacco leaves and leaves of poor quality.

(ee) *Suspended sale.* Any first marketing of tobacco at auction for which the sale is not identified by a marketing card by the end of the sale day on which such marketing occurred.

(ff) *Tobacco.* Flue-cured tobacco, types 11, 12, 13, and 14, as classified in Service and Regulatory Announcement No. 118 (Part 30 of this title) of the former Bureau of Agricultural Economics of the U.S. Department of Agriculture.

(gg) *Tobacco available for marketing.* All tobacco produced on a farm which has not been marketed and which has not been disposed of so that it cannot be marketed.

(hh) *Trucker.* A person who engages in the business of trucking or hauling tobacco for producers to a point where it may be marketed or otherwise disposed of in the form and in the condition in which it is usually marketed by producers.

(ii) *Undermarketings.* The pounds by which the effective farm marketing quota is more than the pounds marketed.

(jj) *Warehouseman.* A person who engages in the business of holding sales of tobacco at public auction.

§ 725.52 Location of farm for administrative purposes.

(a) *County.* The location of a farm in a county for administrative purposes shall be as provided in Part 719 of this chapter.

(b) *Community.* (1) A farm that is geographically located entirely within one community shall be assigned to that community.

(2) A farm that is geographically located in one county and in more than one community shall be assigned to the community (i) where the principal dwelling is located, or (ii) where the largest amount of cropland is located, if there is no such dwelling.

(3) A farm that is geographically located in more than one county and in more than one community shall be assigned to the community in the county in which the farm is located for administrative purposes under Part 719 of this chapter in which the principal dwelling is located, or if the principal dwelling is not located in such county, or there is no

such dwelling, to the community in such county having the largest amount of cropland.

§ 725.53 Extent of determinations, computations, and rule for rounding fractions.

(a) *General.* If rounding is prescribed herein, computations shall be carried to two decimal places beyond the number of decimal places required, and digits of 50 or less beyond the required number of decimal places shall be dropped; if 51 or more, the last required decimal place shall be increased by 1.

(b) *Allotments.* Farm acreage allotments shall be determined in hundredths and any allotment of less than 0.01 acre shall be increased to 0.01 acre. For example, 2.5536 equals 2.55; 2.5550 equals 2.55; 2.5551 equals 2.56; 2.5582 equals 2.56; and 0.0001 equals 0.01.

(c) *Yields.* Yields shall be determined in whole pounds. For example, 2006.50 equals 2006; and 2006.51 equals 2007.

§ 725.54 Supervisory authority of ASC State committee.

The State committee may take any action required by these regulations which has not been taken by a county committee. The State committee may also (a) correct, or require a county committee to correct, any action taken by a county committee which is not in accordance with these regulations, or (b) require a county committee to withhold taking any action which is not in accordance with these regulations.

§ 725.55 Instructions and forms.

The Director shall cause to be prepared and issued such forms as are necessary, and shall cause to be prepared such instructions with respect to internal management as are necessary for carrying out the regulations in this part. The forms and instructions shall be approved by and the instructions shall be issued by the Deputy Administrator.

§ 725.56 Determination of preliminary farm acreage allotments.

(a) *Farms with history acreage in base period.* A preliminary farm acreage allotment shall be determined for each farm which has tobacco history acreage, as defined and explained in § 725.73 of this part, in the base period, except that no preliminary farm acreage allotment shall be established for such farm in the current year if the county committee determines that the farm is devoted to commercial or residential development or other nonagricultural purposes, was not and could not have been acquired under the right of eminent domain by the persons or agency that acquired it, and is retired from agricultural production: *Provided,* That this paragraph shall not preclude the determination of a preliminary farm acreage allotment for (1) an old farm that is returned to agricultural production if the allotment for the retired land was not allocated to other land contained in the farm of which the retired land was a part, or (2) a farm for which an acreage allotment may be determined under the provisions of § 725.68.

(b) *Preliminary farm acreage allotment.* The preliminary farm acreage allotment for the current year for a farm which qualifies for a preliminary farm acreage allotment under paragraph (a) of this section shall be the same as the farm acreage allotment (prior to reduction for violation, prior to adjustment for lease and transfer, and prior to adjustment for undermarketings or overmarketings) established for such farm for the immediately preceding year.

§ 725.57 Determination of preliminary farm yields.

(a) *Old farms.* The preliminary farm yield for an old farm shall be the same preliminary farm yield as was in effect for such farm in the immediately preceding year. Preliminary farm yields required to be established for farms reconstituted under § 725.63, using yield data for base years 1959-63, shall be determined as follows:

(1) An average yield per acre for each farm for each year of the period 1959 through 1963 shall be determined by dividing the total pounds of flue-cured tobacco produced on such farm by the total acreage of flue-cured tobacco harvested from such farm for each respective year.

(2) A simple average of the yields per acre for each farm for the three highest years of the five consecutive crop years beginning with the 1959 crop year shall be determined. If flue-cured tobacco was not produced for at least 3 years of the 5-year period, the average of the yields for the years in which tobacco was produced shall be determined. The provisions of subparagraph (4) of this paragraph shall be applied to the simple average of such yields.

(3) If no flue-cured tobacco was produced on the farm in the 5-year period (1959-63) but the farm is eligible for an allotment because it has tobacco history acreage in the 5-year period (1960-64), a preliminary farm yield for the farm shall be determined by the county committee taking into consideration (i) the soil and other physical factors affecting the production of tobacco on the farm, and (ii) the preliminary farm yields determined for other farms in the community on which the soil and other physical factors affecting the production of tobacco are similar. If no flue-cured tobacco was produced in the community in the 5-year period 1959-63, the preliminary farm yield shall be appraised on the basis of the soil and other physical factors affecting the production of tobacco on the farm and the preliminary farm yields for similar farms outside the community.

(4) If the simple average of the yields for the farm as determined under subparagraph (2) of this paragraph is (i) as much as 80 percent but not more than 120 percent of the community average yield, the preliminary farm yield shall be the simple average of such yields; (ii) more than 120 percent of the community average yield, the preliminary farm yield shall be the sum of 50 percent of the average of the 3 highest years and 50 percent of the national average yield

goal (1854 pounds) but not less than 120 percent of the community average yield or more than the average of the 3 highest years for the farm; or (iii) less than 80 percent of the community average yield, the preliminary farm yield shall be 80 percent of the community average yield.

(b) *New farms.* The preliminary farm yield for a new farm shall be determined by dividing the farm yield determined in accordance with § 725.59(b) for such farm by the national yield factor applicable for the year in which the new farm allotment was established.

§ 725.58 Determination of effective farm acreage allotments.

The effective farm acreage allotment for the current year shall be determined by multiplying the preliminary farm acreage allotment for such year by the national acreage factor for the current year, adjusted as follows:

(a) *Upward adjustment.* The farm acreage allotment shall be adjusted upward by adding (1) the acreage obtained by dividing the pounds undermarketed in the preceding marketing year, not to exceed 100 percent of the farm marketing quota established for the preceding marketing year (plus pounds leased and transferred to the farm in such year) by the farm yield for the current year, and (2) the acreage obtained by dividing the pounds leased and transferred to the farm in the current year by the current year's farm yield for the lessee farm.

(b) *Downward adjustment.* The farm acreage allotment, after adjustment under paragraph (a), if any, shall be adjusted downward by subtracting (1) the acreage computed by dividing the pounds overmarketed in the preceding marketing year plus additional pounds overmarketed in any prior marketing year for which a reduction in quota has not been made, by the farm yield for the current year, (2) the acreage reduced for violation of the tobacco marketing quota regulations for a prior year, and (3) the acreage computed by dividing the pounds leased and transferred from the farm for the current year by the current year's farm yield for the lessor farm.

§ 725.59 Determination of farm yields.

(a) *Old farms.* The farm yield for an old farm shall be determined by multiplying the preliminary farm yield for the farm by the national yield factor for the current year.

(b) *New farms.* The farm yield for a new farm shall be that yield, not to exceed the community average yield, which the county committee determines for the farm taking into consideration (1) the soil and other physical factors affecting the production of tobacco on the farm, and (2) the farm yields determined for other farms on which the soil and other physical factors affecting the production of tobacco are similar.

§ 725.60 Determination of effective farm marketing quotas.

The effective farm marketing quota for a farm for the current year shall be the farm marketing quota determined by multiplying the farm acreage allotment

for the current year by the farm yield established for the current year, adjusted as follows:

(a) *Upward adjustment.* The farm marketing quota shall be adjusted upward by adding (1) the pounds undermarketed in the preceding marketing year, not to exceed 100 percent of the farm marketing quota for the preceding marketing year, plus pounds leased and transferred to the farm in such year, and (2) the pounds leased and transferred to the farm for the current year.

(b) *Downward adjustment.* The farm marketing quota, after adjustment, if any, under paragraph (a) of this section, shall be adjusted downward by subtracting (1) the pounds overmarketed in the preceding marketing year plus additional pounds overmarketed in any prior marketing year for which a reduction in quota has not been made, (2) the pounds reduced for violation of the tobacco marketing quota regulations for a prior year, and (3) the pounds leased and transferred from the farm for the current year.

§ 725.61 Determination of undermarketings and overmarketings for farms with conservation reserve contracts, cropland conversion program agreements, or land covered by a cropland adjustment program agreement.

The farm marketing quota established for a farm, all of which is under a conservation reserve contract or cropland conversion program agreement, or land covered by a cropland adjustment program agreement, including the tobacco acreage, shall be considered as zero for the purpose of determining undermarketings and overmarketings for such farm. For a farm, a part of which is under a conservation reserve contract or cropland conversion program agreement with the permitted acres less than the allotment, the marketing quota determined by multiplying that part of the allotment equal to the permitted acres by the farm yield shall be considered the farm marketing quota for the farm for the purpose of determining undermarketings and overmarketings. Permitted acres as used in this section means the total number of acres which could be devoted to nonconserving or soil bank base crops under the terms of the conservation reserve contract or cropland conversion program agreement.

§ 725.62 Determination of undermarketings and overmarketings for allotments while in eminent domain pool.

The farm marketing quota established for an allotment which is in the eminent domain pool for the current year shall be considered as zero for the purpose of determining undermarketings and overmarketings.

§ 725.63 Determination of allotments and yields for divided farms.

(a) *Allotments.* Farm acreage allotments for divided farms shall be divided pursuant to the provisions of Part 719 of this chapter. History acreages and other basic data for the base period shall be apportioned among the divided tracts as provided in Part 719 of this chapter,

except as provided in paragraphs (b) and (c) of this section.

(b) *Preliminary farm yields.* (1) Where contribution method is used, Where a tract is separated from the parent farm and the tobacco acreage allotment is divided by the contribution method, the preliminary farm yield shall be determined as follows:

(i) Where a preliminary farm yield was established for the tract prior to the time the tract became part of the parent farm such yield shall be the preliminary farm yield for the tract.

(ii) Where the tract is one for which a preliminary farm yield has never been established and one which was not a separate farm in one or more years of the period 1959 through 1963, the preliminary farm yield shall be the same as the preliminary farm yield for the parent farm.

(iii) Where the tract is (a) one for which a preliminary farm yield has never been established, and (b) one which was a separate farm in one or more years of the period 1959 through 1963, the preliminary farm yield shall be determined in accordance with procedure in § 725.57, using the community average yield for the community in which the tract is located under the provisions of § 725.52. In determining the preliminary farm yield, the yield per acre for the parent farm shall be used for those years of the period 1959 through 1963 the tract was part of the parent farm and the yield per acre for the tract when it was a separate farm shall be used in the remaining years.

(2) Where the contribution method is not used. When a farm is divided and the allotments are divided by any method other than the contribution method, the preliminary farm yield for such tract shall be the same as the preliminary farm yield established for the parent farm.

(c) *Farm yield.* The farm yield for a tract separated from a parent farm by division shall be determined by multiplying the preliminary farm yield by the national yield factor for the current year.

§ 725.64 Determination of allotments and yields for combined farms.

(a) *Allotments.* Farm acreage allotments and history acreages and other basic data for combined farms shall be computed for the base period in accordance with Part 719 of this chapter, except as provided in paragraph (b) of this section.

(b) *Yields.* The farm yield for a combined farm shall be the weighted average of the farm yields established for the parent farms. The preliminary farm yield for the combined farm shall be determined by dividing the farm yield for the combined farm by the national yield factor for the current year.

§ 725.65 Determination of undermarketings and overmarketings for reconstituted farms.

(a) *Divisions.* Undermarketings and overmarketing of the parent farms shall be apportioned among the divided tracts in the same ratio as the marketing quotas are established for the divided tracts.

(b) *Combinations.* Undermarketings of the parent farm shall be the total undermarketings of the combined farms and overmarketings of the parent farm shall be the total overmarketings of the combined farms.

§ 725.66 Correction of errors and adjusting inequities in acreage allotments for old farms.

(a) *General.* Notwithstanding the limitations contained in any other section of this subpart, the farm acreage allotment established for an old farm may be increased to correct an error or adjust an inequity if the county committee determines, with the approval of a representative of the State committee, that the increase is necessary to establish an allotment for such farm which is fair and equitable in relation to the allotments for other old farms in the community in which the farm is located.

(b) *Basis for adjustment.* Acreage increases to adjust inequities in acreage allotments shall be made on the basis of the past acreage of tobacco, making due allowances for drought, flood, hail, other abnormal weather conditions, plant bed, and other diseases; land, labor and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. Not to exceed 1 percent of the national acreage allotment minus that part of the national reserve set aside for establishing new farm allotments shall be made available for adjusting inequities and correction of errors.

(c) *CR, CCP, and CAP farms.* The allotment for a farm under a conservation reserve contract or a farm under a cropland conversion program agreement, or land under a cropland adjustment program agreement shall be given the same consideration under this section as the allotments for other old farms.

(d) *Approved acreage.* Acreage approved for a farm under this section becomes a part of the farm acreage allotment. The farm marketing quota for such farm shall be adjusted by multiplying the adjusted farm acreage allotment by the farm yield.

§ 725.67 Time for making reduction of acreage allotment for violation of the marketing quota regulations.

Any reduction in the farm acreage allotment for a farm for the current year required for any of the reasons provided in § 725.98 shall be made no later than April 1 of the current year. If the reduction is not made by such date for the current year, the reduction shall be in the farm acreage allotment next established for the farm, but no later than by April 1 in the subsequent year: *Provided,* That no reduction shall be made in the acreage allotment for any farm for a violation if the acreage allotment for such farm for any prior year was reduced on account of the same violation.

§ 725.68 Allotments and yields for farms acquired under right of eminent domain.

(a) *Allotments and marketing quotas.* The determination of allotments for farms acquired by an agency having the right of eminent domain, the transfer of such allotments to a pool, and reallocation from the pool shall be administered as provided in Part 719 of this chapter. Where all or a part of an allotment is pooled, all or a proportionate part of the farm marketing quota shall be pooled.

(b) *Yields for receiving farms.* The farm yield for a farm to which pooled acreage allotment and marketing quota are transferred shall be determined by dividing the farm marketing quota (including the transferred farm marketing quota) by the farm acreage allotment (including the transferred farm acreage allotment). The preliminary farm yield shall be determined by dividing the farm yield by the national yield factor for the current year.

(c) *Undermarketings and overmarketings.* Undermarketings of the farm acquired by eminent domain shall be added to the marketing quota of the receiving farm and overmarketings of the acquired farm shall be subtracted from the marketing quota of the receiving farm.

(d) *Release and reapportionment.* The displaced owner of a farm may, not later than April 1 of the current year, release in writing to the county committee for the current year all or part of the acreage for the farm in a pool under Part 719 of this chapter for reapportionment for the current year by the county committee to other farms in the county having allotments for flue-cured tobacco. The marketing quota for the pooled acreage shall be adjusted downward by the amount determined by multiplying the acreage released by the farm yield for the farm acquired by eminent domain. The county committee may reapportion, not later than May 1 of the current year, the released acreage or any part of it to other farms in the county on the basis of past acreage of tobacco, land, labor, and equipment available for the production of tobacco, crop rotation practices, and soil and other physical factors affecting the production of tobacco. The marketing quota for the farm to which released acreage is reapportioned shall be adjusted upward by multiplying the reapportioned acreage by the farm yield for such farm. The allotment acreage reapportioned shall not, for purposes of establishing future farm allotments, be regarded as planted on the farm to which the allotment was reapportioned.

§ 725.69 Determination of acreage allotments for new farms.

(a) *Basis.* The acreage allotment, other than an allotment made under § 725.68, for a new farm shall be that acreage which the county committee, with approval of the State committee, determines is fair and reasonable for the farm taking into consideration the past

tobacco experience of the farm operator, the land, labor and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco: *Provided,* That the acreage allotment so determined shall not exceed 50 percent of the average of the acreage allotments established for two or more but not more than five old tobacco farms which are similar with respect to land, labor and equipment available for the production of tobacco, crop rotation practices, and the soil and other physical factors affecting the production of tobacco.

(b) *Conditions.* Notwithstanding any other provision of this section, a tobacco acreage allotment shall not be established for any new farm unless each of the following conditions has been met:

(1) The farm shall be operated by the owner thereof. A person who owns only part of a farm cannot be considered the owner of the farm except that both husband and wife shall be considered the owner of the farm if the farm is jointly owned by such husband and wife.

(2) The farm covered by the application shall be the only farm in the United States owned or operated by the farm operator for which a burley, flue-cured, fire-cured, dark air-cured, Virginia sun-cured, Maryland, cigar-filler (type 41); cigar-binder (types 51 and 52), or cigar-filler and binder (types 42, 43, 44, 53, 54, and 55) tobacco acreage allotment is established for the current year.

(3) The farm shall not have an allotment for the current year for any of the kinds of tobacco listed in subparagraph (2) of this paragraph, other than the allotment requested in the application.

(4) The available land, type of soil, topography of the land on the farm for which the allotment is requested is suitable for the production of flue-cured tobacco requested in the application and the production of flue-cured tobacco on the farm ordinarily will not result in an undue erosion hazard under continuous production.

(5) The operator shall own, or otherwise have readily available, adequate equipment and the other facilities of production (including irrigation water) necessary to the successful production of flue-cured tobacco.

(6) The operator will obtain, during the current year, more than 50 percent of his income from the production of agricultural commodities or products from the farm for which the new farm allotment application is filed. In making this computation of income from the farm, no value will be allowed for the estimated return from the production of the requested allotment. However, in addition to the value of agricultural products sold from the farm, credit will be allowed for the estimated value of home gardens, livestock and livestock products, poultry, or other agricultural products produced for home consumption or other use on the farm. Where the farm operator is a partnership, each partner must obtain, during the current year, more

than 50 percent of his income from agricultural commodities or products from the farm. Where the farm operator is a corporation, it must have no major corporate purpose other than operation and ownership, where applicable, of such farm, and the officers and general manager of the corporation must obtain more than 50 percent of their income, including dividends and salary, from the corporation.

(7) The farm operator shall have had experience in producing, harvesting and marketing flue-cured tobacco either as a sharecropper, tenant, or farm operator during at least two of the 5 years immediately preceding the year for which the new farm allotment is requested. The production of flue-cured tobacco on a farm for which no farm acreage allotment for such kind of tobacco was established shall not be deemed as experience in growing tobacco for this purpose.

(8) A written application is filed by the farm operator at the office of the county committee on or before February 15 of the calendar year for which the application is made.

(9) The farm shall not include land returned to agricultural production after being acquired by an agency having the right of eminent domain if the entire tobacco allotment for the land was pooled pursuant to Part 719 of this chapter until after a date 5 years from the date the former owner was displaced from the land acquired by eminent domain.

(10) A farm which includes land which has no tobacco acreage allotment because the owner did not designate a tobacco allotment for such land when the parent farm was reconstituted pursuant to Part 719 of this chapter, shall not be eligible for a new farm tobacco allotment for a period of 5 years beginning with the year in which the farm reconstitution becomes effective.

