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PART I

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HIGHLIGHTS OF THIS ISSUE

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SUBCHAPTER F—DETERMINATION OF NORMAL YIELDS AND ELIGIBILITY FOR ABANDONMENT AND CROP DEFICIENCY PAYMENTS (SUPP. 14)

PART 842—BEET SUGAR AREA

Approved Local Producing Areas for 1970 Crop

Pursuant to the provisions of section 303 of the Sugar Act of 1948, as amended, § 842.16 is added to read as follows:

§ 842.16 Approved local producing areas for the 1970 crop.

Notice is given that for the purposes of considering eligibility for abandonment and crop deficiency payments to be made prior to January 1, 1972, on the 1970-crop sugar beets, the respective Agricultural Stabilization and Conservation county committees have determined with respect to the following counties and local producing areas that due to drought, flood, storm, freeze, disease, or insects, the actual yields of commercially recoverable sugar from the acreages planted to sugar beets on farms in each such county or local producing area were below 80 percent of the applicable normal yields either for 10 percent or more of the number of such farms or for 10 percent or more of the total acres of sugar beets planted on all farms in such county or local producing area.

(a) ARIZONA

Entire Counties

Cochise.
Maricopa.
Pima.
Pinal.
Yuma.

(b) ARKANSAS

Entire Counties

Clay.

(c) CALIFORNIA

Entire Counties

Alameda.
Kings.
Sacramento.
Sutler.
Tulare.

Individual Local Producing Areas—Counties and Areas

Butte: Area 2.
Colusa: Area 1; Area 2; Area 3.
Merced: Area 2.
Monterey: T. 14 S., R. 3 E.; T. 15 S., R. 3 E.
San Joaquin: Area 1; Area 2; Area 4; Area 6; Area 8; Area 9; T. 1 N., R. 6 E.; T. 2 S., R. 8 E.
Ventura: Area 1; Area 2; Area 3.
Yolo: Area 1; Area 5; Area 6; Area 7.

(d) COLORADO

Entire Counties

Adams.
Arapahoe.
Baca.
Bent.
Boulder.
Cheyenne.
Crowley.
Delta.
Kit Carson.
Larimer.
Logan.
Mesa.
Montrose.
Morgan.
Otero.
Ouray.
Phillips.
Prowers.
Pueblo.
Sedgwick.
Washington.
Weld.
Yuma.

(e) IDAHO

Entire Counties

Ada.
Bannock.
Bingham.
Blaine.
Bonneville.
Canyon.
Caribou.
Cassia.
Lincoln.
Franklin.
Gem.
Jefferson.
Owyhee.
Payette.
Power.
Twin Falls.
Washington.

Individual Local Producing Areas—Counties and Areas

Jerome: Area 1; Area 2; Area 4; Area 6.
Minidoka: Area 1.

(f) IOWA

Entire Counties

Cerro Gordo.
Franklin.
Kossuth.

(g) KANSAS

Entire Counties

Cheyenne.
Decatur.
Finney.
Grant.
Kearney.
Logan.
Rawlins.
Sheridan.
Sherman.
Stanton.
Thomas.
Wallace.

(h) MICHIGAN

Entire Counties

Arenac.
Clinton.
Gratiot.
Isabella.
Lenawee.
Midland.
Monroe.
St. Clair.
Shiawassee.

Individual Local Producing Areas—Counties and Areas

Bay: Hampton; Williams; Penconning.
Saginaw: Area 4; Area 5; Area 7.
Sanilac: Area 1; Area 4; Area 6.
Tuscola: Wisner.

(i) MINNESOTA

Entire Counties

Big Stone.
Chippewa.
Clay.
Freeborn.
Kandiyohi.
Kittson.
Marshall.
Norman.
West Polk.
Redwood.
Renville.
Swift.
Traverse.
Waseca.
Watonwan.
Yellow Medicine.

(j) MISSOURI

Entire Counties

Dunklin.
New Madrid.
Pemiscot.

(k) MONTANA

Entire Counties

Big Horn.
Blaine.
Broadwater.
Carbon.
Custer.
Dawson.
Prairie.
Ravalli.
Richland.
Stillwater.
Treasure.
Yellowstone.

Individual Local Producing Areas—Counties and Areas

Rosebud: Area 1; Area 2.

(l) NEBRASKA

Entire Counties

Box Butte.
Burt.
Chase.
Cheyenne.
Dawson.
Deuel.
Keith.
Lincoln.
Morrill.
Perkins.
Red Willow.
Sioux.

Individual Local Producing Areas—Counties and Areas

Scotts Bluff: Area 1; Area 2; Area 3; Area 4; Area 5; Area 6.

(m) NEW MEXICO

Entire Counties

Curry.
Grant.
Hidalgo.
Luna.

(n) NORTH DAKOTA

Entire Counties

Cass.
Grand Forks.
Pembina.
Richland.
Traill.
Walsh.

(o) OHIO

Entire Counties

Allen.
Defiance.
Fulton.
Hancock.
Hardin.
Henry.
Lucas.
Ottawa.
Putnam.
Sandusky.
Seneca.
Van Wert.
Wood.

(p) OREGON

Entire Counties

Malhuer.
Umatilla.

(q) TEXAS

Entire Counties

Bailey.
Castro.
Dallam.
Deaf Smith.
Hartley.
Moore.
Oldham.
Parmer.
Potter.
Randall.

(r) UTAH

Entire Counties

Box Elder.
Cache.
Carbon.
Davis.
Emery.
Iron.
Juab.
Millard.
Salt Lake.
Sanpete.
Sevier.
Utah.

(s) WASHINGTON

Entire Counties

Adams.	Grant.
Benton.	Walla Walla.
Franklin.	Yakima.

(t) WYOMING

Entire Counties

Big Horn.	Park.
Converse.	Platte.
Goshen.	

STATEMENT OF BASES AND CONSIDERATIONS

One of the conditions of eligibility of a sugarbeet producer for an acreage abandonment or crop deficiency payment to be made prior to January 1, 1972, is that the farm of such producer be located in a county or local producing area for which the county Agricultural Stabilization and Conservation Committee determines that certain natural conditions have caused a prescribed amount of damage to the sugarbeet crop.

The purpose of this supplement is to give notice that specific counties and local producing areas have qualified under the requirements with respect to the 1970 crop of sugarbeets and that any sugarbeet producer operating a farm which is located in any one of these counties or local producing areas and which is otherwise qualified may apply for payment accordingly, if he has not already done so.

Effective date. In view of the limited time remaining before January 1, 1972, in which the determinations set forth in § 842.16 shall apply to 1970 crop abandonment and deficiency payments made before such date, as well as the need to make such payments available without delay, it is hereby found and determined that compliance with the notice, procedure and effective date requirements in 5 U.S.C. 553 is impracticable and not in the public interest, and this notice shall become effective on the date of publication (12-28-71).

Signed at Washington, D.C. on December 15, 1971.

E. J. PERSON,
Acting Deputy Administrator, State and County Operations.

[FR Doc.71-18870 Filed 12-27-71;8:47 am]

SUBCHAPTER H—DETERMINATION OF WAGE RATES

PART 863—WAGES; SUGARCANE; FLORIDA

Fair and Reasonable Wage Rates

Pursuant to the provisions of section 301(c)(1) of the Sugar Act of 1948, as amended (herein referred to as "act"), after investigation and consideration of the evidence obtained at the public hearing held in Belle Glade, Fla., on July 13, 1971, the following determination is hereby issued:

The regulations previously appearing in these sections under "Determination of Wage Rates; Sugarcane; Florida" remain in full force and effect as to the crops to which they were applicable.

Sec.
863.28 Requirements.
863.29 Applicability of wage requirements.
863.30 Payment of wages.
863.31 Evidence of compliance.
863.32 Subterfuge.
863.33 Claim for unpaid wages.
863.34 Failure to pay all wages in full.
863.35 Checking compliance.

AUTHORITY: Secs. 863.28 to 863.35 issued under secs. 301, 403, 61 Stat. 929, as amended, 932; 7 U.S.C. 1131, 1153.

§ 863.28 Requirements.

A producer of sugarcane in Florida shall be deemed to have complied with the wage provisions of the act if all persons employed on the farm in production, cultivation, or harvesting work, as provided in § 863.29, shall have been paid in accordance with the following:

(a) *Wage rates.* All such persons shall have been paid in full for all such work and shall have been paid wages in cash therefor at rates required by existing legal obligations, regardless of whether those obligations resulted from an agreement (such as a labor union agreement) or were created by State or Federal legislative action, or at rates as agreed upon between the producer and the worker, whichever is higher, but not less than the following, which shall become effective on January 10, 1972, and shall remain in effect until amended, superseded, or terminated:

(1) *Work performed on a time basis.*

Class of worker	*Rate per hour*
(i) Tractor drivers and principal operators of mechanical harvesting and loading equipment	$2.10
(ii) All other workers, including those employed to assist in the operation of mechanical harvesting and loading equipment such as harvester cutter blade operators	1.85

(2) *Workers 14 and 15 years of age and full-time students when employed on a time basis.* For workers 14 and 15 years of age and, where the Secretary of Labor has by certificate or order provided for the employment of full-time students 14 years of age or older on a part-time basis (not to exceed 20 hours in any workweek during the time school is in session) or on a part-time or full-time basis during school vacations, the rate shall be not less than 85 percent of the applicable hourly rate for the class of worker prescribed in subparagraph (1) of this paragraph. (The act provides that the employment of workers under 14 years of age, or the employment of workers 14 and 15 years of age for more than 8 hours per day, will result in a deduction from Sugar Act payments to the producer.)

(3) *Apprentice operators of tractors and mechanical harvesting and loading equipment when employed on a time basis.* The hourly wage rate for a learner or apprentice, who is being trained as a tractor driver or the principal operator of mechanical harvesting or loading equipment, shall be not less than $1.85. The training period for such workers shall not exceed 6 workweeks.

(4) *Handicapped workers when employed on a time basis.* The wage rate for workers certified by the Regional Director, Wage and Hour and Public Contracts Divisions, U.S. Department of Labor, 1371 Peachtree Street NE., Atlanta, GA 30309, to be handicapped because of age or physical or mental deficiency or injury, and whose productive capacity is thereby impaired, shall be not less than 75 percent of the applicable hourly rate for the class of worker prescribed in subparagraph (1) of this paragraph.

(5) *Work performed on a piecework basis.* The piecework rate for any operation shall be as agreed upon between the producer and the worker. The hourly rate of earnings of each worker employed on piecework during each pay period (not to be in excess of 2 weeks) shall average for the time worked at piecework rates during such pay period not less than the applicable hourly rate for the class of worker prescribed in subparagraph (1), (2), (3), or (4) of this paragraph.

(b) *Compensable working time.* For work performed under paragraph (a) of this section, compensable working time commences at the time the worker is required to start work and ends upon completion of work in the field, except time taken out for meals during the working day. If the producer requires the operator of mechanical equipment, driver of animal or any other class of worker to report to a place other than the field, such as an assembly point or tractor shed located on the farm, the time spent in transit from such place to the field and from the field to such is compensable working time. Time spent in performing work directly related to the principal work performed by the worker, such as servicing equipment, is compensable working time. Time of the worker while being transported from a central recruiting point or labor camp to the farm is not compensable working time.

(c) *Equipment necessary to perform work assignment.* The producer shall furnish without cost to the worker any equipment required in the performance of any work assignment. The worker may be charged for the cost of such equipment in the event of its loss or destruction through negligence of the worker. Equipment includes, but is not limited to, hand and mechanical tools and special wearing apparel, such as boots and raincoats, required to discharge the work assignment.

§ 863.29 Applicability of wage requirements.

The wage requirements of this part apply to all persons who are employed or who work on the farm in operations directly connected with the production, cultivation, or harvesting of sugarcane on any acreage from which sugarcane is marketed or processed for the production of sugar, harvested for seed, or any acreage which qualifies as bona fide abandoned. Such persons include field overseers or supervisors while directing other workers, and those workers employed by an independent contractor who perform services on the farm. The

wage requirements are not applicable to persons who voluntarily perform work without pay on the farm for a religious or charitable institution or organization; inmates of a prison who work on a farm operated by the prison; truck drivers employed by a contractor engaged only in hauling sugarcane; members of a cooperative arrangement among producers for the exchange of labor to be performed by themselves or members of their families; persons who have an agreement with the producer to perform all work on a specified acreage in return for a share of the crop or crop proceeds if such share, including the share of any Sugar Act payments, results in earnings at least as much as would otherwise be received in accordance with the requirements of this part for the work performed; independent contractors and members of their immediate families; or workers performing services which are indirectly connected with the production, cultivation, or harvesting of sugarcane, including but not limited to mechanics, welders, and other maintenance workers and repairmen.

§ 863.30 Payment of wages.

Workers shall be paid in cash for all work performed, except to the extent that the cash payment is reduced by the following deductions: Cash advances made to the worker by the producer; the market value or the amount agreed upon for supplies furnished by the producer at the request of the worker; meals, lodging, and transportation expense which the producer agreed to furnish for a stated amount; and mandatory deductions such as taxes and social security contributions. In addition, a producer may deduct the amounts he has paid to a third party on behalf of the worker in connection with his employment as a farmworker which are acknowledged in writing signed by the worker or his agent or substantiated by other evidence acceptable to the county ASC committee to be an indebtedness of the worker, and which cover the expense of services and benefits furnished the worker by the third party, and which the worker or his agent has agreed may be deducted from his wages, such as public utilities, medical services, group hospitalization or other insurance for the benefit of the worker. As evidence of payments to a third party for which a deduction is made from the earnings of a worker, the producer shall maintain for a period of 3 years, for the inspection of the worker and the local county ASCS office, receipted bills or other written satisfactory evidence that support such deductions. Payments made to a labor contractor, supervisor, or labor trainer, or the cost of meals, lodging, transportation, and insurance covering injury or illness resulting from employment, any or all of which the producer agreed to furnish the worker free of charge, shall not be deducted from cash wages due the worker. When any deductions are made, the producer shall furnish to the worker at time of settlement, a statement showing the gross amount of wages due for work performed and the amount of each deduction properly identified.

§ 863.31 Evidence of compliance.

Each producer subject to the provisions of this part shall keep and preserve, for a period of 3 years following the date on which his application for a Sugar Act payment is filed, such wage records as will demonstrate that each worker has been paid in full in accordance with the requirements of this part. Wage records should set forth dates work was performed, the class of work performed, units of work (piecework or hours), agreed upon rates per unit of work, total earnings and any permissible deductions, and the amount paid each worker. The producer shall furnish upon request to the appropriate Agricultural Stabilization and Conservation County Committee such records or other evidence as may satisfy such committee that the requirements of this part have been met.

§ 863.32 Subterfuge.

The producer shall not reduce the wage rates to workers below those determined in accordance with the requirements of this part through any subterfuge or device whatsoever.

§ 863.33 Claim for unpaid wages.

Any person who believes he has not been paid in accordance with this part may file a wage claim with the local Agricultural Stabilization and Conservation County Committee against the producer on whose farm the work was performed. Such claim must be filed on Form SU–191, entitled "Claim Against Producer for Unpaid Wages," within 2 years from the date the work with respect to which the claim is made was performed. Detailed instructions and Forms SU–191 are available at the local county ASCS office. Upon receipt of a wage claim the county office shall thereupon notify the producer against whom the claim is made concerning the representation made by the worker. The county ASC committee shall arrange for such investigation as it deems necessary and the producer and worker shall be notified in writing of its recommendation for settlement of the claim. If either party is not satisfied with the recommended settlement, an appeal may be made to the Florida State Agricultural Stabilization and Conservation Committee, 401 Southeast First Avenue, Gainesville, FL 32601, which shall likewise consider the facts and notify the producer and worker in writing of its recommendation for settlement of the claim. If the recommendation of the State ASC Committee is not acceptable, either party may file an appeal with the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. All such appeals shall be filed within 15 days after the date the written notice of the recommended settlement is mailed by the respective committee, otherwise such recommended settlement will be applied in making payments under the act. If a claim is appealed to the Deputy Administrator, State and County Operations, his decision shall be binding on all parties insofar as payments under the act are concerned. Appeals procedures are set forth and explained fully in Part 780 of this Title 7 of the Code of Federal Regulations (7 CFR Part 780).

§ 863.34 Failure to pay all wages in full.

(a) Notwithstanding the provisions of this part requiring that all persons employed on the farm in the production, cultivation, or harvesting of sugarcane be paid in full for all such work as one of the conditions to be met by a producer for payment under the act, if the producer has failed to meet this condition but has met all other conditions, a portion of such payment, representing the remainder after deducting from the payment the amount of accrued unpaid wages, may be disbursed to producer(s) upon a determination by the county committee (1) that the producer has made a full disclosure to the county committee or its representative of any known failure to pay all workers on the farm wages in full as a condition for payment under the Sugar Act; and (2) that either (i) the failure to pay all workers their wages in full was caused by the financial inability of the producer; or (ii) the failure to pay all workers in full was caused by an inadvertant error or was not the fault of the producer or his agent, and the producer has used reasonable diligence to locate and to pay in full the wages due all such workers. If the county committee makes the determination as heretofore provided in this paragraph, such committee shall cause to be deducted from the payment for the farm the full amount of the unpaid wages which shall be paid promptly to each worker involved if he can be located, otherwise the amount due shall be held for his account, and the remainder of the payment for the farm, if any, shall be made to the producer. If the county committee determines that the producer did not pay all workers in full because of an inadverant error that was not discovered until after he received his Sugar Act payment, the producer shall be placed on the claims control record for the total amount of the unpaid wages.

(b) Except as provided in paragraph (a) of this section, if upon investigation the county committee determines that the producer failed to pay all workers on the farm the required wages, the entire Sugar Act payment with respect to such a farm shall be withheld from the producer until such time as evidence is presented to the county committee which will satisfy the county committee that all workers have been paid in full the wages earned by them; or if unpaid workers cannot be located, and the county committee determines that the producer used reasonable diligence to locate such workers, the amounts of unpaid wages shall be deducted from the Sugar Act payment computed for the farm and the balance released to the producer after the expiration of 1 year from the date payment would otherwise be made. If payment

has been made to the producer prior to the county committee's determination that all workers on the farm have not been paid in full, the producer shall be placed on the claims control record for the total payment until the county committee determines that all workers on the farm have been paid in full, the producer refunds the entire amount of debt, or a setoff in the amount of the debt is made from a program payment otherwise due the producer, or the county committee after determining that the producer used reasonable diligence to locate such workers has recovered from such producer the amount of unpaid wages computed for the farm.

§ 863.35 Checking compliance.

The procedures to be followed by county ASCS offices in checking compliance with the wage requirements of this part are set forth under the heading "Wage Rate Determinations" in Handbook 3–SU, issued by the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service. Handbook 3–SU may be inspected at local county ASCS offices, and copies may be obtained from the Florida State ASCS Office, 401 Southeast First Avenue, Gainesville, FL 32601.

STATEMENT OF BASES AND CONSIDERATIONS

General. The foregoing determination provides fair and reasonable wage rates to be paid for work performed by persons employed on the farm in production, cultivation, or harvesting of sugarcane in Florida as one of the conditions with which producers must comply to be eligible for payments under the act.

Requirements of the act and standards employed. Section 301(c)(1) of the act requires that all persons employed on the farm in the production, cultivation, or harvesting of sugarcane with respect to which an application for payment is made, shall have been paid in full for all such work, and shall have been paid wages therefor at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing, and in making such determinations the Secretary shall take into consideration the standards therefor formerly established by him under the Agricultural Adjustment Act, as amended (i.e., cost of living, prices of sugar and byproducts, income from sugarcane, and cost of production), and the differences in conditions among various sugar-producing areas.

Wage determination. This determination differs from the prior determination in that minimum hourly wage rates are increased 10 cents per hour for work performed on a time basis. The new minimum hourly rates are $2.10 for tractor drivers and principal operators of mechanical harvesting and loading equipment, and $1.85 for all other workers. Other provisions of the prior determination continue unchanged.

A public hearing was held in Belle Glade, Fla., on July 13, 1971, at which interested persons were afforded the opportunity to testify on whether the wage rates established for Florida sugarcane fieldworkers in the wage determination which became effective on October 26, 1970, continue to be fair and reasonable under the circumstances, or whether such determination should be amended. Testimony was presented by two representatives of sugarcane producers and one representative of fieldworkers.

Representatives of producers recommended a modest wage increase for sugarcane workers. They also recommended that there be no change in the worker classifications, and that the provision for payment of an apprentice rate to inexperienced mechanical operators be retained in the determination. One witness, representing the Florida Sugar Cane League, testified that the present worker classification provides producers with sufficient flexibility in paying workers' wages. The witness gave recognition to the need for an increase in the minimum wage rates for sugarcane fieldworkers to offset the effects of inflation, but also stated that since the productivity of workers has not increased, the cost of a wage increase must be offset by an increase in the price of sugar or the producer will be forced to bear the added cost. The witness further testified that the average earnings during the 1970–71 harvest season of canecutters in Florida was $2.13 per hour, approximately 22 percent above the rate specified in the determination and 64 percent above the agricultural minimum wage rate specified in the Fair Labor Standards Act. With regard to producers' ability to pay higher wages, the witness stated that even with an expected acreage increase for the 1971–72 crop, most of the additional cane will have to be grown on colder and less desirable land where productivity will be lower and where the average yield per acre will be reduced. He also pointed out that over the 12-month period, June 1970 to June 1971, the parity index increased 5.6 percent while the price of raw sugar increased only 3.9 percent.

A sugarcane producer representing the Florida Farm Bureau supported the recommendation for moderate wage increases by stating that since sugarcane wage rates have a direct effect on other crop rates in Florida, a large increase in wages may have a damaging effect on farmers whose crops have little or no margin of profit.

A witness on behalf of labor, representing the International Association of Machinists and Aerospace Workers, AFL–CIO, testified that the IAM has a contract with one of the principal sugarcane growers and processors in the Glades area which includes only skilled workers and provides wage rates for tractor driver from approximately $2.10 to $2.20 per hour and hourly rates up to $2.55 for harvesting equipment operators. The witness also stated that the IAM is the only organization representing operators in the sugar industry and that, although they are not now negotiating with other companies, they hope someday to represent the entire industry.

Consideration has been given to the recommendations and testimony presented at the public hearing; to the returns, costs, and profits of producing sugarcane obtained by field survey for recent crops and recast in terms of conditions likely to prevail for the 1971 crop; to other standards generally considered in wage determinations, including the cost of living and the producer's ability to pay; and to the President's current economic wage and price stabilization program. Analysis of these and other relevant factors indicates that the minimum rates established in this determination are fair and reasonable and within the producers' ability to pay.

The wage determination for Florida sugarcane fieldworkers is normally issued by the Department each year in October just prior to the start of harvesting operations. However, on August 15, 1971, the President announced a freeze on wages and prices for the 90-day period ending November 13, 1971. Wage rates could not be increased during that period. A transition from the 90-day freeze to a more flexible system of economic stabilization was provided by Presidential Executive Order No. 11627 of October 15. The Pay Board, which was established under that order, adopted policies on November 8 governing pay adjustments after the general freeze. On and after November 14, 1971, permissible annual aggregate increases will be those normally considered supportable by productivity improvement and cost of living trends. The general pay increase standard initially established by the Pay Board is 5.5 percent.

The increase in minimum wage rates for both classes of workers has been determined by applying the 5.5 percent general pay standard and rounding the resulting rates to the nearest 5-cent increment. Therefore, the increase of 10 cents per hour closely reflects the general standard of the Pay Board, with actual increases of 5 percent for tractor drivers and principal operators of mechanical harvesting and loading equipment and 5.7 percent for all other workers. The productivity of Florida fieldworkers has increased about 6 percent per year on average over the last 10 years, while the cost of living has increased slightly more than 4 percent during the past 12 months.

As recommended by sugarcane producers, this determination retains the worker classifications and the provision for payment of an apprentice rate to inexperienced mechanical operators contained in the prior determination. The wage increases established in the determination will have some effect on 1971 crop wages since about half of the harvest work will be performed at the new rates. The higher rates will be effective for most of the production and cultivation work on the 1972 crop.

This determination is issued on a continuing basis and will remain in effect until amended or terminated. However, the Department will keep the wage situation under review and will conduct investigations and hold hearings annually.

Accordingly, I hereby find and conclude that the foregoing wage determination will effectuate the wage provisions of the Sugar Act of 1948, as amended.

NOTE: The recordkeeping and reporting requirements of these regulations have been approved by, and subsequent recordkeeping and reporting requirements will be subject to the approval of the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Effective date. This determination shall become effective on January 10, 1972.

Signed at Washington, D.C., on December 22, 1971.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.71-18909 Filed 12-27-71;8:50 am]

PART 864—SUGARCANE; LOUISIANA

Fair and Reasonable Wage Rates

Pursuant to the provisions of section 301(c)(1) of the Sugar Act of 1948, as amended (herein referred to as "act"), after investigation and consideration of the evidence obtained at the public hearing held in Houma, La., on July 9, 1971, the following determination is hereby issued.

The regulations previously appearing in these sections under "Determination of Wage Rates; Sugarcane; Louisiana" remain in full force and effect as to the crops to which they were applicable.

Sec.
864.23 Requirements.
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AUTHORITY: Secs. 864.23 to 864.30 issued under secs. 301, 403, 61 Stat. 929, as amended, 932; 7 U.S.C. 1131, 1153.

§ 864.23 Requirements.

A producer of sugarcane in Louisiana shall be deemed to have complied with the wage provisions of the act if all persons employed on the farm in production, cultivation, or harvesting work, as provided in § 864.24, shall have been paid in accordance with the following:

(a) *Wage rates.* All such persons shall have been paid in full for all such work and shall have been paid wages in cash therefor at rates required by existing legal obligations, regardless of whether those obligations resulted from an agreement (such as a labor union agreement) or were created by State or Federal legislative action, or at rates as agreed upon between the producer and the worker, whichever is higher, but not less than the following, which shall become effective on January 10, 1972, and shall remain in effect until amended, superseded, or terminated:

(1) *Work performed on a time basis.*

Class of worker:	Rate per hour
Harvest work:	
Harvester and loader operators	$1.75
Tractor drivers, truck drivers, harvester bottom blade operators, and hoist operators	1.70
All other harvesting workers	1.60
Production and cultivation work:	
Tractor drivers	1.65
All other production and cultivation workers	1.60

(2) *Workers 14 and 15 years of age and full-time students when employed on a time basis.* For workers 14 and 15 years of age and, where the Secretary of Labor has by certificate or order provided for the employment of full-time students 14 years of age or older on a part-time basis (not to exceed 20 hours in any workweek during the time school is in session) or on a part-time or a full-time basis during school vacations, the rate shall be not less than 85 percent of the applicable hourly rate for the class of worker prescribed in subparagraph (1) of this paragraph. (The act provides that the employment of workers under 14 years of age, or the employment of workers 14 and 15 years of age for more than 8 hours per day, will result in a deduction from Sugar Act payments to the producer.)

(3) *Handicapped workers when employed on a time basis.* The wage rate for workers certified by the Regional Director, Wage and Hour and Public Contracts Divisions, U.S. Department of Labor, 1931 Ninth Avenue South, Birmingham, AL 35205, to be handicapped because of age or physical or mental deficiency or injury, and whose productive capacity is thereby impaired, shall be not less than 75 percent of the applicable hourly rate for the class of worker prescribed in subparagraph (1) of this paragraph.

(4) *Work performed on a piecework basis.* The piecework rate for any operation shall be as agreed upon between the producer and the worker. The hourly rate of earnings of each worker employed on piecework during each pay period (not to be in excess of 2 weeks) shall average for the time worked at piecework rates during such pay period not less than the applicable hourly rate for the class of worker prescribed in subparagraphs (1), (2), and (3) of this paragraph.

(b) *Compensable working time.* For work performed under paragraph (a) of this section, compensable working time commences at the time the worker is required to start work and ends upon completion of work in the field, except time taken out for meals during the working day. If the producer requires the operator of mechanical equipment, driver of animals, or any other class of worker to report to a place other than the field, such an assembly point or a tractor shed located on the farm, the time spent in transit from such place to the field and from the field to such place is compensable working time. Time spent in performing work directly related to the principal work performed by the worker, such as servicing equipment, is compensable working time. Time of the worker while being transported from a central recruiting point or labor camp to the farm is not compensable working time.

(c) *Equipment necessary to perform work assignment.* The producer shall furnish without cost to the worker any equipment required in the performance of any work assignment. The worker may be charged for the cost of such equipment in the event of its loss or destruction through negligence of the worker. Equipment includes, but is not limited to, hand and mechanical tools and special wearing apparel, such as boots and raincoats, required to discharge the work assignment.

§ 864.24 Applicability of wage requirements.

The wage requirements of this part apply to all persons who are employed or who work on the farm in operations directly connected with the production, cultivation, or harvesting of sugarcane on any acreage from which sugarcane is marketed or processed for the production of sugar, harvested for seed, or any acreage which qualifies as bona fide abandoned. Such persons include field overseers or supervisors while directing other workers, and those workers employed by an independent contractor who perform services on the farm. The wage requirements are not applicable to persons who voluntarily perform work without pay on the farm for a religious or charitable institution or organization; inmates of a prison who work on a farm operated by the prison; truck drivers employed by a contractor engaged only in hauling sugarcane; members of a cooperative arrangement among producers for the exchange of labor to be performed by themselves or members of their families; persons who have an agreement with the producer to perform all work on a specified acreage in return for a share of the crop or crop proceeds if such share, including the share of any Sugar Act payments, results in earnings at least as much as would otherwise be received in accordance with the requirements of this part for the work performed; independent contractors and members of their immediate families; or workers performing services which are indirectly connected with the production, cultivation, or harvesting of sugarcane, including but not limited to mechanics, welders, and other maintenance workers and repairmen.

§ 864.25 Payment of wages.

Workers shall be paid in cash for all work performed, except to the extent that the cash payment is reduced by the following deductions: Cash advances made to the worker by the producer; the market value or the amount agreed upon for supplies furnished by the producer at the request of the worker; meals, lodging, and transportation expense which the producer agreed to furnish for a

stated amount; and mandatory deductions such as taxes and social security contributions. In addition, a producer may deduct the amounts he has paid to a third party on behalf of the worker in connection with his employment as a farm worker which are acknowledged in writing signed by the worker or his agent or substantiated by other evidence acceptable to the county ASC committee to be an indebtedness of the worker, and which cover the expense of services and benefits furnished the worker by the third party, and which the worker or his agent has agreed may be deducted from his wages, such as public utilities, medical services, group hospitalization or other insurance for the benefit of the worker. As evidence of payments to a third party for which a deduction is made from the earnings of a worker, the producer shall maintain for a period of 3 years, for the inspection of the worker and the local county ASCS office, receipted bills or other written satisfactory evidence that support such deductions. Payments made to a labor contractor, supervisor, or labor trainer, or the cost of meals, lodging, transportation, and insurance covering injury or illness resulting from employment, any or all of which the producer agreed to furnish the worker free of charge, shall not be deducted from cash wages due the worker. When any deductions are made, the producer shall furnish to the worker, at time of settlement, a statement showing the gross amount of wages due for work performed and the amount of each deduction properly identified.

§ 864.26 Evidence of compliance.

Each producer subject to the provisions of this part shall keep and preserve, for a period of 3 years following the date on which his application for a Sugar Act payment is filed, such wage records as will demonstrate that each worker has been paid in full in accordance with the requirements of this part. Wage records should set forth dates work was performed, the class of work performed, units of work (piecework or hours), agreed upon rates per unit of work, total earnings and any permissible deductions, and the amount paid each worker. The producer shall furnish upon request to the appropriate Agricultural Stabilization and Conservation County Committee such records or other evidence as may satisfy such committee that the requirements of this part have been met.

§ 864.27 Subterfuge.

The producer shall not reduce the wage rates to workers below those determined in accordance with the requirements of this part through any subterfuge or device whatsoever.

§ 864.28 Claim for unpaid wages.

Any person who believes he has not been paid in accordance with this part may file a wage claim with the local Agricultural Stabilization and Conservation County Committee against the producer on whose farm the work was performed. Such claim must be filed on Form SU-191 entitled "Claim Against Producer for Unpaid Wages," within 2 years from the date the work with respect to which the claim is made was performed. Detailed instructions and Forms SU-191 are available at the local county ASCS office. Upon receipt of a wage claim the county office shall thereupon notify the producer against whom the claim is made concerning the representation made by the worker. The county ASC committee shall arrange for such investigation as it deems necessary and the producer and worker shall be notified in writing of its recommendation for settlement of the claim. If either party is not satisfied with the recommended settlement, an appeal may be made to the Louisiana State Agricultural Stabilization and Conservation Committee, 3737 Government Street, Alexandria, LA 71303, which shall likewise consider the facts and notify the producer and worker in writing of its recommendation for settlement of the claim. If the recommendation of the State ASC committee is not acceptable, either party may file an appeal with the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. All such appeals shall be filed within 15 days after the date the written notice of the recommended settlement is mailed by the respective committee, otherwise such recommended settlement will be applied in making payments under the act. If a claim is appealed to the Deputy Administrator, State and County Operations, his decision shall be binding on all parties insofar as payments under the act are concerned. Appeals procedures are set forth and explained fully in Part 780 of this Title 7 of the Code of Federal Regulations (7 CFR 780).

§ 864.29 Failure to pay all wages in full.

(a) Notwithstanding the provisions of this part requiring that all persons employed on the farm in the production, cultivation, or harvesting of sugarcane be paid in full for all such work as one of the conditions to be met by a producer for payment under the act, if the producer has failed to meet this condition but has met all other conditions, a portion of such payment, representing the remainder after deducting from the payment the amount of accrued unpaid wages, may be disbursed to producer(s) upon a determination by the county committee (1) that the producer has made a full disclosure to the county committee or its representatives of any known failure to pay all workers on the farm wages in full as a condition for payment under the Sugar Act; and (2) that either (i) the failure to pay all workers their wages in full was caused by the financial inability of the producer, or (ii) the failure to pay all workers in full was caused by an inadvertent error or was not the fault of the producer or his agent, and the producer has used reasonable diligence to locate and to pay in full the wages due all such workers. If the county committee makes the determination as heretofore provided in this paragraph, such committee shall cause to be deducted from the payment for the farm the full amount of the unpaid wages which shall be paid promptly to each worker involved if he can be located, otherwise the amount due shall be held for his account, and the remainder of the payment for the farm, if any, shall be made to the producer. If the county committee determines that the producer did not pay all workers in full because of an inadvertent error that was not discovered until after he received his Sugar Act payment, the producer shall be placed on the claims control record for the total amount of the unpaid wages.

(b) Except as provided in paragraph (a) of this section, if upon investigation the county committee determines that the producer failed to pay all workers on the farm the required wages, the entire Sugar Act payment with respect to such farm shall be withheld from the producer until such time as evidence is presented to the county committee which will satisfy the county committee that all workers have been paid in full the wages earned by them, or if unpaid workers cannot be located and the county committee determines that the producer used reasonable diligence to locate such workers, the amounts of unpaid wages shall be deducted from the Sugar Act payment computed for the farm and the balance released to the producer after the expiration of 1 year from the date payment would otherwise be made. If payment had been made to the producer prior to the county committee's determination that all workers on the farm have not been paid in full, the producer shall be placed on the claims control record for the total payment until the county committee determines that all workers on the farm have been paid in full, the producer refunds the entire amount of the debt, or a setoff in the amount of the debt is made from a program payment otherwise due the producer, or the county committee after determining that the producer used reasonable diligence to locate such workers has recovered from such producer the amount of unpaid wages computed for the farm.

§ 864.30 Checking compliance.

The procedures to be followed by county ASCS offices in checking compliance with the wage requirements of this Part are set forth under the heading "Wage Rate Determinations" in Handbook 3-SU, issued by the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service. Copies of Handbook 3-SU may be inspected at local county ASCS offices and copies may be obtained from the Louisiana State ASCS Office, 3737 Government Street, Alexandria, LA 71303.

STATEMENT OF BASES AND CONSIDERATIONS

General. The foregoing determination provides fair and reasonable wage rates to be paid for work performed by persons

employed on the farm in the production, cultivation, or harvesting of sugarcane in Louisiana as one of the conditions with which producers must comply to be eligible for payments under the act.

Requirements of the act and standards employed. Section 301(c)(1) of the act requires that all persons employed on the farm in the production, cultivation, or harvesting of sugarcane with respect to which an application for payment is made, shall have been paid wages therefor at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing, and in making such determinations, the Secretary shall take into consideration the standards therefor formerly established by him under the Agricultural Adjustment Act, as amended (i.e., cost of living, prices of sugar and byproducts, income from sugarcane, and cost of production), and the differences in conditions among the various sugar-producing areas.

Wage determination. This determination differs from the prior determination in that minimum hourly wage rates are increased 10 cents per hour for all classes of workers. The new minimum hourly wage rates established during the harvest season are $1.75 for harvester and loader operators, $1.70 for tractor drivers, and $1.60 for all other workers. During the production and cultivation season, minimum wages are $1.65 for tractor drivers and $1.60 for all other workers. Other provisions of the prior determination continue unchanged.

A public hearing was held in Houma, La., on July 9, 1971, at which interested persons were afforded the opportunity to testify on whether the wage rates established for Louisiana sugarcane fieldworkers in the wage determination which became effective on October 12, 1970, continue to be fair and reasonable under the circumstances, or whether such determination should be amended.

Witnesses appearing at the public hearing on behalf of sugarcane workers generally recommended a minimum wage of $2 to $2.65 per hour. One such witness testified that while $2 an hour should be the minimum wage for unskilled workers, higher wages for skilled workers should be comparable to workers of similar skills in industry, as these people are skilled mechanics and more closely related to industrial workers than to farmworkers. Another witness recommended that sugarcane workers be covered by laws providing medical and other fringe benefits and permitted the right to organize and bargain collectively. He added that new technology and industrial progress has resulted in the employment of fewer sugarcane workers, but that the remaining workers' wages do not reflect any of the benefits associated with such progress.

Other witnesses supported their recommendations of higher wages by pointing out the hardships endured by sugarcane fieldworkers as a result of low wages. A student at Tulane Medical School presented a summary of a preliminary health study and medical service project conducted in March 1971 on 107 sugarcane fieldworkers in Louisiana. According to the witness, results of the experiment showed that of the 37 adults examined, only two were found to be medically normal, and only eight were not in need of immediate medical care. The witness also pointed out that while the average family of four must spend about $600 a year for medical needs, the disposable income of sugar workers for medical expenses for a family of four is well below this figure.

A professor of agricultural economics at Louisiana State University presented an analysis of economic conditions on Louisiana sugarcane farms. The witness stated that wage rates have been increased every year since 1961, even in years of adverse growing and harvesting conditions. He testified further that acreage allotments were reestablished for Lousiana sugarcane growers for the 1965 crop and have remained in effect through the 1971 crop, thereby lowering total returns and increasing unit costs. The witness concluded his testimony by stating that his analysis shows that labor has benefited more from technological advancements than the sugarcane farmer.

Another witness, testifying on behalf of sugarcane producers, recommended that harvester and loader operators engaged in planting operations not be classified as performing harvest work. He suggested that the present general classification "Production and Cultivation Work" be changed to "Production, Cultivation and Planting Work", and that its subclassification "Tractor Drivers" be changed to "Tractor Drivers and Operators of Other Mechanical Equipment" in order to include harvester and loader operators engaged in planting operations. The witness also recommended wage increases of 15 cents per hour for harvester and loader operators during harvest work; 10 cents per hour for tractor drivers and operators of other mechanical equipment during harvest work and during production, cultivation, and planting work; and 5 cents per hour for all other workers in both general classifications. Finally, the witness recommended that field overseers and supervisors not be covered by the minimum wage requirements. In support of his recommended wage increases, the witness testified that the skill and type of work required of the harvester and loader operators during the harvest season justify a larger increase for them than for tractor drivers and operators of other mechanical equipment; that the proposed minimum rates for mechanical equipment operators, who make up the vast majority of the work force, are up to 50 cents per hour in excess of the minimum rates for all classes of agricultural workers under the Fair Labor Standards Act and up to 20 cents per hour in excess of the hourly minimum provided for all industrial workers; and that the proposed increases are the largest that Louisiana sugarcane producers have the ability to pay under favorable conditions.

Consideration has been given to the testimony presented at the public hearing; to the returns, costs, and profits of producing sugarcane obtained by field survey for prior crops and recast in terms of price and production conditions likely to prevail for the 1971 crop; to other standards generally considered in wage determinations, including the cost of living and the producers' ability to pay; and to the President's current economic wage and price stabilization program. Analysis of these and other relevant factors indicates that the minimum rates established in this determination are fair and reasonable and within the producers' ability to pay.

The wage determination for Louisiana sugarcane fieldworkers is normally issued by the Department each year in early October just prior to the start of harvesting operations. However, on August 15, 1971, the President announced a freeze on wages and prices for the 90-day period ending November 13, 1971. Wage rates could not be increased during that period. A transition from the 90-day freeze to a more flexible system of economic stabilization was provided by Presidential Executive Order No. 11627 of October 15. The Pay Board, which was established under that order, adopted policies on November 8 governing pay adjustments after the general freeze. On and after November 14, 1971, permissible annual aggregate increases will be those normally considered supportable by productivity improvement and cost of living trends. The general pay increase standard initially established by the Pay Board is 5.5 percent.

The increase in minimum wage rates for all classes of workers has been determined by applying the 5.5 percent general pay standard and rounding the resulting rates to the nearest 5-cent increment. Therefore, the increase of 10 cents per hour slightly exceeds the general standard, with the actual increases ranging from 6.1 percent for the highest skilled worker to 6.7 percent for the lowest skilled worker. Improvement in the productivity of Louisiana fieldworkers has averaged about 4 percent per year during the past 10 years but has entailed increased costs for equipment. The cost of living has increased slightly more than 4 percent during the past 12 months. The wage increases established in this determination will have little effect on 1971 crop wages since all of the cultivating work and most of the harvest work will have been performed at the rates that became effective on October 12, 1970. However, the higher rates will be effective for most of the production and cultivation work on the 1972 crop.

The recommendation of producers for an increase of 15 cents per hour for the highest skilled workers and only 5 cents for the lowest skilled workers has not been adopted. A 15-cent increase would exceed the Pay Board guidelines and a 5-cent increase would give the class of workers in greatest need of more income

little more than the increase in the cost of living.

This determination is issued on a continuing basis and will remain in effect until amended or terminated. However, the Department will keep the wage situation under review and will conduct investigations and hold hearings annually.

Accordingly, I hereby find and conclude that the foregoing wage determination will effectuate the wage provisions of the Sugar Act of 1948, as amended.

NOTE: The recordkeeping and reporting requirements of these regulations have been approved by, and subsequent recordkeeping and reporting requirements will be subject to the approval of the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Effective date. This determination shall become effective on January 10, 1972.

Signed at Washington, D.C., on December 22, 1971.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.71-18910 Filed 12-27-71;8:50 am]

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Lemon Reg. 513]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.813 Lemon Regulation 513.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 36 F.R. 9061), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 21, 1971.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period December 26, through January 1, 1972, is hereby fixed at 180,000 cartons.

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

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

Dated: December 22, 1971.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-18903 Filed 12-23-71;8:47 am]

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON EXCEPT MALHEUR COUNTY

Expenses, Rate of Assessment and Late Payment Charges

Notice of rule making regarding the proposed expenses, rate of assessment and late payment charges to be effective under Marketing Agreement No. 114, as amended, and Order No. 947, as amended (7 CFR Part 947), regulating the handling of Irish potatoes grown in Modoc and Siskiyou Counties in California and in all counties in Oregon except Malheur County, was published in the December 14, 1971, FEDERAL REGISTER (36 F.R. 23728). This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). The notice afforded interested persons an opportunity to file written data, views, or arguments pertaining thereto not later than 7 days following publication in the FEDERAL REGISTER. None was filed.

After consideration of all relevant matters, including the proposals set forth in the aforesaid notice which were recommended by the Oregon-California Potato Committee, established pursuant to the said marketing agreement and order, it is hereby found and determined that:

§ 947.324 Expenses, rate of assessment and late payment charges.

(a) The reasonable expenses that are likely to be incurred during the fiscal period beginning July 1, 1971, and ending June 30, 1972, by the Oregon-California Potato Committee for its maintenance and functioning, and for such purposes as the Secretary determines to be appropriate, will amount to $34,565.

(b) The rate of assessment to be paid by each handler in accordance with the Marketing Agreement and this part shall be one-half of one cent ($0.005) per hundredweight of potatoes handled by him as the first handler thereof during said fiscal period: *Provided,* That seed potatoes and potatoes for canning, freezing and "other processing" as defined in the amendment to the act (Public Law 91–196) shall be exempt.

(c) In accordance with the provisions of § 947.41, late payment charges of $1 per month or 1 percent per month, whichever is greater, shall be charged on the unpaid balance for each past-due account. An account is past-due 60 days after the billing date.

(d) Unexpended income in excess of expenses for the fiscal period ending June 30, 1972, may be carried over as a reserve.

(e) Terms used in this section have the same meaning as when used in said marketing agreement and this part.

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

Dated: December 22, 1971.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-18904 Filed 12-27-71;8:50 am]

PART 967—CELERY GROWN IN FLORIDA

Expenses and Rate of Assessment

Notice of rule making regarding the proposed expenses and rate of assessment, to be effective under Marketing Agreement No. 149 and Order No. 967, both as amended (7 CFR Part 967) regulating the handling of celery grown in Florida was published in the FEDERAL REGISTER December 14, 1971 (36 F.R. 23728). This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). The notice afforded interested persons an opportunity to submit written data, views, or arguments pertaining thereto not later than 7 days following publication in the FEDERAL REGISTER. None was filed.

After consideration of all relevant matters, including the proposals set forth

in the aforesaid notice which were unanimously recommended by the Florida Celery Committee, established pursuant to said marketing agreement and this part, it is hereby found and determined that:

§ 967.207 Expenses and rate of assessment.

(a) The expenses that are reasonable and likely to be incurred during the fiscal year ending July 31, 1972, by the Florida Celery Committee for its maintenance and functioning and for such purposes as the Secretary may determine to be appropriate, will amount to $40,350.

(b) The rate of assessment to be paid by each handler in accordance with the marketing agreement and this part shall be one-half of 1 cent ($0.005) per crate of celery handled by him as the first handler thereof during said fiscal year.

(c) As provided in § 967.62, unexpended income in excess of expenses for the fiscal year ending July 31, 1972, may be carried over as an operating reserve.

(d) Terms used in this section have the same meaning as when used in the marketing agreement and this part.

It is hereby found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) The relevant provisions of said marketing agreement and this part require that the rate of assessment fixed for a particular fiscal year shall be applicable to all assessable celery from the beginning of such fiscal year, and (2) the current fiscal year began on August 1, 1971, and the rate of assessment herein fixed will automatically apply to all assessable celery beginning with such date.

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

Dated: December 22, 1971.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-18905 Filed 12-27-71; 8:50 am]

Chapter X—Consumer and Marketing Service (Marketing Agreements and Orders; Milk) Department of Agriculture

[Milk Order No. 106]

PART 1106—MILK IN THE OKLAHOMA METROPOLITAN MARKETING AREA

Redesignation of Effective Date of Suspension of Certain Provisions

This order redesignates the effective date of the suspension of provisions specified herein of the order regulating the handling of milk in the Oklahoma metropolitan marketing area.