(c) *Downward adjustment.* The acreage allotments established as provided in this section shall be subject to such downward adjustment as is necessary to bring the total of such allotments within the total acreage available for allotments to all new farms.

(d) *Basis for cancellation.* Any improperly established new farm allotment is subject to cancellation as further provided in this subpart.

§ 725.70 Approval of allotments and marketing quotas, and notices to farm operators.

(a) *Review by State committee.* All farm acreage allotments, yields, and marketing quotas shall be determined by the county committee of the county in which the farm is located and shall be reviewed by a representative of the State committee. The State committee may revise or require revision of any determination made under these regulations. All acreage allotments, yields, and marketing quotas shall be approved by a representative of the State committee, and no official notice of acreage allotment and marketing quota shall be mailed to a farm operator until such allotment and marketing quota has been so approved, except that revised notices without such

prior approval may be mailed in cases (1) resulting from reconstitutions that do not involve the use of additional acreage or marketing quota, or (2) of allotment reductions due to failure to return marketing cards where a satisfactory report of disposition of tobacco is not otherwise furnished.

(b) *Notice to farm operator.* An official notice of the effective farm acreage allotment and effective farm marketing quota shall be mailed to the operator of each farm shown by the records of the county committee to be entitled to an allotment. The notice to the operator of the farm shall constitute notice to all persons who as operator, landlord, tenant, or sharecropper are interested in the farm for which the allotment is established. All such notices shall bear the actual or facsimile signature of a member of the county committee. The facsimile signature may be affixed by a county committeeman or an employee of the county office. Insofar as practical, all notices shall be mailed in time to be received prior to the date of any tobacco marketing quota referendum. A copy of such notice containing thereon the date of mailing shall be maintained for not less than 30 days in a conspicuous place in the county office and shall thereafter be kept available for public inspection in the office of the county committee. A copy of such notice certified as true and correct shall be furnished without charge to any person interested in the farm for which the allotment is established.

(c) *Mailing notices.* If the records of the county committee indicate that the acreage allotment and marketing quota established for any farm may be changed because of (1) a violation of the marketing quota regulations for prior marketing year, (2) removal of the farm from agricultural production, (3) division of the farm, or (4) combination of the farm, the mailing of the notices may be delayed: *Provided*, That the notice of allotment and marketing quota for any farm shall be mailed no later than April 1 of the current year.

(d) *Allotment erroneous notice.* If the official written notice of the farm acreage allotment and marketing quota issued for any farm erroneously stated an acreage allotment larger than the correct effective farm acreage allotment, the acreage allotment shown on the erroneous notice shall be deemed to be the tobacco acreage allotment for the farm for the current marketing year only, if the county committee determines (with approval of the State executive director) that (1) the error was not so gross as to place the operator on notice thereof, and (2) that the operator, relying upon such notice and acting in good faith, planted an acreage of tobacco in excess of the correct effective farm acreage allotment.

(e) *Marketing quota erroneous notice.* If the official notice of acreage allotment and marketing quota issued for a farm erroneously stated a marketing quota larger than the correct effective farm marketing quota, the marketing quota shown on the erroneous notice shall be deemed to be the marketing quota and

the basis for marketing quota penalty computation for the farm for the current marketing year only, if the county committee determines (with approval of the State executive director) that (1) the error was not so gross as to place the operator on notice thereof and he relied on such notice acting in good faith, and (2) the farm operator was not notified of the correct farm marketing quota prior to harvest.

Undermarketings and overmarketings for farms for which the erroneous notice of marketing quota is applied shall be determined based on the correct effective farm marketing quota for the farm.

§ 725.71 Application for review.

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

(b) *If marketing quotas are not in effect.* Any producer who is dissatisfied with the farm acreage allotment may request reconsideration of such allotment in accordance with Part 780 of this chapter, Appeal Regulations, and amendments thereto, which are available in the ASCS county office.

§ 725.72 Lease and transfer of tobacco marketing quotas.

(a) *Farms eligible.* For the 1966, 1967, 1968, and 1969 crop years, notwithstanding the provisions of §§ 725.51 through 725.71, but subject to the limitations provided in this section, the owner and operator (acting together if different persons) of any farm for which an old farm tobacco acreage allotment is established for the current year, may lease and transfer all or any part of the farm marketing quota established for such farm to any other owner or operator of a farm in the same county with a current year's allotment (old or new farm) for flue-cured tobacco for use on such farm. Such lease and transfer of marketing quotas shall be recognized and considered valid by the county committee subject to the conditions set forth in this section.

(b) *Annual agreement.* Any lease shall be made on an annual basis and on such terms and conditions, except as otherwise provided in this section, as the parties thereto agree.

(c) *Filing an approval of lease.* The lease and transfer of an effective farm marketing quota or any part thereof shall not be effective until a copy of the lease, determined by the county committee to be in compliance with the provisions of this section, is filed with the county committee not later than April 1 of the current year.

(d) *Marketing quota basis for lease and transfer.* Marketing quota, pound for pound, shall be the basis for lease and transfer under the acreage-poundage program. The maximum marketing quota that may be leased and transferred to a lessee farm shall be limited to that number of pounds obtained by multiplying five (5.00) acres by the current year's farm yield for the lessee farm: *Provided*, That the total acreage allotted to a lessee farm after lease and transfer (the sum of its own allotment and the upward adjustment in acreage for lease and transfer) shall not exceed 50 per centum of the cropland acreage in the lessee farm. The maximum marketing quota that may be leased and transferred from a farm shall be limited to the effective farm marketing quota for the lessor farm.

(e) *Adjustment of acreage allotment.* The acreage allotment for a farm involved in a lease and transfer agreement shall be adjusted as follows:

(1) The acreage allotment for the lessee farm shall be adjusted upward by the number of acres obtained by dividing the pounds leased and transferred to the farm by the current year's farm yield for the lessee farm.

(2) The acreage allotment for the lessor farm shall be adjusted downward by the number of acres obtained by dividing the pounds leased and transferred from the farm by the current year's yield for the lessor farm.

(f) *Allotment acreage considered fully planted.* For purpose of establishing allotments for subsequent years, the tobacco acreage computed for pounds leased and transferred from a lessor farm shall be considered to have been planted on the lessor farm.

(g) *Marketing quota for a new farm.* Marketing quota established for a new farm shall not be leased or transferred.

(h) *CR, CCP, and CAP farms.* Marketing quotas shall not be leased and transferred to or from any farm under a conservation reserve contract or cropland conversion program agreement, or from a farm for which the allotment is covered by a cropland adjustment program agreement, which would result in acreage allotments in excess of the total number of acres which could be devoted to nonconserving or soil bank base crops under the terms of such contract or agreement, less, in the case of a lessee farm, the tobacco allotment acreage for such farm without regard to the lease and transfer. For possible effects of a lease and transfer agreement on such conservation reserve contract or cropland conversion program agreement, or cropland adjustment agreement, the regulations issued with respect to the conservation reserve program, cropland conversion program, and cropland adjustment program are applicable.

(i) *Pooled allotments.* Marketing quotas established for allotments in a pool, including allotments which have been released to the county committee and reapportioned to other farms, shall not be eligible for lease and transfer.

(j) *No subleasing.* Any leased marketing quota shall not be subleased to another farm.

(k) *Revised notices.* A revised notice showing the effective farm acreage allotment and effective farm marketing quota after lease and transfer shall be issued by the county committee to each of the operators of all farms involved in the lease and transfer agreement.

(l) *Violations.* If consideration of a violation is pending which may result in an allotment reduction for a farm for the current year, the county committee shall delay approval of any lease and transfer until the violation is cleared or the allotment reduction is made. However, if the allotment reduction in such a case cannot be made effective for the current crop year before April 1 the lease may be approved by the county committee. In any case, if, after a lease and transfer of a tobacco marketing quota has been approved by the county committee, it is determined that the allotment for the farm from which or to which the marketing quota is leased is to be reduced for a violation, the allotment reduction for such farm shall be delayed until the following year.

(m) *Zero allotment and zero marketing quota farms.* If the effective farm acreage allotment and effective farm marketing quota for a farm for the current year are reduced to zero for violation of the tobacco marketing quota regulations, no marketing quota for flue-cured tobacco may be leased to such farm for the current year.

(n) *Approval after review period.* No lease shall be approved by the county committee for any farm involved in a lease and transfer agreement until the time for filing an application for review, as shown on the original notice for the farm, has expired. If an application for review is filed for a farm involved in a lease and transfer agreement, such agreement shall not be approved by the county committee until the allotment for such farm is finally determined pursuant to part 711 of this chapter.

(o) *Marketing quota after lease and transfer approval.* The acreage allotment and marketing quota finally determined (after lease and transfer) for a farm under the provisions of this section shall be the allotment and marketing quota for such farm for the current year only for the purposes of determining (1) excess acreage, (2) the amount of penalty to be collected on marketings of excess tobacco, (3) eligibility for price support, (4) undermarketings and overmarketings, and (5) the percentage reduction in allotment and quota for violation of the tobacco marketing quota regulations. The percentage reduction determined as applicable when the violation occurred shall be applied to the allotment being reduced prior to any lease and transfer.

(p) *Dissolution of leasing agreement.* An agreement to lease and transfer may be dissolved at the request of all parties to the leasing agreement by so notifying the county committee in writing not later than April 1 of the current year. In such a case, an official notice of the effective farm acreage allotment and effective farm marketing quota, disregarding lease and transfer, shall be issued by the county committee to each of the op-

erators involved in the leasing agreement. If the request to dissolve the lease is made after April 1 of the current year, the acreage allotment and marketing quota resulting from the lease and transfer shall remain in effect.

(q) *Reconstitutions after lease and transfer.* Allotments for reconstituted farms shall be divided or combined in accordance with Part 719 of this chapter. For this purpose, the farm acreage allotment being divided or combined for a farm in the current year shall be the allotment after lease and transfer has been made. For the following year, that part of the acreage allotment computed for pounds leased shall revert to the farm from which it was transferred. Notwithstanding the above, in the case of division, the county committee may allocate, under Part 719 of this chapter, the leased quota involved to the tracts involved in the division as the farm operators interested in such tracts agree in writing.

§ 725.73 Determining tobacco history acreages.

Tobacco history acreage shall be determined for each farm for which a tobacco farm acreage allotment has been established for the current year.

(a) *Farm acreage allotment fully preserved.* The farm acreage allotment is fully preserved as tobacco history acreage for the current year if:

(1) (i) In the current year or either of the two preceding years the sum of (a) the final tobacco acreage as determined under Part 718 of this chapter, (b) the acreage computed for pounds leased and transferred from the farm under lease and transfer provisions, (c) the acreage regarded as planted to tobacco under the provisions of the Soil Bank Act, the cropland conversion program established under subsection 16(e) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590p(e)), and as 75 per centum of the farm acreage allotment (after adjustment for overmarketings and reduction for violation of marketing quota regulations). If the erroneous notice of allotment is applicable, the correct allotment shall be used to determine whether the 75 per centum provision was met; or (ii) in the current year or either of the two preceding years the farm acreage allotment is or was in the eminent domain allotment pool; or

(2) The farm consists of federally owned land for which a restrictive lease is in effect prohibiting the production of tobacco. (Federally owned land as used in this section means land owned by the Federal Government or any Department, bureau, or agency thereof, or by any corporation all of the stock of which owned by the Federal Government.)

(b) *Computed history acreage.* If the farm acreage allotment is not fully preserved as tobacco history acreage under paragraph (a) of this section, the tobacco history acreage shall be the sum of the acreage (not to exceed the farm acreage allotment) as follows:

(1) Final tobacco acreage.

(2) Acreage regarded as planted to tobacco under the provisions of the Soil

Bank Act, the cropland conversion program, and other diversion programs.

(3) Acreage computed for pounds leased and transferred from the farm.

(c) *Adjustment of tobacco history acreage for abnormal weather or disease.* If the county committee determines (with the approval of a representative of the State committee) that for any year the sum of the final acreage, the acreage computed for pounds leased and transferred from the farm under the lease and transfer provisions, and the acreage regarded as planted to tobacco under the Soil Bank Act, the cropland conversion program, and other diversion programs is less than 75 per centum of the farm acreage allotment (after any reduction for violation of the marketing quota regulations and adjustment for overmarketings) because of abnormal weather or disease, the tobacco history acreage for such year shall be adjusted to become the smaller of (1) the farm acreage allotment, or (2) the sum of the (i) final tobacco acreage for the farm, (ii) the acreage computed for pounds leased and transferred from the farm, (iii) the acreage regarded as planted to tobacco under the Soil Bank Act, the cropland conversion program, and other diversion programs, and (iv) the additional acreage which the county committee determines (with the approval if a representative of the State committee) would have been included in the final acreage except for abnormal weather or disease. Any adjustment in tobacco history acreages because of abnormal weather or disease shall not be considered as acreage devoted to tobacco in determining whether or not 75 percent of the farm acreage allotment is planted. No adjustment for abnormal weather or disease shall be made unless the farm operator requests such an adjustment in writing to the county committee no later than October 1 of the crop year involved.

(d) *Zero allotment farms.* Any acreage planted to tobacco on a farm for which a farm acreage allotment of zero was established shall not be credited with any tobacco history acreage.

(e) *Allotments in eminent domain pool.* The farm acreage allotments in the eminent domain pool, as provided in Part 719 of this chapter, shall be considered fully planted during the years in the pool, including any year in which the pooled allotment is released by the displaced owner to the county committee for reapportionment to other farms in the county. The tobacco history acreage shall be the same as the pooled allotment.

(f) *All history acreage is restored history acreage.* A farm shall be considered to have no tobacco history acreage during the base period and shall not be considered an old farm if the only tobacco history acreage computed for the farm during the base period consists of tobacco history acreage restored for reduction of the farm acreage allotment for violation of the tobacco marketing quota regulations.

(g) *Tobacco history acreage for new farms.* The tobacco history acreage for

a farm for the year it received an allotment as a new farm shall be the same as the new farm allotment if as much as 75 percent of the allotment is planted in such year. If less than 75 percent of the new farm allotment is planted, the tobacco history acreage shall be the same as the planted acreage. No adjustment for abnormal weather or disease shall be made in the tobacco history acreage for a farm for the year it was a new farm.

§ 725.74 Transfer of farm marketing quotas.

There shall be no transfer of farm marketing quotas except as provided in § 725.72 and Part 719 of this chapter.

§ 725.75-725.84 [Reserved]

§ 725.85 Identification of kinds of tobacco.

(a) *Similar tobacco.* Any tobacco that has similar appearance and growth characteristics while growing in a field on a farm, or any cured tobacco that has the same characteristics and corresponding qualities, colors and lengths, of flue-cured tobacco shall be considered flue-cured tobacco without regard to any factors of historical or geographical nature which cannot be determined by examination of the tobacco.

(b) *Discovering and identifying similar tobacco.* For the purpose of discovering and identifying tobacco subject to marketing quotas, the term "tobacco" with respect to any farm located in an area in which one or more of a kind and type of tobacco classified in Service and Regulatory Announcement No. 118 (Part 30 of this title) of the former Bureau of Agricultural Economics of the U.S. Department of Agriculture, is normally produced shall include all acreage of tobacco on a farm unless the county committee with the approval of the State committee (1) determines all or part of such acreage should not be considered as flue-cured tobacco under paragraph (a) of this section, or (2) determines from satisfactory proof furnished by the operator of the farm that a part or all of the production of such acreage has been certified by the Consumer and Marketing Service, U.S. Department of Agriculture, under the Tobacco Inspection Act (7 U.S.C. 511), and regulations issued pursuant thereto, as a kind of tobacco not subject to marketing quotas.

§ 725.86 Disposition of tobacco produced on excess acres.

Disposition of tobacco produced on excess acreage prior to harvest shall be subject to the provisions of Part 718 of the chapter.

§ 725.87 Issuance of marketing cards.

(a) *General.* A marketing card (MQ-76) shall be issued for the current marketing year for each farm having tobacco available for marketing. Cards shall be issued in the name of the farm operator except that (1) cards issued for tobacco grown for experimental purposes only shall be issued in the name of the experiment station, and (2) cards issued to a successor-in-interest shall be

issued in the name of the successor-in-interest.

(b) *Person authorized to issue marketing cards.* The county office manager shall be responsible for the issuance of marketing cards.

(c) *Rights of producers and successors-in-interest.* (1) Each producer having a share in the tobacco available for marketing from a farm shall be entitled to the use of the marketing card for marketing his proportionate share.

(2) Any person who succeeds, other than as a dealer, in whole or in part to the share of a producer in the tobacco available for marketing from a farm, shall, to the extent of such succession, have the same rights to the use of the marketing card and bear the same liability for penalties as the original producer.

(d) *Farms not eligible for price support.* The marketing card issued for a farm shall have the notation "No Price Support" where either of the following conditions exist:

(1) The farm is determined not to be in compliance with the tobacco allotment therefor under the provisions of Part 718 of this chapter.

(2) Tobacco is produced on land owned by the Federal Government in violation of a lease restricting the production of tobacco, even though the allotment for the farm is not exceeded.

(e) *Cards for tobacco grown by publicly-owned experiment stations.* A marketing card shall be issued to identify tobacco grown for experimental purposes by or for publicly-owned experiment stations.

(f) *Farm quota data entered on marketing card and supplemental card.* (1) Any marketing card issued to market tobacco shall show when issued, in the spaces provided on the reverse side, (i) the pounds computed by multiplying 10 percent times the effective farm marketing quota, and (ii) the pounds computed by multiplying 110 percent times the effective farm marketing quota.

(2) Where the farm operator requests it, a supplemental marketing card bearing the same name and identification as shown on the original marketing card may be issued for a farm upon return to the county office of an original marketing card or a supplemental marketing card. The pounds computed as 10 percent of the effective farm marketing quota and pounds computed as 110 percent of the effective farm marketing quota shall be entered in the spaces provided on reverse side of the marketing card and the balance of 110 percent of quota from prior marketing card shall be shown in the first space on the card.

(3) Two or more marketing cards may be issued for a farm if the farm operator so requests in writing and specifies in writing the number of pounds to be assigned to each card. In such cases, (i) each marketing card shall show 10 percent of the assigned quota in the space "10 percent of quota", and (ii) each marketing card shall show the assigned quota plus 10 percent of such assigned quota in the space "110 percent of quota".

§ 725.88 Debt stamping and replacing marketing cards.

(a) *Stamping to show indebtedness.*

(1) If any producer on a farm is indebted to the United States and such indebtedness is listed on the county debt record, the face of the marketing card issued for the farm shall bear the notation "U.S. Debt" followed by the amount of indebtedness. The name of the indebted producer, if different from the farm operator, shall be recorded directly under the debt notation. A notation showing indebtedness to the United States shall constitute notice to any warehouseman or loan organization that, subject to prior liens, the net proceeds from any price support loan due the debtor shall be paid to the United States to the extent of the indebtedness shown. The acceptance and use of a marketing card bearing a notice and information of indebtedness to the United States shall not constitute a waiver by the producer of any right to contest the validity of such indebtedness by appropriate administrative appeal or legal action and the producer may reject price support from which such indebtedness would be deductible. As debt collections are made, the amount of the debt shown on the card shall be revised to show the debt balance, and the tobacco sale bill shall show the amount collected.

(2) Any marketing card may be marked for the purpose of notifying warehousemen or loan organizations that the tobacco being marketed pursuant to such card is subject to a lien held by the United States.

(b) *Replacing, exchanging, or issuing additional marketing cards.* Subject to the approval of the county office manager, two or more marketing cards may be issued for any farm. Upon the return to the ASCS county office of a marketing card which has been used in its entirety and before the marketing of tobacco from the farm has been completed, a new marketing card bearing the same name, information and identification as the used card shall be issued for the farm. A new marketing card shall be issued to replace a card which has been determined by the county office manager who issued the card to have been lost, destroyed, or stolen.

§ 725.89 Invalid cards.

(a) *Reasons for being invalid.* A marketing card shall be invalid under any one of the following conditions:

- (1) It is not issued or delivered in the form and manner prescribed.
- (2) An entry is omitted or is incorrect.
- (3) It is lost, destroyed, stolen, or becomes illegible.
- (4) Any erasure or alteration has been made and not properly initialed by the county office manager or a marketing recorder.

(b) *Validating invalid cards.* If any entry is not made on a marketing card as required, either through omission or incorrect entry, and the proper entry is made and initialed by the county office manager who issued the card, or by a marketing recorder, then such card shall become valid.

(c) *Returning invalid cards.* In the event any marketing card becomes invalid (other than by loss, destruction, or theft, or by omission, alteration, or incorrect entry, which has not been corrected by the county office manager who issued the card, or by a marketing recorder), the farm operator, or the person having the card in his possession, shall return it to the ASCS county office at which it was issued.

§ 725.90 Misuse of marketing card.

Any information which causes a marketing recorder, a member of a State, county, or community committee, or an employee of an ASCS State or county office to believe that any tobacco which actually was produced on one farm has been or is being marketed under the marketing card issued for another farm, shall be reported immediately by such person to the ASCS county or State office.

§ 725.91 Identification of marketings.

(a) *Identification of producer marketings.* Each auction and nonauction marketing of tobacco from a farm in the current year shall be identified by a marketing card, Form MQ-76, issued for the farm. The reverse side of the marketing card shall show in pounds (1) 10 percent of quota, (2) 110 percent of quota, and (3) balance of 110 percent of quota after each sale. Also, each producer sale, auction or nonauction, shall be recorded on a uniform tobacco sale bill.

(b) *Other persons authorized to act as marketing recorder.* (1) A warehouseman or his representative who has been authorized to act as a marketing recorder during the current year on MQ-78—Tobacco, Warehouse Organization and Authorization to Issue Memoranda of Sale, may so act if the marketing recorder is not available at the warehouse.

(2) Any warehouseman or dealer who engages in the business of acquiring scrap tobacco from farmers, and who has been authorized to act as a marketing recorder, may record sales on MQ-76 covering a purchase of scrap tobacco.

(c) *Withdrawal of approval to act as marketing recorder.* The authorization on MQ-78 for a person to perform duties of a marketing recorder may be withdrawn by the State executive director if such action is determined to be necessary in order to properly enforce the regulations in this subpart.

(d) *Verification of penalty by warehousemen or dealers.* Each sale of tobacco by a producer which is subject to penalty and which has been recorded by a marketing recorder shall be verified by a warehouseman or dealer to determine whether the amount of penalty shown to be due has been correctly computed. Such warehouseman or dealer shall not be relieved of any liability for the amount of penalty due because of any error which may occur in computing the penalty and recording the sale.

(e) *Check register.* The serial number of the tobacco sale bill(s) shall be recorded by the warehouseman on the

check register or check stub for the check written covering the auction sale of tobacco by a producer.

(f) *Identification of dealer marketings of resale tobacco.* Each auction and nonauction marketing of resale tobacco in the current year shall be identified by a dealer identification card, Form MQ-79-2, issued to the dealer.

(g) *Separate display on auction warehouse floor.* Any warehouseman upon whose floor more than one kind of tobacco is offered for sale at public auction shall for each different kind of tobacco:

(1) Display it in separate areas on the auction warehouse floor.

(2) Identify each basket by a distinguishably different basket ticket clearly showing the kind of tobacco.

(3) Make and keep records that will insure a separate accounting and reporting of each of such kinds of tobacco sold at auction over the warehouse floor.

§ 725.92 Rate of penalty.

(a) *Basic rate.* The basic penalty rate shall be equal to seventy-five (75%) percent of the average market price for the immediately preceding marketing year as determined by the Crop Reporting Board, Statistical Reporting Service, United States Department of Agriculture. The rate of penalty will be determined for each marketing year and announced by the regulations in this subpart or amendment thereto.

(b) *Average market price.* The average market price as determined by the Crop Reporting Board for the marketing years specified was:

AVERAGE MARKET PRICE	
Marketing Year:	Cents per pound
1965-66	64.6

(c) *Rate of penalty per pound.* The penalty per pound upon marketings of excess tobacco subject to marketing quotas during the marketing years specified shall be:

RATE OF PENALTY	
Marketing Year:	Cents per pound
1966-67	48

§ 725.93 Persons to pay penalty.

The persons to pay the penalty due on any marketing of tobacco subject to penalty shall be determined as follows:

(a) *Auction sale.* The penalty due on marketings by a producer through an auction sale shall be paid by the warehouseman who may deduct an amount equivalent to the penalty from the price paid to the producer.

(b) *Non-auction sale.* The penalty due on tobacco acquired directly from a producer, other than at an auction sale, shall be paid by the person acquiring the tobacco who may deduct an amount equivalent to the penalty from the price paid to the producer in the case of a sale.

(c) *Marketings outside the United States.* The penalty due on marketings by a producer directly to any person outside the United States shall be paid by the producer.

§ 725.94 Penalties considered to be due from warehousemen, dealers, buyers and others excluding the producer.

Any marketings of tobacco under any one of the following conditions shall be considered to be a marketing of excess tobacco.

(a) *Auction sale without marketing card.* Any first marketing of tobacco at an auction sale by a producer which is not identified by a valid marketing card at the time of marketing shall be considered to be a marketing of excess tobacco and the penalty thereon shall be collected and remitted by the warehouseman.

(b) *Nonauction sale.* Any nonauction sale of tobacco which:

(1) is not identified by a valid marketing card and recorded on MQ-79, Dealer's Report, not later than the end of the calendar week in which the tobacco was purchased; or,

(2) if purchased prior to the opening of the local auction market for the current year, is not identified by a valid marketing card and recorded on MQ-79 not later than the end of the calendar week which includes the first sale day of the local auction markets, shall be considered a marketing of excess tobacco. The penalty thereon shall be collected by the purchaser of such tobacco, and remitted with MQ-79.

(c) *Leaf account tobacco.* If part or all of any marketing of leaf account tobacco (including floor sweepings and tobacco from the buyers corrections account), when added to prior leaf account resales, is in excess of prior leaf account purchases, such marketing shall be considered to be a marketing of excess tobacco unless and until such warehouseman furnishes proof acceptable to the State committee showing that such marketing is not a marketing of excess tobacco. Floor sweepings which the State executive director determines have been properly identified and reported by the warehouseman shall be considered acceptable proof that such marketings are not marketings of excess tobacco provided the amount thereof for the warehouse does not exceed the floor sweepings limitation of 1.10 percent of producers' tied sales and 0.17 percent of producers' untied sales for the season.

(d) *Dealer's tobacco.* The part or all of any marketing of tobacco by a dealer which such dealer represents to be a resale, which, when added to prior resales by such dealer as shown on Form MQ-79 presented to the warehouseman by the dealer, is in excess of total prior purchases shown on such Form MQ-79, shall be considered to be a marketing of excess tobacco. The penalty thereon shall be withheld by the warehouseman from the proceeds due the dealer and immediately transmitted by the warehouseman to a marketing recorder.

(e) *Resales not reported.* Any resale of tobacco which is required to be reported by a warehouseman or dealer, but which is not so reported within the time and in the manner required, shall be considered to be a marketing of excess tobacco, unless and until such ware-

houseman or dealer furnishes a report of such resale which is acceptable to the State executive director. The penalty thereon shall be paid by the warehouseman or dealer who fails to make the report as required.

(f) *Marketings falsely identified by a person other than the producer.* If any marketing of tobacco by a person other than the producer is identified by a marketing card other than the marketing card issued for the farm on which such tobacco was produced, such marketing shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by such person.

§ 725.95 Producers penalties; false identification; failure to account; cancelled allotments.

(a) *Penalties for false identification or failure to account.* If any producer falsely identifies or fails to account for the disposition of any tobacco produced on a farm, penalty at the full rate shall be due on the larger of: (1) the actual marketings above 110 percent of the effective farm marketing quota, or (2) the amount of tobacco equal to 25 percent of the effective farm marketing quota plus the amount determined by multiplying the farm yield times the number of acres harvested in excess of the farm acreage allotment.

(b) *Cancelled allotment.* If part or all of the tobacco produced on a farm has been marketed and the allotment for the farm is cancelled, any penalty due on the marketings shall be paid by the producers.

§ 725.96 Payment of penalty.

(a) *Date due.* Penalties shall become due at the time the tobacco is marketed, except that in the case of false identification or failure to account for disposition of tobacco, the penalty shall be due on the date of such false identification or failure to account for disposition. The penalty shall be paid by remitting the amount due to the ASCS State office not later than the end of the calendar week in which the tobacco becomes subject to penalty. A draft, money order, or check drawn payable to the Agricultural Stabilization and Conservation Service may be used to pay any penalty, but any such draft or check shall be received subject to payment at par.

(b) *Auction sale—net proceeds.* If the penalty due on any auction sale of tobacco by a producer is in excess of the net proceeds of such sale (gross amount for all lots included in the sale less usual warehouse charges), the amount of the net proceeds accompanied by a copy of the warehouse bill covering such sale may be remitted as the full penalty due. Usual warehouse charges shall not include (1) advances to producers, (2) charges for hauling, or (3) any other charges not usually incurred by producers in marketing tobacco through a warehouse.

(c) *Nonauction sale.* Nonauction sales of excess tobacco shall be subject to the full rate of penalty and shall be paid in full even though the penalty may

exceed the proceeds for the sale of tobacco.

§ 725.97 Request for return of penalty.

Any producer of tobacco and any other person who bore the burden of the payment of any penalty after the marketing of all tobacco available for marketing from the farm, may request the return of the amount of such penalty which is in excess of the amount required to be paid. Such request shall be filed on Form MQ-85, Farm Record and Account, with the ASCS county office within 2 years after the payment of the penalty. Approval of return of penalty to producers shall be by the county committee, subject to the approval of the State executive director.

§ 725.98 Producers' records and reports.

(a) *Failure to file reports or filing false reports.* If any producer on a farm files an incomplete or incorrect report, fails to file a report, or files or aids or acquiesces in the filing of any false report with respect to (1) the acreage of tobacco grown on the farm, or (2) the amount of tobacco produced on, or marketed from the farm, the tobacco allotment next established for any such farm shall be reduced except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (i) the failure to file, filing of, or aiding or acquiescing in the filing of, such report was not intentional on the part of any producer on the farm, and that no producer on the farm could reasonably have been expected to know that the report was false: *Provided*, That the failure to file or the filing of or aiding or acquiescing in the filing of the report will be construed as intentional unless a correct report is filed and any penalty is paid in full, or (ii) no person connected with the farm for the year for which the allotment is being established caused, aided, or acquiesced in the filing of the false report or failure to file a report.

(b) *Report of tobacco grown for experimental purposes.* For farms on which tobacco is being grown for experimental purposes only, the director of a publicly owned agricultural experiment station shall furnish the ASCS State office, prior to the beginning of the harvesting of tobacco from any farm on which experimental tobacco is being grown, a report for each current year showing the following information:

(1) Name and address of the publicly owned agricultural experimental station.

(2) Name of the owner, and name of the operator if different from the owner, of each farm on which tobacco is grown for experimental purposes only.

(3) The amount of acreage of tobacco grown on each farm for experimental purposes only.

(4) A certification signed by the Director of the publicly owned agricultural experiment station to the effect that such acreage of tobacco was grown on each farm for experimental purposes only, the tobacco was grown under his direction, and the acreage on each plot

was considered necessary for carrying out the experiment.

(c) *Harvesting second crop tobacco from same acreage.* If, in the same calendar year more than one crop of tobacco was grown from (1) the same tobacco plants, or (2) different tobacco plants, and is harvested for marketing from the same acreage of a farm, the acreage allotment next established for such farm shall be reduced by an amount equivalent to the acreage from which more than one crop of tobacco was so grown and harvested.

(d) *Cancellation of new farm allotment.* Any new farm allotment approved under this subpart which was determined by the county committee on the basis of incorrect information knowingly furnished the county committee by the applicant for the new farm allotment shall be cancelled by the county committee as of the date the allotment was established.

(e) *False identification.* If tobacco was marketed or was permitted to be marketed in any marketing year as having been produced on the acreage allotment for any farm which, in fact, was produced on a different farm, the acreage allotments next established for both such farms and kind of tobacco shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) no person on such farm intentionally participated in such marketing or could have reasonably been expected to have prevented such marketing: *Provided:* That the marketing shall be construed as intentional, unless all tobacco from the farm is accounted for and payment of all additional penalty is made, or (2) no person connected with such farm for the year for which the allotment is being established caused, aided, or acquiesced in such marketing.

(f) *Report on marketing card.* The operator of each farm on which tobacco is produced shall return to the ASCS county office each marketing card issued for the farm whenever marketings from the farm are completed, and, in no event, later than 20 days, in the year of issuance of the card, after the close of the tobacco auction markets for the locality in which the farm is located. Failure to return the marketing card within 15 days after written request by certified mail from the county office manager shall constitute failure to account for disposition of all tobacco marketed from the farm unless disposition of tobacco marketed from the farm is otherwise accounted for to the satisfaction of the county committee. Upon failure to satisfactorily account to the county committee for disposition of Flue-cured tobacco marketed from the farm the allotment next established for such farm shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county committee and a representative of the State committee, that (1) the failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof

of disposition: *Provided,* That such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made; or (2) no person connected with such farm for the year for which the allotment is being established, caused, aided, or acquiesced in the failure to furnish such proof.

(g) *Report of production and disposition.* In addition to any other reports which may be required by this subpart, the operator on each farm or any producer on the farm (even though the harvested acreage does not exceed the acreage allotment or even though no allotment was established for the farm) shall, upon written request by certified mail from the State executive director, within 15 days after deposit of such request in the United States mail, addressed to such person at his last known address, furnish the Secretary on MQ-108, Report of Production and Disposition, a written report of the acreage, production and disposition of all tobacco produced on the farm by sending the same to the ASCS State office showing, as to the farm at the time of filing such report, (1) the number of fields (patches or areas) from which tobacco was harvested from the farm, (2) the total pounds of tobacco produced, (3) the amount of tobacco on hand and its location, (4) as to each lot of tobacco marketed, the name and address of the warehouseman, dealer, or other person to or through whom such tobacco was marketed and the number of pounds marketed, the gross price paid and the date of the marketings, and (5) the complete details as to any tobacco disposed of other than by sale. Failure to file the MQ-108 as requested, the filing of a false MQ-108, or the filing of an MQ-108 which is found by the State committee to be incomplete or incorrect, shall constitute failure of the producer to account for disposition of tobacco produced on the farm and the allotment next established for such farm shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition: *Provide,* that such failure will be construed as intentional and unless such proof of disposition is furnished and payment of all additional penalty is made, or (ii) no person connected with such farm for the year for which the allotment is being established caused, aided, or acquiesced in the failure to furnish such proof.

(h) *Amount of allotment reduction.* The amount of reduction in the allotment for the current year for a violation described in paragraph (a), (e), (f), or (g) of this section shall be that percentage which the amount of tobacco involved in the violation is of the respective farm marketing quota for the farm for the year in which the violation occurred. Where the amount of tobacco involved in the violation(s) equals or exceeds the amount of the farm marketing quota, the

amount of reduction shall be 100 percent and no deduction will be made in subsequent years for the violation(s). The quantity of tobacco in violation shall be the amount of tobacco as determined by the county committee. If the actual quantity of tobacco is known, such quantity shall be determined by the county committee to be the amount of tobacco involved in the violation. If the actual quantity of tobacco is not known, the county committee shall determine the quantity in violation in the following manner: The yield per acre and the total production of tobacco on the farm shall be determined by taking into consideration the condition of the crop during production, if known, and the actual yield per acre of tobacco on other farms in the locality in which the soil and other physical factors affecting the production of tobacco are similar: *Provided,* that the determination of the total production of tobacco on the farm shall not exceed the harvested acreage of tobacco on the farm multiplied by the average actual yield on farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar. The yield per acre as so determined by the county committee shall be deemed to be the actual production per acre. Where the actual quantity of tobacco produced on acreage not included in a report of acreage is not known, such quantity shall be determined by the county committee to be the quantity resulting from multiplying the yield per acre for the farm, determined as aforesaid, by the acreage not shown on a report of acreage. Where the amount of tobacco produced on, or marketed from a farm is not known, such quantities shall be determined by the county committee to be the quantity of tobacco remaining after deducting from the total production on the farm, as determined aforesaid, the quantity of tobacco for which proof of production and marketing has been furnished. The acreage reductions required under this section shall be in addition to any other adjustments made under these regulations and any amendments thereto later issued.

(i) *Allotment reductions for combined farms.* If the farm involved in the violation is combined with another farm prior to the reduction, the reduction shall be applied as heretofore provided in this section to that portion of the allotment for which a reduction is required.

(j) *Allotment reduction for divided farms.* If the farm involved in the violation has been divided prior to the reduction, the reduction shall be applied as heretofore provided in this section to the allotments for the divided farms required to be reduced. Allotment reductions are applicable, except under paragraph (c) of this section, unless the violating producer has no interest in the current tobacco crop.

§ 725.99 Warehouseman's records and reports.

(a) *Record of marketing—(1) Auction sale.* Each warehouseman shall keep such records as will enable him to furnish

the ASC State office with respect to each auction sale of tobacco made at his warehouse the following information:

(i) The name of the operator of the farm on which the tobacco was produced and the name of the seller, in the case of a sale by a producer, and in the case of a resale, the name of the seller.

(ii) Date of sale.

(iii) Number of pounds sold.

(iv) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producer; and, in addition, with respect to each individual basket or lot of tobacco constituting the auction sale, the following information:

(v) Name of purchaser.

(vi) Number of pounds sold.

(vii) Gross sale price.

(2) *Separate account records.* Records of all purchases and resales of tobacco by the warehouseman shall be maintained to show a separate account for:

(i) Non-auction sales by farmers of tobacco purchased by or on behalf of the warehouseman.

(ii) Purchases and resales of leaf account tobacco. The resale record shall include data for leaf account floor sweeping tobacco.

(3) *Buyers corrections account.* Each warehouseman shall keep such records as will enable him to furnish a weekly report on Form MQ-79 to the ASC State office showing the total pounds and amounts of the debits (for returned baskets, short baskets and short weights of tobacco) and the credits (for long baskets and long weights of tobacco) to the Buyers Corrections Account. Where the warehouseman returns to the seller tobacco debited to the Buyers correction account, the warehouseman shall prepare an adjustment invoice to the seller. This invoice shall be the basis for a credit entry for the warehouse in the Buyers Corrections Account and a corresponding purchase (debit entry) in the case of a dealer on his MQ-79, Dealer's Report. Any balancing figure reflected on the warehouseman's summary of bill-puts shall not be included in the Buyers Corrections Account.

(4) *Uniform tobacco sale bill and daily warehouse sales summary.* Each warehouseman shall use uniform tobacco sale bills furnished by Flue-cured Tobacco Cooperative Stabilization Corporation, Raleigh, N.C. (hereinafter referred to as "Record Center"). The warehouseman shall not weigh in any tobacco for sale unless a card (MQ-76 for producers, MQ-79-2 for dealers) is furnished the weighman. In the "Buyer and Grade" space on the tobacco sale bill (i) the left column shall show non-auction purchases by the warehouse and tobacco grade for tobacco consigned to price support, and (ii) the right column shall show the symbol for tobacco bought by private buyers. At the end of each sale day, the tobacco sale bills shall be sorted in numerical order, and on the top of such bills an executed Form MQ-80, Daily Warehouse Sales Summary, shall be placed. A copy of the tobacco sale

bills and a copy of the executed MQ-80 shall be furnished the marketing recorder for the Record Center. Tobacco sale bills for suspended sales shall be sent in by the marketing recorder when the sale is cleared from suspension.