An order issued May 28, 1971 (36 F.R. 10775) pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), specified the suspension of certain provisions of the Oklahoma metropolitan order effective June 15, 1971. By order issued June 11, 1971, the effective date of suspension of the provisions cited herein was deferred to September 1, 1971, and by subsequent redesignations the effective date was deferred to January 1, 1972 (36 F.R. 11511, 36 F.R. 17492, 36 F.R. 20742).

The effective date of suspension is hereby changed to February 1, 1972, with respect to the following provisions of the Oklahoma metropolitan order:

1. In § 1106.9, paragraph (c).

2. In § 1106.11, the portion of paragraph (c) which reads: "which owns or operates a plant described in § 1106.9(c)."

Statement of consideration. This order defers until February 1, 1972, the effective date of the suspension of the provisions of the Oklahoma metropolitan milk order under which a cooperative association may designate pool status for a plant operated by the cooperative association.

Delay of the effective date will allow plants currently pooled under this provision to continue in such status pending a decision on the record of a public hearing commenced August 24, 1971, in which pooling of such plants was an issue.

It is therefore ordered, That the effective date of the suspension with respect to the above designated order provisions is February 1, 1972.

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

Signed at Washington, D.C., on December 22, 1971.

PHILIP C. OLSSON,
Acting Assistant Secretary.

[FR Doc.71-18907 Filed 12-27-71; 8:50 am]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Service,[1] Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

[Docket No. 71-605]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Areas Quarantined

Pursuant to provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f), Part 76, Title 9, Code of Federal Regulations, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases, is hereby amended in the following respects:

In § 76.2, the introductory portion of paragraph (e) is amended by adding thereto the name of the State of Texas; paragraph (f) is amended by deleting the name of the State of Texas; and a new subparagraph (e)(1) relating to the State of Texas is added to read:

§ 76.2 Notice relating to existence of hog cholera, prohibition of movement of any hog cholera virus, exceptions; spread of disease through raw garbage; quarantines; eradication States; and free States.

* * * * *

(e) * * *

(1) *Texas.*

(i) That portion of the State of Texas comprised of all of Hidalgo, Willacy, and Cameron Counties.

(ii) That portion of Victoria County bounded by a line beginning at the junction of the Victoria-Goliad County line and U.S. Highway 59; thence, following U.S. Highway 59 in a northeasterly direction to U.S. Highway 87; thence, following U.S. Highway 87 in a northwesterly direction to Farm-to-Market-Road 447; thence, following Farm-to-Market-Road 447 in a southwesterly direction to Farm-to-Market-Road 236; thence, following Farm-to-Market-Road 236 in a southeasterly direction to Farm-to-Market-Road 622; thence, following Farm-to-Market-Road 622 in a southwesterly direction to the Victoria-Goliad County line; thence, following the Victoria-Goliad County line in a generally southerly direction to its junction with U.S. Highway 59.

* * * * *

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; sec. 1, 75 Stat. 481, secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 29 F.R. 16210, as amended)

Effective date. The foregoing amendment shall become effective upon issuance.

The amendment quarantines all of Hidalgo, Willacy, and Cameron Counties and a portion of Victoria County in Texas because of the existence of hog cholera. This action is deemed necessary to prevent further spread of the disease. The restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will apply to the quarantined counties and portion of county.

The amendment deletes Texas from the list of hog cholera eradication States in § 76.2(f), and the special provisions pertaining to the interstate movement of swine and swine products from or to such eradication States are no longer applicable to Texas.

Insofar as the amendment imposes certain further restrictions necessary to prevent the interstate spread of hog

[1] The functions prescribed in Part 76 of Chapter I, 9 CFR, have been transferred from the Agricultural Research Service, U.S. Department of Agriculture, to the Animal and Plant Health Service of the Department (36 F.R. 20707).

cholera, it must be made effective immediately to accomplish its purpose in the public interest. Insofar as it relieves restrictions, it should be made effective promptly in order to be of maximum benefit to affected persons. It does not appear that public participation in this rule making proceeding would make additional relevant information available to this Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 22d day of December 1971.

F. J. MULHERN,
Administrator,
Animal and Plant Health Service.

[FR Doc.71-18908 Filed 12-27-71;8:50 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 11594, Amdt. 39-1369]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Model PA-18 Series Airplanes Modified in Accordance With Supplemental Type Certificate SA 136AL

There has been a report that a number of Piper Model PA-18 series airplanes with the Lycoming 0-320 (150 h.p.) engine installed in accordance with Supplemental Type Certificate SA 136AL, have engine mount assembly P/N 12351 or P/N 12351-11 intalled which are not designed to withstand the loads imposed by the Lycoming 150 h.p. engine. The operation of those aircraft with those engine mounts installed could result in an engine mount failure. 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 the replacement of engine mount P/N's 12351 and 12351-11, with engine mount assembly P/N 12351-12, which is capable of withstanding the loads imposed by the Lycoming 0-320 (150 h.p.) engine. The AD requires the replacement to be accomplished in accordance with Piper Drawing Number 12351, Mount Assembly-Engine, including Revision J dated January 16, 1968, or an equivalent approved by the Chief, Engineering and Manufacturing Branch of an FAA region (or in the case of the Western Region, the Chief, Aircraft Engineering Division), within the next 25 hours' time in service after the effective date of this AD.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to the public interest 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 (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

PIPER. Applies to Piper Model PA-18 series airplanes which have been modified in accordance with Supplemental Type Certificate SA 136AL.

Compliance is required as indicated.

To prevent possible failure of the engine mount, within the next 25 hours' time in service after the effective date of this AD, unless already accomplished, install engine mount, P/N 12351-12, in accordance with Piper Drawing Number 12351, Mount Assembly-Engine, including Revision J dated January 16, 1968, or an equivalent approved by the Chief, Engineering and Manufacturing Branch of an FAA region (or in the case of the Western Region, the Chief, Aircraft Engineering Division).

NOTE: Engine mount assembly P/N 12351-12 may be identified by the gage of Tube "A" and Tube "B", which measure 0.049 inches, and by the installation of the No. 14438 reinforcement, as shown on Piper Drawing No. 12351, Mount Assembly-Engine, including Revision J dated January 16, 1968.

This amendment becomes effective January 27, 1972.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act 49 U.S.C. 1655(c))

Issued in Washington, D.C., on December 21, 1971.

R. S. SLIFF,
Acting Director,
Flight Standards Service.

[FR Doc.71-18860 Filed 12-27-71;8:46 am]

[Airspace Docket No. 71-WE-32]

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

Alteration of Transition Area

Correction

In F.R. Doc. 71-18284 appearing in the issue of Wednesday, December 15, 1971, on page 23795, the latitude figures listed in the fourth and fifth lines of the fourth paragraph now reading "36°22'00" N.", should read, "36°32'00" N.".

[Docket No. 11593, Amdt. 788]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260-3, 8260-4, or 8260-5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (35 F.R. 5609).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Copies of SIAP's adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Document Inspection Facility, HQ-405, 800 Independence Avenue SW., Washington, DC, 20591, or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $125 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.11 is amended by establishing, revising, or canceling the following L/MF-ADF(NDB)-VOR SIAPS, effective January 20, 1972.

Winslow, Ariz.—Winslow Municipal Airport; VOR-1, Amdt. 6; Canceled.

2. Section 97.15 is amended by establishing, revising, or canceling the following VOR/DME SIAPs, effective January 20, 1972.

Winslow, Ariz.—Winslow Municipal Airport; VOR/DME-1, Amdt. 1; Canceled.

3. Section 97.23 is amended by establishing, revising, or canceling the following VOR-VOR/DME SIAPs, effective January 20, 1972.

Anchorage, Alaska—Anchorage International Airport; VOR Runway 6R, Amdt. 7; Revised.
Endicott, N.Y.—Tri Cities Airport; VOR-A, Amdt. 2; Revised.
White Sulphur Springs, W. Va.—Greenbrier Airport; VOR-A, Amdt. 7; Revised.
Winslow, Ariz.—Winslow Airport; VOR Runway 11, Original; Established.
Arcata-Eureka, Calif.—Arcata Airport; VOR/DME-A, Amdt. 1; Revised.
Bay St. Louis, Mo.—Gulf Central Stennis Airport; VOR/DME-A, Amdt. 1; Revised.
Bluefield, W. Va.—Mercer County Airport; VOR/DME-A, Original; Established.

4. Section 97.25 is amended by establishing, revising or canceling the following SDF-LOC-LDA SIAPs effective January 20, 1972.

Cleveland, Ohio—Cleveland-Hopkins International Airport; LOC (BC) Runway 23L/R, Amdt. 7; Revised.
Muscle Shoals, Ala.—Muscle Shoals Airport; LOC Runway 29, Amdt. 1; Revised.
Philadelphia, Pa.—North Philadelphia Airport; LOC (BC) Runway 6, Original; Established.

5. Section 97.27 is amended by establishing, revising or canceling the following NDB/ADF SIAPs, effective January 20, 1972.

Arcata-Eureka, Calif.—Arcata Airport; NDB-A, Amdt. 1; Revised.
Cleveland, Ohio—Cleveland-Hopkins International Airport; NDB Runway 5R/5L, Amdt. 6; Revised.
Cleveland, Ohio—Cleveland-Hopkins International Airport; NDB Runway 23L/R, Amdt. 9; Revised.
Gustavus, Alaska—Gustavus Airport; NDB-A, Amdt. 1; Revised.

6. Section 97.29 is amended by establishing, revising, or canceling the following ILS SIAPs, effective January 20, 1972.

Anchorage, Alaska—Anchorage International Airport; ILS Runway 6R, Amdt. 1; Revised.
Arcata-Eureka, Calif.—Arcata Airport; ILS Runway 31, Amdt. 17; Revised.
Cleveland, Ohio—Cleveland-Hopkins International Airport; ILS Runway 5R/5L, Amdt. 9; Revised.
Cleveland, Ohio—Cleveland-Hopkins International Airport; ILS Runway 28R, Amdt. 9; Revised.

7. Section 97.31 is amended by establishing, revising, or canceling the following Radar SIAPs, effective January 20, 1972.

Cleveland, Ohio—Cleveland-Hopkins International Airport; RADAR-1, Amdt. 19; Revised.

8. Section 97.33 is amended by establishing, revising, or canceling the following RNAV SIAPs, effective January 20, 1972.

Baltimore, Md.—Friendship International Airport; RNAV Runway 22, Original; Established.
Cleveland, Ohio—Cleveland Hopkins International Airport; RNAV Runway 10L, Amdt. 2; Revised.
Cleveland, Ohio—Cleveland Hopkins International Airport; RNAV Runway 18R, Amdt. 2; Revised.
Cleveland, Ohio—Cleveland Hopkins International Airport; RNAV Runway 23L, Amdt. 2; Revised.
Cleveland, Ohio—Cleveland Hopkins International Airport; RNAV Runway 36L, Amdt. 2; Revised.
Poughkeepsie, N.Y.—Dutchess County Airport; RNAV Runway 6, Original; Established.

Section 97.23 is amended by establishing, revising, or canceling the following VOR-VOR/DME SIAPs, effective January 13, 1972.

NOTE: This is a correction to same procedure issued in Amendment 787, Docket No. 11583.

Eugene, Oreg.—Mahlon-Sweet Field; VOR/DME Runway 16, Amdt. 1; Revised.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1958; 49 U.S.C. 1438, 1354, 1421, 1510, sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c) and 5 U.S.C. 552(a)(1))

Issued in Washington, D.C., on December 15, 1971.

R. S. SLIFF,
Acting Director,
Flight Standards Service.

NOTE: Incorporation by reference provisions in §§ 97.10 and 97.20 (35 F.R. 5610), approved by the Director of the Federal Register on May 12, 1969.

[FR Doc.71-18817 Filed 12-27-71;8:45 am]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. C-2097]

PART 13—PROHIBITED TRADE PRACTICES

Bernie Bee, Inc., et al.

Subpart—Importing, selling, or transporting flammable wear: § 13.1060 *Importing, selling, or transporting flammable wear.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 67 Stat. 111, as amended; 15 U.S.C. 45, 1191) [Cease and desist order, Bernie Bee, Inc., et al., New York, N.Y., Docket C-2097, Nov. 15, 1971]

In the Matter of Bernie Bee, Inc., a Corporation and Barry Bernowitz, and Richard Bernowitz, Individually and as Officers of Said Corporation

Consent order requiring a marketer of New York, N.Y., to cease marketing dangerously flammable products in violation of the Flammable Fabrics Act.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Bernie Bee, Inc., a corporation, and its officers and Barry Bernowitz and Richard Bernowitz, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, selling or offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce any product, fabric, or related material; or manufacturing for sale, selling or offering for sale any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric," and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to any applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint of the flammable nature of said products, and effect recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents, intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since February 16, 1971 and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of 2 ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Respondents shall submit samples of not less than 1 square yard in size of any such product, fabric, or related material with this report.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the corporate respondent shall forthwith distribute a copy of this order to each of its operating divisions.

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

Issued: November 15, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN,
Secretary.

[FR Doc.71-18883 Filed 12-27-71;8:48 am]

[Docket No. C-2095]

PART 13—PROHIBITED TRADE PRACTICES

Slack Manufacturing Co. and Alvin K. Fish

Subpart—Importing, Selling, or Transporting Flammable Wear: § 13.1060 *Importing, selling, or transporting flammable wear.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 67 Stat. 111, as amended; 15 U.S.C. 45, 1191) [Cease and desist order, Slack Manufacturing Co. et al., Chicago, Ill., Docket C-2095, Nov. 15, 1971]

In the Matter of Slack Manufacturing Co., a Corporation, and Alvin K. Fish, Individually and as an Officer of Said Corporation

Consent order requiring an importer of Chicago, Ill., to cease marketing dangerously flammable products in violation of the Flammable Fabrics Act.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Slack Manufacturing Co., a corporation, and its officers, and Alvin K. Fish, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material; or manufacturing for sale, selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce as "commerce," "product," "fabric," and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material, fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint, of the flammable nature of said products, and effect the recall of said products from said customers.

It is further ordered, That the respondents herein either process the products which gave rise to this complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this Order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this Order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since January 16, 1970, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of 2 ounces or less per square yard, or any product, fabric, or related material having a raised fiber surface. Respondents shall submit samples of not less than 1 square yard in size of any such product, fabric, or related material with this report.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

Issued: November 15, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-18884 Filed 12-27-71;8:48 am]

[Docket No. C-2096]

PART 13—PROHIBITED TRADE PRACTICES

Sol L. Silverstein & Co., Inc., et al.

Subpart—Importing, selling, or transporting flammable wear: § 13.1060 *Importing, selling, or transporting flammable wear.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 67 Stat. 111, as amended; 15 U.S.C. 45, 1191) [Cease and desist order, Sol L. Silverstein & Co., Inc., et al., Los Angeles, Calif., Docket C-2096, Nov. 15, 1971]

In the Matter of Sol L. Silverstein & Co., Inc., a Corporation, and Sol L. Silverstein and Robert Silverstein, Individually and as Officers of Said Corporation

Consent order requiring an importer of Los Angeles, Calif., to cease marketing dangerously flammable products in violation of the Flammable Fabrics Act.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Sol L. Silverstein & Co., Inc., a corporation, and its officers, and Sol L. Silverstein and Robert Silverstein, individually and as officers of said corporation, and the respondents' agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting, or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material; or selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce as "commerce," "product," "fabric," and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric, or related material fails to conform to an applicable standard or regulation issued, amended or continued in effect, under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all their customers who have purchased or to whom have been delivered the products which gave rise to the complaint, of the flammable nature of said products, and effect the recall of said products from such customers.

It is further ordered, That the respondents herein shall either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since August 21, 1970, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results

of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and accetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of 2 ounces or less per square yard, or any product, fabric, or related material having a raised fiber surface. Respondents shall submit samples of not less than 1 square yard in size of any such product, fabric, or related material with this report.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

Issued: November 15, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-18885 Filed 12-27-71;8:48 am]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 72-1]

PART 1—GENERAL PROVISIONS

Customs Agency Service Districts

To provide for more effective enforcement, jurisdiction over Coos County, N.H., is transferred from the Special Agent in Charge, Boston, Mass., in Customs Agency District No. 1 to the Special Agent in Charge, Rouses Point, N.Y., in Customs Agency District No. 20.

To effect this change, the table in § 1.5 of the Customs Regulations is amended as follows:

In Customs Agency District No. 1:

Under "Customs Agency Service Districts and Suboffices," in the column headed "Area of Jurisdiction," the area of jurisdiction of the Special Agent in Charge, Boston, Mass., is revised to read:

The States of Maine, Massachusetts, and Rhode Island; the State of New Hampshire except for Coos County; and that part of the State of Connecticut east of a straight line (running north and south) midway between Bridgeport and New Haven.

In Customs Agency District No. 20:

Under "Customs Agency Service Districts and Suboffices," in the column headed "Area of Jurisdiction," the area of jurisdiction of the Special Agent in Charge, Rouses Point, N.Y., is revised to read:

The State of Vermont; that part of the State of New Hampshire comprising Coos County; and that part of the State of New York east of 77° west longitude and north of 42° north latitude.

(R.S. 251, as amended, sec. 624, 46 Stat. 759; 5 U.S.C. 301, 19 U.S.C. 66, 1624)

This amendment involves a matter relating to agency management and, therefore, is excepted from the requirements for notice and public procedure by 5 U.S.C. 553(a)(2).

Effective date. This amendment shall become effective on the date of its publication in the FEDERAL REGISTER (12-28-71).

[SEAL] LEONARD LEHMAN, *Acting Commissioner of Customs.*

Approved: December 13, 1971.

EUGENE T. ROSSIDES, *Assistant Secretary of the Treasury.*

[FR Doc.71-18867 Filed 12-27-71;8:46 am]

[T.D. 72-2]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Containers Arriving Empty to Pick Up Export Cargo; Use in Incidental Point-to-Point Local Traffic

Treasury Decision 69-216, dated September 19, 1969 (34 F.R. 14886), amended paragraph (f) of § 10.41a, Customs regulations, to permit containers arriving in the United States with cargo to be used in point-to-point local traffic in the United States on a reasonably direct route to, or nearer to, the place where export cargo is to be loaded or where the container is to be re-exported empty. Such local traffic must be incidental to the efficient and economical utilization of the containers in the course of their use in international traffic. A notice of a proposal to further amend paragraph (f) to provide that containers arriving empty to pick up export cargo may be used in incidental point-to-point local traffic was published in the FEDERAL REGISTER on August 24, 1971 (36 F.R. 16590). Consideration was given to all relevant matter presented in response to that notice, and it has been decided to adopt the proposed rule without change.

Accordingly, paragraph (f) of § 10.41a, Customs regulations, is amended to read as follows:

§ 10.41a Lift vans, cargo vans, shipping tanks, skids, pallets, and similar instruments of international traffic; repair components.

* * * * *

(f) Except as provided in paragraph (i) of this section, no part of this section precludes (1) the use of an instrument in picking up and delivering loads at intervening points in the United States while en route between the port of arrival and the point of destination of its imported cargo, (2) such use of the instrument while en route from such point of destination of imported cargo to a point where export cargo is to be loaded or to an exterior port of departure by a reasonably direct route to, or nearer to, the place of such loading or departure, or (3) such use of a "container", as defined in Article 1 of the Customs Convention on Containers (see paragraph (a)(3) of this section), which arrived empty while en route between the port of arrival and a point where export cargo is to be loaded or from that point to an exterior port of departure by a reasonably direct route to, or nearer to, the place of such loading or departure, provided such point-to-point traffic is incidental to the efficient and economical utilization of the instrument in the course of its use in international traffic. Such use does not constitute a diversion to unpermitted point-to-point local traffic within the United States or a withdrawal of an instrument in the United States from its use as an instrument of international traffic under this section.

* * * * *

(80 Stat. 379, R.S. 251, as amended, sec. 14, 67 Stat. 516; 5 U.S.C. 301, 19 U.S.C. 66, 1322)

The amendment will relax existing restrictions on the use of containers admitted as instruments of international traffic in point-to-point local traffic in the United States. Good cause is found, therefore, for dispensing with the delayed effective date provision of 5 U.S.C. 553(d).

Effective date. This amendment shall become effective on the date of its publication in the FEDERAL REGISTER (12-28-71).

[SEAL] MYLES J. AMBROSE, *Commissioner of Customs.*

Approved: December 13, 1971.

EUGENE T. ROSSIDES, *Assistant Secretary of the Treasury.*

[FR Doc.71-18866 Filed 12-27-71;8:46 am]

Title 20—EMPLOYEES' BENEFITS

Chapter V—Manpower Administration, Department of Labor

PART 616—INTERSTATE ARRANGEMENT FOR COMBINING EMPLOYMENT AND WAGES

Title 20 of the Code of Federal Regulations is hereby amended by adding thereto a new Part 616 dealing with the Interstate Arrangement for Combining Employment and Wages as approved in

accordance with section 3304(a)(9)(B) of the Internal Revenue Code of 1954, as amended by the Employment Security Amendments of 1970 (Public Law 91–373).

The provisions of 5 U.S.C. 553 which require notice of proposed rule making, public participation in their adoption, and delay in effective date are not applicable because the arrangement is not addressed primarily to members of the public but rather to the several States which must participate in and administer the arrangement, and further, notice, public participation, and delay, in the effective date is found to be contrary to the public interest which in this instance makes desirable the prompt issuance of this new part so that States may have as much time as possible to prepare their procedures which must be in effect on and after January 1, 1972.

This new part shall become effective on the date of publication in the FEDERAL REGISTER (12–28–71).

As added, Part 616 reads as follows:

Sec.

AUTHORITY: The provisions of this Part 616 issued under sec. 3304(a)(9)(B), 84 Stat. 702; 26 U.S.C. 3304(a)(9)(B); Secretary's Order No. 20–71, August 13, 1971.

§ 616.1 Purpose of arrangement.

This arrangement is approved by the Secretary under the provisions of section 3304(a)(9)(B) of the Federal Unemployment Tax Act to establish a system whereby an unemployed worker with covered employment or wages in more than one State may combine all such employment and wages in one State, in order to qualify for benefits or to receive more benefits.

§ 616.2 Consultation with the State agencies.

As required by section 3304(a)(9)(B), this arrangement has been developed in consultation with the State unemployment compensation agencies. For purposes of such consultation in its formulation and any future amendment the Secretary recognizes, as agents of the State agencies, the duly designated representatives of the Interstate Conference of Employment Security Agencies.

§ 616.3 Interstate cooperation.

Each State agency will cooperate with every other State agency by implementing such rules, regulations, and procedures as may be prescribed for the operation of this arrangement. Each State agency shall identify the paying and the transferring State with respect to Combined-Wage Claims filed in its State.

§ 616.4 Rules, regulations, procedures, forms—resolution of disagreements.

All State agencies shall operate in accordance with such rules, regulations, and procedures, and shall use such forms, as shall be prescribed by the Secretary in consultation with the State unemployment compensation agencies. All rules, regulations, and standards prescribed by the Secretary with respect to intrastate claims will apply to claims filed under this arrangement unless they are clearly inconsistent with the arrangement. The Secretary shall resolve any disagreement between State agencies concerning the operation of the arrangement, with the advice of the duly designated representatives of the State agencies.

§ 616.5 Effective date.

This arrangement shall apply to all new claims (to establish a benefit year) filed under it after December 31, 1971.

§ 616.6 Definitions.

These definitions apply for the purpose of this arrangement and the procedures issued to effectuate it.

(a) *State.* "State" includes the States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) *State agency.* The agency which administers the unemployment compensation law of a State.

(c) *Combined-Wage Claim.* A claim filed under this arrangement.

(d) *Combined-Wage Claimant.* A claimant who has covered wages under the unemployment compensation law of more than one State and who has filed a claim under this arrangement.

(e) *Paying State.* (1) The State in which a Combined-Wage Claimant files a Combined-Wage Claim provided he (i) is qualified for unemployment benefits in that State, or (ii) is not qualified in any State.

(2) If the State in which a Combined-Wage Claim is filed is not the paying State under the criteria set forth under subparagraph (1) of this paragraph then that State where the Combined-Wage Claimant was last employed in covered employment among the States in which he qualifies.

(f) *Transferring State.* A State in which a Combined-Wage Claimant had covered employment and wages in the base period of a paying State, and which transfers such employment and wages to the paying State for its use in determining the benefit rights of such claimant under its law.

(g) *Employment and wages.* "Employment" refers to all services which are covered under the unemployment compensation law of a State, whether expressed in terms of weeks of work or otherwise. "Wages" refers to all remuneration for such employment.

(h) *Secretary.* The Secretary of Labor of the United States.

(i) *Base period and benefit year.* The base period and benefit year applicable under the unemployment compensation law of the paying State.

§ 616.7 Election to file a Combined-Wage Claim.

(a) Any unemployed individual who has had employment covered under the unemployment compensation law of two or more States, whether or not he is monetarily qualified under one or more of them, may elect to file a Combined-Wage Claim. He may not so elect, however, if he has established a benefit year under any State or Federal unemployment compensation law and:

(1) The benefit year has not ended, and

(2) He still has unused benefit rights based on such benefit year.[1]

(b) For the purposes of this arrangement, a claimant will not be considered to have unused benefit rights based on a benefit year which he has established under a State or Federal unemployment compensation law if:

(1) He has exhausted his rights to all benefits based on such benefit year; or

(2) His rights to such benefits have been postponed for an indefinite period or for the entire period in which benefits would otherwise be payable; or

(3) Benefits are affected by the application of a seasonal restriction.

(c) If an individual elects to file a Combined-Wage Claim, all employment and wages in all States in which he worked during the base period of the paying State must be included in such combining, except employment and wages which are not transferrable under the provisions of § 616.9(b).

(d) A Combined-Wage Claimant may withdraw his Combined-Wage Claim within the period prescribed by the law of the paying State for filing an appeal, protest, or request for redetermination (as the case may be) from the monetary determination of the Combined-Wage Claim, provided he either

(1) Repays in full any benefits paid to him thereunder, or

(2) Authorizes the State(s) against which he files a substitute claim(s) for benefits to withhold and forward to the paying State a sum sufficient to repay such benefits.

(e) If the Combined-Wage Claimant files his claim in a State other than the paying State, he shall do so pursuant to the Interstate Benefit Payment Plan.

§ 616.8 Responsibilities of the paying State.

(a) *Transfer of employment and wages—payment of benefits.* The paying

[1] The Federal-State Extended Unemployment Compensation Act of 1970, title II, Public Law 91–373, section 202(a)(1), limits the payment of extended benefits with respect to any week to individuals who have no rights to regular compensation with respect to such week under any State unemployment compensation law or to compensation under any other Federal law and in certain other instances. This provision precludes any individual from receiving any Federal-State extended benefits with respect to any week for which he is eligible to receive regular benefits based on a Combined Wage Claim. (See section 5752, Part V of the Employment Security Manual.)

State shall request the transfer of a Combined-Wage Claimant's employment and wages in all States during its base period, and shall determine his entitlement to benefits (including additional benefits, extended benefits and dependents' allowances when applicable) under the provisions of its law based on employment and wages in the paying State, if any, and all such employment and wages transferred to it hereunder. The paying State shall apply all the provisions of its law to each determination made hereunder, even if the Combined-Wage Claimant has no earnings in covered employment in that State, except that the paying State may not determine an issue which has previously been adjudicated by a transferring State. Such exception shall not apply, however, if the transferring State's determination of the issue resulted in making the Combined-Wage Claim possible under § 616.7(b)(2). If the paying State fails to establish a benefit year for the Combined-Wage Claimant, or if he withdraws his claim as provided herein, it shall return to each transferring State all employment and wages thus unused.

(b) *Notices of determination.* The paying State shall give to the claimant a notice of each of its determinations on his Combined-Wage Claim that he is required to receive under the Secretary's Claim Determinations Standard and the contents of such notice shall meet such Standard. When the claimant is filing his Combined-Wage Claims in a State other than the paying State, the paying State shall send a copy of each such notice to the local office in which the claimant filed such claims.

(c) *Redeterminations.* Redeterminations may be made by the paying State in accordance with its law based on additional or corrected information received from any source, including a transferring State, except that such information shall not be used as a basis for changing the paying State if benefits have been paid under the Combined-Wage Claim.

(d) *Appeals.* (1) Except as provided in subparagraph (3) of this paragraph, where the claimant files his Combined-Wage Claim in the paying State, any protest, request for redetermination or appeal shall be in accordance with the law of such State.

(2) Where the claimant files his Combined-Wage Claim in a State other than the paying State, or under the circumstances described in subparagraph (3) of this paragraph, any protest, request for redetermination or appeal shall be in accordance with the Interstate Benefit Payment Plan.

(3) To the extent that any protest, request for redetermination or appeal involves a dispute as to the coverage of the employing unit or services in a transferring State, or otherwise involves the amount of employment and wages subject to transfer, the protest, request for redetermination or appeal shall be decided by the transferring State in accordance with its law.

(e) *Recovery of prior overpayments.* If there is an overpayment outstanding in a transferring State and such transferring State so requests, the overpayment shall be deducted from any benefits the paying State would otherwise pay to the claimant on his Combined-Wage Claim except to the extent prohibited by the law of the paying State. The paying State shall transmit the amount deducted to the transferring State or credit the deduction against the transferring State's required reimbursement under this arrangement. This paragraph shall apply to overpayments only if the transferring State certifies to the paying State that the determination of overpayment was made within 3 years before the Combined-Wage Claim was filed and that repayment by the claimant is legally required and enforceable against him under the law of the transferring State.

(f) *Statement of benefit charges.* (1) At the close of each calendar quarter, the paying State shall send each transferring State a statement of benefits charged during such quarter to such State as to each Combined-Wage Claimant.

(2) Each such charge shall bear the same ratio to the total benefits paid to the Combined-Wage Claimant by the paying State as his wages transferred by the transferring State bear to the total wages used in such determination. The computation of such ratio shall be to the nearest full percentage point.

§ 616.9 Responsibilities of transferring States.

(a) *Transfer of employment and wages.* Each transferring State shall promptly transfer to the paying State the employment and wages the Combined-Wage Claimant had in covered employment during the base period of the paying State. Any employment and wages so transferred shall be transferred without restriction as to their use for determination and benefit payments under the provisions of the paying State's law.

(b) *Employment and wages not transferable.* Employment and wages transferred to the paying State by a transferring State shall not include:

(1) Any employment and wages which have been transferred to any other paying State and not returned unused, or which have been used in the transferring State as the basis of a monetary determination which established a benefit year.

(2) Any employment and wages which have been canceled or are otherwise unavailable to the claimant as a result of a determination by the transferring State made prior to its receipt of the request for transfer, if such determination has become final or is in the process of appeal but is still pending. If the appeal is finally decided in favor of the Combined-Wage Claimant, any employment and wages involved in the appeal shall forthwith be transferred to the paying State and any necessary redetermination shall be made by such paying State.

(3) Any employment and wages which would be canceled under the law of the transferring State, if its law does not permit noncharging of benefits paid thereon, except that this paragraph shall not apply to requests for transfer made after June 30, 1973, or after amendment of the law to provide for noncharging, whichever is earlier.

(c) *Reimbursement of paying State.* Each transferring State shall, as soon as practicable after receipt of a quarterly statement of charges described herein, reimburse the paying State accordingly.

§ 616.10 Reuse of employment and wages.

Employment and wages which have been used under this arrangement for a determination of benefits which establishes a benefit year shall not thereafter be used by any State as the basis for another monetary determination of benefits.

§ 616.11 Amendment of arrangement.

Periodically the Secretary shall review the operation of this arrangement, and shall propose such amendments to the arrangement as he believes are necessary or appropriate. Any State unemployment compensation agency or the ICESA may propose amendments to the arrangement. Any proposal shall constitute an amendment to the arrangement upon approval by the Secretary in consultation with the State unemployment compensation agencies. Any such amendment shall specify when the change shall take effect, and to which claims it shall apply.

Signed at Washington, D.C., on this 17th day of November 1971.

MALCOLM R. LOVELL, Jr.,
Assistant Secretary for Manpower,
U.S. Department of Labor.

[FR Doc. 71-18871 Filed 12-27-71;8:47 am]

Title 39—POSTAL SERVICE

Chapter I—U.S. Postal Service

PART 911—RULE MAKING PROCEDURES OF THE POST OFFICE DEPARTMENT

PART 926—RULES OF PRACTICE IN PROCEEDINGS TO REVOKE ORDERS CHANGING THE MODE OF TRANSPORTATION OF PERIODICAL MAIL OF THE SECOND CLASS

PART 936—RULES OF PROCEDURE FOR CONTRACT FINANCING

Revocation of Parts

I. Procedural regulations set out in Parts 911 and 926 of Title 39, Code of Federal Regulations, are outmoded, in view of the enactment of the Postal Reorganization Act (Public Law 91-375). Accordingly, Parts 911 and 926 are revoked.

II. Part 936 has been superseded. (See 36 F.R. 12451.) Accordingly, Part 936 is revoked.

(39 U.S.C. 401, 410)

LOUIS A. COX,
Solicitor.

[FR Doc.71-18861 Filed 12-27-71;8:46 am]

Title 24—HOUSING AND URBAN DEVELOPMENT

Chapter X—Federal Insurance Administration

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

List of Eligible Communities

Section 1914.4 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1914.4 List of eligible communities.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
* * *	* * *	* * *	* * *	* * *	* * *	* * *
California	Santa Barbara	Unincorporated areas.				Dec. 23, 1971.
Kentucky	Jefferson	Jeffersontown				Do.
Minnesota	Yellow Medicine	Granite Falls				Do.
Missouri	Cape Girardeau	Cape Girardeau				Do.
Do.	St. Louis	Clayton				Do.
New Jersey	Union	Clark Township	I 34 039 0616 02 through I 34 039 0616 05	Department of Environment Protection, Division of Water Resources, Box 1390, Trenton, NJ 08625. New Jersey Department of Insurance, State House Annex, Trenton, N.J. 08625.	Office of the Township Engineer, Municipal Bldg., Westfield Ave., Clark, N.J. 07066.	Do.
Do.	Atlantic	Absecon City				Do.
New York	Nassau	Atlantic Beach				Do.
Do.	Erie	East Aurora				Do.
Oklahoma	Stephens	Comanche	I 40 137 1070 02 through I 40 137 1070 05	Oklahoma Water Resources Board, 2241 Northwest 40th St., Oklahoma City, OK 73112. Oklahoma Insurance Department, Room 408 Will Rogers Memorial Bldg., Oklahoma City, OK 73105.	City Hall, City of Comanche, Comanche, Okla. 73529.	Dec. 23, 1971.
Do.	Kingfisher	Kingfisher				Do.
Oregon	Douglas	Roseburg				Do.
Pennsylvania	Montgomery	West Norriton				Do.
Washington	Walla Walla	Unincorporated areas.				Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended (secs. 408–410, Public Law 91–152, Dec. 24, 1969), 42 U.S.C. 4001–4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969)

Issued: December 20, 1971.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.71-18845 Filed 12-27-71;8:45 am]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities With Special Hazard Areas

Section 1915.3 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1915.3 List of communities with special hazard areas.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazard
* * *	* * *	* * *	* * *	* * *	* * *	* * *
California	Santa Barbara	Unincorporated areas.				Dec. 23, 1971.
Kentucky	Jefferson	Jeffersontown				Do.
Minnesota	Yellow Medicine	Granite Falls				Do.
Missouri	Cape Girardeau	Cape Girardeau				Do.
Do.	St. Louis	Clayton				Do.
New Jersey	Union	Clark Township	H 34 039 0616 02 through H 34 039 0616 05	Department of Environment Protection, Division of Water Resources, Box 1390, Trenton, NJ 08625. New Jersey Department of Insurance, State House Annex, Trenton, N.J. 08625.	Office of the Township Engineer, Municipal Bldg., Westfield Ave., Clark, N.J. 07066.	July 11, 1970.
Do.	Atlantic	Absecon City				Dec. 23, 1971.
New York	Nassau	Atlantic Beach				Do.
Do.	Erie	East Aurora				Do.
Oklahoma	Stephens	Comanche	H 40 137 1070 02 through H 40 137 1070 05	Oklahoma Water Resources Board, 2241 Northwest 40th St., Oklahoma City, OK 73112. Oklahoma Insurance Department, Room 408 Will Rogers Memorial Bldg., Oklahoma City, Okla. 73105.	City Hall, City of Comanche, Comanche, Okla. 73529.	Mar. 6, 1971.
Do.	Kingfisher	Kingfisher				Dec. 23, 1971.
Oregon	Douglas	Roseburg				Do.
Pennsylvania	Montgomery	West Norriton				Do.
Washington	Walla Walla	Unincorporated areas.				Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended (secs. 408–410, Public Law 91–152, Dec. 24, 1969), 42 U.S.C. 4001–4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969)

Issued: December 20, 1971.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.71-18846 Filed 12-27-71;8:45 am]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7153]

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

Information Required for Filing Elections To Amortize Certain Pollution Control Facilities

In order to extend the time for submitting certain information with an election under section 169 of the Internal Revenue Code of 1954, paragraph (a) of § 1.169-4 of the Income Tax Regulations (26 CFR Part 1) is hereby amended by revising subdivision (ix) of subparagraph (1) and by adding a new subparagraph (4). These revised and added provisions read as follows:

§ 1.169-4 Time and manner of making elections.

(a) *Election of amortization*—(1) *In general.* * * *

(ix) (*a*) A statement that the facility has been certified by the Federal certifying authority, together with a copy of such certification, and a copy of the application for certification which was filed with and approved by the Federal certifying authority or (*b*), if the facility has not been certified by the Federal certifying authority, a statement that application has been made to the proper State certifying authority (see paragraph (c) (2) of § 1.169-2) together with a copy of such application and (except in the case of an election to which subparagraph (4) of this paragraph applies) a copy of the application filed or to be filed with the Federal certifying authority.

* * * * *

(4) *Elections filed before February 29, 1972.* If a statement of election required by subparagraph (1) of this paragraph is attached to a return (including an amended return referred to in subparagraph (2) of this paragraph) filed before February 29, 1972, such statement of election need not include a copy of the Federal application to be filed with the Federal certifying authority but a copy of such application must be filed no later than February 29, 1972, by the taxpayer with the district director, or with the director of the internal revenue service center, with whom the return or amended return referred to in this subparagraph was filed.

* * * * *

Because this Treasury decision amends existing regulations merely by postponing the last day for filing certain information, it is hereby found unnecessary and impracticable to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. section 553(b), or subject to the effective date limitation of 5 U.S.C. section 553(d).

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

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

Approved: December 22, 1971.

EDWIN S. COHEN,
Assistant Secretary of the Treasury.

[FR Doc.71-18874 Filed 12-27-71;8:47 am]

[T.D. 7154]

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

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

PART 301—PROCEDURE AND ADMINISTRATION

Bonds and Other Evidence of Indebtedness

In order to revise the Income Tax Regulations (26 CFR Part 1) under sections 163, 451, 453, 454, 483, 591, 1016,

1037, 1232, and 6049 of the Internal Revenue Code of 1954 and in order to revise the Regulations on Procedure and Administration (26 CFR Part 301) under section 6049 of the Internal Revenue Code of 1954 the proposed amendments contained in a notice of proposed rule making published in the FEDERAL REGISTER on July 22, 1971 (36 F.R. 13605) are adopted with the changes noted below. The items being reserved below are not withdrawn. The changes read as follows:

PARAGRAPH 1. Paragraph (a) of § 1.163–4, as set forth in paragraph (2) of the appendix of the notice of proposed rule making, is changed by adding subparagraph (3).

PAR. 2. Paragraph (d) of § 1.1232–1, as set forth in paragraph 13 of the notice of proposed rule making, is changed, by adding a new sentence at the end thereof.

PAR. 3. The amendments to § 1.1232–3, as set forth in paragraph 15 of the notice of proposed rule making, are changed, by adding a new (*d*) to paragraph (b)(1)(iii), by reserving subdivision (iv) of paragraph (b)(1), and by reserving subdivision (iii) of paragraph (b)(2).

PAR. 4. Section 1.1232–3A, as set forth in paragraph 16 of the notice of proposed rule making, is changed, by reserving subdivision (iii) of paragraph (a)(1), by reserving Example (4) of paragraph (d), and by adding new subparagraphs (4), (5), and (6) to paragraph (e).

PAR. 5. The amendments to § 1.6049–1, as set forth in paragraph 19 of the notice of proposed rule making, are changed by revising paragraph (a)(1)(ii) and (iv), by adding a new subdivision (iv) to paragraph (a)(2), by revising paragraph (a)(5), and by revising paragraph (c)(2).

PAR. 6. The amendments to § 1.6049–2, as set forth in paragraph 20 of the notice of proposed rule making, is changed by revising paragraph (a)(1) and by adding a new paragraph (d).

PAR. 7. The amendments to § 1.6049–3, as set forth in the notice of proposed rule making, are changed.

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

Approved: December 22, 1971.

EDWIN S. COHEN,
Assistant Secretary of the Treasury.

PARAGRAPH 1. Section 1.163–3 is amended by revising the heading and by adding new paragraph (e) to read as follows:

§ 1.163–3 Deduction for discount on bonds issued on or before May 27, 1969.

* * * * *

(e) *Effective date.* The provisions of this section shall not apply in respect of a bond issued after May 27, 1969, unless issued pursuant to a written commitment which was binding on that date and at all times thereafter.

PAR. 2. The following new section is added immediately after § 1.163–3:

§ 1.163–4 Deduction for original issue discount on certain obligations issued after May 27, 1969.

(a) *In general.* (1) If an obligation is issued by a corporation with original issue discount, the amount of such discount is deductible as interest and shall be prorated or amortized over the life of the obligation. For purposes of this section the term "obligation" shall have the same meaning as in § 1.1232–1 (without regard to whether the obligation is a capital asset in the hands of the holder) and the term "original issue discount" shall have the same meaning as in section 1232(b)(1) (without regard to the one-fourth-of-1-percent limitation in the second sentence thereof). Thus, in general, the amount of original issue discount equals the excess of the amount payable at maturity over the issue price of the bond (as defined in paragraph (b)(2) of § 1.1232–3), regardless of whether that amount is less than one-fourth of 1 percent of the redemption price at maturity multiplied by the number of complete years to maturity. For the rule as to whether there is original issue discount in the case of an obligation issued in an exchange for property other than money, and the amount thereof, see paragraph (b)(2)(iii) of § 1.1232–3. In any case in which original issue discount is carried over from one corporation to another corporation under section 381(c)(9) or from an obligation exchanged to an obligation received in any exchange under paragraph (b)(1)(iv) of § 1.1232–3, such discount shall be carried over for purposes of this section. The amount of original issue discount carried over in an exchange of obligations under the preceding sentence shall be prorated or amortized over the life of the obligation received in such exchange. For computation of issue price and the amount of original issue discount in the case of serial obligations, see paragraph (b)(2)(iv) of § 1.1232–3.

(2) In the case of an obligation issued by a corporation as part of an investment unit (as defined in paragraph (b)(2)(ii)(*a*) of § 1.1232–3) consisting of an obligation and other property, the issue price of the obligation is determined by allocating the amount received for the investment unit to the individual elements of the unit in the manner set forth in paragraph (b)(2)(ii) of § 1.1232–3.

(3) *Recovery or retention of amounts previously deducted.* In any taxable year in which an amount of original issue discount which was deducted as interest under this section is retained or recovered by the taxpayer, such as, for example, by reason of a fine, penalty, forfeiture, or other withdrawal fee, such amount shall be includible in the gross income of such taxpayer for such taxable year.

(b) *Examples.* The rules in paragraph (a) of this section are illustrated by the following examples:

Example (1). N Corporation, which uses the calendar year as its taxable year, on January 1, 1970, issued for $99,000, 9 percent bonds maturing 10 years from the date of issue, with a stated redemption price at maturity of $100,000. The original issue discount on each bond (as determined under section 1232(b)(1) without regard to the one-fourth-of-1-percent limitation in the second sentence thereof) is $1,000, i.e., redemption price, $100,000, minus issue price, $99,000. N shall treat $1,000 as the total amount to be amortized over the life of the bonds.

Example (2). Assume the same facts as example (1), except that the bonds are convertible into common stock of N Corporation. Since the issue price of the bonds includes any amount attributable to the conversion privilege, the result is the same as in example (1).

Example (3). Assume the same facts as example (1), except that the bonds are issued as part of an investment unit consisting of an obligation and an option. Assume further that the issue price of the bonds as determined under the rules of allocation set forth in paragraph (b)(2)(ii) of § 1.1232–3 is $94,000. The original issue discount on the bond (as determined under section 1232(b)(1) without regard to the one-fourth-of-1-percent limitation in the second sentence thereof) is $6,000, i.e., redemption price, $100,000, minus issue price, $94,000. N shall treat $6,000 as the total amount to be amortized over the life of the bonds.

Example (4). On January 1, 1971, a commercial bank which uses the calendar year as its taxable year, issued a certificate of deposit for $10,000. The certificate of deposit is not redeemable until December 31, 1975, except in an emergency as defined in, and subject to the qualifications provided by, Regulations Q of the Board of Governors of the Federal Reserve. See 12 CFR § 217.4(d). The stated redemption price at maturity is $13,382.26. The certificate is an obligation to which section 1232(a)(3)(A) applies (see paragraph (d) of § 1.1232–1), and the original issue discount with respect to the certificate (as determined under section 1232(b)(1) without regard to the one-fourth-of-1-percent limitation in the second sentence thereof) is $3,382.26 (i.e., redemption price, $13,382.26, minus issued price, $10,000). Y shall treat $3,382.26 as the total amount to be amortized over the life of the certificate.

(c) *Deduction upon repurchase.* [Reserved]

(d) *Effective date.* The provisions of this section shall apply in respect of obligations issued after May 27, 1969, other than—

(1) Obligations issued pursuant to a written commitment which was binding on May 27, 1969, and at all times thereafter, and

(2) Deposits made before January 1, 1971, in the case of certificates of deposit, time deposits, bonus plans, and other deposit arrangements with banks, domestic building and loan associations, and similar financial institutions.

PAR. 3. Section 1.451–1 is amended by adding new paragraph (d) immediately after paragraph (c) to read as follows:

§ 1.451–1 General rule for taxable year of inclusion.

* * * * *

(d) *Special rule for ratable inclusion of original issue discount.* For ratable inclusion of original issue discount in respect of certain corporate obligations issued after May 27, 1969, see section 1232(a)(3).

PAR. 4. Section 1.451–2 is amended by revising paragraph (b) to read as follows:

§ 1.451–2 Constructive receipt of income.