(5) Any warehouseman or any other person who grades tobacco for farmers shall maintain records which will enable him to furnish the ASCS State office the name of the farm operator and the approximate amount of scrap tobacco obtained from the grading of tobacco from each farm.

(6) Any warehouseman or any other person who provides tobacco curing space or stripping space for farmers shall maintain records which will enable him to furnish the ASCS State office the name of the farm operator and the approximate amount of scrap tobacco obtained from each farm resulting from providing such space.

(7) In the case of resales for dealers, the name of the dealer making each resale, and in the case of resales for the warehouse, the word "Resale" shall be clearly shown on each tobacco sale bill covering such tobacco.

(b) *Identification of producer sales of tobacco—(1) Tobacco Sale Bill.* The farm serial number on the marketing card identifying the tobacco to be marketed at auction shall be recorded by the warehouseman on the tobacco sale bill at the time the tobacco is weighed in and the warehouseman shall retain the marketing card where tobacco is to be sold at auction until the producer has been paid for the sale of the tobacco or the tobacco is removed from the warehouse by the producer. The warehouseman shall be responsible for the safekeeping and proper use of the marketing card during his retention of it. A separate tobacco sale bill shall be executed to cover any tobacco which represents more than 110 percent of the effective farm marketing quota and the notation, "No Price Support" shall be shown on such tobacco sale bill. The sale of such tobacco shall be considered a separate sale. The letters, "NA" shall be shown on each line of a tobacco sale bill on which there is recorded tobacco purchased by or for the warehouse at non-auction sale and there shall be recorded on all such tobacco sale bills the farm serial number on the marketing card identifying the tobacco marketed at the time the tobacco is purchased at non-auction sale. A copy of the tobacco sale bill bearing the letters, "NA" shall be furnished the producer for any lot or basket of such tobacco purchased by the warehouseman.

(c) *Marketing card.* Each marketing of tobacco from a farm shall be identified by a marketing card issued for the farm. The card shall be executed as follows:

(1) *Auction Sale.* A marketing card used to cover an auction shall show on the reverse side the poundage balance of the "110 percent of quota". The tobacco sale bill shall show the pounds on which penalty is due, and the amount of the penalty.

(2) *Nonauction sale to a warehouseman at the warehouse.* A marketing card used to cover a nonauction sale of tobacco to a warehouseman shall show on the reverse side the poundage balance of the "110 percent of quota". If the tobacco sale bill includes both an auction sale and a nonauction sale such combined pounds shall be used to compute and reflect the balance of the "110 percent of quota". The tobacco sale bill shall show the pounds on which penalty is due and the amount of the penalty.

(3) *Nonauction sale (country purchase) to a warehouseman.* A marketing card used to cover a nonauction sale (country purchase) at the farm shall show on the reverse side the poundage balance of the "110 percent of quota". The tobacco sale bill shall show the actual weight of the tobacco, the pounds on which penalty is due, and the amount of the penalty. Each warehouseman shall record each nonauction purchase of tobacco made by him on MQ-79.

(d) *Suspended sale record.* Any tobacco sale bill covering first marketing of farm tobacco for which a valid marketing card was not presented shall be given to a marketing recorder who shall stamp such bills, "Suspended", or if a marketing recorder is not available, the auction warehouseman may stamp such bills, "Suspended" and deliver them to a marketing recorder when one is available. Such tobacco sale bills shall be made available to the Record Center after the sale is cleared.

(e) *Warehouseman's entries or other dealer's report.* Each warehouseman shall record, or have the dealer record, on MQ-79, the total purchases and resales made by each such dealer or other warehouseman during each sale day at the warehouse. If any tobacco resold by the dealer is tobacco bought by him and carried over by him from a crop produced prior to the current crop, the entry on MQ-79 shall clearly show such fact.

(f) *Record and report of warehouseman's leaf account purchases and resales not on his floor.* Each warehouseman shall keep a record and make reports on MQ-79, Dealer's Report, showing:

(1) All nonauction purchases of tobacco, except nonauction purchases at his warehouse which are reported on MQ-30.

(2) All purchases and resales of tobacco at public auction through warehouses other than his own.

(3) All purchases of tobacco from dealers other than warehousemen and resales of tobacco to dealers other than warehousemen.

Form MQ-79 shall be prepared and a copy, including copies of tobacco sale bills for all nonauction purchases, forwarded to the ASCS State office not later than the end of the calendar week in which such tobacco was purchased or resold: *Provided:* That, if tobacco is purchased prior to the opening of the local auction market, an MQ-79 shall be prepared and a copy, together with copies of tobacco sale bills for all non-auction purchases, forwarded to the

ASCS State office not later than the end of the calendar week which would include the first sale day of the local auction markets. A remittance for all penalties shown by the entries on MQ-79 to be due shall be forwarded to the ASCS State office with the original copy of MQ-79.

(g) *Daily Warehouse Sales Summary.* Each warehouseman shall prepare at the end of each sale day a report on MQ-80, Daily Warehouse Sales Summary, showing for each sale day:

(1) For each manufacturer, buyer, order buyer and Flue-Cured Stabilization (pool), pounds of tobacco purchased at auction (consigned in the case of the pool), and the total of all such pounds.

(2) For each dealer subject to reporting purchases and resales on MQ-79, as originally billed, the total pounds of tobacco purchased at auction, and the total of all of such pounds.

(3) The sum of the total pounds for subparagraphs (1) and (2).

(4) The total pounds purchased at auction for the leaf account.

(5) The total pounds purchased at nonauction at the warehouse for the leaf account.

(6) The sum of the total pounds for subparagraphs (4) and (5).

(7) The sum of the totals for subparagraphs (2), (3), and (6) of this paragraph.

(8) For each warehouse sale of excess tobacco from a farm, the applicable farm number with daily remittance of the penalty due.

(9) For each dealer, at time of settlement having excess resale tobacco, the applicable dealer number with daily remittance of the penalty due.

(10) As to the information required to be entered on MQ-80, Daily Warehouse Sales Summary, by the marketing recorder, the warehouseman shall keep and make available such records as will enable the marketing recorder to enter thereon: (i) The total number of tobacco sale bills for the sale day, and (ii) The sum of pounds sold shown on the tobacco sale bills.

§ 725.100 Dealer's record and reports.

Each dealer, except as provided in § 725.101, shall keep the records and make the reports as provided by this section.

(a) *Record of marketing.* Each dealer shall keep such records as will enable him to furnish the ASCS State office with respect to each lot of tobacco purchased by him the following information:

(1) (i) The name of the warehouse through which the tobacco was purchased in the case of a warehouse sale, (ii) the name of the operator of the farm on which the tobacco was produced, and the name of the seller in the case of a nonauction sale, including the records and reports for farm scrap tobacco, and (iii) the name of the seller in the case of nonauction purchases from warehousemen and dealers.

(2) Date of purchase.

(3) Number of pounds purchased.

(4) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producer, and as to each lot of tobacco sold by him the following information:

(5) Name of the warehouse through which the tobacco was sold in the case of a warehouse sale, and the name of the purchaser if other than an auction warehouse sale.

(6) Date of sale.

(7) Number of pounds sold.

(8) In the event of a resale of tobacco bought by him and carried over from a crop produced prior to the current crop, the fact that such tobacco was so bought and carried over.

(b) *Nonauction sale (country purchase) to a dealer.* Each purchase of tobacco from a producer shall be identified by a marketing card issued for the farm on which the tobacco was produced. The reverse side of the marketing card shall show the poundage balance of the "110 percent of quota". The tobacco sale bill shall show the actual weight of the tobacco, the pounds on which penalty is due, and the amount of the penalty. The dealer shall record each nonauction purchase of tobacco made by him on MQ-79.

(c) *Record and report of purchases and resales.* (1) Except as provided in subparagraph (2) of this paragraph, each dealer shall keep a record and make reports on MQ-79, showing all purchases and resales of tobacco made by or for the dealer, and in the event of purchase or resale of tobacco bought from a crop produced prior to the current crop, the fact that such tobacco was bought by him and carried over from a crop produced prior to the current crop.

(2) Form MQ-79 shall be prepared and a copy, together with copies of tobacco sale bills for all nonauction purchases, forwarded to the ASCS State office not later than the end of the calendar week in which such tobacco was purchased or resold, except as follows:

(i) If tobacco is purchased prior to the opening of the local auction market, an MQ-79 shall be prepared and a copy, together with copies of tobacco sale bills for all nonauction purchases, forwarded to the ASCS State office not later than the end of the calendar week which would include the first sale day of the local auction markets; (ii) if tobacco is resold in a State other than where produced, and the auction markets at such location open earlier than those where the tobacco would normally be sold at auction by farmers, reports shall be prepared and forwarded, together with copies of tobacco sale bills for all nonauction purchases, not later than the end of the calendar week which would include the first sale day of the local auction market where the resale takes place.

(d) *Daily report to warehouseman for buyers corrections account of tobacco received.* Notwithstanding the provisions of § 725.101, any dealer, buyer, or any other person receiving tobacco from or through a warehouseman at an auction sale or otherwise, which is not invoiced to him or which is incorrectly in-

voiced to him by the warehouseman, shall furnish the warehouseman on a daily sales basis an adjustment invoice or buyers settlement sheet. Such reports shall be furnished daily, if practicable; otherwise they shall be furnished at the end of each week.

§ 725.101 Dealers exempt from regular records and reports.

Any dealer or buyer who acquires tobacco only at auction sales and resells, in the form in which tobacco ordinarily is sold by farmers, five percent or less of any such tobacco shall not be subject to the requirements of § 725.100.

§ 725.102 Records and reports of truckers, persons redrying, prizing, or stemming tobacco, and storage firms.

(a) Each trucker shall keep such records as will enable him to furnish the ASCS State office a report with respect to each lot of tobacco received by him showing:

(1) The name and address of the producer.

(2) The date of receipt of the tobacco.

(3) The number of pounds received.

(4) The name and address of the person to whom it was delivered.

(b) Each person engaged in the business of redrying, prizing, or stemming tobacco for producers and storage farms handling producer tobacco shall keep such records as will enable him to furnish the director a report showing:

(1) The information required above for truckers, and, in addition:

(2) The purpose for which the tobacco was received.

(3) The amount of advance made by him on the tobacco.

(4) The disposition of the tobacco.

(5) Person to whom delivered and pounds involved.

§ 725.103 Separate records and reports from persons engaged in more than one business.

Any person who is required to keep any record or make any report as a warehouseman, processor, dealer, buyer, trucker, or as a person engaged in the business of sorting, redrying, prizing, stemming, packing, or otherwise processing tobacco for producers, and who is engaged in more than one such business, shall keep such records as will enable him to make separate reports for each such business in which he is engaged to the same extent for each such business as if he were engaged in no other business.

§ 725.104 Failure to keep records and make reports or making false report or record.

(a) *Failure to keep records or make reports.* Under the provisions of section 373(a) of the act, any warehouseman, processor, buyer, dealer, trucker, or person engaged in the business of sorting, redrying, prizing, stemming, packing, or otherwise processing tobacco for producers who fails to make any report or keep any record as required, or who makes any false report or record, is guilty of a misdemeanor, and upon con-

violation shall be subject of a fine or not more than \$500 for each offense. In addition, any tobacco warehouseman, dealer, or buyer who fails, upon being requested to do so, to remedy a violation by submitting complete reports and keeping accurate records shall be subject to an additional fine, not to exceed \$5,000.

(b) *False representations.* The penalties designated in paragraph (a) of this section are in addition to penalties prescribed by other criminal statutes including U.S. Code, Title 18, section 1001, which provides for a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both, for a person convicted of knowingly and willingly committing such acts as making a false acreage report, altering a marketing card, or falsely identifying tobacco.

(c) *Failure to obtain producer's marketing card or dealer identification card.* The failure of (1) any dealer or warehouseman to obtain a producer's marketing card, MQ-76, to identify a sale of producer tobacco and (2) any dealer or warehouseman who fails to obtain a dealer identification card, MQ-79-2, to cover a resale of tobacco, shall constitute a failure to make a report.

§ 725.105 Duties of Flue-Cured Tobacco Cooperative Stabilization Corporation.

Numerous record keeping and reporting provisions required of these regulations are the responsibility of the Flue-Cured Tobacco Cooperative Stabilization Corporation (also referred to as Record Center). The duties of the Record Center are set forth in writing in an initial memorandum of agreement, dated March 1966, between Record Center and Agricultural Stabilization and Conservation Service.

§ 725.106 Examination of records and reports.

For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining information required to be furnished in any report, but not so furnished, any warehouseman, processor, dealer, buyer, trucker, or person engaged in the business of sorting, redrying, prizing, stemming, packing, or otherwise processing tobacco for producers, shall make available at one place for examination by representatives of the State executive director and by employees of the Office of the Inspector General, and of the Farmer Programs Division and Producer Associations Division of the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, upon written request by the State executive director, all such books, papers, records, basket tickets, tobacco sale bills, buyer adjustment invoices, accounts, cancelled checks, check registers, check stubs, correspondence, contracts, documents, and memorandas as the State executive director or the Director has reason to believe are relevant and are within the control of such person.

§ 725.107 Length of time records and reports are to be kept.

Records required to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained by him for 2 years after the end of the marketing year. Records shall be kept for such longer period of time as may be requested in writing by the State executive director, or the Director.

§ 725.108 Information confidential.

All data reported to or acquired by the Secretary pursuant to the provisions of this subpart shall be kept confidential by all officers and employees of the U.S. Department of Agriculture, and by all members of county and community committees, and all ASCS county office employees and only such data so reported or acquired, as the Deputy Administrator deems relevant shall be disclosed by them, and then only in a suit or administrative hearing under Title III of the act.

§ 725.109 Determination of discount varieties.

(a) *Definition.* "Discount variety" means any of the flue-cured tobacco seed varieties designated as Coker 139, Coker 140, Coker 316, Reams 64, or Dixie Bright 244, or a mixture or strain of such seed varieties, or any breeding line of flue-cured tobacco seed varieties, including, but not limited to, 187-Golden Wilt (also designated by such names as No-Name, XYZ, Mortgage Lifter, Super XYZ), having the quality and chemical characteristics of the seed varieties designated as Coker 139, Coker 140, Coker 316, Reams 64, or Dixie Bright 244: *Provided*, That where there is growing in a field off-type plants of not more than 2 percent, such off-type plants shall not be considered in determining the flue-cured tobacco variety being produced. Flue-cured tobacco which is not determined to be discount variety shall be considered as "acceptable variety". Any breeding line of flue-cured tobacco identified as having appearance and growth characteristics similar to Coker 139, Coker 140, Coker 316, Reams 64, or Dixie Bright 244, shall be considered to have the quality characteristics of Coker 139, Coker 140, Coker 316, Reams 64, or Dixie Bright 244.

(b) *Producer's report.* (1) For each farm on which flue-cured tobacco is produced in the current year, the farm operator or any producer on the farm shall file with the county office a report on MQ-32, Certification of Flue-Cured Tobacco Varieties Planted, showing whether or not discount variety tobacco was planted on the farm.

(2) If the farm operator or any producer on a farm certifies on MQ-32 that there was not planted on the farm any discount variety of flue-cured tobacco, all of the flue-cured tobacco produced on such farm shall be determined by the county committee to be acceptable variety tobacco, unless a subsequent determination is made by the county committee or State committee that tobacco produced on the farm is discount

variety tobacco. If the farm operator or any producer thereon has executed and filed a report with the county office on MQ-32, which shows there was not planted on such farm(s) in the current year, any of the discount varieties of flue-cured tobacco, and the operator or a producer on the farm wishes to change the MQ-32 to show there was planted on such farm(s) a discount variety, he may, at any time prior to the issuance of a marketing card for the farm, be permitted to file a new MQ-32 which shall supersede and replace the first MQ-32.

(3) If the farm operator or any producer on a farm certifies on MQ-32 that there was planted on the farm any discount variety of flue-cured tobacco, all of the flue-cured tobacco produced on such farm shall be determined by the county committee to be discount variety tobacco, unless a subsequent determination is made by the county committee, or State committee, that tobacco produced on the farm is acceptable variety tobacco.

(c) *Right to examine growing varieties.* To assist in making a determination as to whether discount variety tobacco is being produced on a farm, the farm operator or any producer on the farm shall allow any member of the county committee or State committee, or any employee of the ASCS State office, or any employee of the Department of Agriculture designated by the State executive director, as a person qualified to examine and identify seed varieties of flue-cured tobacco, to enter upon the farm (1) to examine the appearance and growth characteristics of flue-cured tobacco plants on the farm, (2) to take and remove from the farm samples of flue-cured tobacco growing on or harvested from the farm, (3) to designate representative flue-cured tobacco plants on the farm to be allowed to go to flower, and (4) to take photographs of representative flue-cured tobacco plants.

(d) *Failure to file report or permit examination.* If the operator of a farm on which flue-cured tobacco is being produced in the current year fails or refuses, within 7 days after a request of the county committee on MQ-34-1, Notice of Action Required Regarding Determination of Seed Varieties of Flue-Cured Tobacco, (1) to file a report on MQ-32, showing whether or not there was planted any of the discount varieties of flue-cured tobacco on such farm, or (2) to permit examination of flue-cured tobacco plants in each field or area on the farm, or (3) to permit, not to exceed 50 representative plants to go to flower in each field or area on the farm, or (4) to permit the taking of photographs of flue-cured tobacco in each field or area on the farm, or (5) to permit the taking and removal of green or cured leaf samples of flue-cured tobacco from the farm, all flue-cured tobacco produced on such farm shall be determined by the county committee to be discount variety tobacco, unless the county committee finds that failure to comply with the request was due to circumstances beyond the control of the farm operator.

(e) *Notice to farm operator.* In any case where the county committee determines that discount variety tobacco is being or was produced on a farm, the farm operator shall be given written notice by certified mail of such determination on MQ-34-2, Notice of Determination of Discount Variety Flue-Cured Tobacco. The notice to the farm operator shall constitute notice to all persons who as owner, operator, landlord, tenant, or sharecropper, are interested in the tobacco being grown on the farm.

(f) *Producer's right of appeal.* Any producer on a farm who believes that the discount variety determination for his farm by the county committee is not correct, may file an appeal with the county committee asking it to reconsider such determination. The request for appeal and facts constituting a basis for such reconsideration must be submitted in writing and postmarked or delivered to the county committee within 7 days after the date of mailing of the notice on MQ-34-2. The request for appeal must be signed by the person making the appeal. If the appellant believes that the county committee's determination on his appeal is not correct, he may appeal to the State committee within 7 days after the date of mailing of the notice of the decision of the county committee. The decision of the State committee shall be final.

(g) *State committee decision final.* Any discount variety determination by the county committee may be reviewed by the State committee, whose decision shall be final.

(h) *Issuance of Marketing Cards—(1) Notation on Card.* If a farm is determined to have discount variety tobacco available for marketing and the farm is eligible for price support, the county office manager shall issue MQ-76, bearing the notation "Discount Variety—Limited Price Support". If the farm is determined to have discount variety tobacco but it is not eligible for price support, the county office manager shall issue MQ-76, bearing the notation "Discount Variety—No price Support".

(2) *Exchange of cards.* (i) Where an MQ-76, bearing the notation "Discount Variety—Limited Price Support" is issued for a farm, the card may be exchanged at the county office for an MQ-76 without the notation, or (ii) where an MQ-76, bearing the notation "Discount Variety—No Price Support" is issued for a farm the card may be exchanged at the county office for an MQ-76 with the notation "No Price Support": *Provided*, That the farm operator establishes to the satisfaction of the county committee that there has been no commingling or substitution of discount variety tobacco produced on the farm or on any other farm operated by him, and that all discount variety tobacco has been marketed or satisfactorily disposed of, or accounted for.