* * * * *

(b) *Examples of constructive receipt.* Amounts payable with respect to interest coupons which have matured and are payable but which have not been cashed are constructively received in the taxable year during which the coupons mature, unless it can be shown that there are no funds available for payment of the interest during such year. Dividends on corporate stock are constructively received when unqualifiedly made subject to the demand of the shareholder. However, if a dividend is declared payable on December 31 and the corporation followed its usual practice of paying the dividends by checks mailed so that the shareholders would not receive them until January of the following year, such dividends are not considered to have been constructively received in December. Generally, the amount of dividends or interest credited on savings bank deposits or to shareholders of organizations such as building and loan associations or cooperative banks is income to the depositors or shareholders for the taxable year when credited. However, if any portion of such dividends or interest is not subject to withdrawal at the time credited, such portion is not constructively received and does not constitute income to the depositor or shareholder until the taxable year in which the portion first may be withdrawn. Accordingly, if, under a bonus or forfeiture plan, a portion of the dividends or interest is accumulated and may not be withdrawn until the maturity of the plan, the crediting of such portion to the account of the shareholder or depositor does not constitute constructive receipt. In this case, such credited portion is income to the depositor or shareholder in the year in which the plan matures. However, in the case of certain deposits made after December 31, 1970, in banks, domestic building and loan associations, and similar financial institutions, the ratable inclusion rules of section 1232(a)(3) apply. See § 1.1232–3A. Accrued interest on unwithdrawn insurance policy dividends is gross income to the taxpayer for the first taxable year during which such interest may be withdrawn by him.

PAR. 5. Paragraph (b) of § 1.453–1 is amended by adding a new subparagraph (3) immediately after subparagraph (2) to read as follows:

§ 1.453–1 Installment method of reporting income.

* * * * *

(b) *Income to be reported.* * * *

(3) For purposes of section 453, any amount of original issue discount in respect of certain corporate obligations issued after May 27, 1969, as computed pursuant to paragraph (b)(2)(iii) of § 1.1232–3 (relating to obligations issued in exchange for property) shall not be included as part of the selling price or the total contract price.

PAR. 6. Paragraph (a) of § 1.454–1 is amended by revising the heading and subparagraph (1)(i) to read as follows:

§ 1.454–1 Obligations issued at discount.

(a) *Certain non-interest bearing obligations issued at discount*—(1) *Election to include increase in income currently.* If a taxpayer owns—

(i) A non-interest-bearing obligation issued at a discount and redeemable for fixed amounts increasing at stated intervals (other than an obligation issued by a corporation after May 27, 1969, as to which ratable inclusion of original issue discount is required under section 1232(a)(3)), or

* * * * *

PAR. 7. Section 1.483–1 is amended by revising paragraphs (b)(3) and (d)(3) to read as follows:

§ 1.483–1 Computation of interest on certain deferred payments.

* * * * *

(b) *Payments to which section 483 applies* * * *

(3) *Effect of other provisions of law.* If there is total unstated interest under a contract, a portion of each payment to which section 483 applies shall be treated as interest to the extent provided in such section, notwithstanding that some other provision of law (for example, section 1245, relating to gain from dispositions of certain depreciable property) would, without regard to section 483, treat a portion of the payment as ordinary income or in some other manner. In such a case, section 483 shall apply first and the other provision of law shall apply only to the remainder of the payment not treated as interest under section 483. For example, if a portion of a payment is treated as interest under section 483 and such portion would otherwise be treated as gain from the sale or exchange of property which is not a capital asset under section 1232(a)(2)(B) (relating to corporate bonds issued on or before May 27, 1969, and Government bonds), section 483 shall apply first and section 1232(a)(2)(B) shall apply only to the remainder of the payment after the interest portion has been determined. In such case, in order to avoid a double inclusion in income, for purposes of section 1232(b) the "stated redemption price at maturity" shall be reduced by any amount treated as interest under section 483. If, however, with respect to an evidence of indebtedness issued by a corporation after May 27, 1969, any amount of original issue discount is ratably includible in the gross income of the holder under section 1232(a)(3), there will be no unstated interest to which section 483 applies since paragraph (d)(3) of this section provides for a zero test rate of interest for determining whether there is total unstated interest with respect to such an evidence of indebtedness.

* * * * *

(d) *Test of whether there is total interest under a contract.* * * *

(3) *Test rate for certain obligations.* The test rate of interest for determining whether there is total unstated interest shall be zero in the case of—

(i) A contract under which the purchaser is the United States, a State, or any other governmental body described in section 103 (relating to interest on certain governmental obligations), and under which the deferred payments are made pursuant to an obligation to which section 103 applies, or

(ii) An evidence of indebtedness which is issued after May 27, 1969, by a corporation in an exchange for property (other than money) which results under paragraph (b)(2)(iii) of § 1.1232–3 in creating original issue discount subject to ratable inclusion under section 1232(a)(3) in the holder's gross income.

* * * * *

PAR. 8. Section 1.591–1 is amended by revising so much of paragraph (b) as follows subparagraph (2) thereof to read as follows:

§ 1.591–1 Deduction for dividends paid on deposits.

* * * * *

(b) *Serial associations, bonus plans, etc.* * * *

In any taxable year in which the right referred to in subparagraph (2) of this paragraph is exercised, there is includible in the gross income of such taxpayer for such taxable year amounts retained or recovered by the taxpayer pursuant to the exercise of such right. If the provisions of paragraph (a) of § 1.163–4 (relating to deductions for original issue discount) apply to deposits made with respect to a certificate of deposit, time deposit, bonus plan or other deposit arrangement, the provisions of this paragraph shall not apply.

PAR. 9. Section 1.1012–1 is amended by revising paragraph (d) to read as follows:

§ 1.1012–1 Basis of property.

* * * * *

(d) *Obligations issued as part of an investment unit.* For purposes of determining the basis of the individual elements of an investment unit (as defined in paragraph (b)(2)(ii)(*a*) of § 1.1232–3) consisting of an obligation and an option (which is not an excluded option under paragraph (b)(1)(iii)(*c*) of § 1.1232–3), security, or other property, the cost of such investment unit shall be allocated to such individual elements on the basis of their respective fair market values. In the case of the initial issuance of an investment unit consisting of an obligation and an option, security, or other property, where neither the obligation nor the option, security, or other property has a readily ascertainable fair market value, the portion of the cost of the unit which is allocable to the obligation shall be an amount equal to the issue price of the obligation as determined under paragraph (b)(2)(ii)(*a*) of § 1.1232–3.

* * * * *

PAR. 10. Section 1.1016–5 is amended by adding a new paragraph (s) immediately after paragraph (r), to read as follows:

§ 1.1016–5 Miscellaneous adjustments to basis.

* * * * *

(s) *Original issue discount.* In the case of certain corporate obligations issued at a discount after May 27, 1969, the basis shall be increased under section 1232(a)(3)(E) by the amount of original issue discount included in the holder's gross income pursuant to section 1232(a)(3).

PAR. 11. In order to change section 1232(a)(2)(A) and section 1232(a)(2)(A)(ii) wherever they appear in § 1.1037–1 to section 1232(a)(2)(B) and section 1232(a)(2)(B)(ii) respectively, paragraph (a) of § 1.1037–1 is amended by revising paragraph (d) of example (6) of subparagraph (3) and paragraph (d) of example (7) of subparagraph (3), and paragraph (b) of such section is amended by revising subparagraph (1), so much of subparagraph (2) as precedes subdivision (ii) thereof, paragraph (d)(2) of example (1) of subparagraph (4), paragraph (b)(2) of example (3) of subparagraph (4), paragraph (b)(2) of example (4) of subparagraph (4), paragraph (e) of example (5) of subparagraph (4), paragraphs (c) and (d) of example (1) of subparagraph (5), and paragraph (c) of example (4) of subparagraph (5). Such amended and revised provisions read as follows:

§ 1.1037–1 Certain exchanges of U.S. obligations.

(a) *Nonrecognition of gain or loss.* * * *

(3) *Illustrations.* * * *

Example (6). * * *

(d) On the sale of the new obligation D realizes a gain of $45 ($1,020 less $975), all of which is recognized by reason of section 1002. Of this gain of $45, the amount of $35 is treated as ordinary income and $10 is treated as long-term capital gain, determined as follows:

(1) Ordinary income under first sentence of sec. 1232(a)(2)(B) on sale of new obligation:	
Stated redemption price of new obligation at maturity	$1,000
Less: Issue price of new obligation under sec. 1232(b)(2)	930
Original issue discount on new obligation	70
Proration under sec. 1232(a)(2)(B)(ii): ($70×60 months/120 months)	35
(2) Long-term capital gain ($45 less $35)	10

Example (7). * * *

(d) On the redemption of the new obligation D realizes a gain of $25 ($1,000 less $975), all of which is recognized by reason of section 1002. Of this gain of $25, the entire amount is treated as ordinary income, determined as follows:

Ordinary income under first sentence of sec. 1232(a)(2)(B) on redemption of new obligation:	
Stated redemption price of new obligation at maturity	$1,000
Less: Issue price of new obligation under sec. 1232(b)(2)	930
Original issue discount on new obligation	70
Proration under sec. 1232(a)(2)(B)(ii): ($70×120 months/120 months), but such amount not to exceed the $25 gain recognized on redemption	25

(b) *Application of section 1232 upon disposition or redemption of new obligation—(1) Exchanges involving nonrecognition of gain on obligations issued at a discount.* If an obligation, the gain on which is subject to the first sentence of section 1232(a)(2)(B), because the obligation was originally issued at a discount, is surrendered to the United States in exchange for another obligation and any part of the gain realized on the exchange is not then recognized because of the provisions of section 1037(a) (or because of so much of section 1031(b) as relates to section 1037(a)), the first sentence of section 1232(a)(2)(B) shall apply to so much of such unrecognized gain as is later recognized upon the disposition or redemption of the obligation which is received in the exchange as though the obligation so disposed of or redeemed were the obligation surrendered, rather than the obligation received, in such exchange. See the first sentence of section 1037(b)(1). Thus, in effect that portion of the gain which is unrecognized on the exchange but is recognized upon the later disposition or redemption of the obligation received from the United States in the exchange shall be considered as ordinary income in an amount which is equal to the gain which, by applying the first sentence of section 1232(a)(2)(B) upon the earlier surrender of the old obligation to the United States, would have been considered as ordinary income if the gain had been recognized upon such earlier exchange. Any portion of the gain which is recognized under section 1031(b) upon the earlier exchange and is treated at such time as ordinary income shall be deducted from the gain which is treated as ordinary income by applying the first sentence of section 1232(a)(2)(B) pursuant to this subparagraph upon the disposition or redemption of the obligation which is received in the earlier exchange. This subparagraph shall apply only in a case where on the exchange of United States obligations there was some gain not recognized by reason of section 1037(a) (or so much of section 1031(b) as relates to section 1037(a)); it shall not apply where only loss was unrecognized by reason of section 1037(a).

(2) *Rules to apply when a nontransferable obligation is surrendered in the exchange.* For purposes of applying both section 1232(a)(2)(B) and subparagraph (1) of this paragraph to the total gain realized on the obligation which is later disposed of or redeemed, if the obligation surrendered to the United States in the earlier exchange is a nontransferable obligation described in section 454(a) or (c)—

* * * * * *

(4) *Illustrations.* * * *

Example (1). * * *

(d) * * *

(2) Ordinary income under first sentence of sec. 1232(a)(2)(B), applying sec. 1037(b)(1)(B) to sale of new bond:	
Stated redemption price of new bond at maturity	$100.00
Less: Issue price of new bond under sec. 1037(b)(1)(B) ($94.50 plus $0 additional consideration paid on exchange)	94.50
Original issue discount on new bond	5.50
Proration under sec. 1232(a)(2)(B)(ii): ($5.50×0 months/120 months)	0

* * * * *

Example (3). * * *

(b) * * *

(2) Ordinary income applicable to new bond (determined as provided in paragraph (d)(2) of example (1), except that the proration of the original issue discount under sec. 1232(a)(2)(B)(ii) amounts to $1.10 ($5.50×24 months/120 months))	1.10

* * * * *

Example (4). * * *

(b) * * *

(2) Ordinary income applicable to new bond (determined as provided in paragraph (d)(2) of example (1), except that the proration of the original issue discount under sec. 1232(a)(2)(B)(ii) amounts to $5.50 ($5.50×120 months/120 months))	5.50

* * * * *

Example (5). * * *

(e) Under section 1037(b)(1)(B) the issue price of the series H bonds is $10,000 ($9,760 stated redemption price of the series E bond at time of exchange, plus $240 additional consideration paid). Thus, with respect to the series H bond, there is no original issue discount to which section 1232(a)(2)(B) might apply.

* * * * *

(5) *Exchanges involving nonrecognition of gain or loss on transferable obligations issued at not less than par—* * * *

Example (1). * * *

(c) The basis of the new bond in A's hands, determined under section 1031(d), is $85 (the same as that of the old bond). The issue price of the new bond for purposes of section 1232(a)(2)(B) is considered under section 1037(b)(2) to be $100 (the same issue price as that of the old bond).

(d) * * *

(1) Ordinary income under first sentence of sec. 1232(a)(2)(B), applicable to old bond:	
Stated redemption price of old bond at maturity	$100
Less: Issue price of old bond	100
Original issue discount on old bond	0

(2) Ordinary income under first sentence of sec. 1232(a)(2)(B), applying sec. 1037(b)(2) to sale of new bond:	
Stated redemption price of new bond at maturity	100
Less: Issue price of new bond under sec. 1037 (b)(2)	100
Original issue discount on new bond	0

* * * * *

Example (4). * * *

(c) The basis of the new bond in B's hands, determined under section 1031(d), is $1,000 (the same basis as that of the old bond). The issue price of the new bond for purposes of section 1232(a)(2)(B) is considered under section 1037(b)(2) to be $1,000 (the same issue price as that of the old bond).

* * * * *

PAR. 12. Section 1.1232 is amended by revising subsections (a) and (b)(2) of section 1232 and the historical note to read as follows:

§ 1.1232 Statutory provisions; bonds and other evidences of indebtedness.

SEC. 1232. *Bonds and other evidences of indebtedness*—(a) *General rule.* For purposes of this subtitle, in the case of bonds, debentures, notes, or certificates or other evidences of indebtedness, which are capital assets in the hands of the taxpayer, and which are issued by any corporation, or by any government or political subdivision thereof—

(1) *Retirement.* Amounts received by the holder on retirement of such bonds or other evidences of indebtedness shall be considered as amounts received in exchange therefor (except that in the case of bonds or other evidences of indebtedness issued before January 1, 1955, this paragraph shall apply only to those issued with interest coupons or in registered form, or to those in such form on March 1, 1954).

(2) *Sale or exchange*—(A) *Corporate bonds issued after May 27, 1969.* Except as provided in subparagraph (C), on the sale or exchange of bonds or other evidences of indebtedness issued by a corporation after May 27, 1969, held by the taxpayer more than 6 months, any gain realized shall (except as provided in the following sentence) be considered gain from the sale or exchange of a capital asset held for more than 6 months. If at the time of original issue there was an intention to call the bond or other evidence of indebtedness before maturity, any gain realized on the sale or exchange thereof which does not exceed an amount equal to the original issue discount (as defined in subsection (b)) reduced by the portion of original issue discount previously includible in the gross income of any holder (as provided in paragraph (3)(B)) shall be considered as gain from the sale or exchange of property which is not a capital asset.

(B) *Corporate bonds issued on or before May 27, 1969, and government bonds.* Except as provided in subparagraph (C), on the sale or exchange of bonds or other evidences of indebtedness issued by a governmental or political subdivision thereof after December 31, 1954, or by a corporation after December 31, 1954, and on or before May 27, 1969, held by the taxpayer more than 6 months, any gain realized which does not exceed—

(i) An amount equal to the original issue discount (as defined in subsection (b)), or

(ii) If at the time of original issue there was no intention to call the bond or other evidence of indebtedness before maturity, an amount which bears the same ratio to the original issue discount (as defined in subsection (b)) as the number of complete months that the bond or other evidence of indebtedness was held by the taxpayer bears to the number of complete months from the date of original issue to the date of maturity,

shall be considered as gain from the sale or exchange of property which is not a capital asset. Gain in excess of such amount shall be considered gain from the sale or exchange of a capital asset held more than 6 months.

(C) *Exceptions.* This paragraph shall not apply to—

(i) Obligations the interest on which is not includible in gross income under section 103 (relating to certain governmental obligations), or

(ii) Any holder who has purchased the bond or other evidence of indebtedness at a premium.

(D) *Double inclusion in income not required.* This section shall not require the inclusion of any amount previously includible in gross income.

(3) *Inclusion in income of original issue discount on corporate bonds issued after May 27, 1969*—(A) *General rule.* There shall be included in the gross income of the holder of any bond or other evidence of indebtedness issued by a corporation after May 27, 1969, the ratable monthly portion of original issue discount multiplied by the number of complete months (plus any fractional part of a month determined in accordance with the last sentence of this subparagraph) such holder held such bond or other evidence of indebtedness during the taxable year. Except as provided in subparagraph (B), the ratable monthly portion of original issue discount shall equal the original issued discount (as defined in subsection (b)) divided by the number of complete months from the date of original issue to the stated maturity date of such bond or other evidence of indebtedness. For purposes of this section, a complete month commences with the date of original issue and the corresponding day of each succeeding calendar month (or the last day of a calendar month in which there is no corresponding day); and, in any case where a bond or other evidence of indebtedness is acquired on any other day, the ratable monthly portion of original issue discount for the complete month in which such acquisition occurs shall be allocated between the transferor and the transferee in accordance with the number of days in such complete month each held the bond or other evidence of indebtedness.

(B) *Reduction in case of any subsequent holder.* For purposes of this paragraph, the ratable monthly portion of original issue discount shall not include an amount, determined at the time of any purchase after the original issue of such bond or other evidence of indebtedness, equal to the excess of—

(i) The cost of such bond or other evidence of indebtedness incurred by such holder, over

(ii) The issue price of such bond or other evidence of indebtedness increased by the portion of original discount previously includible in the gross income of any holder (computed without regard to this subparagraph),

divided by the number of complete months (plus any fractional part of a month commencing with the date of purchase) from the date of such purchase to the stated maturity date of such bond or other evidence of indebtedness.

(C) *Purchase defined.* For purposes of subparagraph (B), the term "purchase" means any acquisition of a bond or other evidence of indebtedness, but only if the basis of the bond or other evidence of indebtedness is not determined in whole or in part by reference to the adjusted basis of such bond or other evidence of indebtedness in the hands of the person from whom acquired, or under section 1014(a) (relating to property acquired from a decedent).

(D) *Exceptions.* This paragraph shall not apply to any holder—

(i) Who has purchased the bond or other evidence of indebtedness at a premium, or

(ii) Which is a life insurance company to which section 818(b) applies.

(E) *Basis adjustments.* The basis of any bond or other evidence of indebtedness in the hands of the holder thereof shall be increased by the amount included in his gross income pursuant to subparagraph (A).

(b) *Definitions.* * * *

(2) *Issue price.* In the case of issues of bonds or other evidences of indebtedness registered with the Securities and Exchange Commission, the term "issue price" means the initial offering price to the public (excluding bond houses and brokers) at which price a substantial amount of such bonds or other evidences of indebtedness were sold. In the case of privately placed issues of bonds or other evidence of indebtedness, the issue price of each such bond or other evidence of indebtedness is the price paid by the first buyer of such bond increased by the amount, if any, of tax paid under section 4911 (and not credited, refunded, or reimbursed) on the acquisition of such bond or evidence of indebtedness by the first buyer. For purposes of this paragraph, the terms "initial offering price" and "price paid by the first buyer" include the aggregate payments made by the purchaser under the purchase agreement, including modifications thereof. In the case of a bond or other evidence of indebtedness and an option or other security issued together as an investment unit, the issue price for such investment unit shall be determined in accordance with the rules stated in this paragraph. Such issue price attributable to each element of the investment unit shall be that portion thereof which the fair market value of such element bears to the total fair market value of all the elements in the investment unit. The issue price of the bond or other evidence of indebtedness included in such investment unit shall be the portion so allocated to it. In the case of a bond or other evidence of indebtedness, or an investment unit as described in this paragraph (other than a bond or other evidence of indebtedness or an investment unit issued pursuant to a plan of reorganization within the meaning of section 368(a)(1) or an insolvency reorganization within the meaning of section 371, 373, or 374), which is issued for property and which—

(A) Is part of an issue a portion of which is traded on an established securities market, or

(B) Is issued for stock or securities which are traded on an established securities market,

the issue price of such bond or other evidence of the indebtedness or investment unit, as the case may be, shall be the fair market value of such property. Except in cases to which the preceding sentence applies, the issue price of a bond or other evidence of indebtedness (whether or not issued as a part of an investment unit) which is issued for property (other than money) shall be the stated redemption price at maturity.

* * * * *

[Sec. 1232 as amended by secs. 50 and 51, Technical Amendments Act of 1958 (72 Stat. 1642, 1643); sec. 3(e), Life Insurance Company Income Tax Act 1959 (73 Stat. 140); sec. 5, Interest Equalization Tax Act (78 Stat. 845); sec. 413 (a) and (b), Tax Reform Act 1969 (83 Stat. 609, 611)]

PAR. 13 Section 1.1232–1 is amended by revising paragraphs (a), (b), and (c), and by adding new paragraph (d) immediately after paragraph (c). These revised and added sections read as follows:

§ 1.1232–1 Bonds and other evidences of indebtedness; scope of section.

(a) *In general.* Section 1232 applies to any bond, debenture, note, or certificate or other evidence of indebtedness (referred to in this section and §§ 1.1232–2 through 1.1232–4 as an obligation) (1) which is a capital asset in the hands of the taxpayer, and (2) which is issued by any corporation, or by any government or political subdivision thereof. In general, section 1232(a)(1) provides that the retirement of an obligation, other than certain obligations issued before January 1, 1955, is considered to be an exchange and, therefore, is usually subject to capital gain or loss treatment. In general, section 1232(a)(2)(B) provides that in the case of a gain realized on the sale or exchange of certain obligations issued at a discount after December 31, 1954, which are either corporate bonds issued on or before May 27, 1969, or government bonds, the amount of gain equal to such discount or, under certain circumstances, the amount of gain equal to a specified portion of such discount, constitutes ordinary income. In the case of certain corporate obligations issued after May 27, 1969, in general, section 1232(a)(3) provides for the inclusion as interest in gross income of a ratable portion of original issue discount for each taxable year over the life of the obligation, section 1232(a)(3)(E) provides for an increase in basis equal to the original issue discount included in gross income, and section 1232(a)(2)(A) provides that any gain realized on such an obligation held more than 6 months shall be considered gain from the sale or exchange of a capital asset held more than 6 months. For the requirements for reporting original issue discount on certain obligations issued after May 27, 1969, see section 6049(a) and the regulations thereunder. Section 1232(c) treats as ordinary income a portion of any gain realized upon the disposition of (i) coupon obligations which were acquired after August 16, 1954, and before January 1, 1958, without all coupons maturing more than 12 months after purchase attached, and (ii) coupon obligations which were acquired after December 31, 1957, without all coupons maturing after the date of purchase attached.

(b) *Requirement that obligations be capital assets.* In order for section 1232 to be applicable, an obligation must be a capital asset in the hands of the taxpayer. See section 1221 and the regulations thereunder. Obligations held by a dealer in securities (except as provided in section 1236) or obligations arising from the sale of inventory or personal services by the holder are not capital assets. However, obligations held by a financial institution, as defined in section 582(c) (relating to treatment of losses and gains on bonds of certain financial institutions) for investment and not primarily for sale to customers in the ordinary course of the financial institution's trade or business, are capital assets. Thus, with respect to obligations held as capital assets by such a financial institution which are corporate obligations to which section 1232(a)(3) applies, there is ratable inclusion of original issue discount as interest in gross income under paragraph (a) of § 1.1232–3A, and gain on a sale or exchange (including retirement) may be subject to ordinary income treatment under section 582(c) and paragraph (a)(1) of § 1.1232–3.

(c) [Reserved].

(d) *Certain deposits in financial institutions.* For purposes of section 1232, this section and §§ 1.1232–2 through 1.1232–4, the term "other evidence of indebtedness" includes certificates of deposit, time deposits, bonus plans, and other deposit arrangements with banks, domestic building and loan associations, and similar financial institutions. For application of section 1232 to such deposits, see paragraph (e) of § 1.1232–3A. However, section 1232, this section, and §§ 1.1232–2 through 1.1232–4 shall not apply to such deposits made prior to January 1, 1971. For treatment of renewable certificates of deposit, see paragraph (e)(4) of § 1.1232–3A.

PAR. 14. Section 1.1232–2 is amended by revising such section to read as follows:

§ 1.1232–2 Retirement.

Section 1232(a)(1) provides that any amount received by the holder upon the retirement of an obligation shall be considered as an amount received in exchange therefor. However, section 1232(a)(1) does not apply in the case of an obligation issued before January 1, 1955, which was not issued with interest coupons or in registered form on March 1, 1954. For treatment of gain on an obligation held by certain financial institutions, see section 582(c) and paragraph (a)(1)(iii) of § 1.1232–3.

PAR. 15. Section 1.1232–3 is amended by revising paragraph (a), paragraph (b)(1), paragraph (b)(2) (i) and (ii) (*a*) and (c), example (1) and part (1) of example (2) of paragraph (b)(2)(ii) (*d*), by adding new subdivisions (iii) and (iv) to paragraph (b)(2), by revising so much of paragraph (c) as precedes example (1) of such paragraph, and by revising paragraphs (d), (e) and (f). These revised and added provisions read as follows:

§ 1.1232–3 Gain upon sale or exchange of obligations issued at a discount after December 31, 1954.

(a) *General rule; sale or exchange—*(1) *Obligations issued by a corporation after May 27, 1969*—(i) *General rule.* Under section 1232(a)(2)(A), in the case of gain realized upon the sale or exchange of an obligation issued at a discount by a corporation after May 27, 1969 (other than an obligation subject to the transitional rule of subparagraph (4) of this paragraph), and held by the taxpayer for more than 6 months—

(*a*) If at the time of original issue there was no intention to call the obligation before maturity, such gain shall be considered as long-term capital gain, or

(*b*) If at the time of original issue there was an intention to call the obligation before maturity, such gain shall be considered ordinary income to the extent it does not exceed the excess of—

(*1*) An amount equal to the entire "original issue discount", over

(*2*) An amount equal to the entire "original issue discount" multiplied by a fraction the numerator of which is the sum of the number of complete months and any fractional part of a month elapsed since the date of original issue and the denominator of which is the number of complete months and any fractional part of a month from the date of original issue to the stated maturity date.

The balance, if any, of the gain shall be considered as long-term capital gain. The amount described in (*2*) of this subdivision (*b*) in effect reduces the amount of original issue discount to be treated as ordinary income under this subdivision (*b*) by the amounts previously includible (regardless of whether included) by all holders (computed, however, as to any holder without regard to any purchase allowance under paragraph (a)(2)(ii) of § 1.1232–3A and without regard to whether any holder purchased at a premium as defined in paragraph (d)(2) of § 1.1232–3).

(ii) *Cross references.* For definition of the terms "original issue discount" and "intention to call before maturity", see paragraph (b) (1) and (4) respectively of this section. For definition of the term "date of original issue", see paragraph (b)(3) of this section. For computation of the number of complete months and any fractional portion of a month, see paragraph (a)(3) of § 1.1232–3A.

(iii) *Effect of section 582(c).* Gain shall not be considered to be long-term capital gain under subdivision (i) of this subparagraph if section 582(c) (relating to treatment of losses and gains on bonds of certain financial institutions) applies.

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

Example (1). On January 1, 1970, A, a calendar-year taxpayer, purchases at original issue for cash of $7,600, M Corporation's 10-year, 5 percent bond which has a stated redemption price at maturity of $10,000. On January 1, 1972, A sells the bond to B, for $9,040. A has previously included $480 of the original issue discount in his gross income (see example (1) of paragraph (d) of § 1.1232–3A) and increased his basis in the bond by that amount to $8,080 (see paragraph (c) of § 1.1232–3A). Thus, if at the time of original issue there was no intention to call the bond before maturity, A's gain of $960 (amount realized, $9,040, less adjusted basis, $8,080) is considered long-term capital gain.

Example (2). (i) Assume the same facts as in example (1), except that at the time of original issue there was an intention to call the bond before maturity. The amount of the entire gain includible by A as ordinary income under subparagraph (1)(i) of this paragraph is determined as follows:

(1) Entire original issue discount (stated redemption price at maturity, $10,000, minus issue price, $7,600)	$2,400
(2) Less: Line (1), $2,400, multiplied by months elapsed since date of original issue, 24, divided by months from such date to stated maturity date, 120	480
(3) Maximum amount includible by A as ordinary income	$1,920

Since the amount in line (3) is greater than A's gain, $960, A's entire gain is includible as ordinary income.

(ii) On January 1, 1979, B, a calendar-year taxpayer, sells the bond to C for $10,150. Assume that B has included $120 of original issue discount in his gross income for each taxable year he held the bond (see example (2) of paragraph (d) of § 1.1232–3A) and therefore increased his basis by $840 (*i.e.*, $120 each year × 7 years) to $9,880. B's gain is therefore $270 (amount realized, $10,150, less basis, $9,880). The amount of such gain includible by B as ordinary income under subparagraph (1)(i) of this paragraph is determined as follows:

(1) Entire original issue discount (as determined in part (i) of this example)	$2,400
(2) Less: Line (1), $2,400, multiplied by months elapsed since date of original issue, 108, divided by months from such date to stated maturity date, 120	$2,160
(3) Maximum amount includible by B as ordinary income	$ 240

Since the amount in line (3) is less than B's gain, $270, only $240 of B's gain is includible as ordinary income. The remaining portion of B's gain, $30, is considered long-term capital gain.

(3) *Obligations issued by a corporation on or before May 27, 1969, and government obligations.* Under section 1232(a)(2)(B), if gain is realized on the sale or exchange after December 31, 1957, of an obligation held by the taxpayer more than 6 months, and if the obligation either was issued at a discount after December 31, 1954, and on or before May 27, 1969, by a corporation or was issued at a discount after December 31, 1954, by or on behalf of the United States or a foreign country, or a political subdivision of either, then such gain shall be considered ordinary income to the extent it does not exceed—

(i) An amount equal to the entire "original issue discount", or

(ii) If at the time of original issue there was no intention to call the obligation before maturity, a portion of the "original issue discount" determined in accordance with paragraph (c) of this section,

and the balance, if any, of the gain shall be considered as long-term capital gain. For the definition of the terms "original issue discount" and "intention to call before maturity", see paragraph (b) (1) and (4) respectively of this section. See section 1037(b) and paragraph (b) of § 1.1037–1 for special rules which are applicable in applying section 1232(a)(2)(B) and this subparagraph to gain realized on the disposition or redemption of obligations of the United States which were received from the United States in an exchange upon which gain or loss is not recognized because of section 1037(a) (or so much of section 1031 (b) or (c) as relates to section 1037(a)).

(4) *Transitional rule.* Subparagraph (3) of this paragraph (in lieu of subparagraph (1) of this paragraph) shall apply to an obligation issued by a corporation pursuant to a written commitment which was binding on May 27, 1969, and at all times thereafter.

(5) *Obligations issued after December 31, 1954, and sold or exchanged before January 1, 1958.* Gain realized upon the sale or exchange before January 1, 1958, of an obligation issued at a discount after December 31, 1954, and held by the taxpayer for more than 6 months, shall be considered ordinary income to the extent it equals a specified portion of the "original issue discount", and the balance, if any, of the gain shall be considered as long-term capital gain. The term "original issue discount" is defined in paragraph (b)(1) of this section. The computation of the amount of gain which constitutes ordinary income is illustrated in paragraph (c) of this section.

(6) *Obligations issued before January 1, 1955.* Whether gain representing original issue discount realized upon the sale or exchange of obligations issued at a discount before January 1, 1955, is capital gain or ordinary income shall be determined without reference to section 1232.

(b) *Definitions*—(1) *Original issue discount*—(i) *In general.* For purposes of section 1232, the term "original issue discount" means the difference between the issue price and the stated redemption price at maturity. The stated redemption price is determined without regard to optional call dates.

(ii) *De minimis rule.* If the original issue discount is less than one-fourth of 1 percent of the stated redemption price at maturity multiplied by the number of full years from the date of original issue to maturity, then the discount shall be considered to be zero. For example, a 10-year bond with a stated redemption price at maturity of $100 issued at $98 would be regarded as having an original issue discount of zero. Thus, any gain realized by the holder would be a long-term capital gain if the bond was a capital asset in the hands of the holder and held by him for more than 6 months. However, if the bond were issued at $97.50 or less, the original issue discount would not be considered zero.

(iii) *Stated redemption price at maturity*—(a) *Definition.* Except as otherwise provided in this subdivision (iii), the term "stated redemption price at maturity" means the amount fixed by the last modification of the purchase agreement, including dividends, interest, and any other amounts, however designated, payable at that time. If any amount based on a fixed rate of simple or compound interest is actually payable or will be treated as constructively received under section 451 and the regulations thereunder at fixed periodic intervals of 1 year or less during the entire term of the obligation, any such amount payable at maturity shall not be included in determining the stated redemption price at maturity. Thus, for example, assume that a note which promises to pay $1,000 at the end of 3 years provides for additional amounts labeled as interest to be paid at the rate of $50 at the end of the first year, $50 at the end of the second year, and $120 at the end of the third year. The stated redemption price at maturity will be $1,070 since only $50 of the $120 payable at the end of the third year is based on a fixed rate of simple or compound interest. If, however, the $120 were payable at the end of the second year, so that only $50 in addition to principal would be payable at the end of the third year, then under the rule for serial obligations contained in subparagraph (2)(iv)(c) of this paragraph, the $1,000 note is treated as consisting of two series. The first series is treated as maturing at the end of the second year at a stated redemption price of $70. The second series is treated as maturing at the end of the third year at a stated redemption price of $1,000. For the calculation of issue price and the allocation of original issue discount with respect to each such series, see example (3) of subparagraph (2)(iv)(f) of this paragraph.

(b) *Special rules.* In the case of face-amount certificates, the redemption price at maturity is the price as modified through changes such as extensions of the purchase agreement and includes any dividends which are payable at maturity. In the case of an obligation issued as part of an investment unit consisting of such obligation and an option (which is not excluded by (c) of this subdivision (iii)), security, or other property, the term "stated redemption price at maturity" means the amount payable on maturity in respect of the obligation, and does not include any amount payable in respect of the option, security, or other property under a repurchase agreement or option to buy or sell the option, security, or other property. For application of this subdivision to certain deposits in financial institutions, see paragraph (e) of § 1.1232–3A.

(c) *Excluded option.* An option is excluded by this subdivision (c) if it is an option to which paragraph (a) of § 1.61–15 applies or if it is an option, referred to in paragraph (a) of § 1.83–7, granted in connection with performance of services to which section 421 does not apply.

(d) *Obligation issued in installments.* If an obligation is issued by a corporation under terms whereby the holder makes installment payments, then the stated redemption price for each installment payment shall be computed in a manner consistent with the rules contained in subparagraph (2)(iv) of this paragraph for computing the issue price for each series of a serial obligation. For application of this subdivision (d) to certain open account deposit arrangements, see examples (1) and (2) of paragraph (e)(5) of § 1.1232–3A.

(iv) *Carryover of original issue discount.* [Reserved].

(2) *Issue price defined*—(i) *In general.* The term "issue price" in the case of obligations registered with the Securities and Exchange Commission means the initial offering price to the public at which price a substantial amount of such obligations were sold. For this purpose, the term "the public" does not include bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers. Ordinarily, the issue price will be the first price at which the obligations were sold to the public, and the issue price will not change if, due to market developments, part of the issue must be sold at a different price. When obligations are privately placed, the issue price of each obligation is the price paid by the first buyer of the particular obligation, irrespective of the issue price of the remainder of the issue. In the case of an obligation issued by a foreign obligor, the issue price shall be increased by the amount, if any, of interest equalization tax paid under section 4911 (and not credited, refunded, or reimbursed) on the acquisition of the obligation by the first buyer. In the case of an obligation which is convertible into stock or another obligation, the issue price includes any amount paid in respect of the conversion privilege. However, in the case of an obligation issued as part of an investment unit (as defined in subdivision (ii)(*a*) of this subparagraph), the issue price of the obligation includes only that portion of the initial offering price or price paid by the first buyer properly allocable to the obligation under the rules prescribed in subdivision (ii) of this subparagraph. The terms "initial offering price" and "price paid by the first buyer" include the aggregate payments made by the purchaser under the purchase agreement, including modifications thereof. Thus, all amounts paid by the purchaser under the purchase agreement or a modification of it are included in the issue price (but in the case of an obligation issued as part of an investment unit, only to the extent allocable to such obligation under subdivision (ii) of this subparagraph), such as amounts paid upon face-amount certificates or installment trust certificates in which the purchaser contracts to make a series of payments which will be returnable to the holder with an increment at a later date.

(ii) *Investment units consisting of obligations and property*—(*a*) *In general.* An investment unit, within the meaning of this subdivision (ii) and for purposes of section 1232, consists of an obligation and an option, security, or other property. For purposes of this subparagraph, the initial offering price of an investment unit shall be allocated to the individual elements of the unit on the basis of their respective fair market values. However, if the fair market value of the option, security, or other property is not readily ascertainable (within the meaning of paragraph (c) of § 1.421–6), then the portion of the initial offering price or price paid by the first buyer of the unit which is allocable to the obligation issued as part of such unit shall be ascertained as of the time of acquisition of such unit by reference to the assumed price at which such obligation would have been issued had it been issued apart from such unit. The assumed price of the obligation shall be ascertained by comparison to the yields at which obligations of a similar character which are not issued as part of an investment unit are sold in arm's length transactions, and by adjusting the price of the obligation in question to this yield. The adjustment may be made by subtracting from the face amount of the obligation the total present value of the interest foregone by the purchaser as a result of purchasing the obligation at a lower yield as part of an investment unit. In most cases, assumed price may also be determined in a similar manner through the use of standard bond tables. Any reasonable method may be used in selecting an obligation for comparative purposes. Obligations of the same grade and classification shall be used to the extent possible, and proper regard shall be given, with respect to both the obligation in question and the comparative obligation, to the solvency of the issuer, the nature of the issuer's trade or business, the presence and nature of security for the obligation, the geographic area in which the loan is made, and all other factors relevant to the circumstances. An obligation which is convertible into stock or another obligation must not be used as a comparative obligation (except where the investment unit contains an obligation convertible into stock or another obligation), since such an obligation would not reflect the yield attributable solely to the obligation element of the investment unit.

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(*c*) *Cross references.* For rules relating to the deductibility by the issuing corporation of bond discount resulting from an allocation under the rule stated in (*a*) of this subdivision, see §§ 1.163–3 and 1.163–4. For rules relating to the basis of obligations and options, securities, or other property acquired in investment units, see § 1.1012–1(d). For rules relating to certain reporting requirements with respect to options acquired in connection with evidences of indebtedness and for the tax treatment of such options, see § 1.61–15, and section 1234 and the regulations thereunder. With respect to the tax consequences to the issuing corporation upon the exercise of options issued in connection with evidences of indebtedness to which this section applies, see section 1032 and the regulations thereunder.

(*d*) *Examples.* The application of the principles set forth in this subdivision (ii) may be illustrated by the following examples in each of which it is assumed that there was no intention to call the note before maturity:

Example (*1*). M Corporation is a small manufacturer of electronic components located in the southwestern United States. On January 1, 1969, in consideration for the payment of $41,500, M issues to X its unsecured note for $40,000 together with warrants to purchase 3,000 shares of M stock at $10 per share at any time during the term of the note. The note is payable in 4 years and provides for interest at the rate of 5 percent per year, payable semiannually. The fair market values of the note and the warrants are not readily ascertainable. Assume that companies in the same industry as M Corporation, and similarly situated both financially and geographically, are generally able to borrow money on their unsecured notes at an annual interest rate of 6 percent. Using a present value table, the calculation of the issue price of a 5 percent, 4 year, $40,000 note, discounted to yield 6 percent compounded semiannually is made as follows:

(1) Semiannual interest period	(2) Amount payable at 5 percent	(3) Factor for present value discounted at 3 percent per period	(2)×(3) Present value of payment
1	$1,000	0.9709	$970.90
2	1,000	.9426	942.60
3	1,000	.9151	915.10
4	1,000	.8885	888.50
5	1,000	.8626	862.60
6	1,000	.8375	837.50
7	1,000	.8131	813.10
8	1,000	.7894	789.40
8	40,000	.7894	31,576.00
Total present value of note discounted at 6 percent, compounded semiannually			38,595.70

The same result may be reached through the use of a standard bond table or by the following present value calculation:

Present value of annuity of $1,000 payable over 8 periods at 3 percent per period=1000 ×7.0197=	$7,019.70
Add: Present value of principal (as calculated above)	31,576.00
Total	$38,595.70

Accordingly, the assumed price at which M's note would have been issued had it been issued without stock purchase warrants, i.e., that portion of the $41,500 price paid by X which is allocable to M's note, is $38,596 (rounded). Since the price payable on redemption of M's note at maturity is $40,000, the original issue discount on M's note is $1,404 ($40,000 minus $38,596). Under the rules stated in § 1.163–3, M is entitled to a deduction, to be prorated or amortized over the life of the note, equal to this original issue discount on the note. The excess of the price for the unit over the portion of such price allocable to the note, $2,904 ($41,500 minus $38,596), is allocable to and is the basis of the stock purchase warrants acquired by X in connection with M's note. Upon the exercise of X's warrants, M will be allowed no deduction and will have no income. Upon maturity of the note X will receive $40,000 from M, of which $1,404, the amount of the original issue discount, will be taxable as ordinary income. If X were to transfer the note at its face amount to A 2 years after the issue date, X would realize, under section 1232(a)(2)(B), ordinary income of $702 (one-half of $1,404).

Example (*2*). (*1*) On Januray 1, 1969, N Corporation negotiates with Y, a small business investment company, for a loan in the amount of $51,500 in consideration of which N Corporation issues to Y its unsecured 5-year note for $50,000, together with warrants to purchase 2,000 shares of N stock at $5 per share at any time during the term of the note. The note provides for interest of 6 percent, payable semiannually. The fair market values of the note and warrants are

not readily ascertainable. The loan agreement between Y and N contains a provision, agreed to in arms-length bargaining between the parties, that a rate of 7 percent payable semiannually would have been applied to the loan if warrants were not issued as part of the consideration for the loan. The issue price of the note is $47,921 (rounded), determined with the use of a standard bond table, or computed in the manner illustrated in Example (1) or in the following alternative manner:

(1) Interest period	(2) Interest rate differential [deleted]	(3) Principal	(4) Interest foregone for period (3½%)	(5) Factor for present value discounted at 3½ percent per period	(4)×(5) Present value of interest foregone
1	1% (7%-6%)	$50,000	250	0.9662	$241.55
2	1%	50,000	250	.9335	233.38
3	1%	50,000	250	.9019	225.48
4	1%	50,000	250	.8714	217.85
5	1%	50,000	250	.8420	210.50
6	1%	50,000	250	.8135	203.38
7	1%	50,000	250	.7860	196.50
8	1%	50,000	250	.7594	189.85
9	1%	50,000	250	.7337	183.43
10	1%	50,000	250	.7089	177.23
Total present value of interest foregone					$2,079.15
Principal					50,000.00
Less: Total present value of interest foregone					2,079.15
Issue price					47,920.85

The calculation of present value of interest foregone may also be made as follows:

Present value of annuity of $250 discounted for 10 periods at 3½ percent per period = $250 × 8.3166 = $2,079.15.

The total present value of interest foregone, $2,079, is also the original issue discount attributable to the note ($50,000 −$47,921). Under (b) of this subdivision, since the agreed assumed rate of interest of 7 percent is not more than 1 percentage point greater than the actual rate payable on the note, determination of the issue price of the note (and original issue discount) based upon such assumed rate will be presumed to be correct and will not be considered clearly erroneous, provided that both N and Y adhere to such determination. Under the rules in § 1.163–3, N is entitled to a deduction, to be prorated or amortized over the life of the note, equal to the original issue discount on the note. The excess of the price paid for the unit over the portion of such price allocable to the note, $3,579 ($51,500 −$47,921) is allocable to and is the basis of the stock purchase warrants acquired by Y in connection with N's note. Upon the exercise or sale of the warrants by Y, N will be allowed no deduction and will have no income. Upon maturity of the note Y will receive $50,000 from N, of which $2,079, the amount of the original issue discount, will be taxable as ordinary income. If Y were to transfer the note at its face value to B 2½ years after the issue date, Y would realize, under section 1232(a)(2)(B), ordinary income of $1,039.50 (one-half of $2,079).

* * * * *

Example (3). O Corporation is a small advertising company located in the northeastern United States. Z is a tax-exempt organization. In consideration for the payment of $60,000, O issues to Z, in a transaction not within the scope of section 503(b), its unsecured 5-year note for $60,000, together with warrants to purchase 6,000 shares of O stock at $10 per share at any time during the term of the note. The note is subject to quarterly amortization at the rate of $3,000 per quarter, and provides for interest on the outstanding unpaid balance at an annual rate of 6 percent payable quarterly (1½ percent per quarter). The fair market values of the notes and warrants are not readily ascertainable. The loan agreement between O and Z contains a recital that if the $60,000 note had been issued without the warrants only $45,000 would have been paid for it. An examination of relevant facts indicates that companies in the same industry as O Corporation, and similarly situated both financially and geographically, are able to borrow money on their unsecured notes at an annual interest cost of 8½ percent payable quarterly (2⅛ percent per quarter). By reference to a present value table, it is found that the present value of O's note discounted to yield 8½ percent compounded quarterly is $56,608 (rounded). The computation is as follows:

(1) Quarterly interest period	(2) Principal payable	(3) Interest payable (1⅜ percent)	(4) Total amount payable (2)+(3)	(5) Factor for present value discounted at 2⅛ percent per quarter	(6) Present value of total payment (4)×(5)
1	$3,000	$900	$3,900	0.9792	$3,818.88
2	3,000	855	3,855	.9588	3,696.17
3	3,000	810	3,810	.9389	3,577.21
4	3,000	765	3,765	.9193	3,461.16
5	3,000	720	3,720	.9002	3,348.74
6	3,000	675	3,675	.8815	3,239.51
7	3,000	630	3,630	.8631	3,133.05
8	3,000	585	3,585	.8452	3,030.04
9	3,000	540	3,540	.8276	2,929.70
10	3,000	495	3,495	.8104	2,832.35
11	3,000	450	3,450	.7935	2,737.58
12	3,000	405	3,405	.7770	2,645.69
13	3,000	360	3,360	.7608	2,556.29
14	3,000	315	3,315	.7450	2,469.68
15	3,000	270	3,270	.7295	2,385.47
16	3,000	225	3,225	.7143	2,303.62
17	3,000	180	3,180	.6994	2,224.09
18	3,000	135	3,135	.6849	2,147.16
19	3,000	90	3,090	.6706	2,072.15
20	3,000	45	3,045	.6567	1,999.65
Total					56,608.19

This amount ($56,608) is the assumed price at which the note would have been issued had it been issued without stock purchase warrants. The assumed price of $45,000 agreed to by the parties is not presumed to be correct since it is less than the face value adjusted to a yield which is one percentage point greater than the actual rate of interest payable on the obligation. The parties did not have adverse interests in agreeing upon an assumed price (since an excessively large amount of original issue discount would benefit O, the borrower, without adversely affecting Z, an exempt organization which would pay no tax on original issue discount income), and the price agreed to appears to be clearly erroneous when compared to the $56,608 assumed issue price determined under the principles of (a) of this subdivision. Since the maturity value of O's note is $60,000, the original issue discount on O's note is $3,392 ($60,000 minus $56,608). Under the rules in § 1.163–3, O is entitled to a deduction, to be prorated or amortized over the life of the note, equal to this original issue discount on the note. The excess of the price paid for the unit over the portion of such price allocable to the note, $3,392 ($60,000 minus $56,608), is allocable to and is the basis of the stock purchase warrants acquired by Z in connection with O's note. Upon the exercise or sale of the warrants by Z, O will be allowed no deduction and will have no income.

(iii) *Issuance for property after May 27, 1969* [Reserved].

(iv) *Serial obligations—(a) In general.* If an issue of obligations which matures serially is issued by a corporation, and if on the basis of the facts and circumstances in such case an independent issue price for each particular maturity can be established, then the obligations with each particular maturity shall be considered a separate series, and the obligations of each such series shall be treated as a separate issue with a separate issue price, maturity date, and stated redemption price at maturity. The ratable monthly portion of original issue discount attributable to each obligation within a particular series shall be determined and ratably included as interest in gross income under the rules of § 1.1232–3A.

(b) Issue price not independently established. If a separate issue price cannot be established with respect to each series of an issue of obligations which matures serially, the issue price for each obligation of each series shall be its stated redemption price at maturity minus the amount of original issue discount allocated thereto in accordance with (d) of this subdivision. The amount of original issue discount so allocated shall be ratably included as interest in gross income under rules of § 1.1232–3A.

(c) Single obligation rule. If a single corporate obligation provides for payments (other than payments which would not be included in the stated redemption price at maturity under subparagraph (1)(iii) of this paragraph) in two or more installments, the provisions of (b) of this subdivision shall be applied by treating such obligation as an issue of obligations consisting of more than one series each of which matures on the due date of each such installment payment.

(d) Allocation of discount. For purposes of (b) and (c) of this subdivision, the original issue discount with respect to

each series of an issue shall be the total original issue discount for the issue multiplied by a fraction—

(*1*) The numerator of which is the product of (*i*) the stated redemption price of such series and (*ii*) the number of complete years (and any fraction thereof) constituting the period for such series from the date of original issue (as defined in paragraph (b)(3) of this section) to its stated maturity date, and

(2) The denominator of which is the sum of the products determined in (*1*) of this subdivision (*d*) with respect to each such series.

If a series consists of more than one obligation, the original issue discount allocated to such series shall be apportioned to such obligations in proportion to the stated redemption price of each. Computations under this subdivision (*d*) may be made using periods other than years, such as, for example, months or periods of 3 months.

(*e*) *Effective date.* The provisions of this subdivision (iv) shall apply with respect to corporate obligations issued after July 22, 1971. However, no inference shall be drawn from the preceding sentence with respect to serial obligations issued prior to such date.

(*f*) *Examples.* The provisions of this subdivision (iv) may be illustrated by the following examples:

Example (1). On January 1, 1972, P Corporation issued a note with a total face value of $100,000 to B for cash of $94,000. The terms of the note provide that $50,000 is payable on December 31, 1973, and the other $50,000 on December 31, 1975. Each payment is treated as the stated redemption price of a series, and the total original issue discount with respect to the note, $6,000, is allocated to each such series as follows:

Year of maturity	1973	1975	Total
(1) Stated redemption price	$50,000	$50,000	
(2) Multiply by years outstanding	2	4	
(3) Product of bond years	$100,000	$200,000	
(4) Sum of products			$300,000
(5) Fractional portion of discount	$100,000	$200,000	
	$300,000	$300,000	
(6) Multiply line (5) by discount for entire issue	$6,000	$6,000	
(7) Discount for each series	$2,000	$4,000	
(8) Issue price (line (1), minus line (7))	$48,000	$46,000	

Example (2). Assume the same facts as in example (1) except that a separate note is issued for each payment. The result is the same as in example (1).

Example (3). On January 1, 1971, Y Bank, a corporation, issues a note to C for $1,000 cash. The terms of the note provide that $50 will be paid at the end of the first year, $120 at the end of the second year, and $1,050 at the end of the third year. Under (*c*) of this subdivision (iv), the $1,000 note is treated as consisting of two series, the first of which matures at the end of the second year, and the second of which matures at the end of the third year. The issue price and the allocation of original issue discount with respect to each series is computed as follows:

Year of maturity	1972	1973	Total
(1) Stated redemption price	$70	$1,000	
(2) Multiply by years outstanding	2	3	
(3) Product of bond years	$140	$3,000	
(4) Sum of products			$3,140
(5) Fractional portion of discount	$140	$3,000	
	$3,140	$3,140	
(6) Multiply line (5) by discount for entire issue	$70	$70	
(7) Discount for each series	$3.12	$66.88	
(8) Issue price (line 1 minus line (7))	$66.88	$933.12	

* * * * *

(c) *Gain treated as ordinary income in certain cases; computation.* The amount of gain treated as ordinary income under paragraph (a)(3)(ii) or (5) of this section is computed by multiplying the original issue discount by a fraction, the numerator of which is the number of full months the obligation was held by the holder and the denominator of which is the number of full months from the date of original issue to the date specified as the redemption date at maturity. (See paragraph (b)(3) of this section for definition of "date of original issue".) The period that the obligation was held by the taxpayer shall include any period that it was held by another person if, under chapter 1 of the Code, for the purpose of determining gain or loss from a sale or exchange, the obligation has the same basis, in whole or in part, in the hands of the taxpayer as it would have in the hands of such other person. This computation is illustrated by the following examples:

* * * * *

(d) *Exceptions to the general rule—*(1) *In general.* Section 1232(a)(2)(C) provides that section 1232(a)(2) does not apply (i) to obligations the interest on which is excluded from gross income under section 103 (relating to certain government obligations), or (ii) to any holder who purchases an obligation at a premium.

(2) *Premium.* For purposes of section 1232, this section, and § 1.1232–3A, "premium" means a purchase price which exceeds the stated redemption price of an obligation at its maturity. For purposes of the preceding sentence, if an obligation is acquired as part of an investment unit consisting of an option, security, or other property and an obligation, the purchase price of the obligation is that portion of the price paid or payable for the unit which is allocable to the obligation. The price paid for the unit shall be allocated to the individual elements of the unit on the basis of their respective fair market values. However, if the fair market value of the option, security, or other property is not readily ascertainable (within the meaning of paragraph (c) of § 1.421–6), then the price paid for the unit shall be allocated in accordance with the rules under paragraph (b)(2)(ii) of this section for allocating the initial offering price of an investment unit to its elements. If, under chapter 1 of the Code, the basis of an obligation in the hands of the holder is the same, in whole or in part, for the purposes of determining gain or loss from a sale or exchange, as the basis of the obligation in the hands of another person who purchased the obligation at a premium, then the holder shall be considered to have purchased the obligation at a premium. Thus, the donee of an obligation purchased at a premium by the doner will be considered a holder who purchased the obligation at a premium.

(e) *Amounts previously includible in income.* Nothing in section 1232(a)(2) shall require the inclusion of any amount previously includible in gross income. Thus, if an amount was previously includible in a taxpayer's income on account of obligations issued at a discount and redeemable for fixed amounts increasing at stated intervals, or, under section 818(b) (relating to accrual of discount on bonds and other evidences of indebtedness held by life insurance companies), such amount is not again includible in the taxpayer's gross income under section 1232(a)(2). For example, amounts includible in gross income by a cash receipts and disbursements method taxpayer who has made an election under section 454 (a) or (c) (relating to accounting rules for certain obligations issued at a discount to which section 1232(a)(3) does not apply) are not includible in gross income under section 1232(a)(2). In the case of a gain which would include, under section 1232(a)(2), an amount considered to be ordinary income and a further amount considered long-term capital gain, any amount to which this paragraph applies is first used to offset the amount considered ordinary income. For example, on January 1, 1955, A purchases a 10-year bond which is redeemable for fixed amounts increasing at stated intervals. At the time of original issue, there was no intention to call the bond before maturity. The purchase price of the bond is $75, which is also the issue price. The stated redemption price at maturity of the bond is $100. A elects to treat the annual increase in the redemption price of the bond as income pursuant to section 454(a). On January 1, 1960, A sells the bond for $90. The total stated increase in the redemption price of the bond which A has reported annually as income for the taxable years 1955 through 1959 is $7. The portion of the original issue discount of $25 attributable to this period is $12.50, computed as follows:

$$\frac{\text{60 (months bond is held by A)}}{\text{120 (months from date of original issue to redemption date)}} \times \$25 \text{ (original issue discount)}$$

However, $7, which represents the annual stated increase taken into income, is offset against the amount of $12.50, leaving $5.50 of the gain from the sale to be treated as ordinary income.

(f) *Recordkeeping requirements.* In the case of any obligation held by a taxpayer which was issued at an original issue discount after December 31, 1954, the taxpayer shall keep a record of the issue price and issue date upon or with each obligation (if known to or reasonably ascertainable by him). If the obligation held by the taxpayer is an obligation of the United States received from the United States in an exchange upon which gain or loss is not recognized because of section 1037(a) (or so much of section 1031 (b) or (c) as relates to section 1037(a)), the taxpayer shall keep sufficient records to determine the issue price of such obligation for purposes of applying section 1037(b) and paragraphs (a) and (b) of § 1.1037–1 upon the disposition or redemption of such obligation. The issuer (or in the case of obligations first sold to the public through an underwriter or wholesaler, the underwriter or wholesaler) shall mark the issue price and issue date upon every obligation which is issued at an original issue discount after September 26, 1957, but only if the period between the date of original issue (as defined in paragraph (b)(3) of this section) and the stated maturity date is more than 6 months.

PAR. 16. The following new section is added immediately after § 1.1232–3:

§ 1.1232–3A Inclusion as interest of original issue discount on certain obligations issued after May 27, 1969.

(a) *Ratable inclusion as interest*—(1) *General rule.* Under section 1232(a)(3), the holder of any obligation issued by a corporation after May 27, 1969 (other than an obligation issued by or on behalf of the United States or a foreign country, or a political subdivision of either) shall include as interest in his gross income an amount equal to the ratable monthly portion of original issue discount multiplied by the sum of the number of complete months and any fractional part of a month such holder held the obligation during the taxable year. For increase in basis for amounts included as interest in gross income pursuant to this paragraph, see paragraph (c) of this section. For requirements for reporting original issue discount, see section 6049(a) and the regulations thereunder.

(2) *Ratable monthly portion of original issue discount*—(i) *General rule.* Except when subdivision (ii) of this subparagraph applies, the term "ratable monthly portion of original issue discount" means an amount equal to the original issue discount divided by the sum of the number of complete months (plus any fractional part of a month) beginning on the date of original issue and ending the day before the stated maturity date of such obligation.

(ii) *Reduction for purchase allowance.* With respect to an obligation which has been acquired by purchase (within the meaning of subparagraph (4) of this paragraph), the term "ratable monthly portion of original issue discount" means the lesser of the amount determined under subdivision (i) of this subparagraph or an amount equal to—

(*a*) The excess (if any) of the stated redemption price of the obligation at maturity over its cost to the purchaser divided by

(*b*) The sum of the number of complete months (plus any fractional part of a month) beginning on the date of such purchase and ending the day before the stated maturity date of such obligation.

The amount of the ratable monthly portion within the meaning of this subdivision reflects a purchase allowance provided under section 1232(a)(3)(B) where a purchase is made at a price in excess of the sum of the issue price plus the portion of original issue discount previously includible (regardless of whether included) in the gross income of all previous holders (computed, however, as to such previous holders without regard to any purchase allowance under this subdivision and without regard to whether any previous holder purchased at a premium).

(iii) [Reserved].

(iv) *Cross references.* For definitions of the terms "original issue discount" and "date of original issue", see subparagraphs (1) and (3) respectively, of § 1.1232–3(b). For definition of the term "premium," see paragraph (d)(2) of § 1.1232–3.

(3) *Determination of number of complete months*—(i) *In general.* For purposes of this section—

(*a*) A complete month and a fractional part of a month commence with the date of original issue and the corresponding day of each succeeding calendar month (or the last day of a calendar month in which there is no corresponding day),

(*b*) If an obligation is acquired on any day other than the date a complete month commences, the ratable monthly portion of original issue discount for the complete month in which the acquisition occurs shall be allocated between the transferor and the transferee in accordance with the number of days in such complete month each held the obligation,

(*c*) In determining the allocation under (*b*) of this subdivision, any holder may treat each month as having 30 days,

(*d*) The transferee, and not the transferor, shall be deemed to hold the obligation during the entire day on the date of acquisition, and

(*e*) The obligor will be treated as the transferee on the date of redemption.

(ii) *Example.* The provisions of this subparagraph may be illustrated by the following example:

Example. On February 22, 1970, A acquires an obligation of X Corporation for which February 1, 1970, is the date of original issue. B acquires the obligation on June 16, 1970. A does not choose to treat each month as having 30 days. Thus, A held the obligation for 3¾ months during 1970, i.e., one-fourth of February (7/28 days), March, April, May, one-half of June (15/30 days). The ratable monthly portion of original issue discount for the obligation is multiplied by 3¾ months to determine the amount included in A's gross income for 1970 pursuant to this paragraph.

(4) *Purchase.* For purposes of this section, the term "purchase" means any acquisition (including an acquisition upon original issue) of an obligation to which this section applies, but only if the basis of such obligation is not determined in whole or in part by reference to the adjusted basis of such obligation in the hands of the person from whom it was acquired or under section 1014 (a) (relating to property acquired from a decedent).

(b) *Exceptions*—(1) *Binding commitment.* Section 1232(a)(3) shall not apply to any obligation issued pursuant to a written commitment which was binding on May 27, 1969, and at all times thereafter.

(2) *Exception for 1-year obligations.* Section 1232 (a)(3) shall not apply to any obligation in respect of which the period between the date of original issue (as defined in paragraph (b)(3) of § 1.1232–3) and the stated maturity date is 1 year or less. In such case, gain on the sale or exchange of such obligation shall be included in gross income as interest to the extent the gain does not exceed an amount equal to the ratable monthly portion of original issue discount multiplied by the sum of the number of complete months and any fractional part of a month such taxpayer held such obligation.

(3) *Purchase at a premium.* Section 1232(a)(3) shall not apply to any holder who purchased the obligation at a premium (within the meaning of paragraph (d)(2) of § 1.1232–3).

(4) *Life insurance companies.* Section 1232(a)(3) shall not apply to any holder which is a life insurance company to which section 818(b) applies. However, ratable inclusion of original issue discount as interest under section 1232(a)(3) is required by an insurance company which is subject to the tax imposed by section 821 or 831.

(c) *Basis adjustment.* The basis of an obligation in the hands of the holder thereof shall be increased by any amount of original issue discount with respect thereto included as interest in his gross income pursuant to paragraph (a) of this section. See section 1232(a)(3)(E). However, the basis of an obligation shall not be increased by any amount that was includible as interest in gross income under paragraph (a) of this section, but was not actually included by the holder in his gross income.

(d) *Examples.* The provisions of paragraphs (a) through (c) of this section may be illustrated by the following examples:

Example (1). On January 1, 1970, A, a calendar-year taxpayer, purchases at original issue, for cash of $7,600, M Corporation's 10-year, 5-percent bond which has a stated redemption price of $10,000. The ratable monthly portion of original issue discount, as determined under section 1232(a)(3) and this section, to be included as interest in A's gross income for each month he holds such bond is $20, computed as follows:

Original issue discount (stated redemption price, $10,000, minus issue price, $7,600)	$2,400	
Divide by: Number of months from date of original issue to stated maturity date		120 months
Ratable monthly portion	$20	

Assume that A holds the bond for all of 1970 and 1971 and includes as interest in his gross income for each such year an amount equal to the ratable monthly portion, $20, multiplied by the number of months he held the bond each such year, 12 months, or $240. Accordingly, on January 1, 1972, A's basis in the bond will have increased under paragraph (c) of this section by the amount so included, $480 (i.e., $240×2), from his cost, $7,600, to $8,080. For results if A sells the bond on that date, see examples (1) and (2) of paragraph (a)(2) of § 1.1282–3.

Example (2). Assume the same facts as in example (1). Assume further that on January 1, 1972, A sells the bond to B, a calendar-year taxpayer for $9,040.

Since B purchased the bond, he determines under paragraph (a)(2)(ii) of this section the amount of the ratable monthly portion he must include as interest in his gross income in order to reflect the amount of his purchase allowance (if any). B determines that his ratable monthly portion is $10, computed as follows:

(1) Stated redemption price at maturity	$10,000	
(2) Minus: B's cost	$9,040	
(3) Excess	$960	
(4) Divide by: Number of months from date of purchase to stated maturity date		96 months
(5) Tentative ratable monthly portion	$10	
(6) Ratable monthly portion as computed in example (1)	$20	

Since line (5) is lower than line (6), B's ratable monthly portion is $10. Accordingly, if B holds the bond for all of 1972, he must include $120 (i.e., ratable monthly portion, $10×12 months) as interest in his gross income.

Example (3). (*1*) Assume the same facts as in example (1). Assume further than on January 1, 1975, A sells the bond to B for $10,150. Under the exception of paragraph (b)(3) of this section, B is not required to include any amount in respect of original issue discount as interest in his gross income since he has purchased the bond at a premium.

(*2*) On January 1, 1979, B sells the bond to C, a calendar-year taxpayer, for $9,940. Since C is now the holder of the bond (and no exception applies to him), he must include as interest in his gross income the ratable monthly portion of original issue determined under section 1232(a)(3) and this section. Since C purchased the bond he determines under paragraph (a)(2)(ii) of this section the amount of the ratable monthly portion he must include as interest in his gross income in order to reflect the amount of his purchase allowance (if any). C determines that his ratable monthly portion is $5, computed as follows:

(1) Stated redemption price at maturity	$10,000	
(2) Minus: C's cost	$9,940	
(3) Excess	$60	
(4) Divide by: Number of months from date of purchase to stated maturity date		12 months
(5) Tentative ratable monthly portion	$5	
(6) Ratable monthly portion as computed in example (1)	$20	

Since line (5) is lower than line (6), C's ratable monthly portion is $5. Accordingly, if C holds the bond for all of 1979, he must include $60 (i.e., ratable monthly portion, $5, × 12 months) as interest in his gross income. Upon maturity of the bond on January 1, 1980, C will receive $10,000 from M, which under paragraph (c) of this section will equal his adjusted basis (the sum of his cost, $9,940, plus original issue discount included as interest in his gross income, $60).

Example (4). [Reserved].

(e) *Application of section 1232 to certain deposits in financial institutions and similar arrangements*—(1) *In general.* Under paragraph (d) of § 1.1232–1, the term "other evidence of indebtedness" includes certificates of deposit, time deposits, bonus plans, and other deposit arrangements with banks, domestic building and loan associations, and similar financial institutions.

(2) *Adjustments where obligation redeemed before maturity*—(i) *In general.* If an obligation described in subparagraph (1) of this paragraph is redeemed for a price less than the stated redemption price at maturity from a taxpayer who acquired the obligation upon original issue, such taxpayer shall be allowed as a deduction, in computing adjusted gross income, the amount of the original issue discount he included in gross income but did not receive (as determined under subdivision (ii) of this subparagraph). The taxpayer's basis of such obligation (determined after any increase in basis for the taxable year under section 1232(a)(3)(E) by the amount of original issue discount included in the holder's gross income under section 1232(a)(3)) shall be decreased by the amount of such adjustment.

(ii) *Computation.* The amount of the adjustment under subdivision (i) of this subparagraph shall be an amount equal to the excess (if any) of (*a*) the ratable monthly portion of the original issue discount included in the holder's gross income under section 1232(a)(3) for the period he held the obligation, over (*b*) the excess (if any) of the amount received upon the redemption over the issue price. Under paragraph (b)(1)(iii)(*a*) of § 1.1232–3, if any amount based on a fixed rate of simple or compound interest is actually payable or will be treated as constructively received under section 451 and the regulations thereunder at fixed periodic intervals of 1 year or less during the term of the obligation, any such amount payable upon redemption shall not be included in determining the amount received upon such redemption.

(iii) *Partial redemption.* (*a*) In the case of an obligation (other than a single obligation having serial maturity dates), if a portion of the obligation is redeemed prior to the stated maturity date of the entire obligation, the provisions of this subdivision shall be applied and not the provisions of subdivision (ii) of this subparagraph. In such case, the adjusted basis of the unredeemed portion of the obligation on the date of the partial redemption shall be an amount equal to the adjusted basis of the entire obligation on that date minus the amount paid upon the redemption.

(*b*) If the adjusted basis of the unredeemed portion (as computed under (*a*) of this subdivision) is equal to or in excess of the amount to be received for the unredeemed portion at maturity, no gain or loss shall be recognized at the time of the partial redemption but the holder shall be allowed a deduction, in computing adjusted gross income for the taxable year during which such partial redemption occurs, equal to the amount of such excess (if any), and no further original issue discount will be includible in the holder's gross income under section 1232(a)(3) over the remaining term of the unredeemed portion. In such case, the holder shall decrease his basis in the unredeemed portion (as computed under (*a*) of this subdivision) by the amount of such adjustment.

(*c*) If the adjusted basis of the unredeemed portion (as computed under (*a*) of this subdivision) is less than the redemption price of the unredeemed portion at maturity, a new computation shall be made under paragraph (a) of this section (without regard to the exception for one-year obligations in paragraph (b)(2) of this section) of the ratable monthly portion of original issue discount to be included as interest in the gross income of the holder over the remaining term of the unredeemed portion. For purposes of such computation, the adjusted basis of the unredeemed portion shall be treated as the issue price, the date of the partial redemption shall be treated as the issue date, and the amount to be paid for the unredeemed portion at maturity shall be treated as the stated redemption price.

(3) *Examples.* The application of section 1232 to obligations to which this paragraph applies may be illustrated by the following examples:

Example (1). A is a cash method taxpayer who uses the calendar year as his taxable year. On January 1, 1971, he purchases a certificate of deposit from X Bank, a corporation, for $10,000. The certificate of deposit is not redeemable until December 31, 1975, except in an emergency as defined in, and subject to the qualifications provided by, Regulation Q of the Board of Governors of the Federal Reserve. See 12 CFR § 217.4(d). The stated redemption price at maturity is $13,382.26. The terms of the certificate do not expressly refer to any amount as interest. A's certificate of deposit is an obligation to which section 1232 and this paragraph apply. A shall include the ratable portion of original issue discount in gross

income for 1971 as determined under section 1232(a)(3). Thus, if A holds the certificate of deposit for the full calendar year 1971, the amount to be included in A's gross income for 1971 is $676.45, that is, 12/60 months, multiplied by the excess of the stated redemption price ($13,382.26) over the issue price ($10,000).

Example (2). Assume the same facts as in example (1), except that the certificate of deposit provides for payment upon redemption at December 31, 1975, of an amount equal to "$10,000, plus 6 percent compound interest from January 1, 1971, to December 31, 1975." Thus, the total amount payable upon redemption in both example (1) and this example is $13,382.26. The certificate of deposit is an obligation to which section 1232 and this paragraph apply and, since the substance of the deposit arrangement is identical to that contained in example (1), A must include the same amount in gross income.

Example (3). Assume the same facts as in example (1), except that the certificate provides for the payment of interest in the amount of $200 on December 31 of each year and $2,000 plus $10,000 (the original amount) payable upon redemption at December 31, 1975. Thus, if A holds the certificate of deposit for the full calendar year 1971, A must include in his gross income for 1971 the $200 interest payable on December 31, 1971, and $400 of original issue discount, that is, 12/60 months multiplied by the excess of the stated redemption price ($12,000) over the issue price ($10,000).

Example (4). B is a cash method taxpayer who uses the calendar year as his taxable year. On January 1, 1971, B purchases a 4-year savings certificate from the Y Building and Loan Corporation for $4,000, redeemable on December 31, 1974, for $5,000. On December 31, 1973, Y redeems the certificate for $4,660. Under section 1232(a)(3), B included $250 of original issue discount in his gross income for 1971, $250 for 1972, and includes $250 in his gross income for 1973 for a total of $750. Since the excess of (i) the amount received upon the redemption, $4,660, over (ii) the issue price, $4,000, or $660, is lower than the total amount of original issue discount ($750) included in B's gross income for the period he held the certificate by $90, the $90 will be treated under subparagraph (2) of this paragraph as a deduction in computing adjusted gross income, and accordingly, will decrease the basis of his certificate by such amount. B has no gain or loss upon the redemption, as determined in accordance with the following computation:

Adjusted basis January 1, 1973	$4,500
Increase under section 1232(a)(3)(E)	250
Subtotal	4,750
Decrease under subparagraph (b)(2) of this paragraph	90
Basis upon redemption	4,660
Amount realized upon redemption	4,660
Gain or loss	0

Example (5). On January 1, 1971, C, a cash method taxpayer who uses the calendar year as his taxable year, opens a savings account in Z bank with a $10,000 deposit. Under the terms of the account, interest is made available semiannually at 6 percent annual interest, compounded semiannually. Since all of the interest on C's account in Z Bank is made available semiannually, the stated redemption price at maturity under paragraph (b)(1)(iii)(a) of § 1.1232-3 equals the issue price, and, therefore, no original issue discount is reportable by C under section 1232(a)(3). However, C must include the sum of $300 (i.e., ½ × 6% × $10,000) plus $309 (i.e., ½ × 6% × $10,300) or $609, of interest made available during 1971 in his gross income for 1971.

Example (6). (i) D is a cash method taxpayer who uses the calendar year as his taxable year. On January 1, 1971, D purchases a $10,000 deferred income certificate from M Bank. Under the terms of the certificate, interest accrues at 6 percent per annum, compounded quarterly. The period of the account is 10 years. In addition, the holder is permitted to withdraw the entire amount of the purchase price at any time (but not interest prior to the expiration of the 10 year term), and upon such a withdrawal of the purchase price, no further interest accrues. If the certificate is held to maturity, the issue price plus accrued interest will aggregate $18,140.18.

(ii) In respect of the certificate, the original issue discount is $8,140.18, determined by subtracting the issue price of the certificate ($10,000) from the stated redemption price at maturity ($18,140.18). Thus, under section 1232(a)(3) the ratable monthly portion of original issue discount is $67.835 (i.e., 1/120 months, multiplied by $8,140.18). Under section 1232(a)(3), D includes $814.02 (i.e., 12 months, multiplied by $67.835) in his gross income for each calendar year the certificate remains outstanding and under section 1232(a)(3)(E) increases his basis by that amount. Thus, on December 31, 1975, D's basis for the certificate is $14,070.10 (i.e., issue price, $10,000, increased by product of $814.02 × 5 years).

(iii) On December 31, 1975, D withdraws the $10,000. Under the terms of the certificate $3,468.55 cannot be withdrawn until December 31, 1980. Under the provisions of subparagraph (2)(iii) of this paragraph, the $10,000 partial redemption shall be treated as follows:

(1) Adjusted basis of obligation at time of partial redemption	$14,070.10
(2) Amount paid upon redemption	10,000.00
(3) Adjusted basis of unredeemed portion (line (1) less line (2))	4,070.10
(4) Amount to be paid for unredeemed portion at maturity (December 31, 1980)	3,468.55
(5) Adjustment in computing adjusted gross income (excess of line (3) over line (4))	601.55

Since the adjusted basis of the unredeemed portion exceeds the amount to be received for the unredeemed portion at maturity, D is allowed a deduction, in computing adjusted gross income, of $601.25 in 1975 and no further original issue discount is includible as interest in his gross income. In addition, D will decrease his basis in the unredeemed portion by $601.55, the amount of such adjustment, from $4,070.10 to $3,468.55.

Example (7). E is a cash method taxpayer who uses the calendar year as his taxable year. On January 1, 1971, E purchases a $10,000 "Bonus Savings Certificate" from N Building and Loan Corporation. Under the terms of the certificate, interest is payable at 5 percent per annum, compounded quarterly, and the period of the account is 3 years. In addition, the certificate provides that if the holder makes no withdrawals of principal or interest during the term of the certificate, a bonus payment equal to 5 percent of the purchase price of the certificate will be paid to the holder of the certificate at maturity. Thus, the amount of the bonus payment is $500 (i.e., 5 percent multiplied by $10,000). Since the 5 percent annual interest is payable quarterly, the amount of such interest is not included in determining the stated redemption price at maturity under paragraph (b)(1)(iii) of § 1.1232-3. However, since the bonus payment is only payable at maturity, the amount of such bonus is included as part of the stated redemption price at maturity. Thus, the stated redemption price at maturity equals $10,500 (purchase price, $10,000, plus bonus payment, $500). Accordingly, the original issue discount attributable to such certificate equals $500 (stated redemption price at maturity, $10,500, minus issue price, $10,000). Therefore, E must include as interest $166.67 (i.e., 12/36 months, multiplied by the original issue discount, $500) in his gross income for each taxable year he holds the certificate.

(4) *Renewable certificates of deposit*—(i) *In general.* The renewal of a certificate of deposit shall be treated as a purchase of the certificate on the date the renewal period begins regardless of any requirement pursuant to the terms of the certificate that the holder give notice of an intention to renew or not to renew. Thus, for example, in the case of a certificate of deposit for which a renewal period begins after December 31, 1970, such renewal shall be treated as a purchase after such date whether or not the initial period began before such date.

(ii) *Computation.* For purposes of computing the amount of original issue discount to be ratably included as interest in gross income under section 1232(a)(3) in respect of a renewable certificate of deposit for the initial period or any renewal period, the following rules apply:

(a) The issue price on the date any renewal period begins is considered to be in the case of a certificate of deposit initially purchased—

(1) After December 31, 1971, the adjusted basis of the certificate on the date such period begins,

(2) Before January 1, 1971, the amount the adjusted basis would have been on the date such period begins had the holder included all amounts of original issue discount as interest in gross income that would have been includible if section 1232(a)(3) had applied to the certificate from the date of original purchase.

Thus, if under the terms of the certificate, no amount is forfeited upon a failure to renew, then the issue price on the date any renewal period begins is considered to be the amount which would have been received by the holder on such date had it not been renewed.

(b) The date of original issue for any renewal period shall be considered to be the date it begins.

(c) The date of maturity for the initial period or any renewal period shall be considered to be the date it ends.

(d) The stated redemption price at maturity for the initial period or any renewal period shall be considered to be an amount determined in a manner consistent with (a) of this subdivision.

(iii) *Application of 1-year rule.* For purposes of paragraph (b)(2) of this section (relating to nonapplication of section 1232(a)(3) to any obligation having a term of 1 year or less), the period between the date of original issue (as defined in paragraph (b)(3) of § 1.1232-3)

of a renewable certificate of deposit and its stated maturity date shall include all renewal periods with respect to which, under the terms of the certificate, the holder may either take action or refrain from taking action which would prevent the actual or constructive receipt of any interest on such certificate until the expiration of any such renewal period whether or not the original date of issue is prior to January 1, 1971.

(iv) *Examples.* The provisions of this subparagraph may be illustrated by the following example:

Example. (a) On May 1, 1969, A purchases a 2-year renewable certificate of deposit from M bank, a corporation, for $10,000. Interest will be compounded semiannually at 6 percent on May 1 and November 1. The terms of the certificate provide that such certificate will be automatically renewed on the anniversary date every 2 years if the holder does not notify M of an intention not to renew prior to 60 days before the particular anniversary date. Thus, on May 1, 1971, and May 1, 1973, the certificate may be redeemed for $11,255.09 and $12,667.60, respectively. However, in no event shall the initial period and the renewal periods exceed 10 years. A does not notify M of an intention not to renew by March 1, 1971, and the certificate is automatically renewed for an additional 2-year period on May 1, 1971.

(b) Under subdivision (i) of this subparagraph, the May 1, 1971, renewal shall be treated as the purchase of a certificate of deposit on that date, i.e., after December 31, 1970. Under subdivision (ii) of this subparagraph, the issue price is considered to be $11,255.09 and the date of maturity is considered to be May 1, 1973. Since the stated redemption price at maturity is $12,667.60, A must include $58.85 as interest in gross income for each month he holds the certificate during the renewal period beginning May 1, 1971, computed as follows:

Original issue discount (stated redemption price, $12,667.60, minus issue price, $11,255.09)	$1,412.51
Divided by: Number of months from renewal to maturity date	24 months
Ratable monthly portion	$58.85

(5) *Time deposit open account arrangements*—(i) *In general.* The term "time deposit open account arrangement" means an arrangement with a fixed maturity date where deposits may be made from time to time and ordinarily no interest will be paid or constructively received until such fixed maturity date. All deposits pursuant to such an arrangement constitute parts of a single obligation. The amount of original issue discount to be ratably included as interest in his gross income of the depositor for any taxable year shall be the sum of the amounts separately computed for each deposit. For this purpose, the issue price for a deposit is the amount thereof and the stated redemption price at maturity is computed under paragraph (b)(1)(iii)(*d*) of § 1.1232–3.

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

Example (1). (i) F is a cash method taxpayer who uses the calendar year as his taxable year. On December 1, 1970, F enters into a 5-year deposit open account arrangement with M Savings and Loan Corp. The terms of the arrangement provide that F will deposit $100 each month for a period of 5 years, and that interest will be compounded semiannually (on June 1 and December 1) at 6 percent, but will be paid only at maturity. Thus, assuming F makes deposits of $100 on the first of each month beginning with December 1, 1970, the account will have a stated redemption price of $6,998.20 at maturity on December 1, 1975. Since, however, section 1232 applies only to deposits made after December 31, 1970 (see paragraph (d) of § 1.1232–1), the $34.39 of compound interest to be earned on the first deposit of $100 over the term of the arrangement will not be subject to the ratable inclusion rules of section 1232(a)(3). F must include such $34.39 of interest in his gross income on December 1, 1975, the date it is paid.

(ii) For 1971, F must include $44.19 of original issue discount as interest in gross income, to be computed as follows:

(1) Date of $100 deposit	(2) Months to maturity	(3) Redemption price at maturity	(4) Original issue discount (col. 3−$100)	(5) Ratable monthly portion (col. 4÷col. 2)	(6) Months on deposit in 1971	(7) 1971 original issue discount (col. 5×col. 6)
1-1-71	59	$133.73	$33.73	$0.5717	12	$6.86
2-1-71	58	133.07	33.07	.5702	11	6.27
3-1-71	57	132.42	32.42	.5688	10	5.69
4-1-71	56	131.77	31.77	.5673	9	5.11
5-1-71	55	131.12	31.12	.5658	8	4.53
6-1-71	54	130.48	30.48	.5644	7	3.95
7-1-71	53	129.84	29.84	.5630	6	3.38
8-1-71	52	129.20	29.20	.5615	5	2.81
9-1-71	51	128.56	28.56	.5600	4	2.24
10-1-71	50	127.93	27.93	.5586	3	1.68
11-1-71	49	127.30	27.30	.5571	2	1.11
12-1-71	48	126.68	26.68	.5558	1	0.56
Total original issue discount to be included as interest in F's gross income for 1971						44.19

Example (2). (i) G is a cash method taxpayer who uses the calendar year as his taxable year. On February 1, 1971, G enters into a 4-year deposit open account arrangement with T Bank, a corporation. The terms of the deposit arrangement provide that G may deposit any amount from time to time in multiples of $50 for a period of 4 years. The terms also provide that G may not redeem any amount until February 1, 1975, except in an emergency as defined in, and subject to the qualifications provided by, Regulation Q of the Board of Governors of the Federal Reserve System. See 12 CFR § 217.4(d). Interest will be compounded semiannually (on February 1 and August 1) at 6 percent, providing there is no redemption prior to February 1, 1975. However, if there is a redemption prior to such date, interest will be compounded semiannually at 5½ percent.

(ii) The schedule of deposits made by G pursuant to the arrangement, and computation of ratable monthly portion for each deposit, is set forth in the table below:

(1) Date of deposit	(2) Months to maturity	(3) Amount of deposit	(4) Redemption price at maturity	(5) Original issue discount (Col. 4−Col. 3)	(6) Ratable monthly portion (Col. 5÷Col. 2)
2-1-71	48	$100	$126.68	$ 26.68	$0.5558
6-1-71	44	200	248.42	48.42	1.1005
12-1-71	38	500	602.95	102.95	2.7092
2-1-72	36	800	955.24	155.24	4.3122
3-1-72	35	800	950.56	150.56	4.3017
7-1-72	31	600	699.00	99.00	3.1935
8-1-72	30	250	289.82	39.82	1.3273

(iii) With respect to amounts on deposit pursuant to the arrangement, the amounts of original issue discount G must include as interest in his gross income for 1971 and 1972 are computed in the table below:

(1) Date of deposit	(2) Ratable monthly portion	(3) Months on deposit in 1971	(4) 1971 original issue discount (Col. 2 × Col. 3)	(5) Months on deposit in 1972	(6) 1972 original issue discount (Col. 2 × Col. 5)
2-1-71	$0.5558	11	$6.11	12	$6.67
6-1-71	1.1005	7	7.70	12	13.21
12-1-71	2.7092	1	2.71	12	32.51
2-1-72	4.3122			11	47.43
3-1-72	4.3017			10	43.02
7-1-72	3.1935			6	19.16
8-1-72	1.3273			5	6.64
Total original issue discount includible as interest in gross income for taxable year			16.52		168.64

(6) *Certain contingent interest arrangements*—(i) *In general.* If under the terms of a deposit arrangement—

(*a*) The holder cannot receive payment of any interest or constructively receive any interest prior to a fixed maturity date,

(*b*) Interest is earned at a guaranteed minimum rate of compound interest,

(*c*) Additional contingent interest may be earned for any year at a rate not to exceed one percentage point above such guaranteed minimum rate, and

(*d*) Any additional contingent interest is credited at least annually to the depositor's account,

Then any contingent interest credited to the depositor shall be treated as creating a separate obligation subject to the rules of subdivision (ii) of this subparagraph.

(ii) *Computation.* For purposes of computing the original issue discount to

be included as interest in the depositor's gross income under section 1232(a)(3) with respect to such separate obligation—

(a) The issue price shall be zero,

(b) The date of original issue shall be the date on which the contingent interest is credited to the depositor's account and begins to earn interest,

(c) The date of maturity shall be the fixed maturity date of the deposit, and

(d) The stated redemption price at maturity is the sum of the amount of such contingent interest plus any interest to be earned thereon at the guaranteed minimum rate of compound interest between such dates of original issue and maturity.

PAR. 17. Section 1.1232–4 is amended by revising such section to read as follows:

§ 1.1232–4 Obligations with excess coupons detached.

Section 1232(c) provides that if an obligation which is issued at any time with interest coupons—

(a) Is purchased after August 16, 1954, and before January 1, 1958, and the purchaser does not receive all the coupons which first become payable more than 12 months after the date of the purchase, or

(b) Is purchased after December 31, 1957, and the purchaser does not receive all the coupons which first become payable after the date of purchase,

any gain on the later sale or other disposition of the obligation by the purchaser (or by a transferee of the purchaser whose basis is determined by reference to the basis of the obligation in the hands of the purchaser) shall be treated as ordinary income to the extent that the fair market value of the obligation (determined as of the time of the purchase) with coupons attached exceeds the purchase price. If both the preceding sentence and section 1232(a)(2) apply with respect to the gain realized on the retirement or other disposition of an obligation, then section 1232(a)(2) shall apply only with respect to that part of the gain to which the preceding sentence does not apply. For example, a $100 bond which sells at $90 with all its coupons attached is purchased by A for $80 with 3 years' coupons detached. Three years later, A sells the bond for $92. The first $10 of the $12 profit is taxable as ordinary income. The remaining $2 gain is taxable either as ordinary income or as long-term capital gain, depending upon the application of section 1232(a)(2). Pursuant to section 7851(a)(1)(C), the regulations prescribed in this section shall also apply to taxable years beginning before January 1, 1954, and ending after December 31, 1953, although such years are subject to the Internal Revenue Code of 1939.

PAR. 18. Section 1.6049 is amended by revising subsections (a)(1) and (c) of section 6049 and the historical note to read as follows:

§ 1.6049 Statutory provisions; returns regarding payments of interest.

SEC. 6049. *Returns regarding payments of interest*—(a) *Requirement of reporting*—(1) *In general.* Every person—

(A) Who makes payments of interest (as defined in subsection (b)) aggregating $10 or more to any other person during any calendar year,

(B) Who receives payments of interest as a nominee and who makes payments aggregating $10 or more during any calendar year to any other person with respect to the interest so received, or

(C) Which is a corporation that has outstanding any bond, debenture, note, or certificate or other evidence of indebtedness in registered form as to which there is during any calendar year an amount of original issue discount aggregating $10 or more includible in the gross income of any holder under section 1232(a)(3) without regard to subparagraph (B) thereof,

shall make a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the aggregate amount of such payments and such aggregate amount includible in the gross income of any holder and the name and address of the person to whom paid or such holder.

* * * * *

(c) *Statements to be furnished to persons with respect to whom information is furnished.* Every person making a return under subsection (a)(1) shall furnish to each person whose name is set forth in such return a written statement showing—

(1) The name and address of the person making such return, and

(2) The aggregate amount of payments to, or the aggregate amount includible in the gross income of, the person as shown on such return.

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)(1) was made. No statement shall be required to be furnished to any person under this subsection if the aggregate amount of payments to, or the aggregate amount includible in the gross income of, such person shown on the return made with respect to subparagraph (A), (B), or (C), as the case may be, of subsection (a)(1) is less than $10.

[Sec. 6049 as added by sec. 19(c), Rev. Act 1962 (76 Stat. 1055); amended by sec. 413 (c) and (d), Tax Reform Act 1969 (83 Stat. 611, 612)]

PAR. 19. Section 1.6049–1 is amended by revising the heading, paragraph (a) is amended by revising so much of subparagraph (1) as follows subdivision (i), by revising subparagraph (2) and (4), and by adding a new subparagraph (5), and paragraphs (b) and (c) are amended by revising each of them. Such amended and revised provisions read as follows:

§ 1.6049–1 Returns of information as to interest paid in calendar years after 1962 and original issue discount includible in gross income for calendar years after 1970.

* * * * *

(a) *Requirement of reporting*—(1) *In general.* * * *

(ii) (*a*) Every person which is a corporation that has outstanding any bond, debenture, note, or certificate or other evidence of indebtedness (referred to in this section and § 1.6049–2 as an obligation) in "registered form" (as defined in paragraph (d) of § 1.6049–2) issued after May 27, 1969 (other than an obligation issued by a corporation pursuant to a written commitment which was binding on May 27, 1969, and at all times thereafter), as to which there is during any calendar year after 1970 an amount of original issue discount (as defined in § 1.6049–2) aggregating $10 or more includible as interest in the gross income for such calendar year of any holder (determined, if semiannual record date reporting is being used under (*b*)(*1*) of this subdivision, by treating each holder as holding the obligation on every day it was outstanding during the calendar year), shall make an information return on Forms 1096 and 1099–OID for such calendar year showing the following:

(*1*) The name and address of each record holder for whom such aggregate amount of original issue discount is $10 or more and, for calendar years subsequent to 1972, the account, serial, or other identifying number of each obligation for which a return is being made.

(*2*) The aggregate amount of original issue discount includible by each such holder for the period during the calendar year for which the return is made (or, if the aggregation rules of (*b*)(*2*) of this subdivision are being used, that he held the obligations). If however, the semiannual record date reporting rules are being used under (*b*)(*1*) of this subdivision, such aggregate amount shall be determined by treating each such record date holder as if he held each such obligation on every day it was outstanding during the calendar year. For purposes of this section, an obligation shall be considered to be outstanding from the date of original issue (as defined in paragraph (b)(3) of § 1.1232–3). In the case of a time deposit open account arrangement to which paragraph (e)(5) of § 1.1232–3A applies, for example, the amount to be shown under this subdivision (*2*) on the Forms 1096 and 1099–OID is the sum (computed under such paragraph (e)(5)) of the amounts separately computed for each deposit made pursuant to the arrangement.

(*3*) The issue price of the obligation (as defined in paragraph (b)(2) of § 1.1232–3), except in the case of such a time deposit open account arrangement,

(*4*) The stated redemption price of the obligation at maturity (as defined in paragraph (b)(1)(iii) of § 1.1232–3), except in the case of such a time deposit open account arrangement,

(*5*) The ratable monthly portion of original issue discount with respect to the obligation as defined in section 1232(a)(3)(A) (determined without regard to a reduction for a purchase allowance or whether the holder purchased at a premium), except in the case of such a time deposit open account arrangement,

(*6*) The name and address of the person filing the form,

(*7*) Such other information as is required by the form, and

(8) The sum, for all such holders of the aggregate amounts of such original issue discount includible for such calendar year for each such holder.

(b) With respect to any obligation (other than an obligation to which paragraph (e) of § 1.1232–3A applies relating to deposits in banks and similar financial institutions), the issuing corporation (or an agent acting on its behalf)—

(1) Shall be permitted (until this subdivision (b)(1) is amended) to prepare a Form 1099–OID only for each person who is a holder of record of the obligation on the semiannual record date (if any) used by the corporation (or agent) for the payment of stated interest or, if there is no such date, the semiannual record dates shall be considered to be June 30, and December 31.

(2) Shall be permitted to aggregate all original issue discount with respect to 2 or more obligations of the same issue for which the amounts specified in (a)(2), (a)(3), (a)(4), and (a)(5) of this subdivision are proportional and, therefore, may file one Form 1099–OID for all such obligations being aggregated, except that for calendar year 1971 this aggregation rule shall apply only where such specified amounts are identical. For an illustration of proportional aggregation, see example (4) in (d) of this subdivision.

(c) In any case in which any one holder of a particular obligation for the calendar year held such obligation on more than one record date, only one Form 1099–OID shall be filed for that year with respect to that holder and that obligation. This provision applies only in the case in which any corporation prepares Forms 1099–OID in accordance with the record date reporting rule of (b)(1) of this subdivision.

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

Example (1). On January 1, 1971, a corporation issued a 10-year bond in registered form which pays stated interest to the holder of record on June 30 and December 31. The bond has an issue price (as defined in paragraph (b)(2) of § 1.1232–3) of $7,600, a stated redemption price (as defined in paragraph (b)(1) of § 1.1232–3) at maturity of $10,000, and a ratable monthly portion of original issue discount (as defined in section 1232(a)(3)(A)) of $20. The corporation's books indicate that A was the holder of record on June 30, 1971, and B was the holder on December 31, 1971. Under (b)(1) of this subdivision, the corporation is permitted to file separate Forms 1099–OID for both A and B showing, on each form, all items required by (a) of this subdivision, including the total original issue discount of $240 for the entire calendar year (which includes original issue discount for all holders), the issue price of $7,600, the stated redemption price at maturity of $10,000, and the ratable monthly portion of original issue discount of $20.

Example (2). Assume the facts stated in Example (1), except that A is recorded on the books of the corporation as holding the bond on June 30 and December 31, 1971. The corporation shall complete and file only one Form 1099–OID for A.