(3) *Cards for publicly-owned experiment stations.* MQ-76 issued to identify marketings of tobacco grown for experimental purposes by or for publicly owned experiment stations shall bear the notation "Discount Variety—Limited Price

Support" if such tobacco is determined to be discount variety tobacco.

(i) *Identification of flue-cured leaf account tobacco as acceptable variety and reports on MQ-79-1, Flue-Cured.* Whenever the Director determines there is a significant amount of discount variety tobacco available for marketing in any marketing year he may cause to be initiated the provisions of this paragraph. In addition, the Director may terminate any action initiated hereunder when he determines no discount variety of flue-cured tobacco remains available for sale during the remainder of the current marketing season. Notification to warehousemen of action required under this paragraph shall be by the State executive director.

(1) *Warehouseman.* (i) Each warehouseman who offers for auction sale any leaf account flue-cured tobacco on a warehouse floor other than his own, and who requests the other warehouseman to identify such tobacco as being "acceptable variety", shall either (a) execute MQ-79-1 (Flue-Cured), Dealer's Certification—Resale Tobacco, or (b) have the eligibility of such tobacco to be so identified determined by the State executive director or his representative.

(ii) Each warehouseman who is participating in the Commodity Credit Corporation price support program, and who identifies resale tobacco with a "certified" basket ticket indicating that such tobacco, by virtue of an executed MQ-79-1 (Flue-Cured), is of an acceptable variety, shall at the time the tobacco is weighed in have such tobacco covered by an executed MQ-79-1, unless the eligibility of such tobacco to be identified as being of an acceptable variety, is determined by the State executive director or his representative.

(iii) Each executed MQ-79-1 (Flue-Cured) shall show the following information with respect to each lot of resale tobacco:

(a) Crop year.
(b) Name and address of warehouse where the tobacco is being offered for sale.

(c) Tobacco sale bill number and date.
(d) Date, signature of dealer and current address, and dealer identification number.

(2) *Dealer.* (i) Each dealer or any other person who offers for auction sale any resale flue-cured tobacco on a warehouse floor which is participating in the Commodity Credit Corporation price support program and on which floor eligible resale flue-cured tobacco is identified with a "certified" basket ticket, and who requests the warehouseman to identify his tobacco as being of an "acceptable variety", shall either (a) execute MQ-79-1 (Flue-Cured), Dealer's Certification—Resale Tobacco, or (b) have the eligibility of such tobacco to be so identified determined by the State executive director or his representative.

(ii) Each executed MQ-79-1 (Flue-Cured) shall show the following information with respect to resale tobacco:

(a) Crop year.

(b) Name and address of warehouse where the tobacco is being offered for sale.

(c) Date, signature of dealer and current address, and dealer identification number.

(d) Tobacco sale bill number and date.

(iii) Each dealer or any other person who acquires acceptable variety tobacco in a manner which would make it ineligible for certification on MQ-79-1, or who has on hand both discount variety tobacco and acceptable variety tobacco, and desires to dispose of acceptable variety tobacco prior to disposing of the discount variety tobacco, may apply in writing to the State executive director for a special authorization to have the acceptable variety tobacco certified when offered for auction sale.

(iv) If any dealer fails to timely file MQ-79, Dealer's Report or if there is substantial indication that a dealer has executed a false certification on MQ-79-1, the State executive director may notify such dealer and all auction warehouses participating in the Commodity Credit Corporation price support program that certification by such dealer on MQ-79-1 shall not be accepted for the purpose of identifying tobacco offered for auction sale by such dealer as being of acceptable variety until further notice.

NOTE: The recordkeeping and reporting requirements of these regulations have been approved by and subsequent requirements shall be subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Signed at Washington, D.C., on June 20, 1966.

E. A. JÄENKE,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 66-6962; Filed June 23, 1966; 8:51 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 39]

[Docket No. 7449]

AIRWORTHINESS DIRECTIVES

Boeing Model 707 and 720 Series Airplanes

The Federal Aviation Agency is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to certain Boeing Model 707 and 720 Series airplanes. There have been explosions of fuel vapors in the fuel tanks of Boeing Model 707 airplanes suspected to have resulted from ignition through the fuel tank vent outlet. Since this condition is likely to exist or develop in other airplanes having the same vent outlet design, the proposed AD would require installation of a flame suppression system in the fuel tank vent outlet system or the installation of an auxiliary vent tube with a flame arrester to the vent system surge tank on certain Boeing Model 707 and 720 Series airplanes.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket 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 September 22, 1966, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423).

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

BOEING. Applies to Model 707 and 720 Series airplanes, except 707-300B and -300C Series.

Compliance required within the next 6,000 hours' time in service after the effective date of this AD unless already accomplished.

To prevent explosion of fuel vapors in the fuel tanks as a result of lightning-induced ignition at the fuel tank vent outlet, accomplish one of the following or an equivalent approved by the Chief, Aircraft Engineering Division, FAA Western Region—

(a) Install a flame and explosion suppression system in the fuel tank vent outlet system approved by the Chief, Aircraft Engineering Division, FAA Western Region, that would prevent flame propagation through the vent system following ignition of vapor by lightning at the vent outlet; or

(b) Provide an auxiliary vent tube, with flame arrester, to the vent system surge tank approved by the Chief, Aircraft Engineering Division, FAA Western Region, that would provide, during flight, continuous airflow inward through the existing vent outlet and outward through the protected auxiliary tube.

Issued in Washington, D.C., on June 20, 1966.

C. W. WALKER,
Director,
Flight Standards Service.

[F.R. Doc. 66-6907; Filed, June 23, 1966; 8:46 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 66-WE-41]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Agency is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the transition area in the Eugene, Ore. terminal area as follows:

That airspace extending upward from 700 feet above the surface within 2 miles E and 8 miles W of the Eugene VORTAC 007° radial, extending from the VORTAC

to 14 miles N of the VORTAC; within 2 miles SE and 3 miles NW of the Eugene VORTAC 030° radial, extending from the VORTAC to 13 miles NE of the VORTAC; within 2 miles each side of the Eugene VORTAC 224° radial, extending from the VORTAC to 11 miles SW of the VORTAC; within 2 miles each side of the Eugene VORTAC 187° and 172° radials, extending from the VORTAC to 9 miles S of the VORTAC; and that airspace extending upward from 1,200 feet above the surface within 16 miles W and 10 miles E of the Eugene VORTAC 015° and 195° radials, extending from 26 miles N to 12 miles S of the VORTAC; within 6 miles E and 9 miles W of the Eugene VORTAC 172° radial, extending from the VORTAC to 39 miles S of the VORTAC; within 5 miles each side of the Eugene VORTAC 271° radial, extending from the VORTAC to V-27; and that airspace SW of Eugene bounded on the SE by the NW edge of V-121, on the NW by the SE edge of V-287, and on the N by a line 5 miles S of and parallel to the Eugene VORTAC 271° radial.

The proposed 700-foot floor transition area would provide controlled airspace protection for aircraft executing prescribed instrument approach and departure procedures at Mahlon Sweet Airport.

The 1,200-foot floor transition area would encompass the holding procedures at the Eugene VORTAC and Curtin intersection. It would also provide controlled airspace protection for aircraft transitioning via Eugene VORTAC 271° radial to intercept V-27.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments, as they may desire. Communications should be submitted in triplicate to the Director, Western Region, Attention: Chief, Air Traffic Division, Federal Aviation Agency, 5651 West Manchester Avenue, Post Office Box 90007, Airport Station, Los Angeles, Calif., 90009. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public Docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Agency, 5651 West Manchester Avenue, Los Angeles, Calif., 90045.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (72 Stat. 749; 49 U.S.C. 1348).

Issued in Los Angeles, California, on June 16, 1966.

JOSEPH H. TIPPETS,
Director, Western Region.

[F.R. Doc. 66-6908; Filed, June 23, 1966; 8:46 a.m.]

FEDERAL MARITIME COMMISSION

[46 CFR Part 531]

[Docket No. 65-37]

FILING PROJECT RATES

Proposed Special Permission Requirements

On October 27, 1965, the Federal Maritime Commission published in the FEDERAL REGISTER (30 F.R. 13653) proposed rules for the purpose of establishing provisions which would require a common carrier by water in the domestic off-shore trades to file with the Federal Maritime Commission an application for special permission before establishing project rates in its tariff(s). Comments were received from various interested parties. The Commission has considered the comments received, and in the light thereof hereby publishes its revised proposed rules in accordance with the provisions of section 4, Administrative Procedure Act (5 USC 1003), section 2 of the Intercoastal Shipping Act, 1933 (46 USC 844), and section 43 of the Shipping Act, 1916 (46 USC 841a).

Sections 531.0 and 531.7 of Title 46, CFR, would be amended by the addition of new paragraphs, § 531.0(n) and § 531.7(e), as follows:

§ 531.0 Definitions.

(n) "Project Rate": A reduced rate on the materials and equipment to be employed by the shipper or consignee in the construction or development of a certain named facility used in manufacturing processes, the exploitation of natural resources (including agriculture), or other productive enterprises or service facility. The materials and equipment to which project rates apply may not be shipped for the purpose of resale.

§ 531.7 Commodity rates.

(e) (1) *Project rates.* Publications containing project rates will not be accepted for filing unless they comply in all respects with the provisions of this tariff circular or unless special permission for appropriate rule relief has been granted under § 531.14.

(2) Application for special permission to file such publications shall include:

(i) A recitation of the economic justification for the project rates and a demonstration that the rates would meet at least out-of-pocket costs and pay a share of the voyage costs (see note);

(ii) A certification that all carriers having tariffs on file with this Commission covering service between the in-

volved ports have been served a copy of the application, including the names of the competitors so served;

(ii) A specimen of the proposed tariff, tariff page, or supplement which shall include (a) a list of the commodities to be transported under the project rates; (b) a statement that the bill of lading used to move cargo under the project rates will be claused "All materials included in this bill of lading are of a wholly proprietary nature and may not be resold at destination or otherwise placed in commercial channels for resale;" and (c) a date upon which the project rates will expire (See § 531.4(f)); and

(iv) A list of the tariff circular rules sought to be waived.

NOTE: Information submitted pursuant to paragraph (1) will not be used as a determining factor in granting the application for rule relief but will be utilized for the purpose of staff evaluation of the effect of the proposed project rates.

Interested parties may participate in this rulemaking proceeding by submitting an original and 15 copies of written statements, data, views, or arguments pertaining thereto to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before the close of business July 26, 1966.

The Federal Maritime Commission, Bureau of Compliance, Office of Hearing Counsel shall participate in this pro-

ceeding and shall file Reply to Comments on or before August 15, by serving an original and 15 copies on the Federal Maritime Commission and one copy on each party who filed written comments. Answers to Hearing Counsel's replies shall be submitted to the Federal Maritime Commission on or before August 30, 1966.

By order of the Federal Maritime Commission.

[SEAL]

THOMAS LISI,
Secretary.

[F.R. Doc. 66-6970; Filed, June 23, 1966;
8:52 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Phoenix 060872]

ARIZONA

Order Providing for Opening of Lands

JUNE 17, 1966.

1. Pursuant to the Act of June 14, 1926 (44 Stat. 741; U.S.C. 869), as amended by the Act of June 4, 1954 (68 Stat. 173), as amended, the following described lands have been reconveyed to the United States:

GILA AND SALT RIVER MERIDIAN

T. 5 S., R. 10 E.,
Sec. 6, lots 1, 2 and $S\frac{1}{2}NE\frac{1}{4}$.

The area described aggregates 165.63 acres.

2. The lands are located 1 mile east of Florence, Ariz., and contain rights-of-way for a canal and a flood control earth dam. These tracts are level to gently rolling and there are some low granite hills along the east boundary. These lands will be open to the operation of the public land laws, including the mining and mineral leasing laws.

3. This order shall become effective at 10 a.m. on July 23, 1966.

Inquiries concerning these lands shall be addressed to the Manager, Land Office, Bureau of Land Management, 3022 Federal Building, Phoenix, Ariz., 85025.

FRED J. WEILER,
State Director.

[F.R. Doc. 66-6925; Filed, June 23, 1966;
8:47 a.m.]

DEPARTMENT OF COMMERCE

Bureau of International Commerce

[File No. 23 (65)-53]

OVERSEAS CHINESE RADIO AND TELEVISION INSTITUTE AND KUALA LUMPUR BRANCH

Order Denying Export Privileges for an Indefinite Period

In the matter of Overseas Chinese Radio and Television Institute, 352 Geyland Road, Singapore 1; Kuala Lumpur Branch, 56 Yew Road, Kuala Lumpur, Malaysia, respondent; File No. 23 (65)-53.

The Director, Investigations Division, Office of Export Control, Bureau of International Commerce, U.S. Department of Commerce, has applied for an order denying to the above-named respondent all export privileges for an indefinite period because the said respondent failed to furnish answers to interrogatories and

failed to furnish certain records and other writings specifically requested, without good cause being shown. This application was made pursuant to § 382.15 of the Export Regulations (Title 15, Chapter III, Subchapter B, Code of Federal Regulations).

In accordance with the usual practice, the application for an Indefinite Denial Order was referred to the Compliance Commissioner, Bureau of International Commerce, who after consideration of the evidence has recommended that the application be granted. The report of the Compliance Commissioner and the evidence in support of the application have been considered.

The evidence presented shows that the respondent, Overseas Chinese Radio and Television Institute trades in electrical and electronic equipments and has places of business in Singapore and Kuala Lumpur, Malaysia; that Yap Yee Tze is manager and principal official of said firm; that the firm purchased and received from a supplier in Singapore substantial quantities of U.S.-origin electronic equipment and accessories of a strategic nature. The aforesaid Investigations Division is conducting an investigation into the disposition by said respondent of said commodities. It is impracticable to subpoena the respondent, and relevant and material interrogatories and request to furnish certain specific documents relating to its disposition of said commodities were served on it pursuant to § 382.15 of the Export Regulations. Said respondent has failed to furnish answers to said interrogatories or to furnish the documents requested, as required by said section and it has not shown good cause for such failure. I find that an order denying export privileges to said respondent for an indefinite period is reasonably necessary to protect the public interest and to achieve effective enforcement of the Export Control Act of 1949, as amended.

Accordingly, it is hereby ordered,

I. All outstanding validated export licenses in which respondent appears or participates in any manner or capacity are hereby revoked and shall be returned forthwith to the Bureau of International Commerce for cancellation.

II. The respondent, its successors, representatives, agents, and employees hereby are 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, directly or indirectly, in any manner or capacity:

(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 any document to be submitted therewith; (c) in the obtaining or using of any validated or general export license or other export control document; (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 in whole or in part exported or to be exported from the United States; and (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 respondent, but also to its agents and employees, including Yap Yee Tze. Such denial of export privileges shall also extend to any person, firm, corporation, or business organization with which the respondent 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. This order shall remain in effect until the respondent provides responsive answers, written information, and documents in response to the interrogatories heretofore served upon it or gives adequate reasons for failure to do so, except insofar as this order may be amended or modified hereafter in accordance with the Export Regulations.

V. 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, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the respondent or any related party, or whereby the respondent or related party 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 related party denied export privileges; 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.

VI. A copy of this order shall be served on respondent.

VII. In accordance with the provisions of § 382.15 of the Export Regulations, the respondent may move at any time to vacate or modify this Indefinite Denial Order by filing with the Compliance Commissioner, Bureau of International Commerce, U.S. Department of Commerce, Washington, D.C., 20230, an appropriate motion for relief, supported by substantial evidence, and may also request an oral hearing thereon, which, if requested shall be held before the Compliance Commissioner at Washington, D.C., at the earliest convenient date.

This order shall become effective forthwith.

Dated: June 17, 1966.

RAUER H. MEYER,
Director,
Office of Export Control.

[F.R. Doc. 66-6894; Filed, June 23, 1966;
8:45 a. m.]

[File No. 23(66)-17]

**TOKYO SEIDENSHA CO., LTD.
ET AL.**

**Order Temporarily Denying Export
Privileges**

In the matter of Tokyo Seidensha Company, Ltd., 564-7 Chome, Ebaramachi, Shinagawa-Ku, and 8-11 Koyama 6-Chome, Shinagawa-Ku, and 1395 Hara-machi, Meguro-Ku, all of Tokyo, Japan; respondent; File No. 23(66)-17.

The Director, Investigations Division, Office of Export Control, Bureau of International Commerce, United States Department of Commerce, pursuant to the provisions of § 382.11 of the Export Regulations (Title 15, Chapter III, Subchapter B, Code of Federal Regulations), has applied to the Compliance Commissioner for an order temporarily denying all export privileges to the above-named respondent. The Compliance Commissioner has reviewed the application and the evidence presented in support thereof and has submitted his report, together with his recommendation that the application be granted and that a temporary denial order be issued for 60 days.

The evidence and recommendation of the Compliance Commissioner have been considered. The evidence presented shows that respondent is a joint stock company with a place of business in Tokyo, Japan; that the company is engaged in importing telecommunication and microwave equipment, and also measuring and analyzing instruments and accessories; that the company has received in the recent past substantial quantities of U.S.-origin electronic equipment of a strategic nature; that said equipment was exported from the United States under validated licenses for ultimate use in Japan. The evidence presented further shows that the respondent has not satisfactorily accounted for its disposition of said commodities in accordance with the conditions under

which they were exported or that said disposition has been in accordance with the provisions of the U.S. Export Regulations. Further, the evidence shows that respondent has on order additional substantial quantities of commodities of a similar nature, which in the ordinary course of events will be delivered to it. On the evidence presented there is reasonable basis to believe that the respondent has not disposed of the commodities in accordance with the conditions under which they were exported and in accordance with the provisions of the U.S. Export Regulations. There is also reasonable basis to believe that if the respondent receives the additional commodities which it has on order it may dispose of them in contravention of the U.S. Export Regulations. I find that an order temporarily denying export privileges to the respondent is reasonably necessary for the protection of the public interest and national security.

Accordingly, it is hereby ordered,

I. All outstanding validated export licenses in which respondent appears or participates in any manner or capacity are hereby revoked and shall be returned forthwith to the Bureau of International Commerce for cancellation.

II. The respondent, its successors, assigns, representatives, agents, and employees hereby are 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, directly or indirectly, in any manner or capacity: (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 any document to be submitted therewith; (c) in the obtaining or using of any validated or general export license or other export control document; (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 in whole or in part exported or to be exported from the United States; and (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 respondent, but also to its agents and employees and to any successor and to any person, firm, corporation, or business organization with which it 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. This order shall take effect forthwith and shall remain in effect for a period of 60 days from the date hereof,

unless it is hereafter extended, amended, modified, or vacated in accordance with the provisions of the United States Export Regulations.

V. 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, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with respondent or any related party, or whereby the respondent or related party 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 the respondent or any related party denied export privileges; 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.

VI. A copy of this order shall be served upon the respondent.

VII. In accordance with the provisions of § 382.11 of the Export Regulations, the respondent or any related party may move at any time to vacate or modify this temporary denial order by filing an appropriate motion therefor, supported by evidence, with the Compliance Commissioner and may request an oral hearing thereon which, if requested, shall be held before the Compliance Commissioner in Washington, D.C., at the earliest convenient date.

This order shall become effective forthwith.

Dated: June 17, 1966.

RAUER H. MEYER,
Director, Office of
Export Control.

[F.R. Doc. 66-6895; Filed, June 23, 1966;
8:45 a. m.]

Office of the Secretary

[Dept. Order No. 9]

PERSONAL PROPERTY CLAIMS OF DEPARTMENT OF COMMERCE PERSONNEL

Delegation of Authority

The following order was issued by the Secretary of Commerce on June 10, 1966.

SECTION 1. Purpose. The purpose of this order is to delegate authority to settle and pay claims against the United States for not more than \$6,500 made by a member of the uniformed services under the jurisdiction of the Department of Commerce or by a civilian officer or employee of the Department of Com-

merce, for damage to, or loss of, personal property incident to his service.

SEC. 2. *Definitions.* For purposes of this order:

a. "Agency" means the Department of Commerce, but does not include any contractor with the United States;

b. "Uniformed service" means the commissioned officers of the Environmental Science Services Administration; and

c. "Settle" means consider, ascertain, adjust, determine, and dispose of any claim, whether by full or partial allowance or disallowance.

SEC. 3. *Legal authority.* The Act of August 31, 1964, Public Law 88-558, 78 Stat. 767, as amended (31 U.S.C. 240 et seq.) provides that subject to any policies which the President may prescribe, and under such regulations as the Secretary may prescribe, the Secretary or his designee may settle and pay a claim arising after the effective date of the Act (August 31, 1964) against the United States for not more than \$6,500, made by a member of the uniformed services under the jurisdiction of the Department or by a civilian officer or employee of the Department or his survivors, for damage to, or loss of, personal property incident to his service.

SEC. 4. *Delegation of authority.* .01 Subject to the provisions of section 5 of this order, the following officials are hereby delegated authority to settle and pay claims under Public Law 88-558 and any amendments thereto:

a. Heads of primary operating units;

b. Assistant Secretary for Administration for the Office of the Secretary and for constituent operating units reporting to the Under Secretary for Transportation;

c. Director, Office of Administration, under the Assistant Secretary and Director of Economic Development for constituent operating units reporting to him;

d. Director, Office of Administration (DIB), for that office and the Office of Publications and Information (DIB); and

e. Secretarial Officers for constituent operating units reporting to those officials that may be established in the future.

.02 The authority delegated herein may be redelegated to one or more employees who shall be designated as claims officers.

SEC. 5. *Administrative policy.* The general purpose of the authority provided by the statute is to make possible administrative settlement and payment of meritorious claims, in lieu of settlement and payment of claims by private relief bills. The general purpose, more specifically, is to make it possible for Government agencies, subject to the requirements contained in the statute, to reimburse employees, not for any and all damage to, or loss of, personal property which they may experience, but only for unusual and unforeseen loss of or damage to personal property which is not covered by insurance, indemnity, or other

contracts and which is sustained by employees, through no fault of their own, as an incident of their employment under circumstances in which it is only fair that the Government as their employer should make up the loss.

SEC. 6. *Administration.* .01 The General Counsel and the Assistant Secretary for Administration jointly shall issue such implementing instructions as they may deem necessary for the proper administration of this authority.

.02 No claim shall be settled without prior review for legal sufficiency by the General Counsel of the Department of Commerce or his designee.

.03 The Assistant Secretary for Administration shall prepare, as required by law, a departmental report on claims settled for each fiscal year for submission by the Secretary of Commerce.

Effective date: June 10, 1966.

DAVID R. BALDWIN,
Assistant Secretary
for Administration.

[F.R. Doc. 66-6896; Filed, June 23, 1966;
8:45 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-84]

REGENTS OF UNIVERSITY OF CALIFORNIA

Notice of Issuance of Order Authorizing Dismantling and Transfer of Facility

Please take notice that the Atomic Energy Commission has issued an order authorizing the University of California to dismantle the Model AGN-201, Serial No. 112, nuclear reactor located on the University of California campus at Berkeley, Calif., and covered by AEC Facility License No. R-30 and transfer the dismantled facility to The University of New Mexico at Albuquerque, N. Mex.

Copies of the Commission's order, the application dated April 26, 1966, and the amendment thereto dated May 12, 1966, submitted by the University of California and a related safety evaluation prepared by the Research and Power Reactor Safety Branch of the Division of Reactor Licensing are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of the safety evaluation may be obtained at the Commission's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington, D.C., 20545, Attention: Director, Division of Reactor Licensing.

For the Atomic Energy Commission.

Dated at Bethesda, Md., this 17th day of June 1966.

R. L. DOAN,
Director,
Division of Reactor Licensing.

[F.R. Doc. 66-6896; Filed, June 23, 1966;
8:45 a.m.]

[Docket No. 50-186]

CURATORS OF UNIVERSITY OF MISSOURI

Notice of Issuance of Construction Permit Amendment

Please take notice that the Atomic Energy Commission has issued, effective as of the date of issuance, Amendment No. 1 to Construction Permit No. CPRR-68. The Construction Permit authorizes the Curators of the University of Missouri to construct a 10,000 kilowatt (thermal) heterogeneous, light water-cooled and moderated pressurized tank research reactor located on the campus at Columbia, Mo. The amendment authorizes the insertion of single fuel assemblies into various reactor core positions and in-pool storage positions for fitting test purposes, as described in the application amendment dated May 12, 1966.

Within fifteen (15) days from the date of publication of this notice in the FEDERAL REGISTER, the applicant may file a request for a hearing and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions to intervene shall be filed in accordance with the Commission's regulation (10 CFR Part 2). If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to this amendment, see (1) the licensee's application for amendment dated May 12, 1966, and (2) the Safety Evaluation prepared by the Test and Power Reactor Safety Branch of the Division of Reactor Licensing, both of which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of item (2) above may be obtained at the Commission's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington, D.C., 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 9th day of June 1966.

For the Atomic Energy Commission.

R. L. DOAN,
Director,
Division of Reactor Licensing.

[Construction Permit CPRR-68 Amdt. No. 1]

The Commission has found that:
(1) The application for amendment complies with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations set forth in Title 10, Ch. 1, CFR;

(2) Testing of the reactor fuel assemblies in accordance with the permit, as amended, will not be inimical to the common defense and security or to the health and safety of the public.

(3) Prior public notice of proposed issuance of the amendment is not required since the amendment does not involve significant hazards considerations different from those previously evaluated.

Construction Permit No. CPRR-68, issued to The Curators of the University of Missouri, is amended by adding a new subparagraph C to paragraph 3 as follows:

"C. The University of Missouri is authorized during construction of the facility to insert not more than a single fuel assembly at any one time into various reactor core positions and in-pool storage positions for fitting test purposes, as described in the application amendment dated May 12, 1966."

This amendment is effective as of the date of issuance.

Date of Issuance: June 9, 1966.

For the Atomic Energy Commission.

R. L. DOAN,
Director,
Division of Reactor Licensing.

[F.R. Doc. 66-6897; Filed, June 23, 1966;
8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 15529]

BAGGAGE LIABILITY RULES CASE

Notice of Oral Argument

Oral argument limited to the following matters: (1) The lawful minimum limitation of liability for loss of, damage to, or delay in delivery of any personal property, including baggage, whether checked or not; and (2) appropriate means of giving notice of liability rules to the public, including the affixing of a notice on the ticket envelope and the posting of signs at ticket counters or other locations. See order E-23764, dated June 2, 1966.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in the above-entitled matter is assigned to be heard on July 20, 1966, at 10 a.m., e.d.s.t., in Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before the Board.

Dated at Washington, D.C., June 17, 1966.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 66-6939; Filed, June 23, 1966;
8:49 a.m.]

[Docket 17286]

BRITISH EAGLE INTERNATIONAL AIRLINES LTD.

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference on the above-entitled application is assigned to be held on July 13, 1966, at 10 a.m., e.d.s.t., in Room 911, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Leslie G. Donahue.

In order to facilitate conduct of the conference interested parties are instructed to submit to the examiner and other parties on or before July 7, 1966, (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statements of positions

of parties; and (5) proposed procedural dates.

Dated at Washington, D.C., June 20, 1966.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 66-6940; Filed, June 23, 1966;
8:49 a.m.]

[Docket 17233]

CONDOR FLUGDIENST G.m.b.H.

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference on the above-entitled application is assigned to be held on July 12, 1966, at 10 a.m., e.d.s.t., in Room 911, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Edward S. Stodola.

Advance exchange of information requests are to be filed on or before July 1, 1966.

Dated at Washington, D.C., June 20, 1966.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 66-6941; Filed, June 23, 1966;
8:49 a.m.]

[Docket 17358]

MIAMI-KEY WEST SERVICE INVESTIGATION

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on July 12, 1966, at 10 a.m., e.d.s.t., in Room 726, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner James S. Keith.

In order to facilitate conduct of the conference interested parties are instructed to submit to the examiner and other parties on or before July 6, 1966, (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statements of positions of parties; and (5) proposed procedural dates.

Dated at Washington, D.C., June 20, 1966.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 66-6942; Filed, June 23, 1966;
8:49 a.m.]

[Docket 17378]

NIPPON EXPRESS U.S.A., INC.

Notice of Prehearing Conference

Application for a foreign air carrier permit as a foreign air freight forwarder between points in the United States and Japan.

Notice is hereby given that a prehearing conference on the above-entitled application is assigned to be held on July 14, 1966, at 10 a.m., e.d.s.t., in Room 911, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Joseph L. Fitzmaurice.

Advance exchange of information requests are to be filed on or before July 8, 1966.

Dated at Washington, D.C., June 20, 1966.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 66-6943; Filed, June 23, 1966;
8:49 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 16070; FCC 66M-849]

COMMUNICATIONS SATELLITE CORP.

Order Continuing Conference

In the matter of Communications Satellite Corporation, Docket No. 16070; charges, practices, classifications, rates, and regulations for and in connection with the leasing of voice grade and television channels to common carriers authorized by the Federal Communications Commission, between Andover, Maine, and a communications-satellite in connection with the establishment of communication paths between points in the United States and Europe for the transmission and reception of voice, record, data, telephoto, facsimile, television, and other signals.

It is ordered, This 16th day of June, 1966, by the Hearing Examiner on his own motion, that:

(1) The further prehearing conference in this matter now scheduled for June 21, 1966 is rescheduled to commence at 10 a.m., July 20, 1966, in the Commission's offices in Washington, D.C.,

(2) That future pleadings in this matter be in the more formal of the manners prescribed by the Commission's rules and that any motions involving changing of dates be specific as to actual calendar dates sought,

(3) The following letter-type pleadings are dismissed:

(a) A letter received by the Commission on June 2, 1966 from counsel for Communications Satellite Corporation requesting an extension of time for filing comments¹ and a postponement of the date for a prehearing conference, and

(b) All responses thereto filed by the other parties.

Released: June 16, 1966.

FEDERAL COMMUNICATIONS

COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 66-6965; Filed, June 23, 1966;
8:52 a.m.]

¹ The Hearing Examiner never conceived of his "Notice" released May 26, 1966, as mandatory. It was intentionally not in the form of an order. Unless the Hearing Examiner's jurisdiction is expressly urged in the future he will expect the parties to police their own gentlemen's agreements. In any event, Comsat's letter was untimely filed for relief by June 10, 1966, for the parties had until the close of business on June 13, 1966, to reply to the letter.

[Docket No. 16709; FCC 66M-878]

**ISLAND BROADCASTING SYSTEM
(WRIV), INC.****Order Scheduling Hearing**

In re application of Island Broadcasting System (WRIV), Inc., Riverhead, N.Y., Docket No. 16709, File No. BPCT-3475; for construction permit (Channel 55).

It is ordered, This 20th day of June 1966, that Forest L. McClenning shall serve as Presiding Officer in the above-entitled proceeding; that the hearings therein shall be convened on September 20, 1966, at 10 a.m.; and that a prehearing conference shall be held on July 19, 1966, commencing at 9 a.m.: *And, it is further ordered*, That all proceedings shall be held in the Offices of the Commission, Washington, D.C.

Released: June 21, 1966.

FEDERAL COMMUNICATIONS
COMMISSION,[SEAL] BEN F. WAPLE,
Secretary.[F.R. Doc. 66-6966; Filed, June 23, 1966;
8:52 a.m.]

[Docket Nos. 16536, 16537; FCC 66M-875]

**GORDON SHERMAN AND OMICRON
TELEVISION CORP.****Order Continuing Hearing**

In re applications of Gordon Sherman, Orlando, Fla., Docket No. 16536, File No. BPCT-3529; Omicron Television Corp., Orlando, Fla., Docket No. 16537, File No. BPCT-3596; for construction permit for new television broadcast station (Channel 35).

The Hearing Examiner having under consideration a request by letter, hand delivered this date, from counsel for Gordon Sherman and concurred in by counsel for Omicron Television Corp. for an indefinite postponement of the procedural steps in the above-entitled matter, and

It appearing, that the Chief of the Hearing Division of the Broadcast Bureau having informed the Hearing Examiner that the Bureau would agree to a reasonable postponement, and

It further appearing, that the competing applicants may merge and thus obviate the necessity for a hearing,

It is ordered, This 20th day of June 1966, that the date for the exchange of exhibits (which were to have been exchanged on June 15, 1966) is changed to July 7, 1966 and the date of the hearing is changed from June 22, 1966 to July 12, 1966 to commence at 10 a.m., in the Commission's offices in Washington, D.C.

Released: June 21, 1966.

FEDERAL COMMUNICATIONS
COMMISSION,[SEAL] BEN F. WAPLE,
Secretary.[F.R. Doc. 66-6967; Filed, June 23, 1966;
8:52 a.m.]

[Docket Nos. 16712, 16713; FCC 66-538]

**TREND RADIO, INC., AND JAMES
BROADCASTING CO., INC.****Order Designating Applications for
Consolidated Hearing of Stated
Issues**

In re applications of Trend Radio, Inc., Jamestown, N.Y., Docket No. 16712, File No. BPCT-3665; James Broadcasting Co., Inc., Jamestown, N.Y., Docket No. 16713, File No. BPCT-3694; for construction permits for new television Broadcast station.

At a session of the Federal Communications Commission, held at its offices in Washington, D.C., on the 15th day of June 1966;

1. The Commission has before it for consideration the above-captioned applications, each requesting a construction permit for a new television broadcast station to operate on Channel 26, Jamestown, N.Y. Since the operation proposed by both of the applicants would result in mutually destructive interference, they are mutually exclusive and a hearing will be required to determine which application should be granted.

2. Since FAA approval has not been obtained for James Broadcasting Co., Inc.'s, proposed antenna structure, an air menace issue has been specified.

3. Trend Radio, Inc., proposes to locate its main studio outside of the corporate limits of Jamestown, and has requested a waiver of § 73.613(a) of the Commission's rules. We believe that adequate justification has been shown for a waiver and therefore, no issue is specified. In the event that this application is granted, § 73.613(a) of the rules will be waived.

4. Except as indicated by the issues set forth below, each of the applicants is qualified to construct, own and operate the proposed new television broadcast station. The applications are, however, mutually exclusive in that operation by the applicants as proposed would result in mutually destructive interference. The Commission is, therefore, unable to make the statutory finding that a grant of the applications would serve the public interest, convenience and necessity, and is of the opinion that they must be designated for hearing in a consolidated proceeding on the issues set forth below.

Accordingly, it is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications of Trend Radio, Inc., and James Broadcasting Company, 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 with respect to James Broadcasting Co., Inc.'s, application whether its proposed antenna structure would constitute a menace to air navigation.

2. To determine which of the proposals would better serve the public interest.

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 twenty (20) days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That the applicants 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.

Released: June 21, 1966.

FEDERAL COMMUNICATIONS
COMMISSION,¹[SEAL] BEN F. WAPLE,
Secretary[F.R. Doc. 66-6968; Filed, June 23, 1966;
8:52 a.m.]**FEDERAL POWER COMMISSION**

[Docket Nos. RI66-411, etc.]

HALL-JONES NO. 4 ET AL.**Order Providing for Hearings on and
Suspension of Proposed Changes
in Rates^{1a}**

JUNE 16, 1966.

The Respondents named herein have filed proposed increased rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

¹ Concurring statement of Commissioner Bartley filed as part of the original document. Commissioner Cox absent.

^{1a} Does not consolidate for hearing or dispose of the several matters herein.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the

Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before August 3, 1966.

By the Commission,

[SEAL]

JOSEPH H. GUTRIDE,
Secretary.

Appendix A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI66-411...	Hall-Jones No. 4, et al., c/o Mosteller, Andrews & Mosburg, Attn: Lewis G. Mosburg, Jr., Esq., 18th Floor, United Founders Tower, Oklahoma City, Okla., 73112.	1	2	Panhandle Eastern Pipe Line Co. (Putnam City Field, Dewey County, Okla.) (Oklahoma "Other" Area).	\$16,105	5-23-66	6-23-66	11-23-66	15.0	\$17.0	
RI66-412...	Ethyle Moorhead, Hugoton, Kans., 67951.	1	3	Panhandle Eastern Pipe Line Co. (Hugoton Field, Stevens County, Kans.).	1,330	5-26-66	6-26-66	11-26-66	11.0	12.0	
RI66-413...	Brooks Hall (Operator), et al., Liberty National Bank Bldg., Oklahoma City, Okla., 73102.	1	5	Panhandle Eastern Pipe Line Co. (Major and Dewey Counties, Okla.) (Oklahoma "Other" Area).	2,901	5-23-66	6-23-66	11-23-66	15.0	17.0	
RI66-414...	D. J. Harrison, 2105 Gulf Bldg., Houston, Tex., 77002.	2	2	Union Texas Petroleum, a division of Allied Chemical Corp. (South Mayes Field, Chambers County, Tex.) (R.R. District No. 3).	\$4,092	5-26-66	7-30-66	12-30-66	14.0	15.5	

* The stated effective date is the effective date requested by Respondent.

* Respondent is filing from permanent certificate rate to initial contract rate.

* Pressure base is 14.65 p.s.i.a.

* Periodic rate increase.

* For gas produced above the base of the Chase Group.

* Subject to an upward and downward B.t.u. adjustment.

* Successor to Texas Gas Corp. Buyer resells gas involved to Texas Eastern Transmission Corp. under Buyer's FPC Gas Rate Schedule No. 66 at a rate of 14.3875 cents, effective subject to refund in Docket No. RI62-250. Buyer contractually due but not filed for periodic increase to 15.1 cents plus tax reimbursement.

* Gas currently not requiring compression.

* Subject to a 3.0 cents per Mcf deduction by Buyer for gas requiring compression.

* Subject to downward B.t.u. adjustment for gas below 1000 B.t.u.'s.

All of the producers' proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's statement of general policy No. 61-1, as amended (18 CFR, Ch. I, Part 2, § 2.56).

[F.R. Doc. 66-6850; Filed, June 23, 1966; 8:45 a.m.]

[Docket No. CP66-412]

**LUMAR GAS CORP.
Notice of Application**

JUNE 17, 1966.

Take notice that on June 10, 1966, Lumar Gas Corp. (Applicant), 1215 Chamber of Commerce Building, Houston, Texas, 77002, filed in Docket No. CP66-412 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and a necessity authorizing Applicant, as a gatherer of natural gas, to operate natural gas gathering facilities and to sell natural gas to Texas Eastern Transmission Corporation (Texas Eastern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant purchases gas from producers in several Texas fields which Applicant transports through its own gathering facilities and sells and delivers gas to Texas Eastern for use as compressor fuel at various points along Texas Eastern's pipeline as it traverses the State of Texas. Applicant states that it did not seek Commission authorization prior to initiation of these sales because it believed that such direct sales

for compressor fuel use were not subject to the Commission's jurisdiction. By letter dated December 28, 1965, the Commission requested that Applicant file the instant application in light of the decision in California v. Lo-Vaca Gathering Co., 379 U.S. 366.

The following table identifies the current sources of Applicant's gas supplies for this service:

Field	County	Producer-suppliers
Appling.....	Calhoun....	Joe Blalock. Claire-Benz-Stoddard. Doris Day Melcher, Martin Melcher, Gordon McRae, Marvin Miller, David Miller, Ross Hunter, Art Laboe, Rosenthal, Cook & Green, Phoenix Enterprises— Operator—Ben Novak, John Alexander and Clifford B. Renegar. Appell Petroleum Co., Ownership disputed— Claimants consist of Peggy Sue Harrell, Horace Tucker, David Davidson, Roy T. Walker.
Midway.....	San Patricio..	Humble Oil & Refining Co.
South Lucky..	Matagorda...	R. L. Kirkwood, Harold R. Billingsley, Kirk- wood & Morgan, Inc., Paul J. Moore, Robert W. Luker, J. L. Farh, and Royce M. Jones.
Nada.....	Colorado.....	A. N. Wadsworth, Jr. Carri Oil, a partnership composed of William E. Carl and Jeff Carr, General Crude Oil Co. and J. V. McCullough.
Gyp Hill.....	Brooks.....	