Example (3). Assume the facts stated in Example (1), except that the books of the corporation show that A held 2 of the bonds at all times in 1971. The amounts of the items listed in (a)(2), (a)(3), (a)(4), and (a)(5) of this subdivision are identical for the 2 bonds. Under (b)(2) of this subdivision, the corporation is permitted to treat the 2 bonds as one for purposes of completing and filing a Form 1099–OID for 1971 and aggregate the amounts being reported.

Example (4). On January 1, 1972, a corporation issued to C 3 bonds in registered form of the same issue with stated redemption prices of $1,000, $5,000, and $10,000. The aggregate amounts of original issue discount for each year, the issue prices, the stated redemption prices, and the monthly portions of original issue discount are the same for each $1,000 of stated redemption price. Thus, all relevant amounts for any one bond are proportional to such amounts for any other bond. Therefore, so long as C holds the bonds the corporation shall be permitted to aggregate on one Form 1099–OID all original issue discount with respect to such obligations in accordance with (b)(2) of this subdivision.

Example (5). On June 1, 1971, a corporation issues a 10-year bond to D, for which the ratable monthly portion of original issue discount is $10. For 1971, the corporation uses the record date reporting system permitted by (b)(1) of this subdivision. The corporation's books show that E held the bond on June 30, 1971, and that F held the bond on December 31, 1971, the dates on which the corporation pays stated interest on the bond. The corporation shall file a Form 1099–OID for both E and F showing on each form the aggregate amount of original issue discount includible for 1971 of $70 since E and F are each treated as if each held the bond every day it was outstanding and it was outstanding 7 months in 1971. As to D, the corporation is not required to file a Form 1099–OID since D did not hold the bond on either of the 2 record dates.

(iii) Every person who during a calendar year after 1962 receives payments of interest as a nominee on behalf of another person aggregating $10 or more shall make an information return on Forms 1096 and 1087 for such calendar year showing the aggregate amount of such interest, the name and address of the person on whose behalf received, the total of such interest received on behalf of all persons, and such other information as is required by the forms.

(iv) Except with respect to an obligation to which paragraph (e) of § 1.1232–3A applies (relating to deposits in banks and similar financial institutions), every person who is a nominee on behalf of the actual owner of an obligation as to which there is original issue discount aggregating $10 or more includible in the gross income of such owner during a calendar year after 1970, regardless of whether he receives a Form 1099–OID with respect to such discount, shall make an information return on Forms 1096 and 1087–OID for such calendar year showing in the manner prescribed on such forms the same information for the actual owner as is required or permitted in subdivision (ii) of this subparagraph for the record holder.

(v) Notwithstanding the provisions of subdivisions (iii) and (iv) of this subparagraph, the filing of Form 1087 or Form 1087–OID is not required if—

(a) The record owner is required to file a fiduciary return on Form 1041 disclosing the name, address, and identifying number of the actual owner;

(b) The record owner is a nominee of a banking institution or trust company exercising trust powers, and such banking institution or trust company is required to file a fiduciary return on Form 1041 disclosing the name, address, and identifying number of the actual owner; or

(c) The record owner is a banking institution or trust company exercising trust powers, or a nominee thereof, and the actual owner is an organization exempt from taxation under section 501(a) for which such banking institution or trust company files an annual return,

but only if the name, address, and identifying number of the record owner are included on or with the Form 1041 fiduciary return filed for the estate or trust or the annual return filed for the tax exempt organization.

(2) *Definitions.* (i) The term "person" when used in this section does not include the United States, a State, the District of Columbia, a foreign government, a political subdivision of a State or of a foreign government, or an international organization. Therefore, interest paid by or to one of these entities need not be reported. Similarly, original issue discount in respect of an obligation issued by or to one of these entities need not be reported.

(ii) For purposes of this section, a person who receives interest shall be considered to have received it as a nominee if he is not the actual owner of such interest and if he was required under § 1.6109–1 to furnish his identifying number to the payer of the interest (or would have been so required if the total of such interest for the year had been $10 or more), and such number was (or would have been) required to be included on an information return filed by the payer with respect to the interest. However, a person shall not be considered to be a nominee as to any portion of an interest payment which is actually owned by another person whose name is also shown on the information return filed by the payer or nominee with respect to such interest payment. Thus, in the case of a savings account jointly owned by a husband and wife, the husband will not be considered as receiving any portion of the interest on that account as a nominee for his wife if his wife's name is included on the information return filed by the payer with respect to the interest.

(iii) For purposes of this section, in the case of a person who receives a Form 1099–OID, the determination of who is considered a nominee shall be made in a manner consistent with the principles of subdivision (ii) of this subparagraph.

(iv) For purposes of this section and § 1.6049–3, the term "Form 1099–OID" means the appropriate Form 1099 for original issue discount prescribed for the calendar year.

* * * * *

(4) *Determination of person by whom original issue discount is includible or for whom a Form 1099–OID showing original issue discount is received.* For purposes of applying the provisions of this section,

the determination of the person by whom original issue discount is includible or for whom a Form 1099–OID is received shall be made in a manner consistent with the principles of subparagraph (3) of this paragraph.

(5) *Inclusion of other payments.* The Form 1099 filed by any person with respect to payments of interest to another person during a calendar year prior to 1972 may, at the election of the maker, include payments other than interest made by him to such other person during such year which are required to be reported on Form 1099. Similarly, the Form 1087 filed by a nominee with respect to payments of interest received by him on behalf of any other person during a calender year prior to 1972 may include payments of dividends received by him on behalf of such person during such year which are required to be reported on Form 1087. However, except as provided in subparagraph (1)(ii)(*b*) of this paragraph, a separate Form 1087–OID or 1099–OID shall be filed for each obligation in respect of which original issue discount is required to be reported for any calendar year after 1970. In addition, any person required to report payments on both Forms 1087, 1087–OID, 1099, and 1099–OID, for any calendar year may use one Form 1096 to summarize and transmit such forms.

(b) *When payment deemed made.* For purposes of section 6049, interest is deemed to have been paid when it is credited or set apart to a person without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and is made available to him so that it may be drawn at any time, and its receipt brought within his own control and disposition.

(c) *Time and place for filing*—(1) *Payment of interest.* The returns required under this section for any calendar year for the payment of interest shall be filed after September 30 of such year, but not before the payer's final payment for the year, and on or before February 28 of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for Form 1096. For extensions of time for filing returns under this section, see § 1.6081–1.

(2) *Original issue discount.* (i) The returns required under this section for any calendar year for original issue discount shall be filed after December 31 of such year and on or before February 28 of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for Form 1096. For extensions of time for filing returns under this section, see § 1.6081–1.

(ii) The time for filing returns for the calendar year 1971 required under this section for original issue discount in respect of obligations to which paragraph (e) of § 1.1232–3A applies (relating to deposits in banks and other similar financial institutions) is extended to April 15, 1972.

* * * * *

PAR. 20. Section 1.6049–2 is amended by revising the heading thereof, by revising the heading of paragraph (a), by revising so much of paragraph (a) as precedes subparagraph (2), by adding a new paragraph (b)(6) immediately after paragraph (b)(5), and by adding a new paragraph (c) immediately after paragraph (b). Such revised and added provisions read as follows:

§ 1.6049–2 Interest and original issue discount subject to reporting.

(a) *Interest in general.* Except as provided in paragraph (b) of this section, the term "interest" when used in this section and §§ 1.6049–1 and 1.6049–3 means:

(1) Interest on evidences of indebtedness issued by a corporation in "registered form" (as defined in paragraph (d) of this section). The phrase "evidences of indebtedness" includes bond, debentures, notes, certificates and other similar instruments regardless of how denominated.

* * * * *

(b) *Exceptions.* * * *

(6) Any amount which is subject to reporting as original issue discount.

* * * * *

(c) *Original issue discount*—(1) *In general.* The term "original issue discount" when used in this section and §§ 1.6049–1 and 1.6049–3 means original issue discount subject to the ratable inclusion rules of paragraph (a) of § 1.1232–3A, determined without regard to any reduction by reason of a purchase allowance under paragraph (a)(2)(ii) of § 1.1232–3A or a purchase at a premium as defined in paragraph (d)(2) of § 1.1232–3.

(2) *Coordination with interest reporting.* In the case of an obligation issued after May 27, 1969 (other than an obligation issued pursuant to a written commitment which was binding on May 27, 1969, and at all times thereafter), original issue discount which is not subject to the ratable inclusion rules is interest within the meaning of paragraph (a) of this section and original issue discount which is subject to the ratable inclusion rules is not interest within the meaning of such paragraph (a). Thus, for example, if such an obligation has a fixed maturity date not exceeding one year from the date of original issue (as defined in paragraph (b)(3) of § 1.1232–3), the amount of the original issue discount in respect of the obligation shall be reported as interest upon its retirement.

(3) *Exceptions.* Reporting of original issue discount is not required in respect of an obligation which paragraph (b)(2) of this section except from interest reporting.

(d) *Definition of "in registered form."* For purposes of § 1.6049–1 and this section, an evidence of indebtedness is in registered form if it is registered as to both principal and interest (or, for purposes of reporting with respect to original issue discount, if it is registered as to principal) and if its transfer must be effected by the surrender of the old instrument and either the reissuance by the corporation of the old instrument to the new holder or the issuance by the corporation of a new instrument to the new holder.

PAR. 21. Section 1.6049–3 is amended by revising the heading and paragraphs (a), (b), and (c)(1) to read as follows:

§ 1.6049–3 Statements to recipients of interest payments and holders of obligations to which there is attributed original issue discount.

(a) *Requirement.* Every person filing (1) a Form 1099 or 1087 under section 6049(a)(1) and § 1.6049–1 with respect to payments of interest or (2) a Form 1099–OID or 1087–OID with respect to original issue discount includible in gross income, shall furnish to the person whose identifying number is (or should be) shown on the form a written statement showing the information required by paragraph (b) of this section. With respect to interest, no statement is required to be furnished under section 6049(c) and this section to any person if the aggregate of the payments to (or received on behalf of) such person shown on the form would be less than $10. With respect to original issue discount, no statement is required to be furnished under section 6049(c) and this section to any person if the aggregate amount of original issue discount on the statement to such person with respect to the obligation would be less than $10.

(b) *Form of statement*—(1) *In general.* The written statement required to be furnished to a person under paragraph (a) of this section shall show—

(i) With respect to payments of interest (as defined in § 1.6049–2) aggregating $10 or more to any person during a calendar year after 1962—

(*a*) The aggregate amount of payments shown on the Form 1099 or 1087 as having been made to (or received on behalf of) such person and a legend stating that such amount is being reported to the Internal Revenue Service, and

(*b*) The name and address of the person filing the form, and

(ii) With respect to original issue discount (as defined in § 1.6049–2) which would aggregate $10 or more on the statement to the holder during a calendar year after 1970—

(*a*) The aggregate amount or original issue discount includible by (or on behalf of) such person with respect to the obligation, as shown on Form 1099–OID or Form 1087–OID for such calendar year (determined by applying the rules of paragraph (a)(1)(ii) of § 1.6049–1 for purposes of completing either form),

(*b*) All other items shown on such Form 1099–OID or Form 1087–OID for such calendar year (so determined), and

(*c*) A legend stating that such amount and such items are being reported to the Internal Revenue Service.

(2) *Special rule.* The requirements of this section for the furnishing of a statement to any person, including the legend requirement of this paragraph, may be

met by the furnishing to such person of a copy of the Form 1099, 1099–OID, 1087, or 1087–OID filed pursuant to § 1.6049–1, or a reasonable facsimile thereof, in respect of such person. However, in the case of Form 1087–OID or 1099–OID, a copy of the instructions must also be sent 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.

(c) *Time for furnishing statements*—(1) *In general*—(i) *Payment of interest.* Each statement required by this section to be furnished to any person for a calendar year for the payment of interest shall be furnished to such person after November 30 of the year and on or before January 31 of the following year, but no statement may be furnished before the final interest payment for the calendar year has been paid. However, the statement may be furnished at any time after September 30 if it is furnished with the final interest payment for the calendar year.

(ii) *Original issue discount.* (*a*) Each statement required by this section to be furnished to any person for a calendar year for original issue discount shall be furnished to such person after December 31 of the year and on or before January 31 of the following year.

(*b*) Each statement required by this section to be furnished to any person for the calendar year 1971 for original issue discount in respect of obligations to which paragraph (e) of § 1.1232–3A applies (relating to deposits in banks and other similar financial institutions) is extended to March 15, 1972.

* * * * *

PAR. 22. Section 301.6049 is amended by revising subsections (a)(1) and (c) of section 6049 and the historical note to read as follows:

§ 301.6049 Statutory provisions; returns regarding payments of interest.

"SEC. 6049. *Returns regarding payments of interest*—(a) *Requirement of reporting*—(1) *In general.* Every person—

(A) Who makes payments of interest (as defined in subsection (b)) aggregating $10 or more to any other person during any calendar year,

(B) Who receives payments of interest as a nominee and who makes payments aggregating $10 or more during any calendar year to any other person with respect to the interest so received, or

(C) Which is a corporation that has outstanding any bond, debenture, note, or certificate or other evidence of indebtedness in registered form as to which there is during any calendar year an amount of original issue discount aggregating $10 or more includible in the gross income of any holder under section 1232(a)(3) without regard to subparagraph (B) thereof,

shall make a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the aggregate amount of such payments and such aggregate amount includible in the gross income of any holder and the name and address of the person to whom paid or such holder.

* * * * *

(c) *Statements to be furnished to persons with respect to whom information is furnished.* Every person making a return under subsection (a)(1) shall furnish to each person whose name is set forth in such return a written statement showing—

(1) The name and address of the person making such return, and

(2) The aggregate amount of payments to, or the aggregate amount includible in the gross income of, the person as shown on such return.

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)(1) was made. No statement shall be required to be furnished to any person under this subsection if the aggregate amount of payments to, or the aggregate amount includible in the gross income of, such person shown on the return made with respect to subparagraph (A), (B), or (C), as the case may be, of subsection (a)(1) is less than $10.

* * * * *

[Sec. 6049 as added by sec. 19(c), Rev. Act 1962 (76 Stat. 1055); amended by sec. 413 (c) and (d), Tax Reform Act 1969 (83 Stat. 611, 612)]

[FR Doc.71–18982 Filed 12–27–71;8:52 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 19269; FCC 71–1282]

PART 73—RADIO BROADCAST SERVICES

Equal Employment Opportunities

Report and order. In the matter of amendment of part VI of FCC Forms 301, 303, 309, 311, 314, 315, 340 and 342, and adding the equal employment program filing requirement to Commission §§ 73.125, 73.301, 73.599, 73.680, and 73.793 Docket No. 19269, RM–1722.

1. On December 4, 1970, the National Organization for Women (NOW) filed a petition for rule making (RM–1722) asking that broadcast licensees be required to file with the Commission programs designed to insure equal employment opportunities for women. It was requested that we include women in section VI of various broadcast application forms (FCC Forms 301, 303, 309, 311, 314, 315, 340, and 342), which presently provides that licensees shall file equal employment opportunity programs designed to provide equal employment opportunities for Negroes, orientals, American Indians, and Spanish-surnamed Americans. NOW also asks that the filing requirement be added to the Commission's broadcast rules concerning equal employment opportunities (47 CFR 73.125, 73.301, 73.599, 73.680, and 73.793). On June 28, 1971, the Commission released a notice of proposed rule making (30 FCC 2d 318, 36 F.R. 12542) soliciting comment on the NOW proposal.

2. A substantial number of comments were filed in response to the NOW petition and to the notice of proposed rule making. Almost all of the comments express strong support for the proposal. The proposal is opposed by the National Association of Broadcasters (NAB) and Mrs. Virginia F. Pate, president and general manager, The Chesapeake Broadcasting Corp.

3. The NAB argues that licensees are already required to establish equal employment opportunity programs designed to prevent discrimination in employment on the basis of sex and, in effect, that nothing other than additional burden for the licensee is accomplished by requiring that specific programs be filed with the Commission. Mrs. Pate, commenting as an individual long associated with broadcasting, takes essentially the same position. The NAB maintains that no pattern of discrimination against women in the broadcasting industry has been established. It asserts further that a specific program cannot be drawn up for every religious, racial or national origin subgroup, that a line must be drawn somewhere, and that it should be drawn to exclude women from the filing requirement. As for adding the filing requirement to the rules, the NAB states that the provisions of section VI are set forth as guidelines, that flexibility in their application was intended, and that they are insufficiently precise to be stated as rules. In addition, it maintains that adding section VI to the rules will not enhance its availability to the public.

4. We agree fully with the NAB that specific equal employment opportunity programs cannot be developed for every conceivable group or subgroup. In considering a requirement of specific programs and reporting requirements, it is necessary to focus on those groups which comprise a substantial portion of the population and which have in the past suffered from discrimination in employment. Women, however, clearly come within the confines of these criteria. They constitute over 50 percent of the population, and the history of employment discrimination against women is amply demonstrated by the comments in this proceeding. It is fully appropriate, in our judgment, for the attention of broadcasters to be drawn to the task of providing equal employment opportunities for women as well as for Negroes, orientals, American Indians and Spanish-surnamed Americans. We do not believe it follows, as the NAB suggests, that the extension of the application of section VI to women will require its extension to such groups as Armenians and Tasmanians. The guidelines set out in section VI are, as is pointed out, flexible in their application to particular situations, and we do not intend to change their character in this respect. The focus upon particular groups is achieved by following the guidelines (or taking other measures, if more appropriate) for those groups and is reinforced by the requirement that the programs be articulated and filed with the Commission, where they are subject to scrutiny by the Commission and the public. We see no undue burden which would outweigh the substantial public benefit.

5. While we consider it appropriate to supplement the regulations dealing with equal employment opportunities by inserting a reference to section VI of the application forms, we do not consider it

appropriate to repeat the text of section VI in the rules or to make the guidelines more rigid by casting them as formal rules. Our general practice is to avoid encumbering the rules with lengthy application forms, and we see no important reason for varying from that practice in this instance. The provisions of section VI will be published in the FCC reports, where they will be readily available, and citations to these documents will appear as part of the rule. The forms themselves, moreover, are available from the Commission upon request.

6. Authority for the rules set out in the attached appendix is contained in sections 4(i), 303, 307, 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 307, 308, 309, and 310.

7. In view of the foregoing: *It is ordered*, That Part 73 of the rules and regulations is amended as set forth in Appendix A below, effective February 4, 1972, and that section VI of FCC Forms 301, 303, 309, 311, 314, 315, 340, 342 is amended as set out in Appendix B.[2]

(Secs. 4, 303, 307, 308, 309, 310, 48 Stat., as amended, 1066, 1082, 1083, 1084, 1085, 1086; 47 U.S.C. 154, 303, 307, 308, 309, 310)

Adopted: December 17, 1971.

Released: December 21, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[3]
[SEAL] BEN F. WAPLE,
Secretary.

APPENDIX A

In Part 73 of Chapter I of Title 47 of the Code of Federal Regulations, a new paragraph (c) is added to §§ 73.125, 73.301, 73.599, 73.680, and 73.793, to read as follows:

(c) Applicants for construction permit for a new facility, for assignment of license or construction permit or for transfer of control (other than pro forma or involuntary assignments and transfers), and applicants for renewal of license who have not previously done so, shall file with the Commission programs designed to provide equal employment opportunities for Negroes, orientals, American Indians, Spanish-surnamed Americans, and women, or amendments to such programs. Guidelines for the preparation of such programs are set out in section VI of the appropriate application forms. See 32 FCC 2d ——. A program need not be filed by any station having less than five full-time employees or with respect to any minority group which is represented in such insignificant numbers in the area that a program would not be meaningful. In the latter situation, a statement of explanation should be filed.

[FR Doc.71-18890 Filed 12-27-71;8:48 am]

[2] Filed as part of original document.
[3] Commissioner Bartley absent.

Title 49—TRANSPORTATION

Chapter V—National Highway Traffic Safety Administration, Department of Transportation

PART 567—CERTIFICATION

Ruling Concerning Unavailable Weight Ratings

Amendments that modify the labeling requirements for motor vehicles, in Part 567 of Title 49, Code of Federal Regulations, become effective January 1, 1972. (36 F.R. 7054, Apr. 14, 1971; 36 F.R. 19593, Oct. 8, 1971; 36 F.R. 23571, Dec. 10, 1971.) One of the new requirements is that the label affixed by the final-stage manufacturer contain the gross vehicle weight rating and gross axle weight ratings of the vehicle. In the case of vehicles produced in two or more stages the information will normally be furnished to the final-stage manufacturer by the incomplete vehicle manufacturer, in the document required to accompany the vehicle pursuant to 49 CFR Part 568, Vehicles Manufactured in Two or More Stages.

It has been brought to the attention of the NHTSA by representatives of final-stage manufacturers that the weight rating information may in some instances not be available to those manufacturers, with respect to chassis that were produced before the effective date of Part 568 and that therefore do not contain the incomplete vehicle documents. The NHTSA has assumed that gross vehicle and axle weight rating information was generally furnished with all incomplete vehicles, but it now appears that this is not universally true. It has been determined that final-stage manufacturers should not have to bear the burden of obtaining the weight rating information in the limited number of cases where it is not readily available.

Accordingly, final-stage manufacturers are hereby advised that with respect to vehicles completed on or after January 1, 1972, utilizing incomplete vehicles manufactured before January 1, 1972, for which the gross vehicle weight rating or gross axle weight ratings have not been furnished to them by the incomplete vehicle manufacturers, they may omit from the label the values for those ratings. All other requirements of Part 567, and other requirements of this chapter, shall remain in effect according to their terms.

(Secs. 103, 112, 114, 119, National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.51)

Issued on December 22, 1971.

DOUGLAS W. TOMS,
Administrator.

[FR Doc.71-18900 Filed 12-27-71;8:49 am]

[Docket No. 69-18; Notice 6]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Lamps, Reflective Devices, and Associated Equipment

Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, was amended on August 28, 1971 (36 F.R. 17343) to revise performance requirements for turn signal and hazard warning signal flashers. Thereafter petitions for reconsideration of the amendment were filed by Chrysler Corp., Ideal Corp., Signal-Stat Corp., and Stewart-Warner Corp. This notice responds to these petitions. This notice also amends Standard No. 108 to allow compliance with paragraph S4.6 of Standard No. 108a (§ 571.108a), at the option of the manufacturer, before January 1, 1973.

In its petition for reconsideration, Chrysler noted that "the amendment deletes the sampling provision and imposes new, presumably less stringent, but unique performance requirements" and commented that "while this change was announced in principle in prior rulemaking actions, the details of the new performance requirements were specified for the first time in this amendment." Claiming that its suppliers have not had time to evaluate their ability to comply with the new requirements, Chrysler petitioned that the amendment be withdrawn and reissued as a notice of proposed rule making. Sampling and failure-rate provisions were initially deleted in a rule published October 31, 1970 (35 F.R. 16840), which amended Standard No. 108 in various ways. Then, in response to objections that the action had not been previously the subject of a notice of proposed rule making, the action was revoked, a new notice of proposed rule making to that effect was issued on February 3, 1971 (36 F.R. 1913), and all interested persons were given full opportunity to comment. After careful consideration of the comments received, the agency again published a rule on August 28, 1971 (36 F.R. 17343), which deleted the sampling and failure-rate provisions. The rule also relaxed somewhat some of the quantitative levels of required performance. Thereafter, in accordance with the agency procedural rules, petitions for reconsideration of the rule were received and considered. The NHTSA considers that these actions have considerably exceeded the requirements of the Administrative Procedure Act, 5 U.S.C. 553, that notice and opportunity for comment be provided giving "either the terms or substance of the proposed rule or a description of the subjects and issues involved," and finds that no significant further benefit will be gained by reopening the matter for still another round of comments. Chrysler's petition is therefore denied.

Stewart-Warner submitted a general petition for reconsideration of the amendment, believing that "the amendment can allow unsafe conditions to come into existence." While it is true that the new performance requirements, on a strictly quantitative basis, may be viewed as less stringent than the old, the agency has concluded that the net effect of the amendment, considering the removal of the permissible failure rate, is not a lessening of the safety performance of these items.

Signal-Stat and Ideal petitioned that paragraph S4.1.1 be amended to require that all lighting equipment designed to conform to Standard No. 108 be "manufactured in accordance with sound engineering, manufacturing, and quality control principles." The basis for this request, in Signal-Stat's words, is that "while it is not possible to assure the durability of any single individual flasher, it is possible to reasonably produce requirements on a statistical basis in mass production," and that "the only feasible and practical 'due care' and production means available, dictated by sound quality control principles, is to evaluate devices of volume on a statistical basis." The NHTSA has generally no objection to the above statements, although they are not necessary or appropriate for inclusion in the standard itself. The agency does not have any intent of outlawing designs such as thermal flashers, that have been previously used to satisfy the requirements in question. It also recognizes fully that with high-volume, low-cost items of equipment such as flashers, sample testing by the manufacturer may be the only practicable means of quality control. It can further be stated that in the case of such items, an occasional failure of NHTSA compliance tests, representing a very small percentage of production, will not necessarily result in a determination that there has been a violation of the Act. The question in each case is whether the manufacturer exercised due care; wherever a manufacturer can establish that he has exercised due care, he will not be in violation of the Act. The petitions of Ideal and Signal-Stat are therefore denied.

Ideal has also requested an interpretation that it be allowed to manufacture flashers before January 1, 1973, that conform to the revised requirements. To encourage manufacturers to conform at an early date, the NHTSA is amending Standard No. 108 to allow compliance with paragraph S4.6 of Standard No. 108a (§ 571.108a), at the option of the manufacturer, between January 1, 1972, and January 1, 1973.

This notice also corrects a paragraph numbering error in both standards.

In consideration of the foregoing, 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, is amended as follows:

1. In the first sentence of Paragraph S4.1.1, the reference to "S4.1.1.15" is changed to "S4.1.1.16."

2. A new section S4.1.1.16 is added to read: "In lieu of conformance with the requirements of this standard for turn signal and hazard warning signal flashers, a passenger car, multipurpose passenger vehicle, truck, or bus manufactured before January 1, 1973, may be equipped with turn signal and hazard warning signal flashers conforming to paragraph S4.6 of Motor Vehicle Safety Standard No. 108a (§ 571.108a)."

3. In paragraph S4.3.1, "S4.3.8" is changed to "S4.3.7."

In addition, paragraph S4.3.1 of Standard 108a, 49 CFR 571.108a, is amended by changing "S4.3.8" to "S4.3.7."

Effective date: January 1, 1972. Because the amendments create no additional burden or obligation, and permit an early implementation of revised performance requirements, the Administrator has found for good cause shown that an effective date earlier than 180 days after issuance of this notice is in the public interest.

(Secs. 103, 119, National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1392, 1407; delegation of authority from the Secretary of Transportation to the National Highway Traffic Safety Administrator, 49 CFR 1.51)

Issued on December 22, 1971.

DOUGLAS W. TOMS,
Administrator.

[FR Doc.71-18901 Filed 12-27-71;8:49 am]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

SUBCHAPTER C—THE NATIONAL WILDLIFE REFUGE SYSTEM

PART 32—HUNTING

Catahoula National Wildlife Refuge, La.

On page 21411 of the FEDERAL REGISTER of November 9, 1971, there was published a notice of a proposed amendment to 50 CFR 32.31. The purpose of this amendment is to provide public hunting of big game on Catahoula National Wildlife Refuge, 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.

It has been determined that the use of Catahoula National Wildlife Refuge for public hunting is compatible with the major purposes for which the refuge was established and with the principles of sound wildlife management, and that such public hunting is in the public interest.

Since this amendment benefits the public by relieving existing restrictions on hunting of big game, it shall become effective upon publication in the FEDERAL REGISTER (12-28-71).

(Sec. 7, 80 Stat. 929, 16 U.S.C. 715i; sec. 4, 80 Stat. 927, 16 U.S.C. 668dd (c)(d))

1. Section 32.31 is amended by the following addition:

§ 32.31 List of open areas; big game.

* * * * *

LOUISIANA

Catahoula National Wildlife Refuge.

* * * * *

J. P. LINDUSKA,
Acting Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 22, 1971.

[FR Doc.71-18864 Filed 12-27-71;8:46 am]

PART 32—HUNTING

Catahoula National Wildlife Refuge, La.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (12-28-71).

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

LOUISIANA

CATAHOULA NATIONAL WILDLIFE REFUGE

Public hunting of deer is permitted within the fenced portion of the Catahoula National Wildlife Refuge only on the area designated by signs as open to hunting. This area, comprising 3,000 acres or 55 percent of the total refuge area, is delineated on a map available at the refuge headquarters or from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, Ga. 30323. Deer hunting will be in accordance with all applicable State and Federal regulations, subject to the following special conditions:

(1) Season and hours: December 27-29 1971, inclusive, one-half hour before sunrise until one-half hour after sunset.

(2) Free and nontransferable permits will be issued each morning.

(3) Entrance and exit will be restricted to headquarters access road.

(4) Still hunting for buck deer only. No dogs allowed.

(5) Hunters may enter area 30 minutes prior to legal shooting hours and must exit 30 minutes after legal hours.

(6) No vehicles may be parked more than 50 yards from existing roads or trails. No ATV vehicles other than jeep type will be allowed.

(7) Persons under 18 years of age must be accompanied by an adult.

(8) Unmarked feral hogs may be taken by deer hunters.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 29, 1971.

JACK E. HEMPHILL,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 22, 1971.

[FR Doc.71-18863 Filed 12-27-71;8:46 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Parts 1, 13]

INCOME TAX

Farm Losses

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, preferably in quintuplicate, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by January 27, 1972. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by January 27, 1972. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] HAROLD T. SWARTZ,
Acting Commissioner of Internal Revenue.

The following regulations are prescribed in order to conform the Income Tax Regulations (26 CFR Part 1) to certain amendments made by section 211 (a) and (b) (4) and (5) of the Tax Reform Act of 1969 (83 Stat. 566, 570), relating to gain from disposition of property used in farming where farm losses offset nonfarm income, to section 214(a) of the Tax Reform Act of 1969 (83 Stat. 572), relating to gain from disposition of farm land, to section 1(b) (4) and (5) of the Act of September 12, 1966 (Public Law 89-570, 80 Stat. 759), relating to exploration expenditures in the case of mining, and to section 202(c), Act of November 13, 1966 (Public Law 89-809, 80 Stat. 1576), relating to distribution of installment obligations. Section 1.1251-2 of the regulations hereby set forth supersedes those provisions of § 13.0 of this chapter relating to section 211 of such Act, which were prescribed by T.D. 7032, approved March 9, 1970 (35 F.R. 4330). Except where otherwise specifically provided, these regulations are applicable to gain from the disposition of farm recapture property and farm land during taxable years beginning after December 31, 1969.

PAR. 1. Section 1.341 is amended by revising section 341(e)(12) and the historical note to read as follows:

§ 1.341 Statutory provision; collapsible corporations.

SEC. 341. *Collapsible corporations.* * * *

(e) *Exceptions to application of section.* * * *

(12) *Nonapplication of section 1245(a).* For purposes of this subsection, the determination of whether gain from the sale or exchange of property would under any provision of this chapter be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b) shall be made without regard to the application of sections 617(d)(1), 1245(a), 1250(a), 1251(c), and 1252(a).

* * * * *

[Sec. 341 as amended by sec. 20, Technical Amendments Act 1958 (72 Stat. 1615); sec. 13(f)(4), Rev. Act 1962 (76 Stat. 1035); sec. 231(b)(4), Rev. Act 1964 (78 Stat. 105); sec. 1(b)(4), Act of Sept. 12, 1966 (Public Law 89-570, 80 Stat. 762); secs. 211(b)(4) and 514(b)(4), Tax Reform Act 1969 (83 Stat. 570, 643)]

PAR. 2. Section 1.341-6 is amended by revising subparagraphs (1), (2) (i) and (iii), and (3) of paragraph (b); paragraph (h)(4); paragraph (n); and subdivision (i) of example (1) in paragraph (o) to read as follows:

§ 1.341-6 Exceptions to application of section.

* * * * *

(b) *Subsection (e) asset defined*—(1) *General.* The benefits of section 341(e) are unavailable if the net unrealized appreciation (as defined in paragraph (h) of this section) in certain assets of the corporation (hereinafter called "subsection (e) assets") exceeds 15 percent of the corporation's net worth. In determining whether property is a subsection (e) asset, it is immaterial whether the property is described in section 341(b), and there shall not be taken into account sections 617(d) (relating to gain from dispositions of certain mining property), 1245 and 1250 (relating to gain from dispositions of certain depreciable property), 1251 (relating to gain from disposition of farm property where farm losses offset nonfarm income), and 1252 (relating to gain from disposition of farm land).

(2) *Categories of subsection (e) assets.* * * *

(i) The first category is property (except property described in section 1231(b), without regard to any holding period prescribed therein) which in the hands of the corporation is, or in the hands of any actual or constructive shareholder who is considered to own more than 20 percent in value of the outstanding stock of the corporation would be, property gain from the sale or exchange of which would under any provision of chapter 1 of the Code (other than section 617(d), 1245, 1250, 1251, or 1252) be considered in whole or in part as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b). For example, included in this category is property held by a corporation which in its hands is stock in trade, inventory, or property held by it primarily for sale to customers in the ordinary course of its trade or business regardless of whether such property is appreciated or depreciated in value. Also included in this category is property held by a corporation which is a capital asset in its hands but which, in the hands of any actual or constructive shareholder who is considered to own more than 20 percent in value of the outstanding stock, would be stock in trade, inventory, or property held by such actual or constructive shareholder primarily for sale to customers in the ordinary course of his trade or business. For additional rules relating to whether property is a subsection (e) asset under this subdivision, see subparagraphs (3), (4), and (5) of this paragraph.

* * * * *

(iii) The third category of subsection (e) assets exists only if there is net unrealized appreciation on all property which in the hands of the corporation is property described in section 1231(b) (without regard to any holding period prescribed therein). In such case, any such section 1231(b) property (whether appreciated or depreciated) is a subsection (e) asset of the third category if, in the hands of an actual or constructive shareholder who is considered to own more than 20 percent in value of the outstanding stock of the corporation, such property would be property gain from the sale or exchange of which would under any provision of chapter 1 of the Code (other than section 617(d), 1245, 1250, 1251, or 1252) be considered in whole or in part as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b). Included in this category, for example, is property which in the hands of the corporation is property described in section 1231(b) (without regard to any holding period prescribed therein), but which in the hands of an actual or constructive more-than-20-percent shareholder would be property used in his trade or business held for not more than 6 months, stock in trade, inventory, or property held by such shareholder primarily for sale to customers in the

ordinary course of his trade or business. For additional rules relating to whether property is a subsection (e) asset under this subdivision, see subparagraphs (3) and (4) of this paragraph. This subdivision may be further illustrated by the following example:

* * * * *

(3) *Manner of determination.* For purposes of determining whether property is a subsection (e) asset under subparagraph (2) (i) or (iii) of this paragraph, the determination as to whether property of a corporation in the hands of the corporation is, or in the hands of an actual or constructive shareholder of the corporation would be, property gain from the sale or exchange of which would under any provision of chapter 1 of the Code (other than section 617(d), 1245, 1250, 1251, or 1252) be considered in whole or in part as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b) shall be made as if all property of the corporation had been sold or exchanged to one person in one transaction. For example, if a corporation whose sole asset is an interest in a gas well has entered into a long-term contract for the future delivery of gas from the well, the ownership of which will pass to the buyer only after extraction or severance from the well, the determination as to whether such contract is a subsection (e) asset shall be made as if the contract were sold or exchanged to one person in one transaction together with such corporation's interest in the well. An assumed sale under this subparagraph does not affect the character of property which is held for sale to customers in the ordinary course of a person's trade or business or the character of a transaction which would be an anticipatory assignment of income. Thus, for example, if a corporation holds subdivided lots for sale to customers in the ordinary course of its trade or business, this subparagraph shall not be applied to change the manner in which the lots are held.

* * * * *

(h) *Net unrealized appreciation and depreciation defined.* * * *

(4) *Special rule.* For purposes of determining whether the net unrealized appreciation in subsection (e) assets of a corporation exceeds an amount equal to 15 percent of the corporation's net worth under the tests of section 341(e) (1), (2), (3), and (4), in the case of any asset on the sale or exchange of which only a portion of the gain would under any provision of chapter 1 of the Code (other than section 617(d), 1245, 1250, 1251, or 1252) be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b), there shall be taken into account only an amount equal to the unrealized appreciation in such asset which is equal to such portion of the gain. This subparagraph shall have no effect on whether paragraph (b)(2)(ii) or (iii) of this section applies for purposes of identifying the subsection (e) assets of the corporation.

* * * * *

(n) *Determinations without regard to sections 617(d), 1245, 1250, 1251, and 1252.* For purposes of this section, the determination of whether gain from the sale or exchange of property would under any provision of chapter 1 of the Code be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b) shall be made without regard to the application of sections 617(d)(1) (relating to gain from dispositions of certain mining property), 1245(a) and 1250(a) (relating to gain from dispositions of certain depreciable property), 1251(c) (relating to gain from the disposition of farm property where farm losses offset nonfarm income), and 1252(a) (relating to gain from disposition of farm land).

(o) *Illustrations.* The operation of section 341(e) may be illustrated by the following examples:

Example (1). (i) The outstanding stock of X Corporation is actually owned, on the basis of value, 75 percent by A, 15 percent by B, and 10 percent by C. None of the stock actually owned by one is attributed to another under the constructive ownership rules of paragraph (a)(3) of this section. The corporation owns no property which, in its hands, is property gain from the sale or exchange of which would be considered (without regard to section 617(d), 1245, 1250, 1251, or 1252) as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b). The corporation owns no property described in section 1231(b) except an apartment house on which the unrealized appreciation is $20,000 and which in the hands of A would be property held primarily for sale to customers in the ordinary course of trade or business. The corporation owns no property of the type described in clause (iv) of section 341(e)(5)(A). The net worth of the corporation is $100,000.

* * * * *

PAR. 3. Paragraph (c)(1) of § 1.453–9 is amended to read as follows:

§ 1.453–9 Gain or loss on disposition of installment obligations.

* * * * *

(c) *Disposition from which no gain or loss is recognized.* (1)(i) Under section 453(d)(4)(A), no gain or loss shall be recognized to a distributing corporation with respect to the distribution made after November 13, 1966, of installment obligations if (*a*) the distribution is made pursuant to a plan for the complete liquidation of a subsidiary under section 332, and (*b*) the basis of such obligations in the hands of the distributee is determined under section 334(b)(1).

(ii) Under section 453(d)(4)(B), no gain or loss shall be recognized to a distributing corporation with respect to the distribution of installment obligations if the distribution is made, pursuant to a plan for the complete liquidation of a corporation which meets the requirements of section 337, under conditions whereby no gain or loss would have been recognized to the corporation had such installment obligations been sold or exchanged on the day of the distribution. The preceding sentence shall not apply to the extent that under section 453(d)(1) gain to the distributing corporation would be considered as gain to which section 341(f)(2), 617(d)(1), 1245(a)(1), 1250(a)(1), 1251(c)(1), or 1252(a)(1) applies, computed under the principles of the regulations under such provisions. See paragraph (d) of § 1.1245–6, paragraph (c)(6) of § 1.1250–1, paragraph (e)(6) of § 1.1251–1, and paragraph (d)(3) of § 1.1252–1.

* * * * *

PAR. 4. The following new sections are added immediately after § 1.1250–5:

§ 1.1251 Statutory provisions; gain from disposition of property used in farming where farm losses offset nonfarm income.

SEC. 1251. *Gain from disposition of property used in farming where farm losses offset nonfarm income—*(a) *Circumstances under which section applies.* This section shall apply with respect to any taxable year only if—

(1) There is a farm net loss for the taxable year, or

(2) There is a balance in the excess deductions account as of the close of the taxable year after applying subsection (b)(3)(A).

(b) *Excess deductions account—*

(1) *Requirement.* Each taxpayer subject to this section shall, for purposes of this section, establish and maintain an excess deductions account.

(2) *Additions to account.*

(A) *General rule.* There shall be added to the excess deductions account for each taxable year an amount equal to the farm net loss.

(B) *Exceptions.* In the case of an individual (other than a trust) and, except as provided in this subparagraph, in the case of an electing small business corporation (as defined in section 1371(b)), subparagraph (A) shall apply for a taxable year—

(i) Only if the taxpayer's nonfarm adjusted gross income for such year exceeds $50,000, and

(ii) Only to the extent the taxpayer's farm net loss for such year exceeds $25,000. This subparagraph shall not apply to an electing small business corporation for a taxable year if on any day of such year a shareholder of such corporation is an individual who, for his taxable year with which or within which the taxable year of the corporation ends, has a farm net loss.

(C) *Married individuals.* In the case of a husband or wife who files a separate return, the amount specified in subparagraph (B)(i) shal be $25,000 in lieu of $50,000, and in subparagraph (B)(ii) shall be $12,500 in lieu of $25,000. This subparagraph shall not apply if the spouse of the taxpayer does not have any nonfarm adjusted gross income for the taxable year.

(D) *Nonfarm adjusted gross income.* For purposes of this section, the term "nonfarm adjusted gross income" means adjusted gross income (taxable income, in the case of an electing small business corporation) computed without regard to income or deductions attributable to the business of farming.

(3) *Subtractions from account.* If there is any amount in the excess deductions account at the close of any taxable year (determined before any amount is subtracted under this paragraph for such year) there shall be subtracted from the account—

(A) An amount equal to the farm net income for such year, plus the amount (determined as provided in regulations prescribed by the Secretary or his delegate) necessary to adjust the account for deductions which did not result in a reduction of the taxpayer's tax under this subtitle for the taxable year or any preceding taxable year, and

(B) After applying paragraph (2) or subparagraph (A) of this paragraph (as the

case may be), an amount equal to the sum of the amounts treated, solely by reason of the application of subsection (c), as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231.

(4) *Exception for taxpayers using certain accounting methods.*

(A) *General rule.* Except to the extent that the taxpayer has succeeded to an excess deductions account as provided in paragraph (5), additions to the excess deductions account shall not be required by a taxpayer who elects to compute taxable income from farming (i) by using inventories, and (ii) by charging to capital account all expenditures paid or incurred which are properly chargeable to capital account (including such expenditures which the taxpayer may, under this chapter or regulations prescribed thereunder, otherwise treat or elect to treat as expenditures which are not chargeable to capital account).

(B) *Time, manner, and effect of election.* An election under subparagraph (A) for any taxable year shall be filed within the time prescribed by law (including extensions thereof) for filing the return for such taxable year, and shall be made and filed in such manner as the Secretary or his delegate shall prescribe by regulations. Such election shall be binding on the taxpayer for such taxable year and for all subsequent taxable years and may not be revoked except with the consent of the Secretary or his delegate.

(C) *Change of method of accounting, etc.* If, in order to comply with the election made under subparagraph (A), a taxpayer changes his method of accounting in computing taxable income from the business of farming, such change shall be treated as having been made with the consent of the Secretary or his delegate and for purposes of section 481(a)(2) shall be treated as a change not initiated by the taxpayer.

(5) *Transfer of account.*

(A) *Certain corporate transactions.* In the case of a transfer described in subsection (d)(3) to which section 371(a), 374(a), or 381 applies, the acquiring corporation shall succeed to and take into account as of the close of the day of distribution or transfer, the excess deductions account of the transferor.

(B) *Certain gifts.* If—

(i) Farm recapture property is disposed of by gift, and

(ii) The potential gain (as defined in subsection (e)(5)) on farm recapture property disposed of by gift during any 1-year period in which any such gift occurs is more than 25 percent of the potential gain on farm recapture property held by the donor immediately prior to the first of such gifts, each donee of the property shall succeed (at the time the first of such gifts is made, but in an amount determined as of the close of the donor's taxable year in which the first of such gifts is made) to the same proportion of the donor's excess deductions account (determined, after the application of paragraphs (2) and (3) with respect to the donor, as of the close of such taxable year), as the potential gain on the property received by such donee bears to the aggregate potential gain on farm recapture property held by the donor immediately prior to the first of such gifts.

(6) *Joint return.* In the case of an addition to an excess deductions account for a taxable year for which a joint return was filed under section 6013, for any subsequent taxable year for which a separate return was filed the Secretary or his delegate shall provide rules for allocating any remaining amount of such addition in a manner consistent with the purposes of this section.

(c) *Ordinary income.*

(1) *General rule.* Except as otherwise provided in this section, if farm recapture property (as defined in subsection (e)(1)) is disposed of during a taxable year beginning after December 31, 1969, the amount by which—

(A) In the case of a sale, exchange, or involuntary conversion, the amount realized, or

(B) In the case of any other disposition, the fair market value of such property, exceeds the adjusted basis of such property shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) *Limitation.*

(A) *Amount in excess deductions account.* The aggregate of the amounts treated under paragraph (1) as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231 for any taxable year shall not exceed the amount in the excess deductions account at the close of the taxable year after applying subsection (b)(3)(A).

(B) *Dispositions taken into account.* If the aggregate of the amounts to which paragraph (1) applies is limited by the application of subparagraph (A), paragraph (1) shall apply in respect of such dispositions (and in such amounts) as provided under regulations prescribed by the Secretary or his delegate.

(C) *Special rule for dispositions of land.* In applying subparagraph (A), any gain on the sale or exchange of land shall be taken into account only to the extent of its potential gain (as defined in subsection (e)(5)).

(d) *Exceptions and special rules.*

(1) *Gifts.* Subsection (c) shall not apply to a disposition by gift.

(2) *Transfer at death.* Except as provided in section 691 (relating to income in respect of a decedent), subsection (c) shall not apply to a transfer at death.

(3) *Certain corporate transactions.* If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of sections 332, 351, 361, 371(a), or 374(a), then the amount of gain taken into account by the transferor under subsection (c)(1) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). This paragraph shall not apply to a disposition to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

(4) *Like kind exchanges; involuntary conversion, etc.* If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 1031 or 1033, then the amount of gain taken into account by the transferor under subsection (c)(1) shall not exceed the sum of—

(A) The amount of gain recognized on such disposition (determined without regard to this section), plus

(B) The fair market value of property acquired with respect to which no gain is recognized under subparagraph (A), but which is not farm recapture property.

(5) *Partnerships.*

(A) *In general.* In the case of a partnership, each partner shall take into account separately his distributive share of the partnership's farm net losses, gains from dispositions of farm recapture property, and other items in applying this section to the partner.

(B) *Transfers to partnerships.* If farm recapture property is contributed to a partnership and gain (determined without regard to this section) is not recognized under section 721, then the amount of gain taken into account by the transferor under subsection (c)(1) shall not exceed the excess of the fair market value of farm recapture property transferred over the fair market value of the partnership interest attributable to such property. If the partnership agreement provides for an allocation of gain to the contributing partner with respect to farm recapture property contributed to the partnership (as provided in section 704(c)(2)), the partnership interest of the contributing partner shall be deemed to be attributable to such property.

(6) *Property transferred to controlled corporations.* Except for transactions described in subsection (b)(5)(A), in the case of a transfer, described in paragraph (3), of farm recapture property to a corporation, stock or securities received by a transferor in the exchange shall be farm recapture property to the extent attributable to the fair market value of farm recapture property (or, in the case of land, if less, the adjusted basis plus the potential gain (as defined in subsection (e)(5)) on farm recapture property) contributed to the corporation by such transferor.