The producers deliver gas to Applicant at a central point in each field.

The facilities over which the transportation by Applicant is accomplished are as follows:

- (1) A 2-inch meter station, Gyp Hill Field, Brooks County, Tex.,
- (2) 12,500 feet of 3-inch pipeline extending from the East Midway Field, San Patricio County, Tex.,
- (3) 35,820 feet of 6-inch pipeline extending from the Appling Field, Jackson County, Tex.,
- (4) 35,510 feet of 6-inch pipeline extending from the South Lucky Field, Matagorda County, Tex., and
- (5) A 4-inch meter station, Nada Field, Colorado County, Tex.

Applicant states that no communities nor main line industrial customers are served by it along these pipelines and that it does not own or operate any compressor stations, gasoline plants, dehydration plants, gas storage projects or other major facilities appurtenant to said pipelines.

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) and the regulations under the Natural Gas Act (§ 157.10) on or before July 18, 1966.

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 without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its

own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66-6910; Filed, June 23, 1966;
8:46 a.m.]

[Docket No. CP66-405]

NORTHERN NATURAL GAS CO.

Notice of Application

JUNE 17, 1966.

Take notice that on June 7, 1966, Northern Natural Gas Co. (Applicant), 2223 Dodge Street, Omaha, Nebr., 68102, filed in Docket No. CP66-405 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the transportation of natural gas in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to construct and operate 2,800 feet of 4-inch pipeline and to transport approximately 5,500 Mcf per day of additional natural gas for use as fuel and shrinkage in its hydrocarbon extraction plant located near Hobbs, N. Mex. Applicant also proposes to modify the Hobbs Extraction Plant and to install minor piping in the Hobbs Yard. Applicant states that the yard piping will be installed under the provisions of paragraph 2.55 of the Commission's rules of practice and procedure.

Applicant states that its present hydrocarbon extraction facilities consist of an ambient temperature absorption process which extracts certain volumes of propane, butane and natural gasoline and that the present facilities have a capacity to process 220,000 Mcf of natural gas per day.

Applicant proposes to modify the present extraction facilities by installing a refrigerated absorption process. Applicant states that, although the proposed modifications to the extraction facilities will not increase the capacity of the plant to process volumes in excess of 220,000 Mcf of gas per day, the modifications will increase the amount of hydrocarbons removed, thereby increasing the volumes of fuel and shrinkage by approximately 5,500 Mcf of gas per day.

The total estimated cost of construction for Applicant's proposed project is \$3,031,310, which cost will be financed out of cash on hand.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in ac-

cordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before July 15, 1966.

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 without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66-6911; Filed, June 23, 1966;
8:46 a.m.]

[Docket Nos. CP66-307 etc.]

NORTHERN NATURAL GAS PIPELINE CO., ET AL

Order Consolidating Applications Notifying Intervention and Setting Date of Hearing

JUNE 17, 1966.

Northern Natural Gas Pipeline Co., Docket No. CP66-307; Northern Natural Gas Co., Docket No. CP66-308; Sinclair Oil and Gas Co. (Operator), et al., Docket No. CI66-410.

On April 7, 1966, the Commission issued a notice of application in Docket No. CP66-308 filed by Northern Natural Gas Co. (Northern) on March 25, 1966, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities to receive into its system an initial delivery of 5,000 Mcf of gas per day (which will increase up to 40,000 Mcf per day by July 1, 1969) at the outlet of the Sinclair-Skelly (Eldorado Gas Plant) located in Schleicher County, Tex.

In a companion application, Docket No. CP66-307, filed on March 25, 1966, Northern Natural Gas Pipeline Co. (Pipeline) seeks authority to transport for Northern up to 5,000 Mcf per day of the gas to be received by Northern from the Eldorado Gas Plant. Pipeline would receive the gas from Northern at a point on Pipeline's existing 8-inch line and re-deliver like volumes to Northern at an existing interconnection of facilities at Northern's Eldorado Compressor Station.

On November 15, 1965, Sinclair Oil & Gas Co. (Sinclair) filed an application in Docket No. CI66-410 pursuant to section 7(c) of the Natural Gas Act for authority to sell residue gas to Northern pursuant

to a Residue Gas Purchase Contract dated October 29, 1965, between Sinclair and Skelly Oil Co. as seller and Northern as buyer. Sinclair is the operator and owner of a 50 percent interest in the Eldorado Plant from which gas will be delivered to Northern. Skelly Oil Co. (Skelly), the owner of the remaining 50 percent plant interest has authorized Sinclair to make all necessary filings with the Federal Power Commission to cover its interest.

The application of Sinclair indicates that, initially, the applicant will process only gas well gas produced or purchased from the Eldorado and Fort McKavitt Fields, Schleicher County, Tex. The contract provides that the delivery point for all residue gas purchased and sold under the contract shall be at the point of connection to Northern's facilities at the outlet of the Eldorado Plant, Schleicher County, Tex. Although Sinclair's application states that Sinclair will not own or operate any pipelines in connection with the proposed sale to Northern and will not construct or operate additional facilities to render the service proposed herein subject to the jurisdiction of the Commission, it appears from exhibits submitted in connection with the application that an 11-mile line will be necessary to connect the source of the gas in the Eldorado Field with the Eldorado Gas Production Plant.

We are consequently requiring Sinclair to amend its application to request authorization for the construction and operation of any facilities necessary to transport gas produced and purchased from other producers in the Eldorado Field to the Eldorado Processing Plant, from which plant gas will be sold to Northern in interstate commerce.

On December 22, 1965, Brooks Gas Corporation (Brooks) filed a petition to intervene in Docket No. CI66-410. Brooks alleges that it was authorized by the Commission to construct a gathering system in Docket No. CI63-708 in the Eldorado (Velrex Field) from which it transports gas to its Mertzson Plant by means of a 15-mile line and delivers the residue gas to Northern at the plant tail-gate. The petitioner submits, inter alia, "that the construction and operation of the gathering and transportation lines by Sinclair as proposed will be a needless duplication of petitioners' facilities in the Eldorado Velrex Field as well as the transmission line operated by the Brooks Pipeline Co." In short, Brooks contends that the Sinclair proposal is not required by the public convenience and necessity.

An answer to the petition of Brooks was filed by Sinclair on January 6, 1966, which argues that Brooks fails to show an interest which would be directly affected by Sinclair's proposal. In a supplement to its petition filed on April 18, 1966, Brooks alleges that its "gathering system is the only existing gathering system in the Velrex Eldorado Area and presently serves all producers in both fields". In light of certain maps attached to its supplement of April 18, 1966, showing the location of the fields

[Docket No. CP66-179]

[Docket No. CP66-399]

involved, Brooks contends that it should be permitted to intervene and be a party to the proceeding in Docket No. CI66-410.

On April 28, 1966, Sinclair filed a supplement to its answer to the petition for leave to intervene by Brooks. Finally, on May 5, 1966, Brooks filed an additional petition to intervene in the two related dockets, No. CP66-307 and CP66-308, and also moves to consolidate these dockets with Docket No. CI66-410.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the matters in Docket Nos. CP66-307, CP66-308, and CI66-410 be consolidated for hearing and decision.

(2) It is desirable to allow Brooks Gas Corp. to become an intervenor in these proceedings in order that it may establish the facts involved from which the nature and validity of its alleged rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

The Commission orders:

(A) The above-captioned matters are hereby consolidated for the purpose of hearing and decision.

(B) Brooks Gas Corp. is hereby permitted to become an intervenor in these proceedings subject to the rules and regulations of this Commission: *Provided, however,* That the participation of such intervenor shall be limited to matters affecting asserted rights and interests as specifically set forth in its petition for leave to intervene: *And provided, further,* That the admission of such intervenor shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders of the Commission entered in these proceedings.

(C) As a condition to the acceptance and hearing by the Commission of Sinclair's application in Docket No. CI66-410 the applicant shall amend its application for a certificate prior to hearing so as to specifically request authorization for the construction and operation of any facilities necessary to transport gas produced and purchased from other producers in the Eldorado Field to the Eldorado Processing Plant.

(D) Protests or petitions to intervene in the above-captioned dockets 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) and the regulations under the Natural Gas Act (§ 157.10) on or before July 11, 1966.

(E) A public hearing on the issues presented by the above-captioned applications will be held in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., commencing at 10 a.m., d.s.t., October 10, 1966.

By the Commission.

[SEAL]

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66-6912; Filed, June 23, 1966; 8:46 a.m.]

SECRETARY OF THE ARMY, AND ATLANTIC SEABOARD CORP.

Order Permitting Intervention and Setting Date for Hearing

JUNE 17, 1966.

On December 3, 1965, the Secretary of the Army, Applicant, filed in Docket No. CP66-179 an application pursuant to section 7(a) of the Natural Gas Act for an order directing Atlantic Seaboard Corp., Respondent, to sell up to 288 Mcf of natural gas per day to Applicant through an existing connection at Vint Hill Farms Station, Va. Notice of the application was published in the FEDERAL REGISTER on April 27, 1966 (31 F.R. 6385). On May 18, 1966, a petition for leave to intervene in Docket No. CP66-179 was filed by Virginia Gas Distribution Corp., Intervenor.

The Commission finds:

(1) The participation of Virginia Gas Distribution Corp. in this proceeding may be in the public interest.

(2) This proceeding will be expedited by providing for service of testimony by the Applicant, the Respondent, and the Intervenor prior to the commencement of hearing.

The Commission orders:

(A) Virginia Gas Distribution Corp. is hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission. *Provided, however,* That the participation of such intervenor shall be limited to matters affecting the asserted rights and interests specifically set forth in such intervenor's petition to intervene: *And provided, further,* That the intervention of such intervenor shall not be construed as recognition by the Commission that such intervenor might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(B) Applicant, the Secretary of the Army, shall file with the Commission its direct testimony and exhibits on or before July 18, 1966.

(C) Respondent, Atlantic Seaboard Corp., and Intervenor, Virginia Gas Distribution Corp., shall file their testimony and exhibits on or before August 15, 1966.

(D) Hearing, including cross-examination of witnesses, shall commence before a hearing examiner of the Commission designated by the Chief Examiner at 10 a.m. (e.d.s.t.), on September 12, 1966, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., 20426.

By the Commission.

[SEAL]

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66-6913; Filed, June 23, 1966; 8:46 a.m.]

TEXAS EASTERN TRANSMISSION CORP.

Notice of Application

JUNE 17, 1966.

Take notice that on June 6, 1966, Texas Eastern Transmission Corp. (Applicant), P.O. Box 2521, Houston, Tex., 77001, filed in Docket No. CP66-399 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to include the provisions of the change proposed in Article 13 of the General Terms and Conditions of Applicant's FPC Gas Tariff, Second Revised Volume No. 1, filed with the Commission on May 6, 1966, in the rendition of ACQ natural gas service to Applicant's customers, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the proposed change in Article 13 of the General Terms and Conditions relates to those cases where a buyer purchases ACQ natural gas and operates an integrated system in two of Applicant's rate zones. It permits the taking of such ACQ volumes in either rate zone upon mutual consent, provided that Applicant's ability to meet its other system requirements is not impaired thereby. Applicant states that the proposal will have no effect on the level of its rates.

No new facilities will be required.

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) and the regulations under the Natural Gas Act (§ 157.10) on or before July 11, 1966.

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 without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66-6914; Filed, June 23, 1966; 8:46 a.m.]

[Docket No. CP66-403]

**TOWN OF ARTESIA, MISS., AND
SOUTHERN NATURAL GAS CO.**

Notice of Application

JUNE 17, 1966.

Take notice that on June 7, 1966, the town of Artesia, Miss. (Applicant), filed in Docket No. CP66-403 an application pursuant to section 7(a) of the Natural Gas Act for an order of the Commission directing Southern Natural Gas Co. (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution in Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the proposed physical connection will consist of a metering and regulator station installed by Respondent at a point in Lowndes County, Miss., approximately 3/4 mile east of the corporate limits of Artesia, Miss. Applicant further states that the proposed connection is to deliver natural gas from Respondent's 8-inch lateral pipeline originating in northern Noxubee County, Miss., and terminating at West Point, Clay County, Miss., to Applicant's 3-inch pipeline.

Applicant proposes to construct a distribution system together with automatic regulators and odorizers and approximately 0.833 mile of 3-inch high pressure transmission pipeline.

The total estimated volumes of natural gas involved to meet Applicant's annual and peak day requirements for the initial 3-year period of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf).....	8,962	10,943	12,728
Peak day (Mcf).....	110	134	155

The total estimated cost of Applicant's proposed construction is \$87,000, which cost will be financed through the issuance of Natural Gas System Revenue Bonds.

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 July 15, 1966.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66-6915; Filed, June 23, 1966; 8:47 a.m.]

**SECURITIES AND EXCHANGE
COMMISSION**

[812-1961]

**NUVEEN TAX-EXEMPT BOND FUND,
SERIES 12**

**Notice of Application for Order of
Exemption**

JUNE 20, 1966.

Notice is hereby given that Nuveen Tax-Exempt Bond Fund, Series 12 ("applicant"), 135 South La Salle Street, Chicago, Ill., 60603, a unit investment trust registered under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 6(c) of the Act for an order of the Commission exempting applicant from compliance with the provisions of section 14(a) of the Act. In substance, section 14(a) of the Act provides that no registered investment company shall make a public offering of securities of which it is the issuer unless it has a net worth of at least \$100,000. All interested persons are referred to the application on file with the Commission for a statement of applicant's representations which are summarized below.

Applicant is one of a series of 12 similar funds, named "Nuveen Tax-Exempt Bond Fund," organized pursuant to a Trust Indenture and Agreement between John Nuveen & Co. as Sponsor and United States Trust Company of New York as Trustee. Under the Trust Agreement the Sponsor will deposit with the Trustee \$7,500,000 principal amount of municipal bonds and will receive in exchange therefor certificates for 75,000 units of undivided interest in the trust. It is proposed to offer such units for sale to the public and for this purpose a registration statement under the Securities Act of 1933 has been filed and has not yet become effective. The Trust Agreement provides in substance that no additional bonds will be deposited during the life of the Trust and no additional units will be issued. The proceeds of bonds which may be sold, redeemed, or matured will be distributed to unit holders. Units may be redeemed by the holders at their current net asset value. The Trust may be terminated by 100 percent agreement of the unit holders of the applicant, or, in the event that the value of the bonds shall fall below \$1,500,000 upon direction of the Sponsor to the Trustee.

In connection with the requested exemption the Sponsor has agreed to refund the original price including sales load paid by purchasers for units, if within 90 days after the registration becomes effective, the net worth of the Trust shall be reduced to less than \$100,000 or if the Trust is terminated. Applicant further represents that at the present time the Sponsor maintains a market for the units of the Nuveen Tax-Exempt Bond Funds with which it is similarly connected, and continually

offers to purchase such units at prices which exceed the redemption price for such units by amounts which depend upon general market conditions and that as of the date of this application, partly as a result of these activities, no unit of any of the previous Nuveen Tax-Exempt Bond Funds has ever been redeemed. It is the Sponsor's intention to maintain a market for the units of the applicant and to continuously offer to purchase such units at prices in excess of the redemption price as set forth in the Trust Agreement, although the Sponsor is not obligated to do so.

Notice is further given that any interested person may, not later than July 6, 1966, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. At any time after such date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

For the Commission (pursuant to delegated authority).

[SEAL]

ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 66-6918; Filed, June 23, 1966; 8:47 a.m.]

**SMALL BUSINESS
ADMINISTRATION**

[Delegation of Authority No. 30—Kansas City Regional Office Disaster 1]

**MANAGER OF DISASTER BRANCH
OFFICE, TOPEKA, KANS.**

**Delegations Relating to Financial
Assistance Functions**

I. Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30, F.R. 3252; as amended by 30 F.R. 13556; 30 F.R. 14062; and 30 F.R. 7537; there is hereby redelegated to the Manager of the Topeka,

Kans., Disaster Branch Office the following authority:

A. Financial Assistance. 1. To approve and decline disaster loans in an amount not exceeding \$100,000.

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

(Name), Administrator

By _____
Manager, Disaster Branch Office

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

4. To disburse unsecured disaster loans.

5. To extend the disbursement period on disaster loan authorizations or undischursed 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 branch office.

Effective date: June 15, 1966.

C. I. MOYER,
Regional Director,
Kansas City Regional Office.

[P.R. Doc. 66-6922; Filed, June 23, 1966;
8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

JUNE 21, 1966.

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. 40555—*Liquid caustic soda from Ceico, Ohio.* Filed by Traffic Executive Association—Eastern Railroads, agent (E.R. No. 2849), for interested rail carriers. Rates on liquid caustic soda, in tank carloads, from Ceico, Ohio, to specified points in New Jersey.

Grounds for relief—Market competition.

Tariff—Supplement 153 to Traffic Executive Association—Eastern Railroads, agent, tariff I.C.C. C-383.

FSA No. 40556—*Cement and related articles from Rock Island, Ill.* Filed by Western Trunk Line Committee, agent (No. A-2455), for interested rail carriers. Rates on cement and related articles, in carloads, from Rock Island, Ill., to points in western trunkline territory.

Grounds for relief—Market competition.

Tariff—Supplement 209 to Western Trunk Line Committee, agent, tariff I.C.C. A-4308.

By the Commission.

[SEAL]

H. NEIL GARSON,
Secretary.

[P.R. Doc. 66-6935; Filed, June 23, 1966;
8:48 a.m.]

[Notice 200]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JUNE 21, 1966.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules in Ex Parte No. MC-67 (49 CFR Part 240) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field office named in the FEDERAL REGISTER publication, within 15 calendar days after the date notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protest must be served on the applicant, or its authorized representative, if any, and the protest must certify that such service has been made. The protest must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined, at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 43685 (Sub-No. 6 TA) (CORRECTION), filed June 13, 1966, published recent issue of FEDERAL REGISTER, and republished as corrected this issue. Applicant: MERCER TRUCKING COMPANY, INC., 318 South Asbury Street, Moscow, Idaho, 83843. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Box shoo*, between Greenacres, Wash., on the one hand, and, points in Oregon on and west of U.S. Highways 26 and 97, and points in Idaho, on the other, for 180 days. Supporting shipper: Quiki-Box Manufacturing Co., Inc., North 1201 Barker Road, Greenacres, Wash., 99016. Send protests to: L. C. Taylor, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 401 U.S. Post Office, Spokane, Wash., 99201. NOTE: The purpose of this republication is to show the correct docket assigned thereto, in lieu of No. MC 43785 (Sub-No. 6 TA), which was in error.

No. MC 73688 (Sub-No. 14 TA), filed June 16, 1966. Applicant: SOUTHERN TRUCKING CORPORATION, 546 Weakley Street, Memphis, Tenn., 38107. Applicant's representative: Charles H.

Hudson, Jr., 412 Stahlman Building, Nashville, Tenn., 37201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bituminous fiber pipe and fiber pipe fittings and accessories*, from Birmingham, Ala., and points in its commercial zone, to points in Texas, for 180 days. Supporting shipper: Brown Co., Bermico Division, Post Office Box 3800-G Fairview Station, Birmingham 8, Ala. Send protests to: William W. Garland, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 390 Federal Office Building, 167 North Main, Memphis, Tenn.