(e) *Definitions.* For purposes of this section—

(1) *Farm recapture property.* The term "farm recapture property" means—

(A) Any property (other than section 1250 property) described in paragraph (1) (relating to business property held for more than 6 months), (3) (relating to livestock), or (4) (relating to an unharvested crop) of section 1231(b) which is or has been used in the trade or business of farming by the taxpayer or by a transferor in a transaction described in subsection (b)(5), and

(B) Any property the basis of which in the hands of the taxpayer is determined with reference to the adjusted basis of property which was farm recapture property in the hands of the taxpayer within the meaning of subparagraph (A).

(2) *Farm net loss.* The term "farm net loss" means the amount by which—

(A) The deductions allowed or allowable by this chapter which are directly connected with the carrying on of the trade or business of farming, exceed

(B) The gross income derived from such trade or business.

Gains and losses on the disposition of farm recapture property referred to in section 1231(a) (determined without regard to this section or section 1245(a)) shall not be taken into account.

(3) *Farm net income.* The term "farm net income" means the amount by which the amount referred to in paragraph (2)(B) exceeds the amount referred to in paragraph (2)(A).

(4) *Trade or business of farming.*

(A) *Horse racing.* In the case of a taxpayer engaged in the raising of horses, the term "trade or business of farming" includes the racing of horses.

(B) *Several businesses of farming.* If a taxpayer is engaged in more than one trade or business of farming, all such trades and businesses shall be treated as one trade or business.

(5) *Potential gain.* The term "potential gain" means an amount equal to the excess of the fair market value of property over its adjusted basis, but limited in the case of land to the extent of the deductions allowable in respect to such land under sections 175 (relating to soil and water conservation expenditures) and 182 (relating to expenditures by farmers for clearing land) for the taxable year and the 4 preceding taxable years.

[Sec. 1251 as added by sec. 211(a), Tax Reform Act 1969 (83 Stat. 566)]

§ 1.1251–1 General rule for treatment of gain from disposition of property used in farming where farm losses offset nonfarm income.

(a) *Applicability.* The provisions of section 1251, this section, and §§ 1.1251–2 through 1.1251–4 shall apply with respect to any taxable year beginning after December 31, 1969, but only if (1) there is a farm net loss (as defined in section 1251(e)(2) and paragraph (b) of § 1.1251–3) for the taxable year, or (2) there is a balance in the excess deductions account (as described in § 1.1251–2) as of the close of the taxable year before subtracting any amount under paragraph (c)(1)(i) of § 1.1251–2. See section 1251(a). In general, a taxpayer who has a farm net loss and certain other taxpayers are required to establish and maintain an excess deductions account as provided in section 1251(b). Certain additions and subtractions are made to the excess deductions account, and upon the disposition of "farm recapture property" any gain to the extent of the balance in the excess deductions account is recognized as ordinary income under section 1251(c)(1). See paragraph (b)(1) of this section. "Farm recapture property" is, in general, certain farming property (other than section 1250 property) described in paragraph (1), (3), or (4) of section 1231(b). See paragraph (a) of § 1.1251–3.

(b) *Ordinary income*—(1) *General rule.* In general, subject to the provisions of subparagraphs (2), (3), (4), and (5) of this paragraph, upon a disposition of an item of farm recapture property during a taxable year beginning after December 31, 1969, the amount by which—

(i) In the case of a sale, exchange, or involuntary conversion, the amount realized, or

(ii) In the case of any other disposition, the fair market value of such property

exceeds the adjusted basis of such property shall be recognized under section 1251(c)(1) as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231 (that is, shall be recognized as ordinary income). The amount of gain recognized as ordinary income under section 1251(c)(1) shall be determined separately for each item of farm recapture property in a manner consistent with the principles of subparagraphs (4) and (5) of § 1.1245–1(a) (relating to gain from dispositions of certain depreciable property). Generally, such ordinary income treatment applies even though in the absence of section 1251(c)(1) no gain would be recognized under the Code. For example, if a corporation distributes farm recapture property as a dividend, gain may be recognized as ordinary income to the corporation even though, in the absence of section 1251(c)(1), section 311(a) would preclude any recognition of gain to the corporation. For purposes of section 1251, the term "disposition" shall have the same meaning as in paragraph (a)(3) of § 1.1245–1. For the relation of section 1251 to other provisions of the Code, see paragraph (e) of this section.

(2) *Limitation as to dispositions of land*—(i) *In general.* In the case of a disposition of land, gain shall be recognized as ordinary income under section 1251(c)(1) only to the extent of the land's "potential gain". See section 1251(c)(2)(C).

(ii) *Potential gain.* For purposes of section 1251, the term "potential gain" means in respect of land an amount equal to the excess of its fair market value over its adjusted basis, but limited to the extent of the deductions allowable in respect to such land pursuant to an election (if any) under sections 175 (relating to soil and water conservation expenditures) and 182 (relating to expenditures by farmers for clearing land) for the taxable year of disposition and the four immediately preceding taxable years regardless of whether any such preceding taxable year begins before December 31, 1969. See section 1251(e)(5).

(iii) *Cross reference.* For additional recapture of certain deductions allowed under sections 175 and 182 in respect of farm land, see section 1252.

(3) *Exceptions and special rules.* The amount of gain to be recognized as ordinary income under section 1251(c)(1) after applying subparagraph (2) of this paragraph, if applicable, shall be subject to the exceptions and special rules of section 1251(d) and § 1.1251–4.

(4) *Limitation as to amount in excess deductions account*—(i) *In general.* The aggregate of the amount of gain recognized as ordinary income under section 1251(c)(1) (after applying subparagraphs (2) and (3) of this paragraph, if applicable) shall not exceed the amount in the excess deductions account at the close of the taxable year after subtracting from the account the amount specified in section 1251(b)(3)(A) and paragraph (c)(1)(i) of § 1.1251–2. See section 1251(c)(2)(A). For transfer of amount in an excess deductions account, see section 1251(b)(5).

(ii) *Dispositions taken into account.* If the aggregate of the amounts to which section 1251(c)(1) applies is limited for any taxable year by the application of subdivision (i) of this subparagraph, section 1251(c)(1) shall apply in respect of dispositions of items of farm recapture property in the order made. See section 1251(c)(2)(B).

(5) *Relationship to section 1245.* If property is disposed of which qualifies as both section 1245 property (as defined in section 1245(a)(3)) as well as farm recapture property, then gain shall be recognized as ordinary income under section 1251(c)(1) only to the extent that the amount of any gain realized (in the case of a sale, exchange, or involuntary conversion), or to the extent that the excess of the fair market value of the property over its adjusted basis (in the case of any other disposition), was not recognized as ordinary income under section 1245(a)(1). The amount of gain recognized as ordinary income under section 1245(a)(1) upon a disposition of farm recapture property (i) is taken into account under paragraph (b)(2) of § 1.1251–3 for purposes of computing farm net loss (or farm net income) and (ii) is not under paragraph (c)(1)(ii) of § 1.1251–2 subtracted from the excess deductions account.

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

Example (1). A, an unmarried individual who uses the calendar year as his taxable year, makes one disposition of farm recapture property during 1970. On June 30, 1970, he sells for $75,000 farm recapture property (other than land) with an adjusted basis of $43,000 for a realized gain of $32,000 none of which is recognized under section 1245. The balance in A's excess deductions account is $39,000 at the close of 1970 (after making the applicable additions and subtractions under section 1251(b)(2) and (3)(A)). Hence, the entire gain of $32,000 is recognized as ordinary income under section 1251(c)(1), and the balance remaining in A's excess deductions account is $7,000. If, however, the original balance in the excess deductions account were only $15,000, then only $15,000 would be recognized as ordinary income under section 1251(c)(1) and A's excess deductions account balance would be reduced to zero. The remaining gain of $17,000 may be treated as gain from the sale or exchange of property described in section 1231.

Example (2). M, a calendar year corporation makes one disposition of farm recapture property during 1975. On January 15, 1975, M distributes as a dividend to its shareholders land which it had acquired on March 3, 1970. On that date, the excess of the fair market value ($67,500) over the adjusted basis of the land ($45,000) is $22,500 and the sum of the deductions allowable in respect of such land under sections 175 and 182 is $5,000 for 1970 and $13,000 for the taxable year of disposition and the four immediately preceding taxable years. Thus, the potential gain (as defined in subparagraph (2)(ii) of this paragraph) is limited to $13,000. At the end of M's taxable year (after making the applicable additions and subtractions under section 1251(b)(2) and (3)(A) there is a balance of $25,000 in the excess deductions account of M. Since such balance exceeds the potential gain, M recognizes $13,000 as ordinary income under section 1251(c)(1) even though, in the absence of that provision, section 311(a) would preclude recognition of gain to M. The balance in M's excess deductions account is reduced by $13,000, from $25,000 to $12,000. With respect to the treatment of the remaining gain ($9,500) from the disposition of the land, see section 1252 and example (2) of paragraph (e) of § 1.1252–1.

Example (3). Assume the same facts as in example (2), except that M makes a second disposition of farm recapture property during 1975. On June 5, 1975, M sells for $55,000 a breeding herd of cattle having an adjusted basis of $35,000 for a realized gain of $20,000. M had acquired the herd on April 1, 1971. Assume further that $6,000 of the $20,000 gain realized is treated as ordinary income under section 1245(a)(1). Thus, the amount of gain M would recognize as ordinary income under section 1251(c)(1), computed before applying the excess deductions account limitation, is $14,000. In accordance with the computation in example (1) of paragraph (c)(2) of § 1.1251–2, the excess deductions account limitations limit the maximum amount of gain which can be recognized as ordinary income under section 1251(c)(1) upon the disposition of the land and the breeding herd of $25,000. Under subparagraph (4)(ii) of this paragraph, the amount of such limitation, $25,000, is assigned to each property in the order of disposition. Thus, the amount of gain recognized as ordinary income under section 1251 is

$13,000 (as in example (1) of this subparagraph) on the disposition of the land and $12,000 on the disposition of the breeding herd. The remaining gain of $2,000 (i.e., $14,000 minus $12,000) on the disposition of the breeding herd may be treated as gain from the sale or exchange of property described in section 1231.

(c) *Instances of nonapplication*—(1) *In general.* Section 1251 does not apply with respect to dispositions of farm recapture property by a taxpayer during a taxable year if at the close of such year after making the necessary additions and subtractions under section 1251(b) (2) and (3)(A), there is no balance in the taxpayer's excess deductions account.

(2) *Losses.* Section 1251(c)(1) does not apply to losses. Thus, section 1251 (c)(1) does not apply if a loss is realized upon a sale, exchange or involuntary conversion of property, all of which is farm recapture property, nor does the section apply to a disposition of such property other than by way of sale, exchange, or involuntary conversion if at the time of the disposition the fair market value of such property is not greater than its adjusted basis.

(3) *Certain dispositions of interests in land.* Section 1251(c)(1) does not apply to dispositions of interests in land with respect to which no deductions were allowable pursuant to an election under sections 175 (relating to soil and water conservation expenditures) and 182 (relating to expenditures by farmers for clearing land) for the taxable year of disposition and the four immediately preceding taxable years. For possible application of section 1252 in such a case, see example (1) of paragraph (e) of § 1.1252–1.

(d) *Partnerships.* [Reserved]

(e) *Relation of section 1251 to other provisions*—(1) *General.* The provisions of section 1251 apply (after applying paragraph (b)(5) of this section, relating to section 1245 property) notwithstanding any other provision of subtitle A of the Code. Thus, unless an exception or special rule under section 1251(d) and § 1.1251–4 applies, gain under section 1251(c)(1) is recognized notwithstanding any contrary nonrecognition provision or income characterizing provision. For example, section 1251 overrides section 1231 (relating to property used in a trade or business). Accordingly, gain recognized under section 1251(c)(1) upon a disposition of farm recapture property will be treated as ordinary income to the extent of the balance in the taxpayer's excess deductions account, and only the remaining gain, if any, from the disposition may be considered as gain from the sale or exchange of a capital asset if section 1231 is applicable. See example (3) of paragraph (d)(6) of this section.

(2) *Nonrecognition sections overridden.* The nonrecognition of gain provisions of subtitle A of the Code which section 1251 overrides include, but are not limited to, sections 267(d), 311(a), 336, 337, 501(a), and 512(b)(5). See section 1251(d) and § 1.1251–4 for the extent to which section 1251(c)(1) overrides sections 332, 351, 361, 371(a), 374(a), 721, 1031, and 1033.

(3) *Treatment of gain not recognized under section 1251(c)(1).* For treatment of gain not recognized under section 1251 (c)(1), the principles of paragraph (f) of § 1.1245–6 shall be applicable. Thus, section 1251 does not prevent gain which is not recognized under section 1251 from being considered as gain under another provision of the Code, such as for example, section 1252(a)(1) (relating to treatment of gain from disposition of farm land). See example (1) of paragraph (e) of § 1.1252–1.

(4) *Exempt income.* With regard to exempt income, the principles of paragraph (e) of § 1.1245–6 shall be applicable.

(5) *Normal retirement of asset in multiple asset account.* Section 1251(c)(1) does not require recognition of gain upon normal retirements of farm recapture property in a multiple asset account as long as the taxpayer's method of accounting, as described in paragraph (e)(2) of § 1.167(a)–8 (relating to accounting treatment of asset retirements), does not require recognition of such gain.

(6) *Installment method*—(i) *In general.* Gain from a disposition to which section 1251(c)(1) applies may be reported under the installment method if such method is otherwise available under section 453 of the Code. In such case, the income (other than interest) on each installment payment shall be deemed to consist of gain to which section 1251(c)(1) applies until all such gain has been reported, and the remaining portion (if any) of such income shall be deemed to consist of gain to which section 1251(c)(1) does not apply. For treatment of amounts as interest on certain deferred payments, see section 483. For adjustments in the excess deductions account, see paragraph (c)(1)(ii) of § 1.1251–2.

(ii) *Special rule.* If a taxpayer disposes of property used in the trade or business of farming which qualifies as both section 1245 property as well as farm recapture property and elects to report the gain from such disposition under the installment method, then the income (other than interest) on each installment payment shall (*a*) first be deemed to consist of gain to which section 1245 (a)(1) applies until all such gain has been reported, (*b*) the remaining portion (if any) of such income shall be deemed to consist of gain to which section 1251 (c)(1) applies until all such gain has been reported, and (*c*) finally the remaining portion (if any) of such income shall be deemed to consist of gain to which neither section 1245(a)(1) nor 1251(c)(1) applies. See paragraph (d)(3) of § 1.1252–1 with respect to the installment method in regard to the disposition of property which is both farm recapture property as well as farm land (as defined in section 1252(a)(2) and paragraph (a)(3)(i) of § 1.1252–1).

§ 1.1251–2 Excess deductions account.

(a) *Establishment and maintenance of account*—(1) *General rule.* With respect to any taxable year beginning after December 31, 1969, any taxpayer who—

(i) Has a farm net loss (as defined in section 1251(e)(2) and in paragraph (b) of § 1.1251–3) for such a taxable year, or

(ii) Has an excess deductions account balance as of the close of such a taxable year

shall establish (if not previously established) and maintain for purposes of section 1251 an excess deductions account. See section 1251(b)(1). Once an excess deductions account is established (or succeeded to under paragraph (e) of this section in the case of certain corporate transactions and gifts) all entries (including the entries prescribed by paragraph (f) of this section with respect to married taxpayers who file joint returns) with respect to the account must be part of the taxpayer's permanent records for all taxable years for which the account must be maintained. For purposes of applying section 1251 and this section, the term "taxpayer" in the case of a partnership means each partner of such partnership and in the case of an estate or trust means the estate or trust regardless of whether it is taxable under subpart B or E, subchapter J, chapter 1 of the Code.

(2) *Distributions from estate or trust.* If farm recapture property is distributed from an estate or trust in a transaction to which section 1251(d) (1) or (2) (relating to exceptions for gifts and transfers at death) applies, then the excess deductions account balance of the estate or trust shall be succeeded to by the distributee in the amount, if any, and manner prescribed in paragraph (e)(2) of this section. For purposes of the preceding sentence only, the rules of paragraph (e)(2) of this section shall be applied by treating each distribution as a gift at the time made. Thus; for example, if all of the farm recapture property of an estate or trust is distributed to a distributee on the date the estate or trust terminates, the distributee will succeed on that date to the excess deductions account balance of the estate or trust.

(3) *Exception.* For any taxable year, a taxpayer shall not have to maintain an excess deductions account as required in subparagraph (1) of this paragraph if—

(i) For such taxable year there would be no additions to the taxpayer's excess deductions account, and

(ii) For such taxable year immediately preceding such taxable year the balance in the taxpayer's excess deductions account was reduced to zero by reason of section 1251(b)(3) (relating to subtractions from the account) or section 1251 (b)(5) (relating to transfer of account).

(b) *Additions to account*—(1) *General rule.* For each taxable year, there shall be added to the excess deductions account an amount equal to the taxpayer's farm net loss. See section 1251(b) (2)(A).

(2) *Exceptions.* In the case of an individual and, in the case of an electing small business corporation (as defined in section 1371(b)), subparagraph (1) of this paragraph shall apply for a taxable year—

(i) Only if the taxpayer's nonfarm adjusted gross income (as defined in paragraph (d) of § 1.1251–3) for such year exceeds $50,000, and

(ii) Only to the extent the taxpayer's farm net loss for such year exceeds $25,000.

The limitations of this subparagraph apply to a person (other than a trust) to whom the tax rates set forth in section 1 are applicable and as prescribed in subparagraph (3) of this paragraph in respect of an electing small business corporation.

(3) *Electing small business corporation.* In the case of an electing small business corporation (as defined in section 1371(b))—

(i) For purposes of subparagraph (2) of this paragraph, the term "the taxpayer" means such corporation or any one of its shareholders,

(ii) For purposes of ascertaining under subparagraph (2)(i) of this paragraph whether one of a corporation's shareholders has nonfarm adjusted gross income in excess of $50,000, there shall be attributed, regardless of whether distributed, to him for his taxable year with which or within which the taxable year of the corporation ends his pro rata share of the corporation's nonfarm taxable income or loss (as defined in paragraph (d) (1) and (2)(i) of § 1.1251–3) for such corporation's taxable year,

(iii) For such purposes, if a taxpayer is a shareholder in more than one such corporation, there shall be attributed to him under subdivision (ii) of this subparagraph his pro rata share of each such corporation's nonfarm taxable income or loss, and

(iv) The limitations in subparagraph (2) of this paragraph shall not apply to the corporation for a taxable year if on any day of such year there is a taxpayer who is a shareholder having, for his taxable year with which or within which the taxable year of such corporation ends, a farm net loss (as defined in paragraph (d)(2)(i) of § 1.1251–3). For purposes of determining whether a shareholder of such corporation has a farm net loss, there shall not be taken into account his pro rata share of farm net income or loss of such corporation but there shall be taken into account his pro rata share of farm net income or loss of any other electing small business corporation for such corporation's taxable year ending with or within his taxable year.

(v) The provisions of subdivisions (i) through (iv) of this subparagraph do not apply for purposes of determining whether the shareholder must make an addition to his excess deductions account and the amount of such addition. Under paragraph (d)(2)(ii) of § 1.1251–3, the nonfarm adjusted gross income of a shareholder of an electing small business corporation is computed by including amounts distributed as dividends, and amounts treated under section 1373(b) as distributed as a dividend, to such shareholder and by including the portion of such corporation's net operating loss allowed under section 1374 as a deduction to such shareholder.

(4) *Married individuals*—(i) *Lower limitations for separate returns.* If married taxpayers file separate returns, then for purposes of this paragraph each spouse shall be treated as a separate individual. However, in such case, (*a*) the amount specified in subparagraph (2)(i) of this paragraph shall be $25,000 in lieu of $50,000, and (*b*) the amount specified in subparagraph (2)(ii) of this paragraph shall be $12,500 in lieu of $25,000. The lower limitations in the preceding sentence shall not apply if the spouse of the taxpayer does not have any nonfarm adjusted gross income for the taxable year. See section 1251(b)(2)(C).

(ii) *Joint return.* If married taxpayers for a taxable year file a joint return under section 6013, then for purposes of this paragraph they shall for such taxable year be treated as a single taxpayer. For rules applicable to establishing, maintaining, and allocating a joint excess deductions account, see paragraph (f) of this section.

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

Example (1). For 1971, the M Corporation which uses the calendar year as its taxable year and which is not an electing small business corporation has a farm net loss of $40,000 and nonfarm taxable income of $45,000. Since subparagraph (2) of this paragraph does not apply to M, it is required to make a $40,000 addition to its excess deductions account.

Example (2). For 1971, A, an unmarried individual who uses the calendar year as his taxable year, has a farm net loss of $33,000 and nonfarm adjusted gross income of $65,000. Under subparagraph (2) of this paragraph, A is required to make an addition of $8,000 to his excess deductions account (that is, the excess of the farm net loss, $33,000, over the $25,000 amount referred to in subparagraph (2)(ii) of this paragraph). If, however, A were a trust, the limitation in subparagraph (2) of this paragraph would not apply and such trust would be required to add $33,000 (the amount of the entire farm net loss) to its excess deductions account.

Example (3). H and W each use the calendar year as the taxable year. For 1971, H, a married taxpayer who files a separate return, has a farm net loss of $45,000 and nonfarm adjusted gross income of $60,000. H's spouse W does not have any nonfarm adjusted gross income for 1971. Thus, the lower limitations in subparagraph (4)(i) of this paragraph do not apply. Accordingly, H is required to make an addition of $20,000 to his excess deductions account (that is, the excess of the farm net loss, $45,000, over the $25,000 amount referred to in subparagraph (2)(ii) of this paragraph).

Example (4). Assume the same facts as in example (3), except that for 1971 W has a farm net loss of $10,000 and nonfarm adjusted gross income of $30,000. Thus, the lower limitations in subparagraph (4)(i) of this paragraph do apply and H is required to make an addition of $32,500 to his excess deductions account (that is, the excess of his farm net loss, $45,000, over the $12,500 amount referred to in subparagraph (4)(i)(*b*) of this paragraph). Since, however, W did not have a farm net loss in excess of $12,500, she would not be required to make an addition to her excess deductions account. For the result if H and W were to file a joint return, see example (1) of paragraph (f)(6) of this section.

Example (5). For 1971, the M Corporation, which uses the calendar year as its taxable year and which is an electing small business corporation, has a farm net loss of $35,000 and nonfarm taxable income of $60,000. A, B, and C, the sole equal shareholders of M, are cash method taxpayers and each uses a fiscal year ending on March 31. For the taxable year ending March 31, 1972, A has a farm net loss of $5,000. Thus, as M's taxable year ends within the taxable year of A during which A has a farm net loss, the limitations in subparagraph (2) of this paragraph do not apply with respect to M for 1971. See subparagraph (3)(iv) of this paragraph. For 1971, M is required under subparagraph (1) of this paragraph, to add $35,000 to its excess deductions account.

Example (6). Assume the same facts as in example (5), except that A's farm net loss occurred in his fiscal year ending March 31, 1971, and no shareholder of M has a farm net loss for the fiscal year ending March 31, 1972. Thus, the limitations in subparagraph (2) of this paragraph do apply with respect to M for 1971, and accordingly M is required to add $10,000 to its excess deductions account for 1971 (that is, the excess of M's farm net loss $35,000, over the $25,000 amount referred to in subparagraph (2)(ii) of this paragraph).

Example (7). Assume the same facts as in example (6), except that M has $45,000 of nonfarm taxable income for 1971 and A, for his taxable year ending March 31, 1972, has $40,000 of nonfarm adjusted gross income, computed without regard to his interest in M. Thus, while M would not have nonfarm taxable income in excess of $50,000, A for purposes of subparagraph (2)(i) of this paragraph would have a total of $55,000 of nonfarm adjusted gross income ($40,000 plus ⅓ of $45,000). See subparagraph (3)(ii) of this paragraph. Accordingly, M would be required to add $10,000 to its excess deductions account for 1971 for the reasons stated in example (6).

Example (8). Assume the same facts as in example (7). Assume further that A is one of two equal shareholders in N, another electing small business corporation with a taxable year ending on January 31, and that N for its taxable year ending January 31, 1972, has a $42,000 nonfarm loss and farm net income of $23,000. Thus, A for purposes of subparagraph (2)(i) of this paragraph, would only have a total of $34,000 of nonfarm adjusted gross income ($40,000, plus ½ of M's nonfarm taxable income of $45,000, minus ½ of N's nonfarm loss of $42,000). See subparagraph (3)(ii) and (iii) of this paragraph. Assuming that no other shareholder of M has nonfarm adjusted gross income in excess of $50,000, by reason of the $50,000 limitation in subparagraph (2)(i) of this paragraph, M makes no addition for 1971 to its excess deductions account. (N would make no addition to its excess deductions account as it does not have a farm net loss.) If, however, N were to have a nonfarm loss of only $8,000, A for purposes of subparagraph (2)(i) of this paragraph would have a total of $51,000 of nonfarm adjusted gross income ($40,000, plus ⅓ of M's nonfarm taxable income of $45,000, minus ½ of N's nonfarm loss of $8,000). Hence, with respect to M the result would be the same as in example (7) (and N would make no addition to its excess deductions account since it does not have a farm net loss).

Example (9). D and E are equal individual shareholders in corporations X, Y, and Z the stock of each corporation having recently been purchased from a different unrelated person. X, Y, and Z are electing small business corporations. D, E, and the corporations all use the calendar year as the taxable year. For 1970, the farm net income of D and E (determined without regard to their respective pro rata shares of the farm net income or loss of X, Y, and Z) are $100,000

and zero respectively. For 1970, the farm net income or loss of the corporations are losses of $80,000 and $20,000 for X and Z, respectively, and income of $60,000 for Y. For 1970, the determinations under subparagraph (3) (iv) of this paragraph as to whether a shareholder of corporation X or Z (no determination is necessary with respect to Y since Y does not have a farm net loss) has a farm net loss are made as follows:

	Determinations as to whether D or E has a farm net loss			
	As to X		As to Z	
	D	E	D	E
Farm net income (determined without regard to X, Y, and Z)	$100,000	$0	$100,000	$0
Pro rata (½) share of corporation's farm net income (or loss):				
of X			(40,000)	(40,000)
of Y	30,000	30,000	30,000	30,000
of Z	(10,000)	(10,000)		
Farm net income (or loss) for purposes of determination	120,000	20,000	90,000	(10,000)

Accordingly, since the determination as to X indicates that neither D nor E has a farm net loss, the limitations of subparagraph (2) of this paragraph apply to X. Thus, assuming that under subparagraph (3) (ii) and (iii) of this paragraph X, D, or E has nonfarm adjusted gross income (or taxable income) in excess of $50,000, X will add $55,000 to its excess of deductions account, i.e., the excess of the farm net loss, $80,000, over the $25,000 amount referred to in subparagraph (2) (ii) of this paragraph. Since, however, the determination as to Z indicates that E has a farm net loss, such limitations do not apply to Z. Thus, the addition for 1970 to Z's excess deductions account is the entire amount of its farm net loss, $20,000.

(c) *Subtractions from account*—(1) *General rule.* Under section 1251(b)(3), if there is any amount in the excess deductions account at the close of a taxable year (determined after making any addition required under paragraph (b) of this section for such year but before making any reduction under this paragraph for such year), then the excess deductions account shall be reduced (but not below zero) by subtracting—

(i) An amount equal to (*a*) the farm net income (as defined in section 1251(e)(3) and in paragraph (c) of § 1.1251–3) for such year, plus (*b*) the amount (as determined in subparagraph (3) of this paragraph) necessary to adjust the account for deductions for any taxable year which did not result in a reduction of the taxpayer's tax under subtitle A of the Code for such taxable year or any preceding taxable year, and

(ii) After making any addition to the excess deductions account under paragraph (b) of this section and any reduction under subdivision (i) of this subparagraph for the taxable year, an amount equal to the sum of the amounts recognized as ordinary income solely by reason of the application of section 1251(c)(1). See section 1251(b)(3)(B). Thus, no amount shall be subtracted under this subdivision for gain recognized by reason of the application of section 1245(a)(1) or 1252(a)(1). For effect on computation of farm net loss or income of gain recognized under section 1245(a)(1) upon a disposition of farm recapture property, see paragraph (b)(2) of § 1.1251–3. In the case of an installment sale of farm recapture property, the taxpayer's excess deductions account shall be reduced under this subdivision in the year of such sale by an amount equal to the gain (computed in the year of sale) to be recognized as ordinary income under section 1251(c)(1).

(2) *Examples.* The provisions of subparagraph (1) of this paragraph may be illustrated by the following examples in which it is assumed that there is no subtraction for lack of tax benefit under subparagraph (3) of this paragraph:

Example (1). Assume the same facts as in example (3) of paragraph (b)(6) of § 1.1251–1. M's excess deductions account balance as of the close of 1975 is computed, in accordance with the additional facts assumed, in the table below:

M's Excess Deductions Account

(1) Balance January 1, 1975		$26,000
(2) Additions for 1975		0
(3) Subtotal		26,000
(4) Subtractions for 1975 (farm net income[1])		1,000
(5) Excess deductions account limitation on gain recognized as ordinary income under section 1251(c)(1) for 1975		25,000
(6) Subtraction for disposition of farm recapture property:		
(a) Gain from disposition of land to which section 1251(c)(1) applies (computed before applying limitation)	$13,000	
(b) Gain from disposition of breeding herd to which section 1251(c)(1) applies (computed before applying limitation)	14,000	
(c) Sum of lines (a) and (b)	27,000	
(d) Excess deductions account limitation (amount in line (5))	25,000	
(e) Gain recognized as ordinary income under section 1251(c)(1) (lower of line (6)(c) or line (6)(d))		25,000
(7) Balance December 31, 1975		0

[1] Computed by treating the section 1245 gain of $6,000 under paragraph (b)(1)(ii) of § 1.1251–3 as gross income derived from the trade or business of farming.

For allocation of the $25,000 of gain recognized as ordinary income to the land and herd, and for treatment of the gain recognized in excess of $25,000, see example (3) of paragraph (b)(6) of § 1.1251–1.

Example (2). A is an unmarried individual who uses the calendar year as his taxable year. In 1971, A makes a single disposition of farm recapture property (other than land) realizing a gain of $46,000 of which $15,000 is recognized as ordinary income under section 1245(a)(1). The gain to which section 1251(c)(1) applies (computed before applying the excess deductions account limitation in section 1251(c)(2)(A) and paragraph (b)(4)(i) of § 1.1251–1) is $31,000 (i.e., $46,000 minus $15,000). The treatment of the gain realized on the disposition in excess of the $15,000 recognized as ordinary income under section 1245(a)(1) and the balance in A's excess deductions account as of the close of 1971 is computed, in accordance with the facts assumed, in the table below:

A's Excess Deductions Account

(1) Balance January 1, 1971		$50,000
(2) Additions for 1971:		
(a) Farm net loss for 1971[1]	$5,000	
(b) Less amount in paragraph (b)(2)(ii) of this section	25,000	
(c) Total additions for 1971		0
(3) Subtotal		50,000
(4) Subtractions for 1971		0
(5) Excess deductions account limitation on gain recognized as ordinary income under section 1251(c)(1) for 1971		50,000
(6) Subtraction for dispositions of farm recapture property:		
(a) Gain to which section 1251(c)(1) applies (computed before applying limitation)	$31,000	
(b) Limitation (amount in line (5))	50,000	
(c) Gain recognized as ordinary income under section 1251(c)(1) lower of line 6(a) or line 6(b)		31,000
(7) Balance December 31, 1971		19,000

[1] Computed by treating the section 1245 gain of $15,000 under paragraph (b)(1)(ii) of § 1.1251–3 as gross income derived from the trade or business of farming.

(3) *Amount necessary to adjust the excess deductions account with respect to deductions which did not result in a reduction of the taxpayer's tax*—(i) *In general.* Under section 1251(b)(3)(A), a subtraction shall be made from the excess deductions account when necessary to reflect amounts in the account which did not result in a tax benefit for the taxable year or any preceding taxable year. For purposes of this subparagraph, there is a tax benefit with respect to an amount which has been added to the excess deductions account if such amount resulted in a reduction, in any taxable year, of the taxpayer's tax under subtitle A of the Code. Thus, if during the current taxable year a taxpayer disposes of farm recapture property in a transaction in which gain would be recognized as ordinary income under section 1251(c)(1) if the excess deductions account limitation in section 1251(c)(2) did not apply, then solely for purposes of computing the amount of gain to be recognized as ordinary income under section 1251(c)(1) during such current taxable year there shall be subtracted from such taxpayer's excess deductions account an amount equal to that portion of any amounts previously added to the taxpayer's excess deductions account which

have not resulted in a tax benefit for such current taxable year or any preceding taxable year. Accordingly, the amount of gain recognized as ordinary income under section 1251(c)(1) in the current taxable year in which an item of farm recapture property is disposed of is not affected or increased by reason of amounts in the excess deductions account as of the close of such current taxable year which are later absorbed by income of a subsequent taxable year as part of a net operating loss carryover from such current taxable year. The amount to be subtracted under this subparagraph shall be computed in accordance with the rules of subdivision (ii) of this subparagraph.

(ii) *Order of computation.* (*a*) The computations prescribed in this subdivision (ii) shall be made as of the close of the taxable year in which there is a disposition of farm recapture property for which the amount of gain to be recognized as ordinary income under section 1251(c)(1) is being determined. For purposes of this subparagraph, such taxable year is referred to as "the current taxable year." As of the close of the current taxable year, (*1*) determine the amounts (if any) added to the excess deductions account for such year and for each preceding year, and (2) determine the years for which there was farm net income, gain actually recognized as ordinary income under section 1251(c)(1), a portion of the taxpayer's excess deductions account succeeded to by a donee, or two or more of such events.

(*b*) Second, in order to determine the "remaining addition" for each year there was an addition to the excess deductions account, in the order of such years beginning with the earliest such year first make permanent subtractions from each such addition by applying subdivision (iii) of this subparagraph to the years referred to in (*a*)(*2*) of this subdivision in the order of such years beginning with the earliest such year first. For any year to which more than one inferior subdivision of such subdivision (iii) applies, such inferior subdivisions shall be applied in the order listed in such subdivision (iii).

(*c*) Finally, for each year there is a remaining addition to the excess deductions account, compute under subdivision (iv) of this subparagraph the portion of the farm net loss for which there was a tax benefit, and under subdivision (v) of this subparagraph the amount of the tentative subtraction from each remaining addition to the excess deductions account, making such computations in the order of the taxable years for which such additions were made beginning with the earliest such year.

(*d*) If the taxpayer is or was an electing small business corporation (as defined in section 1371(b)) or a shareholder of such a corporation, the computations prescribed in this subdivision (ii) shall be made in the manner prescribed in subdivision (viii) of this subparagraph.

(iii) *Permanent subtractions from excess deductions account.* (*a*) Farm net income for any taxable year (including the current taxable year) shall be permanently subtracted from amounts added to (and not previously subtracted from) the excess deductions account in the order of preceding taxable years in which such additions were made, beginning with the last such year.

(*b*) Gain actually recognized as ordinary income under section 1251(c)(1) upon a disposition of farm recapture property in any taxable year (excluding the current taxable year) shall be permanently subtracted from additions to the excess deductions account (which have not previously been permanently subtracted therefrom) for such taxable year and years preceding such taxable year in the order of such years, beginning with the last such year. No subtraction shall be made under this subdivision (*b*) for that portion (if any) of any such addition for which there was no tax benefit (as determined under subdivision (iv) of this subparagraph for purposes of determining the amount of gain actually recognized as ordinary income under section 1251(c)(1) upon dispositions during such taxable year) as of the close of the taxable year in which the disposition occurred.

(*c*) If one or more donees succeed under paragraph (e)(2)(iv) of this section during a taxable year (other than the current taxable year) of the donor to all or a portion of the donor's excess deductions account, the amount succeeded to by such donees shall be subtracted in the manner prescribed in subdivision (vii) of this subparagraph from additions to the excess deductions account (which have not previously been permanently subtracted therefrom).

(iv) *Tax benefit for farm net loss.* (*a*) The portion of the farm net loss for a taxable year (original year) for which as of the close of the current taxable year there was a tax benefit is an amount (not less than zero) equal to the difference for such original year between—

(*1*) Taxable income specially computed under (*b*) of this subdivision, and

(2) Taxable income so computed but without regard to such farm net loss.

(Neither the amount determined under (*a*) (*1*) or (*2*) of this subdivision shall in any case be considered less than zero.) The amount of tax benefit so determined shall be increased by the portion of the farm net loss for such original year which causes a reduction in the taxpayer's tax in preceding or succeeding taxable years through any net operating loss carryovers or carrybacks. This increase is the difference determined for each of such preceding or succeeding years between the amounts in (*a*) (*1*) and (*2*) of this subdivision, the computation of each carryover or carryback to be made under (*a*)(*1*) of this subdivision with regard to the amount of the farm net loss for the original year and such computation under (*a*)(*2*) of this subdivision without regard to such amount. A net operating loss for a taxable year subsequent to the current taxable year shall not be taken into account.

(*b*) Specially computed taxable income for a taxable year means taxable income for the year, modified as follows: (*1*) For the current taxable year, include the amount of gain recognized as ordinary income under section 1251(c)(1) from dispositions of farm recapture property during such taxable year (determined as if the excess deductions account limitation in section 1251(c)(2) did not apply); (2) for a year preceding the current taxable year, exclude the amount of gain actually recognized as ordinary income under section 1251(c)(1); (3) for any taxable year, exclude the portion (if any) of farm net income which has been permanently subtracted under subdivision (iii)(*a*) of this subparagraph from an addition to the excess deductions account; (*4*) for the current taxable year, the net operating loss deduction considered absorbed in computing taxable income shall be computed by applying (*b*)(*1*) of this subdivision in computing taxable income; and (*5*) for a taxable year preceding the current taxable year the amount of the net operating loss deduction which causes a reduction in computing the taxpayer's tax shall not be recomputed.

(v) *Tentative subtraction for lack of tax benefit.* As of the close of the current taxable year, the portion to be tentatively subtracted for lack of tax benefit from the amount of the additions to the excess deductions account for such year and preceding years (as reduced by permanent subtractions under subdivision (iii) of this subparagraph) is, for any such year, an amount equal to the excess (if any) of—

(*a*) The amount of such addition for such year remaining after reductions by permanent subtractions therefrom under subdivision (iii) of this subparagraph, over

(*b*) The portion (if any) of the farm net loss for such year for which there was a tax benefit, as determined under subdivision (iv) of this subparagraph.

(vi) *Examples.* The provisions of subdivisions (i) through (v) of this subparagraph may be illustrated by the following examples:

Example (1). A is an unmarried individual who uses the calendar year as his taxable year. In 1971 he makes a sale of farm recapture property and makes a computation to determine if it is necessary to reduce his excess deductions account, for purposes of computing the amount of gain to be recognized as ordinary income under section 1251(c)(1), by any amount therein for which there was no tax benefit at the close of 1971. In the table below assume the facts set forth in lines (1)(a) through (1)(j) and that A had no income or loss for any year prior to 1970. Based upon such facts and the computations in the table, A recognized $55,725 as ordinary income under section 1251(c)(1), and the remaining gain of $32,275 from the sale may be treated as gain from the sale or exchange of property described in section 1231.

1. Amounts assumed:	1970	1971
a. Farm net income (or loss)	($250,000)	$20,000
b. Nonfarm income (or loss)	55,000	(82,000)
c. Gain which would be recognized as ordinary income under section 1251(c)(1) (computed without regard to excess deductions account limitation)		88,000
d. Itemized deductions (taxes and interest)	(2,000)	(2,000)
e. Personal exemption	(625)	(650)
f. Taxable income (or loss) for 1970; for 1971 on basis of assumption in line (c), but without regard to net operating loss deduction	(197,625)	23,350
g. Adjustments under section 172(d) (3) and (4) (sum of lines (d) and (e) for 1970	2,625	
h. Net operating loss for 1970	(195,000)	
i. Taxable income for 1971 on basis of assumption in line (c) and with regard to net operating loss deduction		0
j. Amount of farm net loss in 1970 which causes reduction in tax in 1971 (line (f) minus line (i))		23,350
2. Specially computed taxable income (or loss)		
a. Line (1)(f) for 1970; line (1)(i) for 1971	(197,625)	0
b. Less adjustment (line (1)(a) for 1971)		20,000
c. Specially computed taxable income (or loss)	(197,625)	(20,000)
3. Remaining addition to excess deductions account as of December 31, 1971 for 1970:		
a. Addition to excess deductions account (for 1970, line (1)(a) minus $25,000)	(225,000)	
b. Permanent subtraction of 1971 farm net income (line (1)(a) for 1971)	20,000	
c. Remaining addition in excess deductions account as of December 31, 1971	(205,000)	
4. Amount of tax benefit on 1970 farm net loss in 1970:		
a. Specially computed taxable income for 1970 without regard to farm net loss (difference between line (2)(c), loss of $197,625, and line (1)(a), loss of $250,000)	52,375	
b. Specially computed taxable income (line (2)(c), ($197,625), but not less than zero)	0	
c. Amount of tax benefit on 1970 farm net loss as of December 31, 1970		52,375
5. Amount of tax benefit on 1970 farm net loss in 1971:		
a. Specially computed taxable income for 1971 without regard to 1970 farm net loss (the difference between line (2)(c), a loss of $20,000, and line (1)(j), a loss of $23,350)	3,350	
b. Specially computed taxable income for 1971 (line (2)(c)), but not less than zero)	0	
c. Amount of tax benefit on 1970 farm net loss in 1971		3,350
6. Amount of tax benefit on 1970 farm net loss as of December 31, 1971 (line (4)(c) plus line (5)(c))		55,725
7. Tentative subtraction from 1970 addition to excess deductions account for purposes of determining treatment of 1971 sale (line (3)(c), $205,000, minus line (6))		149,275
8. Amount in excess deductions account for purposes of applying section 1251 to 1971 sale (line (3)(c) minus line (7))		(55,725)
9. Gain recognized as ordinary income under section 1251(c)(1) upon 1971 sale (lower of lines (1)(c) and (8))		($55,725)
10. Gain which may be treated as gain from the sale or exchange of property described in section 1231 (line (1)(c) minus line (9))		32,275
11. Final balance in excess deductions account as of December 31, 1971 (line (3)(c) minus line (9))		(149,275)

Example (2). Assume the same facts as in example (1). Assume further the facts set forth in lines (1)(a) through (1)(i) in the table below. On the basis of such assumed facts, $10,000 of gain is recognized as ordinary income under section 1251(c)(1) upon a sale of farm recapture property in 1972, as determined in accordance with the computations in the table below:

1. Amounts assumed:	1971	1972
a. Farm net income (or loss)	$20,000	$5,000
b. Nonfarm income (or loss)	(82,000)	90,000
c. Gain recognized as ordinary income under section 1251(c)(1) (for 1972, computed without regard to excess deductions account limitation)	55,725	10,000
d. For 1971, long-term capital gain ($32,275) minus section 1202 deduction ($16,137)	16,138	
e. Itemized deductions (taxes and interest)	(2,000)	(2,000)
f. Personal exemption	(650)	(700)
g. Taxable income (for 1972, on the basis of assumption in line (c)), but without regard to net operating loss deduction	7,213	42,300
h. Taxable income (for 1972, on the basis of assumption in line (c)) with regard to net operating loss deduction	0	0
i. Amount of farm net loss in 1970 which causes reduction in tax in 1971 and 1972 (line (g) minus line (h))	7,213	42,300
2. Specially computed taxable income (or loss):		
a. Line (1)(h)	75,725	5,000
b. Less adjustments (sum of lines (1) (a) and (c) for 1971; line (1)(a) for 1972)	75,725	5,000
c. Specially computed taxable income (or loss)	(75,725)	(5,000)
3. Remaining 1970 addition to excess deductions account as of December 31, 1971:		
a. Amount as of December 31, 1971 (line (11) of example (1))		(149,275)
b. Permanent subtraction of 1972 farm net income (line (1)(a) for 1972)		5,000
c. Remaining 1970 addition in excess deductions account as of December 31, 1972		(144,275)
4. Amount of tax benefit on 1970 farm net loss in 1970 (line (4)(c) of example (1))		52,375
5. Amount of tax benefit on 1970 farm net loss in 1971:		
a. Specially computed taxable income for 1971 without regard to 1970 farm net loss (line (2)(c), a loss of $75,725, reduced by line (1)(i), a loss of $7,213, but not less than zero)	0	
b. Specially computed taxable income for 1971 (line (2)(c)), but not less than zero	0	
c. Amount of tax benefit for 1970 farm net loss in 1971		0

	1971	1972
6. Amount of tax benefit on 1970 farm net loss in 1972:		
a. Specially computed taxable income for 1972 without regard to 1970 farm net loss (the difference between line (2)(c), a loss of $5,000, and line (1)(i), a loss of $42,300)	$37,300	
b. Specially computed taxable income for 1972 (line (2)(c)), but not less than zero	0	
c. Amount of tax benefit for 1970 farm net loss in 1972		$37,300
7. Amount of tax benefit on 1970 farm net loss as of December 31, 1972 (sum of lines (4), (5)(c), and (6)(c))		89,675
8. Tentative subtraction from 1970 addition to excess deductions account for purposes of determining treatment of 1972 sale (line (3)(c), $144,275, minus line (7))		54,600
9. Amount in excess deductions account for purposes of applying section 1251 to 1972 sale (line (3)(c) minus line (8))		(89,675)
10. Gain recognized as ordinary income under section 1251(c)(1) upon 1972 sale (lower of line (1)(c) for 1972 and line (9))		10,000
11. Gain which may be treated as gain from the sale or exchange of property described in section 1231 (line (1)(c) for 1972 minus line (10))		0
12. Final balance in excess deductions account as of December 31, 1972 (line (3)(c) minus line (10))		(134,275)

(vii) *Transfer of excess deductions account to donee.* If under paragraph (e)(2)(iv) of this section one or more donees succeed during a taxable year of the donor (other than the current taxable year) to all or a portion of the donor's excess deductions account—

(*a*) The amount succeeded to by such donees shall be considered attributable to and permanently subtracted under subdivision (iii)(c) of this subparagraph from the remaining amounts of the additions to the donor's excess deductions account (which have not previously been permanently subtracted therefrom) for such year or taxable years preceding such year in proportion to the remaining amount of each such addition,

(*b*) Such permanent subtraction is taken into account only for purposes of determining the amount of gain to be recognized as ordinary income under section 1251(c)(1) by the donor in taxable years subsequent to such taxable year, and

(*c*) The attribute of lack of tax benefit shall not carryover from the donor to any donee.

(viii) *Electing small business corporation.* (*a*) In the case of a corporation for which an election under section 1372(a) was in effect for every taxable year during which it was in existence, the amount to be subtracted for lack of tax benefit from the addition for any taxable year to its excess deductions account shall, except as otherwise provided in this subdivision (viii), be computed under the rules of subdivisions (i) through (vii) of this subparagraph. Thus, as of the close of the current taxable year of such corporation, there shall be computed for each taxable year of such corporation for which there was an addition to its excess deductions account the amount of the remaining addition, determined by reducing the amount of such addition by the amount of the permanent subtractions under subdivision (iii) of this subparagraph.