No. MC 107403 (Sub-No. 683 TA), filed June 16, 1966. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, Pa., 19050. Application's representative: C. W. Zook (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Jennite* (a liquid coal tar product), in bulk, in tank vehicles, from Toledo, Ohio, to Jackson, Mich., for 150 days. Supporting shipper: Asphalt Seal Coating Co., of Jackson, 5054 Browns Lake Road, Jackson, Mich., 49203. Send protests to: Ross A. Davis, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 900 U.S. Customhouse, Philadelphia, Pa., 19106.

No. MC 107496 (Sub-No. 489 TA), filed June 16, 1966. Applicant: RUAN TRANSPORT CORPORATION, Keosauqua Way at Third Street, Post Office Box 855, Des Moines, Iowa, 50309. Applicant's representative: H. L. Fabritz (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hydrochloric acid*, in bulk, from points in Boulder County, Colo., to points in Nebraska and Wyoming, for 180 days. Supporting shipper: Arapahoe Chemicals, 2855 Walnut Street, Post Office Box 511, Boulder, Colo., 80302. Send protests to: Ellis L. Annett, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 227 Federal Office Building, Des Moines, Iowa, 50309.

No. MC 107541 (Sub-No. 22 TA), filed June 16, 1966. Applicant: MAGEE TRUCK SERVICE, INC., Post Office Box 67, Klickitat, Wash. Applicant's representative: Herman E. Schmutzer (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Laminated wood products, timbers, trusses, and beams*, fabricated and not fabricated, and *connecting hardware items*, from plantsite of Woodlam, Inc., and Ericson Laminating, Inc., at Tacoma, Wash., to points in Oregon, California, Arizona, Nevada, Utah, Montana, Idaho, Colorado, Wyoming, New Mexico, and export in Washington, for 180 days. Supporting shippers: Davidson Lumber Sales, 145 West Central Avenue, Salt Lake City, Utah; Woodlam, Inc., 1476

Thorne Road, Tacoma, Wash., 98421; Associated Wood & Glu-Lam, Inc., 1220 Sixth Street, Berkeley, Calif.; United Structures, Inc., 1401 Middle Harbor Road, Oakland, Calif. *Send protests to:* S. F. Martin, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 450 Multnomah Building, Portland, Oreg., 97204.

No. MC 112696 (Sub-No. 35 TA), filed June 16, 1966. Applicant: HARTMANS, INCORPORATED, 833 Chicago Avenue, Post Office Box 898, Harrisonburg, Va., 22801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen and prepared foods and dairy products, meat and equipment and supplies used or useful in the preparation and serving of foods in restaurants and commissaries*, between the plantsites of Frank G. Shattuck Co. in New York, N.Y., on the one hand, and, on the other, food facilities operated by Frank G. Shattuck Co. in Philadelphia, Pa., for 180 days. *Supporting shipper:* Frank G. Shattuck Co., Post Office Box 270, Winchester, Va., 22601. *Send protests to:* George S. Hales, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 215 Campbell Avenue SW., Roanoke, Va., 24011.

No. MC 124796 (Sub-No. 18 TA), filed June 17, 1966. Applicant: CONTINENTAL CONTRACT CARRIER CORP., 7236 East Slauson Avenue, Los Angeles, Calif., 90022. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Upholstery or carpet tacking rims or strips and nails; adhesive cement; iron or steel doors and hardware therefor; mechanic handtools; advertising materials and racks or stands therefor*, from Industry, Calif., to points in Alabama, Arizona, Arkansas, Colorado, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, and Wisconsin, for 180 days. *Supporting shipper:* Roberts Consolidated Industries, Inc., 600 North Baldwin Park Boulevard, City of Industry, Calif., 91747. *Send protests to:* John E. Nance, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, Federal Building, Room 7708, 300 North Los Angeles Street, Los Angeles, Calif., 90012.

No. MC 128105 (Sub-No. 1 TA), filed June 17, 1966. Applicant: FRANK R. GIVIGLIANO, 301 Willow Street, Trinidad, Colo., 81082. Applicant's representative: Joseph F. Nigro, 400 Denver Hilton Office Building, Denver, Colo., 80202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages, wines, processed produce not otherwise exempt, and manufactured food products* in containers or cans, from points in California to Raton, N. Mex.; from Saint Helena, Calif., to Trinidad, Colo., and from Omaha, Nebr., St. Louis, Mo., Detroit, Mich., and Kansas City, Mo., to Trinidad, Colo., for 180 days. *Supporting shippers:* Fred Malouff, Trinidad Wholesale Liquor, 416 North Commercial,

Trinidad, Colo., 81082; Tal Micheliza, M & M Distributing Co., 651 West Main, Trinidad, Colo., 81082; Fred Bergamo, Keeps Wholesale, 240 South First Street, Raton, N. Mex., 87740. *Send protests to:* Herbert C. Rueff, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 2022 Federal Building—1961 Stout Street, Denver, Colo., 80202.

No. MC 128312 (Sub-No. 1 TA), filed June 16, 1966. Applicant: SIDNEY SCHWARTZ, doing business as SCHWARTZ TRUCKING COMPANY, 344 West Broadway, New York, N.Y. Applicant's representative: Zelby & Burstein, 160 Broadway, New York, N.Y. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Record changers and component parts thereof*, between points in the New York, N.Y., commercial zone, on the one hand, and, on the other, Blauvelt, Farmingdale, and Port Washington, N.Y., under continuing contract, with shippers named below, for 180 days. *Supporting shippers:* Harben Electronic Corp., Yennico Avenue, Port Washington, Long Island, N.Y.; Benjamin Electronic Sound Corp., 40 Smith Street, Farmingdale, N.Y., 11736; BSR (U.S.A.) Limited, Route 303, Blauvelt, N.Y., 10913. *Send protests to:* Paul W. Assenza, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 346 Broadway, New York, N.Y., 10013.

MOTOR CARRIERS OF PASSENGERS

No. MC 9598 (Sub-No. 6 TA), filed June 16, 1966. Applicant: UNION STREET RAILWAY COMPANY, 935 Purchase Street, New Bedford, Mass., 02740. Applicant's representative: Neal Holland, 225 Franklin Street, Boston, Mass., 02110. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in the same vehicle with passengers, in special operations, in round trip, sight-seeing and pleasure tours, beginning and ending in New Bedford, Mass., and extending to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and the District of Columbia, for 180 days. *Supported by:* 17 individual letters. *Send protests to:* Gerald H. Curry, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 187 Westminster Street, Providence, R.I., 02903.

By the Commission.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 66-6936; Filed, June 23, 1966;
8:48 a.m.]

[Notice 1371]

MOTOR CARRIER TRANSFER PROCEEDINGS

JUNE 21, 1966.

Synopses of orders entered pursuant to section 212(b) of the Interstate Com-

merce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's general rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 30 days from the date of service of the order. 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-68443. By order of June 7, 1966, Division 3, acting as an Appellate Division, approved the transfer to Wm. O'Donnell, Inc., Elkhorn, Wis., of a portion of the operating rights in certificates Nos. MC-119974 and MC-119974 (Sub-No. 2), issued July 11, 1961, and September 14, 1961, respectively, to L.C.L. Transit Co., a corporation, Green Bay, Wis., authorizing the transportation, as modified, to restrict the transportation, in bulk, in tank vehicles, of: Automobile oils and greases, cheese, asphalt, asbestos, and magnesia products, dairy products, dairy byproducts, prepared foods, meat products, meat byproducts, spices, and materials, supplies, and equipment, used in the production of the various commodities, between points in Illinois, Indiana, Iowa, Michigan, Minnesota, and Wisconsin. William C. Dineen, 710 North Plankinton Avenue, Milwaukee, Wis., 53203, attorney for transferee. Adolph E. Solie, 1025 Seminole Highway, Madison, Wis., 53711, attorney for transferor.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 66-6937; Filed, June 23, 1966;
8:48 a.m.]

[Notice 1371-A]

MOTOR CARRIER TRANSFER PROCEEDINGS

JUNE 21, 1966.

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-68513. By supplemented order of June 17, 1966, the Transfer Board approved the transfer to Wilson's Truck Lines, Ltd., Toronto, Ontario, Canada, of permit in No. MC-125607 (Sub-No. 1), issued April 22, 1966, to Wilson's Transport, Ltd., Toronto, Ontario, Can-

ada, authorizing the transportation of: Paper mill materials and supplies, between Parchment, Mich., and Kalama-zoo, Mich., on the one hand, and, on the other, the port of entry on the United States-Canada boundary line, at or near Sault Ste. Marie, Mich. Clarence D. Todd, 1825 Jefferson Place NW., Wash- ington, D.C., 20036, attorney for appli- cants.

No. MC-FC-68855. By order of June 17, 1966, the Transfer Board approved the transfer to Frank A. Castelbuono and Aida Castelbuono, a partnership, doing business as Scanio Movers, New York, N.Y., of the operating rights of Schwalm's Express Co., Inc., in certifi- cates Nos. MC-93512 and MC-93512 (Sub-No. 1), issued May 10, 1949, and July 28, 1949, respectively, authorizing the transportation, over irregular routes, of household goods, as defined, between New York, N.Y., on the one hand, and, on the other, points in New Jersey, Pennsylvania, and Connecticut, and New York. Alvin Altman, 1776 Broad- way, New York, N.Y., 10019, attorney for applicants.

No. MC-FC-68862. By order of June 17, 1966, the Transfer Board approved the transfer to Diehl Moving & Storage, Inc., Albany, N.Y., of the operating rights in certificate No. MC-30050, is- sued May 8, 1941, to Abe Ruskin, doing business as Ruskin the Mover, Benning- ton, Vt., authorizing the transportation of: Household goods, between points in

of Bennington, Vt., on the one hand, and, on the other, points in Connecticut, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. John J. Brady, Jr., 75 State Street, Albany, N.Y., 12207, attorney for applicants.

No. MC-FC-68865. By order of June 17, 1966, the Transfer Board approved the transfer to Robert L. Braasch, Box 3, Rising City, Nebr., 68658, of the operat- ing rights in certificate No. MC-73062, issued September 29, 1961, to Clyde Jones, Rising City, Nebr., 68658, author- izing the transportation of: Household goods, used farm machinery, and live- stock, between Rising City, Nebr., and points within 10 miles of Rising City, on the one hand, and, on the other, points in Iowa and Missouri.

No. MC-FC-68866. By order of June 17, 1966, the Transfer Board approved the transfer to Niagara Limousine Serv- ice, Inc., Niagara Falls, N.Y., of the operating rights in certificate No. MC- 117631, issued April 23, 1959, to Robert M. Tonner, doing business as Holiday Tours, Niagara Falls, N.Y., authorizing the transportation of: Passengers and their baggage, subject to certain restrictions, between Niagara and Niagara Falls, N.Y., on the one hand, and, on the other, the United States-Canadian boundary line at or near Niagara Falls, N.Y. V. Sumner Carroll, 44 Falls Street, Niag- ara Falls, N. Y., 14303, attorney for applicants.

No. MC-FC-68867. By order of June 17, 1966, the Transfer Board approved the transfer to Troina Trucking Com- pany, Inc., Nutley, N.J., of the operating rights in permit No. MC-125049 (Sub- No. 1), issued by the Commission August 11, 1964, to Frank Troina, doing business as Troina Trucking Co., Nutley, N.J., authorizing the transportation of: Auto- mobile parts, tools, and display materials in connection therewith, from Clifton, N.J., to New York, N.Y., points in spec- ified counties in New York, and Phila- delphia, and King of Prussia, Pa. Charles J. Williams, 1060 Broad Street, Newark, N.J., 07102, attorney for ap- plicants.

No. MC-FC-68868. By order of June 17, 1966, the Transfer Board approved the transfer to Glen Marcellus, Liberal, Kans., of the operating rights of Clifford Earl Hale, doing business as Hale's House & Tank Moving Co., Borger, Tex., in certificate No. MC-113782, issued Jan- uary 10, 1963, authorizing the transpor- tation, over irregular routes, of houses and other buildings, except those pre- fabricated, between points in Colorado, Kansas, Oklahoma, Texas, and New Mexico, within 200 miles of Keyes, Okla., including Keyes. H. Hobbie, Jr., 419 North Kansas, Liberal, Kans., 67901, attorney for applicants.

[SEAL]

H. NEIL GARSON,
Secretary.[P.R. Doc. 66-6938; Filed, June 23, 1966;
8:49 a.m.]

CUMULATIVE LIST OF PARTS AFFECTED—JUNE

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 June.

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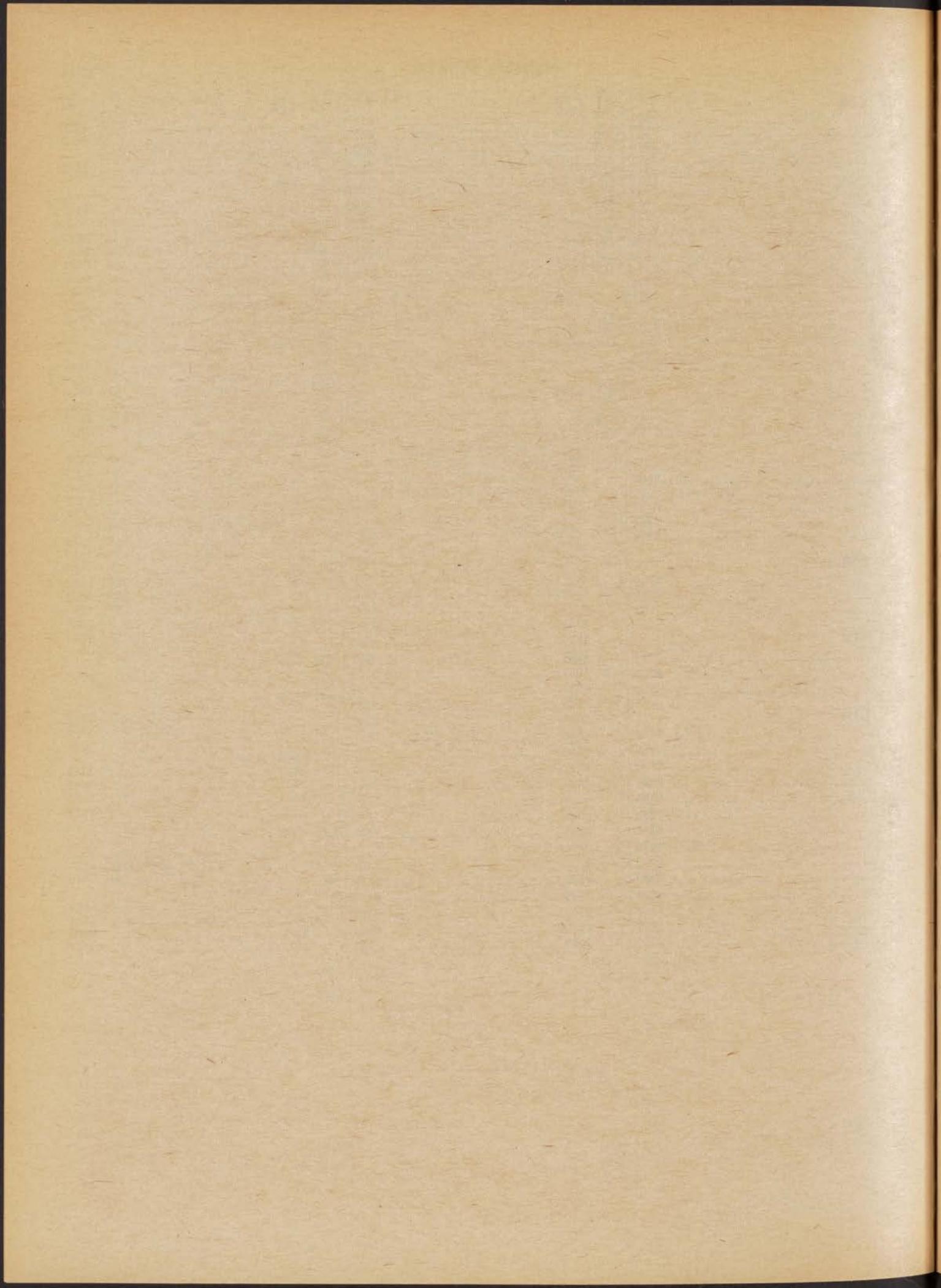
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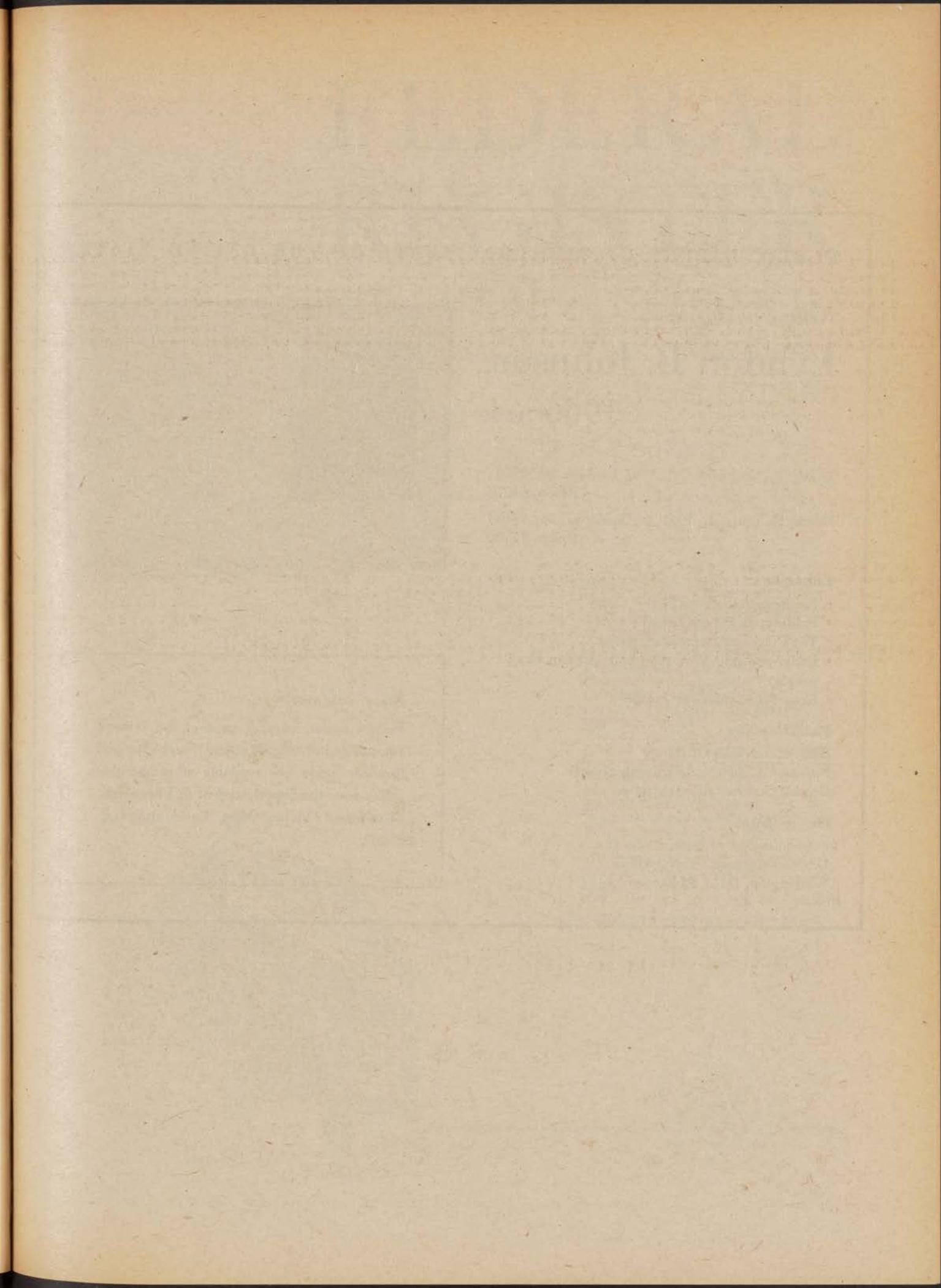
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