(*b*) The provisions of subdivision (iv) of this subparagraph shall be applied in computing the amount (if any) of a tax benefit the corporation received for its farm net loss in any taxable year by first attributing such farm net loss and other items of the corporation to its shareholders for the taxable year of each shareholder with which or within which the taxable year of the corporation ends, and then by making the computations specified in such subdivision (iv). For purposes of this computation, the farm net income or loss of any shareholder shall be the amount of his aggregate farm net income or loss determined by also taking into account any farm net income or loss similarly attributed to him from any other electing small business corporation and any other amounts of farm net income or loss (determined without regard to this (*b*)) that he may have for his taxable year. If for any taxable year of the shareholder he has an aggregate farm net loss so determined, such tax benefit shall be allocated ratably to the amount of farm net loss of each such corporation attributed to him and to the amount of the farm net loss (determined without regard to this (*b*)) that he may have for the taxable year. If for any taxable year of the shareholder he has an aggregate of farm net income, he shall be considered to have a tax benefit for the amount of any farm net loss of each such corporation attributed to him and for the amount of any farm net loss (determined without regard to this (*b*)) that he may have for the taxable year.

(*c*) For purposes of applying subdivision (v)(*b*) of this subparagraph to the corporation, the portion (if any) of its farm net loss for any taxable year for which there was a tax benefit shall be the sum of the amounts in respect of such farm net loss of such corporation for which there was a tax benefit (as determined under (*b*) of this subdivision (viii)) for each of its shareholders.

(*d*) In the case of a small business corporation for which an election under section 1372(a) was in effect for some, but not all, of its taxable years during which it was in existence, the principles of this subparagraph shall apply.

(d) *Exception for taxpayers using certain accounting methods*—(1) *General rule.* Under section 1251(b)(4), except to the extent that a taxpayer has succeeded to an excess deductions account as provided in paragraph (e) of this section (relating to receipt of farm recapture property in certain corporate and gift transactions), additions to the account shall not be required by a taxpayer who elects to compute taxable income from the trade or business of farming (as defined in paragraph (e)(1) of § 1.125–3)—

(i) By using inventories for all property which may be inventoried except as to property to which subdivision (ii) of this subparagraph applies, and

(ii) In accordance with subparagraph (3) of this paragraph, by charging to capital account all expenditures paid or incurred which are properly chargeable to capital account including such expenditures which the taxpayer may, under chapter 1 of the Code or regulations prescribed thereunder, otherwise treat or elect to treat as expenditures which are not chargeable to capital account.

For rules as to procedure of making the election, effect of a change in method of accounting upon making the election, and conditions for revoking the election, see subparagraphs (4), (5), and (6), respectively, of this paragraph.

(2) *Inventories.* The absence of property which may be inventoried shall not preclude a taxpayer from making an election under section 1251(b)(4). Any acceptable inventory method will satisfy the requirement of subparagraph (1)(i) of this paragraph.

(3) *Property chargeable to capital account*—(i) *In general.* Property subject to the capitalization requirement prescribed in subparagraph (1)(ii) of this paragraph includes all property described in section 1231(b) (1) and (3), without regard to any holding period therein provided, which is used in the trade or business of farming. Thus, for example, property subject to the capitalization requirement includes property used in the trade or business of farming of a character subject to the allowance for depreciation and real property so used regardless of the period held, and livestock used in the trade or business of farming which is held for draft, breeding, dairy, or sporting purposes regardless of the period held.

(ii) *Expenditures which must be capitalized.* Expenditures subject to the requirement of subparagraph (1)(ii) of this paragraph are all expenditures, whether direct or indirect, paid or incurred, which are properly chargeable to capital account. For examples of the meaning of the term "properly chargeable to capital account", see §§ 1.61–4, 1.162–12, 1.263(a)–1, and 1.263(a)–2, and paragraph (a)(4) (ii) and (iii) of § 1.446–1. Other examples of expenditures referred to in subparagraph (1)(ii) of this paragraph are expenditures under sections 175 (relating to soil and water conservation), 180 (relating to fertilizer, etc.), 182 (relating to land clearing), and 266 (relating to certain carrying charges) which (without regard to section 1251) a taxpayer may treat or elect to treat as expenditures which are not chargeable

to capital account. Thus, for example, with respect to developing a farm, ranch, orchard, or grove, amounts properly chargeable to capital account include amounts paid or incurred for upkeep, taxes, interest, and other carrying charges, water for irrigation, fertilizing, controlling undergrowth, and the cultivating and spraying of trees. For a further example, with respect to a produced animal, amounts properly chargeable to capital account for the animal include all expenditures paid or incurred for producing the animal, such as for stud, breeding, and veterinary services, as well as all amounts paid or incurred with respect to the brood animal during the gestation period of the produced animal including all amounts paid or incurred for feed, maintenance, utilities, indirect overhead, depreciation, insurance, and carrying charges. Direct and indirect expenditures properly chargeable to capital account with respect to raising an animal may include, in addition to expenditures for feed, maintenance, etc., expenditures for training. Direct and indirect expenditures with respect to feed may include, in the case of a grazing operation, fees for the rental of grazing land, and the portion of all labor, taxes, interest, fencing costs, and carrying charges paid or incurred by the taxpayer allocable to grazing. For purposes of this subparagraph, reasonable allocations shall be made by the taxpayer of items between animals held for different purposes and as to each animal held. However, all amounts allocated to a brood animal during the period of gestation are, for purposes of this subparagraph, entirely chargeable to the capital account of the produced animal.

(iii) *Unharvested crops.* With respect to unharvested crops to which section 1231(b)(4) applies, see section 268 and paragraph (g) of § 1.1016–5 (relating, respectively, to disallowance of certain deductions and to adjustments to basis).

(iv) *Changes in character of property.* If, in a taxable year subsequent to the first taxable year to which an election under section 1251(b)(4) applies, property which was not subject to the requirements of subparagraph (1)(ii) of this paragraph becomes subject to such requirements, then the following rules shall apply:

(*a*) The adjusted basis of such property at the beginning of the taxable year in which it becomes subject to the requirements of subparagraph (1)(ii) of this paragraph shall be equal to the amount its adjusted basis would have been on such date had it been accounted for in accordance with such requirements (taking into account, if applicable, the depreciation which would have been allowed as determined by the taxpayer using a period, salvage value, and methods that would have been proper).

(*b*) At the beginning of the taxable year in which such property becomes subject to the requirements of subparagraph (1)(ii) of this paragraph—

(*1*) If such property was not included in the opening inventory, the amount equal to the excess of its adjusted basis as computed in (*a*) of this subdivision over its adjusted basis as of the close of the preceding taxable year, or

(*2*) If such property was included in the opening inventory, such opening inventory shall be reduced by the inventory value of such property included therein and the amount of the difference between the adjusted basis for the property computed in (*a*) of this subdivision and such inventory value,

shall be added to gross income for such taxable year and shall be treated as gross income derived from the trade or business of farming under paragraph (b)(1)(ii) of § 1.1251–3, except that if the difference in (*b*)(*2*) of this subdivision represents an excess of such inventory value over the adjusted basis for the property computed in (*a*) of this subdivision then such excess shall be subtracted from gross income for such taxable year and shall be treated as a deduction allowed which is directly connected with carrying on the trade or business of farming under paragraph (b)(1)(i) of § 1.1251–3.

(*c*) If any deductions for depreciation are treated as amounts which would have been allowed in a prior taxable year or years for purposes of (*a*) of this subdivision, such deductions shall be treated as having been allowed for purposes of applying sections 1245 and 1250 in the same taxable year or years and thus included in the amount of adjustments reflected in adjusted basis within the meaning of paragraph (a)(1)(ii) of § 1.1245–2 or depreciation adjustments within the meaning of paragraph (d)(1) of § 1.1250–2 (as the case may be).

(*d*) For purposes of this subparagraph (3), if during a taxable year property becomes subject to the requirements of subparagraph (1)(ii) of this paragraph, it shall be considered subject to such requirements on each day it is held during such year.

(*e*) The adjusted basis under (*a*) of this subdivision of property of a character subject to the allowance for depreciation shall be its basis for which deductions may be computed under section 167.

(v) *Examples.* The provisions of subdivision (iv) of this subparagraph may be illustrated by the following examples:

Example (1). On November 28, 1970, A, an individual taxpayer, who uses the cash receipts and disbursements method of accounting and the calendar year as his taxable year, purchases an immature herd of cattle for $60,000 in order to develop and hold such herd for breeding purposes. During 1970 and 1971, no animals in the herd are bred since the herd has not reached an acceptable age for breeding. A currently deducts all expenditures paid or incurred with respect to the herd. For 1972, A properly elects under section 1251(b)(4) to compute income from the trade or business of farming by using inventories and by charging to capital account all items properly chargeable to capital account including such expenditures which the taxpayer may, under chapter 1 of the Code or regulations prescribed thereunder, otherwise treat or elect to treat as expenditures which are not chargeable to capital account. A inventories his livestock under the unit-livestock method. Under the provisions of subdivision (iv)(*a*) of this subparagraph, the adjusted basis of the herd as of January 1, 1972, is $108,210 as computed in accordance with the additional facts assumed in the following table:

(1) Cost of acquisition previously capitalized (adjusted basis as of close of 1971)		$60,000
(2) Expenditures paid or incurred during 1970 and 1971 which must be capitalized		
(a) Feed	$31,000	
(b) Veterinary fees	7,500	
(c) Pasture rental	2,250	
(d) Labor	5,400	
(e) Carrying charges	1,110	
(f) Utilities	950	
(g) Total		48,210
(3) Adjusted basis[1] (sum of lines (1) and (2)(g))		108,210

[1] The is no adjustment for depreciation which would have been allowed since no animal in the herd had reached an acceptable breeding age.

Since A has changed his method of accounting in order to comply with the election under section 1251(b)(4), the excess of the adjusted basis (so computed), $108,210, over the adjusted basis as of the close of 1971, $60,000, or $48,210 must be taken into account to the extent and in the manner provided in section 481. See subdivision (iv)(*b*) of this subparagraph.

Example (2). Assume the same facts as in example (1). Assume further that on January 1, 1974, A purchases a herd of 6-month-old feeder calves for $13,000. During 1974, in connection with such herd, A incurred raising costs of $4,000 and carrying charges of $1,600 which were properly chargeable to capital account within the meaning of subparagraph (1)(ii) of this paragraph. A determines under his unit-livestock method that on December 31, 1974, the inventory value of the herd is $17,000. On March 1, 1975, A decides to use one-half of the herd for breeding purposes with such part of the herd becoming subject to the capitalization requirements. On January 1, 1975, the adjusted basis for the animals held for breeding purposes, computed under the provisions of subdivision (iv)(*a*) of this subparagraph, is $9,300 (that is, the aggregate of one-half of the purchase price of $13,000 for the entire herd of feeder calves, $6,500, one-half of the carrying charges of $1,600 incurred during 1974 in connection with the entire herd, $800, and one-half of the $4,000 of raising costs incurred during 1974 for the entire herd, $2,000). There is no adjustment for depreciation which would have been allowed since no animal in the herd had reached an acceptable breeding age. Therefore, A as of January 1, 1975, must under the provisions of subdivision (iv)(*b*)(*2*) of this subparagraph subtract $9,300 from his opening inventory value of $17,000. However, A has not changed his method of accounting with respect to such animals. Under the provisions of subdivision (iv)(*b*)(*2*) of this subparagraph, A for 1975 will add $800 to his gross income (that is, the difference between the adjusted basis for the calves to be used for breeding purposes, $9,300, over the inventory value of such animals, $8,500). Such amount under the provisions of subdivision (iv)(*b*) shall be treated as gross income derived from the trade or business of farming under paragraph (b)(1) of § 1.1251–3.

(4) *Time and manner of making election*—(i) *In general.* The election under section 1251(b)(4) for any taxable year beginning after December 31, 1969, shall be filed within the time prescribed by law (including extensions thereof) for filing

the return for such taxable year. Such election shall be made and filed by attaching a statement of such election signed by the taxpayer to the return for the first taxable year for which the election is made. The statement shall contain a declaration that the taxpayer is making an election under section 1251(b)(4) of the Code and that taxable income from the trade or business of farming is computed by using inventories and by charging to capital account all expenditures paid or incurred which are properly chargeable to capital account (including such expenditures which the taxpayer may, under chapter 1 of the Code or regulations prescribed thereunder, otherwise treat or elect to treat as expenditures which are not properly chargeable to capital account). Additionally, the statement must contain the information prescribed by subparagraph (5) of this paragraph, if applicable.

(ii) *Joint return.* If for a taxable year taxpayers file a joint return under section 6013, the election referred to in subparagraph (1) of this paragraph must be made by both such taxpayers in accordance with the provisions of subdivision (i) of this subparagraph. If, however, in such case either of such taxpayers has for a previous taxable year made such an election, then only the taxpayer who has not made such election is required to comply with the provisions of subdivision (i) of this subparagraph. The taxpayer who previously made such an election shall attach a statement to the return specifying the taxable year for which the election was made and with whom the election was filed.

(5) *Change in method of accounting, etc.*—(i) *In general.* If, in order to comply with an election made under section 1251(b)(4), a taxpayer must change his method of accounting (in computing taxable income from the trade or business of farming) by placing in inventory a class of items not previously treated as in an inventory or by charging to capital account a class of items which had been consistently treated as an expense or as part of inventory (see paragraph (e)(2)(ii)(*b*) of § 1.446–1), the taxpayer will be deemed to have obtained the consent of the Commissioner as to such change in method of accounting solely as to such items and there shall be taken into account in accordance with section 481 of the Code and the regulations thereunder those adjustments which are determined to be necessary by reason of such change solely as to such items in order to prevent amounts from being duplicated or omitted. For purposes of section 481(a)(2), such change in method of accounting with respect to only such items shall be treated as a change not initiated by the taxpayer and, thus, under paragraph (a)(2) of § 1.481–1, no part of the adjustments required under section 481 with respect to such items shall be based on amounts which are taken into account in computing income (or which should have been taken into account had the new method of accounting been used) for taxable years beginning before January 1, 1954, or ending before August 17, 1954.

(ii) *Additional information.* If, in order to comply with an election made under subparagraph (1) of this paragraph a taxpayer (or in the case of a joint return one or both taxpayers) changes his method of accounting, then in addition to the information required to be filed under subparagraph (4) of this paragraph the taxpayer must file on Form 3115 as part of such election all the information described in paragraph (e)(3) of § 1.446–1 (relating to change in method of accounting), but the time prescribed in paragraph (e)(3) of § 1.446–1 for filing Form 3115 shall not apply.

(iii) *Election made before [the date of publication in the Federal Register of the regulations under section 1251].* If an election referred to in subparagraph (1) of this paragraph was made before [such date], and if subdivision (ii) of this subparagraph applies, then the taxpayer shall file [not later than 90 days after such date] on Form 3115 the information referred to in subdivision (ii) of this subparagraph with the district director, or the director of the internal revenue service center, with whom the election was filed. For this purpose, Form 3115 shall be attached to a statement clearly identifying the election referred to in subparagraph (1) of this paragraph and the first taxable year to which it applied.

(6) *Revocability of election*—(i) *In general.* An election referred to in subparagraph (1) of this paragraph is binding on the taxpayer (or in the case of a joint return both taxpayers) for the taxable year of such election and for all subsequent taxable years (regardless of whether they continue to file a joint return) and may not be revoked except with the consent of the Commissioner. Since revocation would constitute a change in method of accounting, in order to secure the Commissioner's consent to the revocation of such an election and to a change of the taxpayer's method of accounting, all the provisions of paragraph (e)(3) of § 1.446–1 must be met including the requirement that Form 3115 must be filed within 180 days after the beginning of the taxable year in which it is desired to make the change. See section 481 and the regulations thereunder (relating to certain adjustments required by such changes).

(ii) *Revocation of elections made prior to [the date of publication in the Federal Register of the regulations under section 1251].* If on or before [such date] an election under section 1251(b)(4) has been made, such election may be revoked without permission of the Commissioner by filing on or before [the 90th day after the date] with the district director or the director of the internal revenue service center with whom the election was filed a statement of revocation of an election under section 1251(b)(4). If such election to revoke is for a period which falls within one or more taxable years for which an income tax return has been filed, amended income tax returns shall be filed for any such taxable years for which the computation of taxable income is affected by reason of such revocation.

(e) *Transfer of excess deductions account*—(1) *Certain corporate transactions*—(i) *In general.* Under section 1251(b)(5)(A), in the case of a transfer described in section 1251(d)(3) and paragraph (c)(2) of § 1.1251–4 to which section 371(a) (relating to exchanges pursuant to certain receivership and bankruptcy proceedings), 374(a) (relating to exchanges pursuant to certain railroad reorganizations), or 381 (relating to carryovers in certain corporate acquisitions) applies, the acquiring corporation shall succeed to and take into account as of the close of the day of distribution or transfer the excess deductions account of the transferor. Determinations under this subdivision shall be made under subdivisions (ii), (iii), and (iv) of this subparagraph regardless of whether section 381 applies. For treatment as farm recapture property of stock or securities received in certain transfers to controlled corporations to which section 1251(d)(3) (but not section 1251(b)(5)(A)) applies, see section 1251(d)(6) and paragraph (f) of § 1.1251–4.

(ii) *Acquiring corporation.* For purposes of subdivision (i) of this subparagraph, determinations as to which corporation is the acquiring corporation shall be made under paragraph (b)(2) of § 1.381(a)–1.

(iii) *Certain operating rules.* For purposes of subdivision (i) of this subparagraph, the operating rules of section 381(b) and § 1.381(b)–1 shall apply. Thus, for example, except in the case of a reorganization qualifying under section 368(a)(1)(F) (whether or not such reorganization also qualifies under any other provision of section 368(a)(1)), the amount of the excess deductions account of the transferor shall be computed, as of the close of the date of distribution or transfer (as determined under paragraph (b) of § 1.381(b)–1), as if the taxable year of the transferor closed on such date (regardless of whether the taxable year actually closed). In the case of a reorganization qualifying under section 368(a)(1)(F) (whether or not such reorganization also qualifies under any other provision of section 368(a)(1)), the acquiring corporation's excess deductions account shall be treated for purposes of section 1251 just as the transferor corporation's excess deductions account would have been treated if there had been no reorganization.

(iv) *Excess deductions account balance.* For purposes of subdivision (i) of this subparagraph, the amount in the transferor's excess deductions account as of the close of the date of distribution or transfer referred to in subdivision (iii) of this subparagraph shall be the amount in such account determined after making all the applicable additions and subtractions under section 1251(b) (other than subtractions under paragraph (5)(A) of section 1251(b) and this subparagraph) for the taxable year ending (or considered ending) on such date including a subtraction by reason of gain (if any) recognized under section 1251(c)(1) by

reason of a disposition which is in part a sale or exchange and in part a gift transaction to which section 1251(d)(1) and paragraph (a)(2) of § 1.1251–4 apply.

(2) *Certain gifts*—(i) *In general.* If farm recapture property is disposed of by gift (including for purposes of this paragraph in a transaction which is in part a sale or exchange and in part a gift or a transaction treated under paragraph (a)(2) of this section as a gift), and if such gift is made during any "1-year period" (described in subdivision (ii) of this subparagraph) for which the "potential gain limitation percentage" (as computed in subdivision (iii) of this subparagraph) exceeds 25 percent, then the provisions of subdivision (iv) of this subparagraph shall apply in respect of such gift.

(ii) *One-year period.* For purposes of this subparagraph, a "1-year period" is a period of 365 days beginning on the date a gift is made by the donor.

(iii) *Potential gain limitation percentage.* Under this subdivision, the "potential gain limitation percentage" for any such 1-year period is a percentage equal to (*a*) the sum of the potential gains (determined as of the first day of such period) on each item of farm recapture property held by such taxpayer on such first day disposed of by gift by the taxpayer during such period, divided by (*b*) the sum of the potential gains (determined as of the first day of such period) on all farm recapture property held by such taxpayer on such first day.

(iv) *Allocation ratio.* With respect to each gift of property (to which the provisions of this subdivision apply) made during a taxable year, each donee shall succeed (at the time the first of such gifts is made during such taxable year) to the same proportion of (*a*) the donor's excess deductions account determined, as of the close of such taxable year of the donor, after making all the applicable additions and substractions under section 1251(b) (other than subtractions under section 1251(b)(5) and this paragraph), as (*b*) the potential gain (determined immediately prior to the time the first of such gifts is made during such taxable year) on the property (held by the donor immediately prior to such time) received by such donee bears to (*c*) the aggregate potential gain (determined immediately prior to such time) on all farm recapture property held by the donor immediately prior to such time.

(v) *Definitions and certain special rules.* For purposes of this subparagraph—

(*a*) The term "potential gain" means an amount equal to the excess of the fair market value of property over its adjusted basis, but, in the case of land, limited under paragraph (b)(2)(ii) of § 1.1251–1 to the extent of the deductions allowable in respect of such land pursuant to an election (if any) under sections 175 (relating to soil and water conservation expenditures) and 182 (relating to expenditures by farmers for clearing land) for the taxable year of disposition and the four immediately preceding taxable years regardless of whether any such preceding taxable year begins before December 31, 1969. See section 1251(e)(5).

(*b*) Property held on a first day of a 1-year period (or at a particular time during a taxable year) shall be considered to include property considered as held by reason of the application of section 1223, but there shall not be taken into account, (*1*) for purposes of computing the potential gain limitation percentage for a 1-year period, any property not actually held during such period, nor (*2*) for purposes of applying subdivision (iv) of this subparagraph, in respect of gifts made during a taxable year, property not actually held during such taxable year.

(*c*) Determinations with respect to the potential gain of property considered held (but not actually held) by a donor on a first day of a 1-year period or at a particular time during a taxable year shall be made with respect to such property in the hands of the person who actually held the property on such first day or at such time, and

(*d*) If property qualifies as farm recapture property on the date a person disposes of it by gift during a 1-year period (or taxable year) or, when actually held by such person, on the last day of such period (or taxable year), such property shall be considered to be farm recapture property on each day of such period (or taxable year).

(vi) *Part-sale-part-gift transaction.* If—

(*a*) A person disposes of property in a transaction which is in part a sale or exchange and in part a gift, then for purposes of subdivisions (iii)(*a*) and (iv)(*b*) of this subparagraph, or

(*b*) A person receives property in a transaction which is in part a sale or exchange and in part a gift, then for purposes of making a determination referred to in subdivision (v)(*c*) of this subparagraph

the potential gain on the first day of a 1-year period (or at a particular time during a taxable year) for such person shall be the amount the potential gain in the hands of the donee would have been on such first day (or at such time) if such donee had received such property upon such disposition on such first day (or at such time).

(vii) *Joint return.* For application of the provisions of this subparagraph with respect to a taxable year for which a joint return is filed, see paragraph (f)(4) of this section.

(3) *Examples.* The provisions of subparagraph (2) of this paragraph may be illustrated by the following examples in which it is assumed that all taxpayers are unmarried individuals.

Example (1). The only farm recapture property A owns is a farm, consisting of farm land and certain farm equipment which is farm recapture property. During the period involved, there was no deduction allowable under section 175 or 182 to any person owning an interest in the farm. A, who uses the calendar year as his taxable year, makes a series of gifts of undivided interests in the farm. In these circumstances, computations may be made by reference to percentages of undivided interests in the farm. The potential gain limitation percentages for each applicable 1-year period are computed, in accordance with the additional facts assumed, in the table below:

Date	Sept. 1, 1970	Aug. 1, 1971	Mar. 1, 1972	May 1, 1973
Gift to donee	C	D	E	F
(1) Percent of undivided interest in entire farm on date indicated:				
(a) Held by A immediately before gift	100%	80%	70%	60%
(b) Given as gift by A	20%	10%	10%	60%
(c) Held by A given as gift by A (line (b) divided by line (a))	20%	12.5%	14.28%	100%
(d) Given as gift by A after such date during 1-year period beginning on date	10%	10%	0%	0%
(e) Held by A given as gift by A after such date during 1-year period beginning on date (line (d) divided by line (a))	10%	12.5%	0%	0%
(f) Held by A given as gift by A during 1-year period beginning on date (line (c) plus line (e))	30%	25%	14.28%	100%
(2) Potential gain on all farm recapture held by A:				
(a) On date	$100,000	$96,000	$140,000	$125,000
(b) On date given as gift during 1-year period beginning on date (line (1)(f) multiplied by line (2)(a))	$30,000	$24,000	$20,000	$125,000
(3) Potential gain limitation percentage (line (2)(b) divided by line (2)(a))	30%	25%	14.28%	100%

Since the potential gain limitation percentage for the 1-year period beginning on September 1, 1970, exceeds 25 percent, a portion of A's excess deductions account, under the provisions of subparagraph (2)(iv) of this paragraph, is succeeded to by C and D. Similarly, since such percentage for the 1-year period beginning May 1, 1973, exceeds 25 percent, such provisions apply to the gift made to F. Since, however, such percentage is 25 percent or less for all 1-year periods in which the gift to E falls (i.e., 25 percent and 14.28 percent for the 1-year periods beginning, respectively, on August 1, 1971, and March 1, 1972) such provisions do not apply to the gift to E.

(ii) Under subparagraph (2)(iv) of this paragraph, C, D, and F each succeed to the proportion of A's excess deductions account at each applicable time as computed, in accordance with the additional facts assumed, in the table below:

Taxable year ending	Dec. 31, 1970	Dec. 31, 1971	Dec. 31, 1972	Dec. 31, 1973
Gift to donee to which subparagraph (2) (iv) of this paragraph applies during taxable year	C	D	E	F
(4) Potential gain (determined immediately prior to time first gift to which subparagraph (2)(iv) of this paragraph applies is made):				
(a) On property received by donee to which such subparagraph (2)(iv) applies (line (2)(a), multiplied by line (1)(c))	$20,000	$12,000		$125,000
(b) Aggregate potential gain on all farm recapture property held by donor (line (2)(a))	$100,000	$95,000		$125,000
(5) Allocation ratio (line (4)(a), divided by line (4)(b))	20%	12.6%		100%
(6) Excess deductions account of A:				
(a) At end of previous taxable year	$0	$160,000	$210,000	$200,000
(b) Net increase (decrease) for taxable year (determined before making any subtractions under section 1251 (b)(5) and this paragraph)	$200,000	$80,000	($10,000)	$36,000
(c) At 12/31 (so determined)	$200,000	$240,000	$200,000	$236,000
(d) Less: Portion to which donee succeeds (line (5), multiplied by line (6)(c))	$40,000	$30,000	$0	$236,000
(e) At 12/31 (to line (6)(a) following taxable year)	$160,000	$210,000	$200,000	$0

Accordingly, the amount of A's excess deductions account succeeded to is $40,000 by C on September 1, 1970, $30,000 by D on August 1, 1971, and $236,000 by F on May 1, 1973.

Example (2). (i) G uses the calendar year as his taxable year and H uses a taxable year ending June 30. As of the close of 1972, G has $100,000 in his excess deductions account, determined before any subtractions under section 1251(b)(5) and this paragraph. G owns only three items of farm recapture property, none of which is land. On May 1, 1972, G makes a gift of farm recapture property No. 1 to his son and on September 1, 1972, G sells to H for $80,000 farm recapture property No. 2 in a transaction which is in part a sale and in part a gift. G owns throughout all relevant periods farm recapture property No. 3 which did not qualify as farm recapture property until December 1, 1972. The potential gain limitation percentage for G's 1-year period beginning May 1, 1972, is computed in accordance with the additional facts assumed in the table below:

	Farm recapture property			Total
	No. 1	No. 2	No. 3	
(1) Fair market value May 1, 1972	$25,000	$100,000	$800,000	
(2) (a) Adjusted basis May 1, 1972	10,000		795,000	
(b) Selling price September 1, 1972 (adjusted basis to H, donee)		80,000		
(3) Potential gain (line (1), minus line (2))	$15,000	$20,000	$5,000	$40,000
(4) Sum of potential gains on properties disposed of by gift during period	$15,000	$20,000		$35,000
(5) Potential gain limitation percentage (total line (4), divided by total line (3))				87½%

Since the potential gain limitation percentage for the 1-year period beginning on May 1, 1972, exceeds 25 percent, the provisions of subparagraph (2)(iv) of this paragraph apply to the gift to the son and that portion of the disposition to H which is a gift.

(ii) The portion of G's excess deductions account determined, as of the close of 1972, before any subtraction under section 1251 (b)(5) and this paragraph, allocated to the son and to H as of May 1, 1972, is computed in the table below:

	Property			Total
	No. 1	No. 2	No. 3	
(1) Potential gain under part (i) of this example (since the first day of the one year period is the same as the time as of which the first gift was made during the taxable year)	$15,000	$20,000	$5,000	$40,000
(2) Allocation percentage (line (1), divided by $40,000)	37½%	50%		
(3) Excess deductions account at close of taxable year (determined before making any subtractions under section 1251(b)(5) and this paragraph)				$100,000
(4) Portion to which donee succeeds on May 1, 1972	$37,500	$50,000		$87,500
(5) G's excess deductions account Dec. 31, 1972				$12,500

Accordingly, the amount of G's excess deduction account succeeded to as of May 1, 1972, is $37,500 by the son and $50,000 by H.

Example (3). (i) Assume the same facts as in example (2). Assume further that during his taxable years ending June 30, 1972, and June 30, 1973, H makes gifts of farm recapture properties No. 4 on March 5, 1972, and No. 5 on March 5, 1973, respectively, to J and K, and that on August 8, 1972, H purchased property No. 5. Since property No. 5 was purchased after March 5, 1972, the beginning of the 1-year period beginning on that date which is also the date of the first gift during such taxable year, it is not taken into account for purposes of computing the potential gain limitation for such period or for purposes of applying subparagraph (2)(iv) of this paragraph in respect of such taxable year. The potential gain limitation percentages for each applicable 1-year period is computed, in accordance with the additional facts assumed, in the table below:

1-YEAR PERIOD BEGINNING MARCH 5, 1972

	Farm recapture property		Total
	No. 2	No. 4	
(1) Fair market value Mar. 5, 1972	$95,000	$30,000	
(2) (a) Adjusted basis Mar. 5, 1972		20,000	
(b) Selling price Sept. 1, 1972 (adjusted basis to H, donee)	80,000		
(3) Potential gain (line (1), minus line (2))	$15,000	$10,000	$25,000
(4) Sum of potential gains on properties disposed of by gift during period		$10,000	$10,000
(5) Potential gain limitation percentage (total line (4), divided by total line (3))			40%

1-YEAR PERIOD BEGINNING MARCH 5, 1973

	Farm recapture property		Total
	No. 2	No. 5	
(1) Fair market value Mar. 5, 1973	$85,000	$28,000	
(2) Adjusted basis Mar. 5, 1973	$65,000	$23,000	
(3) Potential gain	$20,000	$5,000	$25,000
(4) Sum of potential gains on properties disposed of by gift during period		$5,000	$5,000
(5) Potential gain limitation percentage (total line (4), divided by total line (3))			20%

Since the potential gain limitation percentage for the 1-year period beginning on March 5, 1972 (which period does not include March 5, 1973) exceeds 25 percent, the provisions of subparagraph (2)(iv) of this paragraph apply to the gift of property No. 4 to J. Since, however, such percentage is 25 percent or less for all 1-year periods in which the gift on March 5, 1973 of property No. 5 to K falls, such provisions do not apply to the gift to K.

(ii) Under subparagraph (2)(iv) of this paragraph, J succeeds on March 5, 1972, to the portion of H's excess deductions account as computed, in accordance with the additional facts assumed, in the table below:

	Property		Total
	No. 2	No. 4	
(1) Potential gain as of Mar. 5, 1972 under part (I) of this example (since the first day of the 1-year period is the same as the time as the first gift was made during the taxable year)	$15,000	$10,000	$25,000
(2) Allocation percentage (line (1), divided by $25,000)		40%	
(3) Excess deductions account of H:			
(a) July 1, 1971			$45,000
(b) Amount succeeded to from G on May 1, 1972			$50,000
(c) Net increase for taxable year (determined before making any subtractions under section 1251(b)(5) and this paragraph)			$5,000
(d) June 30, 1972 (so determined) (sum lines (a), (b), and (c))			$100,000
(e) Portion to which J succeeds (line (2) multiplied by line (3)(d))			$40,000
(f) June 30, 1972 (line (d), minus line (e))			$60,000

Accordingly, on March 5, 1972, J succeeds to $40,000 of H's excess deductions account.

(f) *Joint return*—(1) *Joint excess deductions account.* If for a taxable year a taxpayer and his spouse file a joint return under section 6013, then for such taxable year each taxpayer shall (if necessary) establish and maintain a joint excess deductions account. Such joint excess deductions account shall consist of the aggregate of the separately maintained excess deductions account of each spouse. A separately maintained excess deductions account shall be computed under the rules of paragraphs (b) and (c) of this section, except that for each taxable year a joint return is filed—

(i) The $50,000 amount in the nonfarm adjusted gross income limitation in paragraph (b)(2)(i) of this section shall be considered satisfied if the combined nonfarm adjusted gross income of both spouses exceeds $50,000,

(ii) The $25,000 amount in the farm net loss exclusion in paragraph (b)(2)(ii) of this section shall be allocated between the two spouses in proportion to the farm net loss of each spouse having a farm net loss, and

(iii) The separately maintained excess deductions account of each spouse shall be reduced, if necessary, below zero, by the amount of such spouse's farm net income (computed as if a separate return were filed) plus the amount of gain (computed under subparagraph (3) of this paragraph) which is recognized as ordinary income under section 1251(c)(1) in respect of a disposition of farm recapture property owned by the taxpayer.

(2) *Surviving spouse.* For purposes of this paragraph, a joint return does not include a return of a surviving spouse (as defined in section 2 relating to a spouse who died during either of his two taxable years immediately preceding the taxable year) which is treated as a joint return of a husband and wife under section 6013.

(3) *Application of excess deductions account limitation in joint return year.* In the case of a taxable year for which a joint return is filed, the aggregate of the amount of gain recognized as ordinary income under section 1251(c)(1) (after applying paragraph (b)(2)(i) and (3) of § 1.1251–1, if applicable) shall not exceed the amount in the joint excess deductions account (that is, the aggregate of the separately maintained excess deductions account of each spouse) at the close of the taxable year after subtracting from each such separately maintained account the amount specified in section 1251(b)(3)(A) and paragraph (c)(1)(i) of this section as modified by the rules of this paragraph. For the amount of limitation for a taxable year for which a separate return is filed, see paragraph (b)(4) of this section. For determinations as to which dispositions are taken into account for any taxable year, see paragraph (b)(4) of § 1.1251–1.

(4) *Certain gifts*—(i) *In general.* If farm recapture property is transferred as a gift by a spouse to a person other than a spouse during a taxable year for which a joint return is filed, the spouses shall for purposes of applying the provisions of section 1251(b)(5)(B) and paragraph (e)(2) of this section be treated as a single taxpayer. Thus, under paragraph (e)(2) of § 1.1251–2, the potential gain limitation percentage and the proportion for allocating the amount in the joint excess deductions account to one or more donees shall be determined by treating the spouses as a single taxpayer. However, with respect to each gift by a spouse, such spouse's separately maintained excess deductions account shall be reduced (below zero, if necessary) by the amount of the joint excess deductions account balance to which the donee of such gift succeeded under paragraph (e)(2)(iv) of this section.

(ii) *Gift between spouses.* If farm recapture property is transferred by gift by one spouse to another spouse during a taxable year for which a joint return is filed, such gift shall not affect the balance in the joint excess deductions account but its affect on the separately maintained excess deductions account of each spouse shall be determined as if separate returns were filed, but only after applying subdivision (i) of this subparagraph.

(5) *Allocation of joint excess deductions account upon filing separate returns*—(i) *In general.* If for any reason a taxpayer and his spouse cease to file a joint return, then except as provided in this subparagraph the amount of the separately maintained excess deductions account of each spouse as of the close of the last taxable year for which a joint return was filed shall be the amount of such spouse's excess deductions account as of the beginning of the first taxable year for which they cease filing a joint return.

(ii) *Deficit.* If under subparagraph (4)(i) of this paragraph one of the spouses has a deficit in his separately maintained excess deductions account as of the close of the last taxable year for which a joint return was filed, then as of the beginning of the first taxable year for which they cease filing a joint return—

(*a*) The spouse who had such deficit shall have an excess deductions account of zero, and

(*b*) The other spouse shall have an excess deductions account equal to the amount prescribed in subdivision (i) of this subparagraph minus the amount of such deficit.

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

Example (1). Assume the same facts as in example (4) of paragraph (b)(5) of this section, except that H and W file a joint return under section 6013 and that H has a farm net loss of only $40,000. Thus, since the nonfarm adjusted gross income for calendar year 1971 was $60,000 for H and $30,000 for W, their combined nonfarm adjusted gross income exceeds $50,000, thereby satisfying under subparagraph (1)(i) of this paragraph the $50,000 limitation of paragraph (b)(2)(i) of this section. Assume further that for 1971 only W makes a disposition of farm recapture property (other than land and section 1245 property). As a result of such disposition, W realizes a gain of $14,000. Accordingly, for 1971, the separately maintained excess deductions accounts of H and W, their joint excess deductions account, and the treatment of the gain realized by W on the disposition of the farm recapture property are computed, in accordance with the facts assumed, in the table below:

	Excess deductions accounts		
	H's	W's	Joint
(1) Balance Jan. 1, 1971	$10,000	$5,000	$15,000
(2) Additions for 1971:			
(a) Farm net loss for 1971	$40,000	$10,000	$50,000
(b) Less amount in paragraph (b) (2) (ii) of this section as allocated under subparagraph (1) (ii) of this paragraph	20,000	5,000	25,000
(c) Total additions for 1971	20,000	5,000	25,000
(3) Subtotal	30,000	10,000	40,000
(4) Subtractions for 1971	0	0	0
(5) Excess deductions account limitation on gain recognized as ordinary income under section 1251(c)(1) for 1971	30,000	10,000	40,000
(6) Subtraction for dispositions of farm recapture property:			
(a) Gain to which section 1251(c)(1) applies (computed before applying limitation)	0	14,000	14,000
(b) Limitation (amount in line (5))	30,000	10,000	40,000
(c) Gain recognized as ordinary income under section 1251(c)(1), computed for joint account (lower of line 6(a) or line 6(b) subject to provisions as to separately maintained accounts of subparagraph (1)(iii)	0	14,000	14,000
(7) Balance Dec. 31, 1971	30,000	(4,000)	26,000

If for 1972, H and W were to file separate returns, then the separately maintained excess deductions account balances as of January 1, 1972, would be $26,000 and zero respectively. See subparagraph (5)(ii) of this paragraph.

§ 1.1251–3 Definitions relating to section 1251.

(a) *Farm recapture property*—(1) *In general.* (i) The term "farm recapture property" means any property (other than section 1250 property as defined in section 1250(c)) which, in the hands of the taxpayer is or was property—

(*a*) Which is described in section 1231(b)(1) (relating to business property held for more than 6 months), section 1231(b)(3) (relating to livestock), or section 1231(b)(4) (relating to an unharvested crop), and

(*b*) Which, at the time the property qualifies under (*a*) of this subdivision, is used in the trade or business of farming (as defined in paragraph (e) of this section).

(ii) Under section 1251(e)(1)(B), the term "farm recapture property" also includes—

(*a*) Property the basis of which in the hands of the taxpayer is determined by reference to its basis in the hands of the taxpayer who was the prior owner of the property if such property was farm recapture property within the meaning of subdivision (i) of this subparagraph in the hands of such prior owner, and

(*b*) Property the basis of which in the hands of the taxpayer holding such property is determined by reference to the basis of other property which in the hands of such taxpayer was farm recapture property within the meaning of subdivision (i) of this paragraph.

Thus, for example, farm recapture property in the hands of a father given as a gift to his son is under (*a*) of this subdivision farm recapture property in the hands of the son even if the son does not use the property in the trade or business of farming. For a further example, if farm recapture property is exchanged for other property which qualifies for nonrecognition of gain under sections 1033 and 1251(d)(4) (relating to involuntary conversion), the property received in the exchange is under (*b*) of this subdivision farm recapture property even if it is not used after the exchange in the trade or business of farming. For special rule as to property received in a like kind exchange or involuntary conversion qualifying as farm recapture property, see paragraph (d)(2) of § 1.1251–4.

(iii) *Leasehold of farm recapture property.* If property is farm recapture property under this subparagraph, a leasehold of such property is also farm recapture property to the same extent as described in, and in accordance with the principles of paragraph (a)(2) of § 1.1245–3.

(iv) If property described in subdivision (ii) of this subparagraph is stock or securities received in certain corporate transactions described in section 1251(d)(6), see paragraph (f) of § 1.1251–4 for determination as to extent such stock or securities is farm recapture property.

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

Example (1). On December 15, 1971, A, an individual calendar year taxpayer engaged in the trade or business of farming (as defined in paragraph (e) of this section) exchanges in a transaction which qualifies under section 1031(a) (relating to an exchange of property held for productive use or investment) tractor No. 1 which A acquired on March 1, 1971, for tractor No. 2. Under subparagraph (1)(i) of this paragraph, tractor No. 1 is farm recapture property as the tractor was used in the trade or business of farming and was held for a period in excess of 6 months. Under subparagraph (1)(ii) of this paragraph, tractor No. 2 is farm recapture property as the basis of tractor No. 2 in the hands of A is determined with reference to the adjusted basis of tractor No. 1.

Example (2). Assume the same facts in example (1). Assume further that A transfers tractor No. 2 to the X Corporation solely in exchange for stock in X in a transaction which qualifies under section 351. Under the provisions of subparagraph (1)(ii) of this paragraph, tractor No. 2 is farm recapture property in the hands of X and X's basis for such property is determined under section 362(a) by reference to its basis in the hands of A. Under subparagraph (1)(iv) of this paragraph, the stock received by A is farm recapture property.

(b) *Farm net loss*—(1) *In general.* The term "farm net loss" means the amount by which—

(i) The deductions allowed or allowable for the taxable year by chapter 1 of subtitle A of the Code which are directly connected with the carrying on of the trade or business of farming, exceed

(ii) The gross income derived from such trade or business.

(2) *Disposition of farm recapture property.* For purposes of subparagraph (1) of this paragraph, no gain or loss (regardless of how treated) resulting from the disposition of farm recapture property shall be taken into account, except that under subparagraph (1)(ii) of this paragraph gain upon disposition of such property which is recognized as ordinary income by reason of section 1245(a)(1) shall be taken into account. Thus, for example, if land used in the trade or business of farming were disposed of and gain of $3,000 was realized, then none of such gain would be taken into account in computing farm net loss and farm net income even if all or a portion of such gain is recognized as ordinary income by reason of section 1251(c)(1), section 1252(a)(1), or both. If such land were disposed of at a loss, the result would be the same. See paragraph (d)(1)(ii) of this section with respect to the exclusion of gain or loss from the disposition of farm recapture property from the computation of nonfarm adjusted gross income.

(3) *Amount of deduction under section 172(a) attributable to farm net loss.* (i) If all or a portion of a net operating loss (within the meaning of section 172(c)) for a taxable year is absorbed in another taxable year as a carryover or carry back, then for purposes of determining the amount of deductions referred to in subparagraph (1)(i) of this paragraph for such other taxable year the portion of the amount absorbed in such other taxable year which is attributable to amounts directly connected with the carrying on of the trade or business of farming shall be an amount equal to the amount absorbed, multiplied by a fraction the numerator of which is the amount of the farm net loss for the taxable year the net operating loss arose and the denominator of which is the amount of the net operating loss for such year.

(ii) No portion of a farm net loss added to the excess deductions account in the year a net operating loss arose (or which would have been added to such account but for the application of the $25,000 or $12,500 farm net loss exclusion under paragraph (b)(2)(ii) or (4)(i)(*b*) of § 1.1251–2) shall be taken into account under subparagraph (1)(i) of this paragraph in any other taxable year.

Accordingly, the same farm net loss shall not be added to the excess deductions account more than once and a farm net loss for any taxable year shall not be subject to the $25,000 or $12,500 exclusion more than once.

(iii) If a net operating loss for a current taxable year attributable in whole or part to a farm net loss is carried back and absorbed in a preceding taxable year no redetermination shall be made with respect to (*a*) the amount of gain recognized as ordinary income under section 1251(c)(1) and paragraph (b) of § 1.1251–1 in any taxable year preceding the current taxable year, and (*b*) the amount of the taxpayer's excess deductions account allocated under paragraph (e)(2) of § 1.1251–2 to a donee as of the close of any taxable year preceding the current taxable year.

(4) *Special rules as to estates and trusts.* In the case of an estate or trust, computations of amounts under this paragraph shall be made without regard to any deductions under section 651 or 661. If on the termination of an estate or trust the beneficiaries succeeding to its property are allowed a deduction under section 642(h) (relating to unused loss carryovers and excess deductions on termination available to beneficiaries), to the extent the carryover or excess deduction is attributable to a farm loss it shall have the same character in the hands of the beneficiary as in the hands of the estate or trust. The amount of a carryover or of excess deductions from a particular taxable year of an estate or trust succeeded to under section 642(h) shall be allocated between amounts attributable to a farm net loss and other amounts in the same proportion as the farm net loss for such year bears to the amount of such carryover or of excess deductions. If there is more than one beneficiary, the total farm net loss succeeded to by all the beneficiaries shall be allocated to each beneficiary in proportion to the deduction of each under section 642(h).

(c) *Farm net income.* The term "farm net income" means the amount by which the amount referred to in paragraph (b)(1)(ii) of this section exceeds the amount referred to in paragraph (b)(1)(i) of this section.

(d) *Nonfarm adjusted gross income or loss*—(1) *Nonfarm adjusted gross income.* The term "nonfarm adjusted gross income" means adjusted gross income (taxable income in the case of a taxpayer other than an individual) computed without regard to—

(i) Income or deductions taken into account in computing farm net loss and farm net income,

(ii) Gains and losses (regardless of how treated) resulting from the disposition of farm recapture property, and

(iii) In the case of an estate or trust, the principles of paragraph (b)(4) of this section, to the extent applicable, shall apply.

(2) *Electing small business corporation.* (i) A nonfarm loss, for purposes of paragraph (b)(3) of § 1.1251–2 (relating to limitations on additions to excess deductions account) of an electing small business corporation is an excess of deductions over income computed in the manner prescribed in subparagraph (1) of this paragraph.

(ii) Under subparagraph (1) of this paragraph, the nonfarm adjusted gross income of a shareholder of an electing small business corporation is computed by including amounts distributed as dividends, and amounts treated under section 1373(b) as distributed as a dividend, to such shareholder and by including the portion of such corporation's net operating loss allowed under section 1374 as a deduction to such shareholder. For rules applicable in determining whether such corporation must make an addition to its excess deductions account, see paragraph (b)(3) of § 1.1251–2.

(e) *Trade or business of farming*—(1) *In general.* For purposes of section 1251, the term "trade or business of farming" includes any trade or business with respect to which the taxpayer may compute gross income under § 1.61–4, expenses under § 1.162–12, make an election under section 175, 180, or 182, or use an inventory method referred to in § 1.471–6.

(2) *Horse racing.* If a taxpayer is engaged in the raising of horses, including horses which are bred or purchased, then for purposes of section 1251 the term "trade or business of farming" also includes the racing of such horses by the taxpayer. Thus, for example, if a taxpayer purchases a yearling and develops it to the racing stage, the term "trade or business of farming" includes the racing of such horse.

§ 1.1251–4 Exceptions and limitations.

(a) *Exception for gifts*—(1) *General rule.* Section 1251(d)(1) provides that no gain shall be recognized under section 1251(c)(1) upon a disposition by gift. For purposes of this paragraph, the term "gift" shall have the same meaning as in paragraph (a) of § 1.1245–4 and, with respect to the application of this paragraph, principles illustrated by the examples of paragraph (a)(2) of § 1.1254–4 shall apply. For reduction in amount of charitable contribution in case of a gift of farm recapture property, see section 170(e) and the regulations thereunder.

(2) *Disposition in part a sale or exchange and in part a gift.* Where a disposition of farm recapture property is in part a sale or exchange and in part a gift, the amount of gain recognized as ordinary income under section 1251(c)(1) shall not exceed—

(i) In the case of farm recapture property other than land, the excess of the amount realized over adjusted basis, and

(ii) In the case of land, the lower of the amount in subdivision (i) of this subparagraph or the potential gain (as defined in paragraph (b)(2)(ii) * of § 1.1251–1).

(3) *Treatment of land in hands of transferee.* See paragraph (g) of this section for treatment of transferee in the case of a disposition to which this paragraph applies.

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

Example (1). A, a calendar year taxpayer, makes one disposition of farm recapture property during 1976. On March 2, 1976, A makes a gift to B (also a calendar year taxpayer) of a parcel of land which he had acquired on January 15, 1971. On the date of such disposition, the excess of the fair market value ($65,000) over the adjusted basis of the land ($40,000) is $25,000 and the sum of the deductions allowable in respect of such land under sections 175 and 182 is $21,000 for 1971 and $3,000 (attributable to 1975) for the taxable year of disposition and the four immediately preceding taxable years. Thus, the potential gain (as defined in paragraph (b)(2)(ii) of § 1.1251–1) is limited to $3,000. At the end of 1976 (after making the applicable additions and subtractions under section 1251(b)(2) and (3)(A)), there is a balance in A's excess deductions account of $25,000. However, upon making the gift, A recognizes no gain under section 1251(c)(1) or section 1252(a)(1). See subparagraph (a)(1) of this paragraph and paragraph (a)(1) of § 1.1252–2. For treatment of the land in the hands of B, see example (1) of paragraph (g)(3) of this section. For effect of the gift on the excess deductions accounts of A and B, see paragraph (e)(2) of § 1.1251–2.

Example (2). Assume the same facts as in example (1), except that A transfers the land to B for $50,000. Thus, the gain realized is $10,000 (amount realized, $50,000, minus adjusted basis $40,000), and A has made a gift of $15,000 (fair market value, $65,000, minus amount realized, $50,000). Since under subparagraph (2)(ii) of this paragraph, the potential gain ($3,000) is lower than the gain realized ($10,000), the gain to which section 1251(c)(1) could apply is limited by subparagraph (2)(ii) of this paragraph to $3,000. Thus, as A has $25,000 in his excess deductions account, $3,000 is recognized as ordinary income under section 1251(c)(1). See example (2) of paragraph (a)(4) of § 1.1252–2 for computation of gain of $7,000 which is recognized as ordinary income by A under section 1252(a)(1). For treatment of the land in the hands of B, see example (2) of paragraph (g)(3) of this section.

(b) *Exception for transfers at death*—(1) *General rule.* Section 1251(d)(2) provides that, except as provided in section 691 (relating to income in respect of a decedent), no gain shall be recognized under section 1251(c)(1) upon a transfer at death. For purposes of this paragraph, the term "transfer at death" shall have the same meaning as in paragraph (b) of § 1.1245–4 and, with respect to the application of this paragraph, principles illustrated by the examples of paragraph (b)(2) of § 1.1245–4 shall apply.

(2) *Treatment of land in hands of transferee.* If as of the date a person acquires land which is farm recapture property from a decedent such person's basis is determined, by reason of the application of section 1014(a), solely by reference to the fair market value of the property on the date of the decedent's death or on the applicable date provided in section 2032 (relating to alternate valuation date), then on such date the potential gain in respect to such land is zero.

(c) *Certain corporate transactions*—(1) *Limitation on amount of gain.* Under section 1251(d)(3), upon a transfer of property described in subparagraph (2) of this paragraph, the amount of gain

recognized as ordinary income by the transferor under section 1251(c)(1) shall not exceed an amount equal to the excess (if any) of (i) the amount of gain recognized to the transferor on the transfer (determined without regard to section 1251) over (ii) the amount (if any) of gain recognized as ordinary income under section 1245(a)(1). For purposes of this subparagraph, the principles of paragraph (c)(1) of § 1.1245–4 shall apply. Thus, in case of a transfer of both farm recapture property and property other than farm recapture property in a single transaction, the amount realized from the disposition of the farm recapture property (as determined in a manner consistent with the principles of paragraph (a)(5) of § 1.1245–1) shall be deemed to consist of that portion of the fair market value of each property acquired which bears the same ratio to the fair market value of such acquired property as the amount realized from the disposition of farm recapture property bears to the total amount realized. The preceding sentence shall be applied solely for purposes of computing the portion of the total gain (determined without regard to section 1251) which is eligible to be recognized as ordinary income under section 1251(c)(1). Section 1251(d)(3) does not apply to a disposition of property to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by chapter 1 of the Code.

(2) *Transfers covered.* The transfers referred to in subparagraph (1) of this paragraph are transfers of farm recapture property in which the basis of such property in the hands of the transferee is determined by reference to its basis in the hands of the transferor by reason of the application of any of the following provisions:

(i) Section 332 (relating to distributions in complete liquidation of an 80-percent-or-more controlled subsidiary corporation). For the application of section 1251(d)(3) to such a complete liquidation, the principles of paragraph (c)(3) of § 1.1245–4 shall apply. Thus, for example, the provisions of subparagraph (1) of this paragraph do not apply to a liquidating distribution of farm recapture property by an 80-percent-or-more controlled subsidiary to its parent if the parent's basis for the property is determined, under section 334(b)(2), by reference to its basis for the stock of the subsidiary.

(ii) Section 351 (relating to transfer to corporation controlled by transferor).

(iii) Section 361 (relating to exchanges pursuant to certain corporate reorganizations).

(iv) Section 371(a) (relating to exchanges pursuant to certain receivership and bankruptcy proceedings).

(v) Section 374(a) (relating to exchanges pursuant to certain railroad reorganizations).

(3) *Partnerships.* For the application of section 1251 to partnerships, see paragraph (e) of this section.

(4) *Treatment of land in hands of transferee.* See paragraph (g) of this section for treatment of transferee in the case of a disposition of land to which this paragraph applies.

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

Example (1). (i) A, an individual calendar year taxpayer, makes one disposition of farm recapture property during 1971. On January 20, 1971, A transfers farm recapture property (other than land and section 1245 property), having an adjusted basis of $22,000, to corporation M in exchange for stock in M worth $35,000 plus $15,000 in cash in a transaction qualifying under section 351. Thus, the amount realized is $50,000, and the gain realized is the excess of the amount realized, $50,000, over the adjusted basis, $22,000, or $28,000. Without regard to section 1251, A would recognize gain of $15,000 under section 351(b), and M's basis for the farm recapture property would be determined under section 362(a) by reference to its basis in the hands of A. Assume further that the balance in A's excess deductions account (after making the applicable additions and subtractions under section 1251(b)(2) and (3)(A)) at the close of 1971 is $20,000. Thus, since such balance in the excess deductions account ($20,000) is lower than the gain realized ($28,000), if subparagraph (1) of this paragraph did not apply, gain of $20,000 would be recognized as ordinary income under section 1251(c)(1). However, subparagraph (1) of this paragraph limits the amount of gain to be recognized as ordinary income under section 1251(c)(1) to $15,000.

(ii) If, however, A transferred the farm recapture property to M solely in exchange for stock worth $50,000, then, because of the application of subparagraph (1) of this paragraph he would not recognize any gain under section 1251(c)(1). If, instead, A transferred the farm recapture property to M in exchange for stock worth $25,000 and $25,000 cash, only $20,000 (the amount of such balance in the excess deductions account) of the gain of $25,000 recognized under section 351(b) would be recognized as ordinary income under section 1251(c)(1). The remaining $5,000 of gain recognized under section 351(b) may be treated as gain from the sale or exchange of property described in section 1231. In the hands of M, the property received from A is farm recapture property under the provisions of paragraph (a)(1)(ii) of § 1.1251–3. For treatment of the property received by A in such transaction, see section 1251(d)(6) and paragraph (f) of this section.

Example (2). Assume the same facts as in subdivision (i) of example (1), except that the farm recapture property is section 1245 property. Assume further that $5,000 is recognized as ordinary income under section 1245(a)(1), and that as of the close of 1971, A has a balance of $15,000 in his excess deductions account (after making the applicable additions and substractions under section 1251(b)(2) and (3)(A) which, under paragraph (b) of § 1.1251–3, is computed by treating the $5,000 of gain to which section 1245 applies as gross income derived from the trade or business of farming). The amount of gain recognized as ordinary income under section 1251(c)(1) is $10,000, computed as follows:

(1) Amount of gain under section 1251(c)(1) (determined without regard to subparagraph (1) of this paragraph):	
(a) Portion of gain realized ($28,000) in excess of amount recognized as ordinary income under section 1245(a)(1) ($5,000)	$23,000
(b) Excess deductions account balance	15,000
(c) Lower of (a) or (b)	15,000
(2) Limitation in subparagraph (1) of this paragraph:	
(a) Gain recognized (determined without regard to section 1251)	15,000
(b) Minus: Gain recognized as ordinary income under section 1245(a)(1)	5,000
(c) Difference	10,000
(3) Lower of line (1) (c) or line (2) (c)	10,000

(d) *Limitation for like kind exchanges and involuntary conversions*—(1) *General rule.* Under section 1251(d)(4), if farm recapture property is disposed of and gain (determined without regard to section 1251) is not recognized in whole or in part under section 1031 (relating to like kind exchanges) or section 1033 (relating to involuntary conversions), then the amount of gain recognized as ordinary income by the transferor under section 1251(c)(1) shall not exceed an amount equal to the excess (if any) of (i) the amount of gain recognized on such disposition (determined without regard to section 1251) over (ii) the amount (if any) of gain recognized as ordinary income under section 1245(a)(1).

(2) *Special rule.* In the case of a transaction to which subparagraph (1) of this paragraph applies, property acquired which is not used in the trade or business of farming shall be treated as farm recapture property if (i) it is qualifying property under section 1031 or 1033, as the case may be, and (ii) under section 1251(e)(1)(B) and paragraph (a)(1)(ii) of § 1.1251–3 such property would also qualify as farm recapture property if it were treated as farm recapture property because the acquired property would then have a basis determined with reference to the adjusted basis of farm recapture property.

(3) *Examples.* The provisions of subparagraphs (1) and (2) of this paragraph may be illustrated by the following examples:

Example (1). (i) A, an individual calendar year taxpayer, owns a herd of breeding cattle having an adjusted basis of $75,000 which he acquired on March 30, 1968. On March 15, 1970, the entire herd is destroyed by a blizzard and on March 20, 1970, A receives insurance proceeds of $90,000. Thus, the gain realized is $15,000 (that is, the excess of the amount realized, $90,000, over the adjusted basis, $75,000). A makes no other disposition of farm recapture property during 1970. Assume that had the herd been sold at its fair market value on March 15, 1970, no gain would have been recognized as ordinary in-

come under section 1245(a)(1). As of the close of 1970, A has a balance of $12,000 in his excess deductions account (after making the applicable additions and substractions under section 1251(b) (2) and (3)(A)). Thus, since the balance in the excess deductions account, $12,000, is lower than the gain realized, $15,000, the amount of gain which would be recognized under section 1251(c)(1) (determined without regard to subparagraph (1) of this paragraph) would be $12,000.

(ii) Assume further that A spends $72,000 of the insurance proceeds to purchase another breeding herd, $10,000 to purchase stock in the acquisition of control of a corporation which owns property similar or related in service or use to the destroyed breeding herd, and retains cash of $8,000. Both of the acquisitions by A qualify under section 1033(a)(3)(A), and A properly elects under section 1033(a)(3)(A) and the regulations thereunder to limit recognition of gain to $8,000 (that is, the amount by which the amount realized from the conversion, $90,000 exceeds the cost of the stock and other property acquired to replace the converted property, $72,000 plus $10,000). Thus, since $8,000 is the amount of gain which would be recognized under section 1033(a)(3) (determined without regard to section 1251), and since that amount is lower than the gain of $12,000 which would be recognized under section 1251(c)(1) (determined without regard to subparagraph (1) of this paragraph), under subparagraph (1) of this paragraph the amount of gain recognized under section 1251(c)(1) is limited to $8,000. The stock purchased for $10,000 qualifies under the special rule of subparagraph (2) of this paragraph as farm recapture property.

Example (2). (i) A, an individual calendar year taxpayer, owns land which he had acquired on March 7, 1970, having an adjusted basis of $48,000, and a fair market value of $67,500. On January 15, 1975, A, as a result of a condemnation action, receives $67,500 (its fair market value) for the land. The aggregate of the deductions allowable in respect of such land under sections 175 and 182 is $18,000, with $5,000 of such aggregate attributable to 1970 and $13,000 of such aggregate attributable to 1975 and the four preceding taxable years. Thus, the potential gain (as defined in paragraph (b)(2)(ii) of § 1.1251-1) is limited to $13,000, since that amount is lower than $19,500 (the excess of the fair market value of the land, $67,500, over its adjusted basis, $48,000). The gain realized by A is also $19,500. At the end of A's taxable year (after making the applicable additions and subtractions under section 1251(b) (2) and (3)(A)) there is a balance of $21,000 in the excess deductions account of A. Since the potential gain, $13,000, is lower than both the excess deductions account balance, $21,000, and the gain realized, $19,500, A would recognize $13,000 as ordinary income under section 1251(c)(1) (determined without regard to subparagraph (1) of this paragraph).

(ii) Assume further that A spends the entire amount received, $67,500, to purchase stock in the acquisition of control of a corporation which owns property similar or related in service or use to A's condemned land which qualifies under section 1033(a)(3)(A), and A properly elects under section 1033(a)(3)(A) and the regulations thereunder to limit recognition of gain to zero (that is, the amount by which the amount realized from the conversion, $67,500, exceeds the cost of the stock acquired to replace the converted land, $67,500). Thus, since no gain would be recognized under section 1033(a)(3) (determined without regard to section 1251), under subparagraph (1) of this paragraph, no gain is recognized under section 1251(c)(1). The stock purchased for $67,500 qualifies under the special rule of subparagraph (2) of this paragraph as farm recapture property. See example (1) of paragraph (d)(2) of § 1.1252-2 for a computation of gain recognized as ordinary income under section 1252(a)(1).

Example (3). B, an individual calendar year taxpayer, owns a herd of breeding cattle having an adjusted basis of $25,000 which he acquired on March 30, 1970. On March 15, 1976, the entire herd is destroyed by a blizzard and on March 20, 1976, B receives insurance proceeds of $90,000. Thus, the gain realized is $65,000 (that is, the excess of the amount realized, $90,000, over the adjusted basis, $25,000). B makes no other disposition of farm recapture property during 1976. B spends $60,000 of the insurance proceeds to purchase another breeding herd and retains cash of $30,000. The acquisition by B qualifies under section 1033(a)(3)(A), and B properly elects under section 1033(a)(3)(A) and the regulations thereunder to limit recognition of gain to $30,000 (that is, the amount by which the amount realized from the conversion, $90,000, exceeds the cost of the property acquired to replace the converted property, $60,000). Assume that the amount of gain recognized under section 1245(a)(1) is $20,000, and that as of the close of 1976 B has a balance of $100,000 in his excess deductions account (after making the applicable additions and subtractions under section 1251(b) (2) and (3)(A) which, under paragraph (b) of § 1.1251-3, is computed by treating the $20,000 of gain to which section 1245 applies as gross income derived from the trade or business of farming). The amount of gain recognized as ordinary income under section 1251(c)(1) is $10,000, computed as follows:

(1) Amount of gain under section 1251(c)(1) (determined without regard to subparagraph (1) of this paragraph):	
(a) Portion of gain realized ($65,000) in excess of amount recognized as ordinary income under section 1245(a)(1) ($20,000)	$45,000
(b) Excess deductions account balance	100,000
(c) Lower of (a) or (b)	45,000
(2) Limitation in subparagraph (1) of this paragraph:	
(a) Gain recognized (determined without regard to section 1251)	30,000
(b) Minus: Gain recognized as ordinary income under section 1245(a)(1)	20,000
(c) Difference	10,000
(3) Lower of line (1)(c) or line (2)(c)	10,000

(4) *Application to single disposition of farm recapture property of one class and property of different class.* (i) If upon a sale of farm recapture property of one class gain would be recognized under section 1251(c)(1), and if such farm recapture property together with property of a different class or classes is disposed of in a single transaction in which gain is not recognized in whole or in part under section 1031 or 1033 (without regard to section 1251(c)(1)), then rules consistent with the principles of paragraph (d)(6) of § 1.1250-3 (relating to gain from disposition of certain depreciable realty) shall apply for purposes of allocating the amount realized to each of the classes of property disposed of and for purposes of determining what property the amount realized for each class consists of.

(ii) For purposes of this subparagraph, the classes of property other than farm recapture property are (*a*) section 1245 property, (*b*) section 1250 property, and (*c*) other property.

(iii) For purposes of this subparagraph, the classes of farm recapture property are (*a*) land, (*b*) farm recapture property other than land which is section 1245 property, and (*c*) farm recapture property other than land which is not section 1245 property.

(5) *Treatment of farm recapture property received in like kind exchange or involuntary conversion of land.* See paragraph (g)(4) of this section for treatment of farm recapture property received upon a disposition of land in a transaction described in subparagraph (1) of this paragraph.

(e) *Partnerships.* [Reserved]

(f) *Property transferred to controlled corporation.* [Reserved]

(g) *Treatment of land received by a transferee in a disposition by gift and certain tax-free transactions*—(1) *General rule.* If farm recapture property which is land is disposed of in a transaction which is either a gift to which paragraph (a)(1) of this section applies, or a completely tax-free transfer to which paragraph (c)(1) of this section applies, then for purposes of section 1251—

(i) The aggregate of the deductions allowable under sections 175 and 182 in respect of the land in the hands of the transferee immediately after the disposition shall be an amount equal to the amount of such aggregate in the hands of the transferor immediately before the disposition,

(ii) Upon a subsequent disposition by the transferee (including computation of potential gain as defined in paragraph (b)(2)(ii) of § 1.1251-1), such deductions in the hands of the transferee shall be treated as having been allowable with respect to the transferee in the same taxable year they were allowable to the transferor, and shall for purposes of this paragraph be referred to as the annual layers of allowable section 175 and 182 deductions, and

(iii) If the taxable years of the transferor and transferee regularly end on different dates, then the aggregate of such deductions allowable for each taxable year with respect to the transferor shall be treated in the hands of the transferee as constituting the annual layer for the transferee's taxable year in which the taxable year of the transferor regularly ends.

(2) *Certain partially tax-free transfers.* If farm recapture property which is land is disposed of in a transaction (for purposes of this paragraph referred to as the "first transaction") which either is in part a sale or exchange and in part a gift to which paragraph (a)(2) of this section applies (for purposes of this paragraph referred to as a "bargain sale") or is a partially tax-free transfer to which paragraph (c)(1) of this section applies, then for purposes of section 1251—

(i) The land received by the transferee shall consist of an "old element" and a "new element",

(ii) In respect of the old element immediately after the first transaction, the aggregate of the deductions allowable under sections 175 and 182 (which shall pass over in annual layers as described in subparagraph (1)(ii) of this paragraph) in respect of the land which are attributable to such old element shall be an amount equal to the amount of such aggregate in the hands of the transferor immediately before the first transaction, minus the aggregate of the gain recognized under section 1251(c)(1) (and section 1252(a)(1), if applicable) by the transferor upon the first transaction,

(iii) (*a*) The amount of such gain recognized under section 1251(c)(1) by the transferor upon the first transaction shall reduce (in the order of the oldest annual layers first) the annual layers of the aggregate of the allowable section 175 and 182 deductions in a 5-year period which consists of the taxable year of such disposition and the four immediately preceding taxable years, and (*b*), after applying (*a*) of this subdivision, the amount of such gain recognized under section 1252(a)(1) by the transferor upon the first transaction shall reduce (in the order of the oldest annual layers first) the annual layers of the aggregate of the allowable (regardless of whether allowed) section 175 and 182 deductions in the 10-year period ending with such disposition,

(iv) If the taxable years of the transferor and transferee regularly end on different dates, then the aggregate of the deductions allowable for each taxable year with respect to the transferor shall be treated in the hands of the transferee as constituting the layer for the transferee's taxable year in which the taxable year of the transferor regularly ends,

(v) Immediately after the first transaction, the transferee's adjusted basis for the property shall be allocated between the old element and the new element—

(*a*) In the case of a bargain sale, in the proportion that (*1*) the portion of the fair market value of the property transferred as a gift (i.e., the excess of its fair market value over the purchase price) bears to (2) the portion of the property not transferred as a gift (i.e., the purchase price), and

(*b*) In the case of property transferred in a partially tax-free transfer to which paragraph (c)(1) of this section applies, in the proportion that (*1*) the portion of the fair market value of the property received as consideration without recognition of gain, bears to (2) the portion of the fair market value of the property received with recognition of gain,

(vi) If the land is subsequently disposed of by the transferee (for purposes of this subparagraph referred to as in a "second transaction"),

(*a*) The amount realized in the case of a sale, exchange, or involuntary conversion (or the fair market value of the property in the case of any other disposition),

(*b*) The amounts of any net capital improvements in respect of the property between the first and second transactions, and

(*c*) The aggregate of the deductions allowable in respect of the property under sections 175 and 182 for the period between the first and second transactions

shall each be allocated (in the case of the amount in (*c*) of this subdivision, in annual layers) to the old element and the new element in proportion to the adjusted basis of each such element immediately after the first transaction, and upon the second transaction the amount of gain which shall be recognized as ordinary income under section 1251(c)(1) shall be the sum of the separately computed gains for each element, computed under the rules of this subparagraph, but only to the extent not in excess of the balance in the excess deductions account of the transferor in the second transaction at the close of his taxable year (after making the applicable additions and subtractions under section 1251(b)(2) and (3)(A)), and

(vii) If the balance referred to in subdivision (vi) of this subparagraph in the excess deductions account is lower than the sum of the separately computed gains for each element, the gain recognized as ordinary income under section 1251(c)(1) shall be considered to be recognized in respect of the elements in the order of age, the oldest element first.

(3) *Examples.* The provisions of subparagraphs (1) and (2) of this paragraph may be illustrated by the following examples:

Example (1). Assume the same facts as in example (1) of paragraph (a)(4) of this section. Therefore, on the date B receives the land in the gift transaction, under subparagraph (1) (i) and (ii) of this paragraph, the aggregate of the deductions allowable under sections 175 and 182 in respect of the land in the hands of B is the amount in the hands of A, $24,000, and for purposes of applying section 1251 upon a subsequent disposition by B (including the computation of potential gain) such deductions in the hands of B shall be treated as allowable in the same year as they were allowable to A. Thus, in respect to the land in the hands of B, the annual layers of allowable section 175 and 182 deductions are $21,000 and $3,000 for 1971 and 1975 respectively.

Example (2). Assume the same facts as in example (2) of paragraph (a)(4) of this section. Therefore, under subparagraph (2)(i) of this paragraph, on March 2, 1976, the date B receives the land in the part-sale-part-gift transaction, it consists of an old element and a new element. Since B paid $50,000 for the entire parcel of land, an amount in excess of A's adjusted basis, B's adjusted basis for the land is $50,000. Under subparagraph (2)(v) of this paragraph, B's adjusted basis is allocated to the old element and the new element in the proportion that the fair market value of the portion received by B as a gift, $15,000 (i.e., the excess of the fair market value, $65,000, over the purchase price, $50,000), bears to the fair market value of the portion received by B as a purchase (i.e., the purchase price), $50,000. Thus, B's adjusted basis for the old element is $11,538, i.e., $50,000, multiplied by the fraction $15,000/($15,000 plus $50,000), and B's adjusted basis for the new element is $38,462, i.e., $50,000, multiplied by the fraction, $50,000/($15,000 plus $50,000). The aggregate of the allowable section 175 and 182 deductions in respect of the old element of the land in the hands of B, determined as of the date of receipt by B, is $14,000 (the aggregate in the hands of A, $24,000, which is composed of $21,000 for 1971 and $3,000 for 1975, reduced by the sum of the gain recognized as ordinary income under section 1251(c)(1), $3,000, and under section 1252(a)(1), $7,000). See subparagraph (2)(ii) of this paragraph and example (2) of paragraph (a)(4) of § 1.1252-2. Under subparagraph (2)(iii)(*a*) of this paragraph, none of the $3,000 in the annual layers of section 175 and 182 deductions allowable to A for the taxable year of disposition and the 4 preceding years pass over to B since such $3,000 is equal to the amount of gain recognized as ordinary income to A under section 1251(c)(1).

Example (3) (i). Assume the same facts as in example (2) of this subparagraph, except that A acquired the land on January 15, 1972, the aggregate of the section 175 and 182 deductions allowable to A was $14,000, and such aggregate $4,000 is attributable to 1976 while the remaining $10,000 is attributable to 1974. Since as of March 2, 1976, the date of the part-sale-part-gift transaction, the amount of such aggregate, $14,000, is lower than the excess, $25,000, of the fair market value of the land over its adjusted basis, the potential gain on the property is $14,000. Since the gain realized on the disposition, $10,000, is lower than the potential gain, $14,000, and also lower than the balance in A's excess deductions account at the end of 1976 (after making the applicable additions and subtractions under section 1251(b) (2) and (3)(A)), $25,000, the amount of gain recognized as ordinary income under section 1251(c)(1) is equal to the entire gain realized, $10,000. Under subparagraph (2)(iii)(*a*) of this paragraph, the earliest annual layer (1974) of the allowable section 175 and 182 deductions of A is reduced to zero (aggregate for 1974, $10,000, minus gain recognized as ordinary income under section 1251(c)(1), $10,000) and since no gain is recognized as ordinary income by A under section 1252, A's annual layer of allowable section 175 and 182 deductions for 1976 passes over to B.

(ii) Assume further that B makes a single disposition of farm recapture property during 1980. On December 16, 1980, B sells the land for $80,000 (its fair market value), and during the time B holds the land the aggregate of the deductions allowable under sections 175 and 182 is $9,000 with $3,000 of such aggregate attributable to 1976, $500 of such aggregate attributable to 1977, $1,500 of such aggregate attributable to 1978, $2,500 of such aggregate attributable to 1979, and the remaining $1,500 of such aggregate attributable to 1980. In addition, B makes net capital improvements on the land which increase its basis by $4,000. On the sale of the parcel of land, B recognizes gain of $10,000 as ordinary income under section 1251(c)(1), computed in accordance with subparagraph (2) of this paragraph, on the basis of the further facts assumed in the table below:

	Total	Old element	New element
(1) Allocation ratio for lines (2) (a) and (c), and (3)(c):			
(a) Adjusted basis immediately after first transaction	$50,000	$11,538	$38,462
(b) Percent		23.08	76.92
(2) Gain realized upon disposition of land in second transaction:			
(a) Amount realized (fair market value), as allocated	$80,000	$18,464	$61,536
(b) Adjusted basis after first transaction	50,000	11,538	38,462
(c) Net capital improvements, as allocated	4,000	923	3,077
(d) Gain realized (line (2)(a) minus sum of lines (2) (b) and (c))	26,000	6,003	19,997
(3) Annual layers of allowable section 175 and 182 deductions for 1980 and four preceding taxable years for purposes of section 1251, as allocated:			
(a) 1976 annual layer which passes over to B	4,000	4,000	0
(b) Allowable yearly to B:			
1976	3,000		
1977	500		
1978	1,500		
1979	2,500		
1980	1,500		
(c) Aggregate of line (b) allocated	9,000	2,077	6,923
(d) Aggregate of lines (a) and (c)	13,000	6,077	6,923
(4) Potential gain:			
(a) For each element (lower of line (2)(d) or (3)(d))		6,003	6,923
(b) Sum of potential gains for all elements	12,926		
(5) B, excess deductions account balance at the end of 1980 (after making the applicable additions and subtractions under section 1251(b) (2) and (3)(A))	10,000		
(6) Gain recognized as ordinary income under section 1251(c)(1) by B, lowest of line (4)(a), or (5) allocated to old element first	10,000	6,003	3,997

See example (3) of paragraph (f)(3) of § 1.1252-2 for the amount of gain recognized as ordinary income under section 1252.

(4) *Treatment of farm recapture property received in like kind exchange or involuntary conversion of land.* If farm recapture property which is land is disposed of in a transaction described in paragraph (d)(1) of this section, then for purposes of section 1251, the rules of subparagraph (1) or (2) of this paragraph (as the case may be) shall be applied by treating the acquisition of the farm recapture property by the transferee in either such subparagraph as if it were an acquisition of property qualifying under section 1031 or 1033 by the transferor.

§ 1.1252 Statutory provision; gain from disposition of farm land.

SEC. 1252. *Gain from disposition of farm land*—(a) *General rule*—(1) *Ordinary income.* Except as otherwise provided in this section, if farm land which the taxpayer has held for less than 10 years is disposed of during a taxable year beginning after December 31, 1969, the lower of—

(A) The applicable percentage of the aggregate of the deductions allowed under sections 175 (relating to soil and water conservation expenditures) and 182 (relating to expenditures by farmers for clearing land) for expenditures made by the taxpayer after December 31, 1969, with respect to the farm land or

(B) The excess of—

(i) The amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of the farm land (in the case of any other disposition), over

(ii) The adjusted basis of such land,

shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provision of this subtitle, except that this section shall not apply to the extent section 1251 applies to such gain.

(2) *Farm land.* For purposes of this section, the term "farm land" means any land with respect to which deductions have been allowed under sections 175 (relating to soil and water conservation expenditures) or 182 (relating to expenditures by farmers for clearing land).

(3) *Applicable percentage.* For purposes of this section—

If the farm land is disposed of—	The applicable percentage is—
Within 5 years after the date it was acquired.	100 percent.
Within the sixth year after it was acquired.	80 percent.
Within the seventh year after it was acquired.	60 percent.
Within the eighth year after it was acquired .	40 percent.
Within the ninth year after it was acquired.	20 percent.
10 years or more after it was acquired.	0 percent.

(b) *Special rules.* Under regulations prescribed by the Secretary or his delegate, rules similar to the rules of section 1245 shall be applied for purposes of this section.

[Sec. 1252 as added by sec. 214(a), Tax Reform Act 1969 (83 Stat. 572)]

§ 1.1252-1 General rule for treatment of gain from disposition of farm land.

(a) *Ordinary income*—(1) *General rule.* (i) Except as otherwise provided in this section and § 1.1252-2, if farm land is disposed of during a taxable year beginning after December 31, 1969, then under section 1252(a)(1) there shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231 (that is, shall be recognized as ordinary income) the lower of—

(*a*) The applicable percentage of the amount computed in subdivision (ii) of this subparagraph, or

(*b*) The amount computed in subdivision (iii) of this subparagraph.

(ii) The amount computed in this subdivision is an amount equal to—

(*a*) The aggregate of the deductions allowed, in any taxable year any day of which falls within the period the taxpayer held (or is considered to have held) the farm land, under sections 175 (relating to soil and water conservation expenditures) and 182 (relating to expenditures by farmers for clearing land) for expenditures paid or incurred after December 31, 1969, with respect to the farm land disposed of, minus

(*b*) The amount of gain recognized as ordinary income under section 1251(c)(1) (relating to gain from disposition of property used in farming where farm losses offset nonfarm income) upon such disposition of such land.

(iii) The amount computed in this subdivision is an amount equal to—

(*a*) The gain realized, that is, the excess of the amount realized (in the case of a sale, exchange, or involuntary conversion) or the fair market value of the farm land (in the case of any other disposition), over the adjusted basis of the farm land, minus

(*b*) The amount of gain recognized as ordinary income under section 1251(c)(1) upon such disposition of such land.

(iv) If a deduction under section 175 is allowed in respect of the farm land disposed of for a taxable year every day of which falls within the period after the taxpayer held (or is considered to have held) the farm land, and if the deduction is attributable to expenditures paid or incurred after December 31, 1969, with respect to such land during the period the taxpayer held (or is considered to have held) the land, then the amount of such deduction shall be applied to increase the amount computed (without regard to this subdivision) under subdivision (ii)(*a*) of this subparagraph.

(2) *Application of section.* Any gain treated as ordinary income under section 1252(a)(1) shall be recognized as ordinary income notwithstanding any other provision of subtitle A of the Code. For special rules with respect to the application of section 1252, see § 1.1252-2. For the relation of section 1252 to other provisions see paragraph (d) of this section.

(3) *Meaning of terms.* For purposes of section 1252—

(i) The term "farm land" means any land with respect to which deductions have been allowed under section 175 or 182. See section 1252(a)(2).

(ii) The period for which farm land shall be considered to be held shall be determined under section 1223.

(iii) The term "disposition" shall have the same meaning as in paragraph (a)(3) of § 1.1245-1.

(iv) The applicable percentage shall be determined as follows:

If the farm land is disposed of—	The applicable percentage is—
Within 5 years after the date it was acquired.	100 percent.
Within the sixth year after it was acquired.	80 percent.
Within the seventh year after it was acquired.	60 percent.
Within the eighth year after it was acquired.	40 percent.
Within the ninth year after it was acquired.	20 percent.
Within the 10th year after it was acquired and thereafter.	0 percent.

(4) *Portion of parcel.* The amount of gain to be recognized as ordinary income under section 1252(a)(1) shall be determined separately for each parcel of farm land in a manner consistent with the principles of subparagraphs (4) and (5) of § 1.1245-1(a) (relating to gain from disposition of certain depreciable property). If (i) only a portion of a parcel of farm land is disposed of in a transaction, or if two or more portions of a single parcel are disposed of in one transaction, and (ii) the aggregate of the deductions allowed under sections 175 and 182 with respect to any such portion cannot be established to the satisfaction of the Commissioner or his delegate, then the aggregate of the deductions in respect of the entire parcel shall be allocated to each portion in proportion to the fair market value of each at the time of the disposition.

(b) *Instances of non-application*—(1) *In general.* Section 1252 does not apply if a taxpayer disposes of farm land for which the holding period is in excess of 9 years or with respect to which no deductions have been allowed under sections 175 and 182.

(2) *Losses.* Section 1252(a)(1) does not apply to losses. Thus, section 1252(a)(1) does not apply if a loss is realized upon a sale, exchange, or involuntary conversion of property, all of which is farm land, nor does the section apply to a disposition of such property other than by way of sale, exchange, or involuntary conversion if at the time of the disposition the fair market value of such property is not greater than its adjusted basis.

(c) *Treatment of partnerships and partners.* [Reserved.]

(d) *Relation of section 1252 to other provisions*—(1) *General.* The provisions of section 1252 apply notwithstanding any other provision of subtitle A of the Code. Thus, unless an exception or limitation under § 1.1252-2 applies, gain under section 1252(a)(1) is recognized notwithstanding any contrary nonrecognition provision or income characterizing provision. For example, since section 1252 overrides section 1231 (relating to property used in the trade or business), the gain recognized under section 1252(a)(1) upon a disposition of farm land will be treated as ordinary income and only the remaining gain, if any, from the disposition may be considered as gain from the sale or exchange of a capital asset if section 1231 is applicable. See example (1) of paragraph (e) of this section.

(2) *Nonrecognition sections overridden.* The nonrecognition of gain provisions of subtitle A of the Code which section 1252 overrides include, but are not limited to, sections 267(d), 311(a), 336, 337, 501(a), and 512(b)(5). See § 1.1252-2 for the extent to which section 1252(a)(1) overrides sections 332, 351, 361, 371(a), 374(a), 721, 731, 1031, and 1033.

(3) *Installment method.* Gain from a disposition to which section 1252(a)(1) applies may be reported under the installment method if such method is otherwise available under section 453 of the Code. In such case, the income (other than interest) on each installment payment shall (i) first be deemed to consist of gain to which section 1251(c)(1) applies (if applicable) until all such gain has been reported, (ii) the next portion (if any) of such income shall be deemed to consist of gain to which section 1252(a)(1) applies until all such gain has been reported, and (iii) finally the remaining portion (if any) of such income shall be deemed to consist of gain to which neither section 1251(c)(1) nor 1252(a)(1) applies. For treatment of amounts as interest on certain deferred payments, see section 483.

(4) *Exempt income.* With regard to exempt income, the principles of paragraph (e) of § 1.1245-6 shall be applicable.

(5) *Treatment of gain not recognized under section 1252(a)(1).* For treatment of gain not recognized under this section, the principles of paragraph (f) of § 1.1245-6 shall be applicable.

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

Example (1). Individual A uses the calendar year as his taxable year. On April 10, 1975, he sells for $75,000 a parcel of farm land which he had acquired on January 5, 1970, with an adjusted basis of $52,500 for a realized gain of $22,500. The aggregate of the deductions allowed under sections 175 and 182 with respect to such land is $18,000 and all of such amount was allowed for 1970. Under the stated facts, none of the $22,500 gain realized is recognized as ordinary income under section 1251(c)(1) as there is no potential gain (as defined in section 1251(e)(5)) with respect to the farm land. Since no gain is recognized as ordinary income under section 1251(c)(1), and since the applicable percentage, 80 percent, of the aggregate of the deductions allowed under sections 175 and 182, $18,000, or $14,400, is lower than the gain realized, $22,500, the amount of gain recognized as ordinary income under section 1252(a)(1) is $14,400. The remaining $8,100 of the gain may be treated as gain from the sale or exchange of property described in section 1231.

Example (2). Assume the same facts as in example (2) of paragraph (b)(6) of § 1.1251-1. Assume further that the aggregate of the amount of sections 175 and 182 deductions allowable to the M corporation is equal to the amount allowed. Under paragraph (a)(1) of this section, $5,000 is recognized as ordinary income under section 1252(a)(1) upon the disposition of the land as a dividend, computed as follows:

(1) Aggregate of deductions allowed under sections 175 and 182	$18,000
(2) Minus: Gain recognized as ordinary income under section 1251(c)(1)	$13,000
(3) Difference	$5,000
(4) Multiply: Applicable percentage for property disposed of within the fifth year after it was acquired	100%
(5) Amount in paragraph (a)(1)(i)(a) of this section	$5,000
(6) Gain realized (fair market value $67,500, less adjusted basis, $45,000)	$22,500
(7) Minus: Amount in line (2)	$13,000
(8) Amount in paragraph (a)(1)(i)(b) of this section	$9,500
(9) Lower of line (5) or line (8)	$5,000

The "gain realized", $22,500, minus the sum of the gain recognized as ordinary income under section 1251(c)(1), $13,000, and under section 1252(a)(1), $5,000, equals $4,500. Assuming section 311(d) (relating to certain distributions of appreciated property to redeem stock) does not apply, under section 311(a) the corporation does not recognize gain on account of the $4,500.

Example (3). Assume the same facts as in example (2) of this paragraph, except that M contracted to sell the land for $67,500 which would be paid in 10 equal payments of $6,750 each, plus a sufficient amount of interest so that section 483 does not apply. Assume further that the remaining gain of $4,500 is treated as gain from the sale or exchange of property described in section 1231. M properly elects under section 453 to report under the installment method gain of $13,000 to which section 1251(c)(1) applies, gain of $5,000 to which section 1252(a)(1) applies, and gain of $4,500 to which section 1231 applies. Since the total gain realized on the sale was $22,500, the gross profit realized on each installment payment is $2,250, i.e., $6,750 × ($22,500/$67,500). Accordingly, the treatment of the income to be reported on each installment payment is as follows:

Payment No.	Applicable sections		
	1251	*1252*	*1231*
1	$2,250		
2	2,250		
3	2,250		
4	2,250		
5	2,250		
6	1,750	$500	
7		2,250	
8		2,250	
9			$2,250
10			2,250
Totals	13,000	5,000	4,500

§ 1.1252-2 Special rules.

(a) *Exception for gifts*—(1) *General rule.* In general, no gain shall be recognized under section 1252(a)(1) upon a disposition of farm land by gift. For purposes of section 1252 and this paragraph, the term "gift" shall have the same meaning as in paragraph (a) of

§ 1.1245–4 and, with respect to the application of this paragraph, principles illustrated by the examples of paragraph (a)(2) of § 1.1245–4 shall apply. For reduction in amount of charitable contribution in case of a gift of farm land, see section 170(e) and the regulations thereunder.

(2) *Disposition in part a sale or exchange and in part a gift.* Where a disposition of farm land is in part a sale or exchange and in part a gift, the amount of gain which shall be recognized as ordinary income under section 1252(a)(1) shall be computed under paragraph (a)(1) of § 1.1252–1, applied by treating the gain realized (for purposes of paragraph (a)(1)(iii)(*a*) of § 1.1252–1) as the excess of the amount realized over the adjusted basis of the farm land.

(3) *Treatment of farm land in hands of transferee.* See paragraph (f) of this section for treatment of the transferee in the case of a disposition to which this paragraph applies.

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

Example (1). On March 2, 1976, A, a calendar year taxpayer, makes a gift to B of a parcel of land having an adjusted basis of $40,000, a fair market value of $65,000, and a holding period of 6 years (A, having purchased the land on January 15, 1971). On the date of such gift, the aggregate of the deductions allowed to A under sections 175 and 182 with respect to the land is $24,000 with $21,000 of such amount attributable to 1971. Upon making the gift, A recognizes no gain under section 1251(c)(1) or section 1252(a)(1). See paragraph (a)(1) of § 1.1251–4 and subparagraph 1 of this paragraph. For treatment of the farm land in the hands of B, see example (1) of paragraph (f)(3) of this section. For effect of the gift on the excess deductions accounts of A and of B, see paragraph (e)(2) of § 1.1251–2.

Example (2). (i) Assume the same facts as in example (1), except that A transfers the land to B for $50,000. Thus, the gain realized is $10,000 (amount realized, $50,000, minus adjusted basis, $40,000), and A has made a gift of $15,000 (fair market value, $65,000, minus amount realized, $50,000).

(ii) Upon the transfer of the land to B, A recognizes, $3,000 of gain under section 1251(c)(1). See example (2) of paragraph (a)(4) of § 1.1251–4. Thus, A recognizes $7,000 as ordinary income under section 1252(a)(1), computed under subparagraph (2) of this paragraph as follows:

(1) Aggregate of deductions allowed under sections 175 and 182	$24,000
(2) Minus: Gain recognized as ordinary income under section 1251(c)(1)	$3,000
(3) Difference	$21,000
(4) Multiply: Applicable percentage for land disposed of within sixth year after it was acquired	80%
(5) Amount in paragraph (a)(1)(i)(*a*) of § 1.1252–1	$16,800
(6) Gain realized (see subdivision (i) of this example)	$10,000
(7) Minus: Amount in line (2)	$3,000
(8) Amount in paragraph (a)(1)(i)(*b*) of § 1.1252–1, applied in accordance with subparagraph (2) of this paragraph	$7,000
(9) Lower of line (5) or line (8)	$7,000

Thus, the entire gain realized on the transfer, $10,000, is recognized as ordinary income since that amount is equal to the sum of the gain recognized as ordinary income under section 1251(c)(1), $3,000, and under section 1252(a)(1), $7,000. For treatment of the farm land in the hands of B, see example (2) of paragraph (f)(3) of this section.

(b) *Exception for transfers at death—*(1) *In general.* Except as provided in section 691 (relating to income in respect of a decedent), no gain shall be recognized under section 1252(a)(1) upon a transfer at death. For purposes of section 1252 and this paragraph, the term "transfer at death" shall have the same meaning as in paragraph (b) of § 1.1245–4 and, with respect to the application of this paragraph, principles illustrated by the examples of paragraph (b)(2) of § 1.1245–4 shall apply.

(2) *Treatment of farm land in hands of transferee.* If as of the date a person acquires farm land from a decedent such person's basis is determined, by reason of the application of section 1014(a), solely by reference to the fair market value of the property on the date of the decedent's death or on the applicable date provided in section 2032 (relating to alternative valuation date), then on such date the aggregate of the sections 175 and 182 deductions allowed with respect to the farm land in the hands of such transferee is zero.

(c) *Limitation for certain tax-free transactions—*(1) *Limitation on amount of gain.* Upon a transfer of farm land described in subparagraph (2) of this paragraph, the amount of gain recognized as ordinary income under section 1252(a)(1) shall not exceed an amount equal to the excess (if any) of (i) the amount of gain recognized to the transferor on the transfer (determined without regard to section 1252) over (ii) the amount (if any) of gain recognized as ordinary income under section 1251(c)(1). For purposes of this subparagraph, the principles of paragraph (c)(1) of § 1.1245–4 shall apply. Thus, in the case of a transfer of farm land and property other than farm land in one transaction, the amount realized from the disposition of the farm land (as determined in a manner consistent with the principles of paragraph (a)(5) of § 1.1245–1) shall be deemed to consist of that portion of the fair market value of each property acquired which bears the same ratio to the fair market value of such acquired property as the amount realized from the disposition of the farm land bears to the total amount realized. The preceding sentence shall be applied solely for purposes of computing the portion of the total gain (determined without regard to section 1252) which is eligible to be recognized as ordinary income under section 1252(a)(1). The provisions of this paragraph do not apply to a disposition of property to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by chapter 1 of the Code.

(2) *Transfers covered.* The transfers referred to in subparagraph (1) of this paragraph are transfers of farm land in which the basis of such property in the hands of the transferee is determined by reference to its basis in the hands of the transferor by reason of the application of any of the following provisions:

(i) Section 332 (relating to distributions in complete liquidation of an 80-percent-or-more controlled subsidiary corporation). For application of subparagraph (1) of this paragraph to such a complete liquidation, the principles of paragraph (c)(3) of § 1.1245–4 shall apply. Thus, for example, the provisions of subparagraph (1) of this paragraph do not apply to a liquidating distribution of farm land by an 80-percent-or-more controlled subsidiary to its parent if the parent's basis for the property is determined, under section 334(b)(2), by reference to its basis for the stock of the subsidiary.

(ii) Section 351 (relating to transfer to a corporation controlled by transferor).

(iii) Section 361 (relating to exchanges pursuant to certain corporate reorganizations).

(iv) Section 371(a) (relating to exchanges pursuant to certain receivership and bankruptcy proceedings).

(v) Section 374(a) (relating to exchanges pursuant to certain railroad reorganizations).

(vi) Section 721 (relating to transfers to a partnership in exchange for a partnership interest). See paragraph (e) of this section.

(vii) Section 731 (relating to distributions by a partnership to a partner). For special carryover of basis rule, see paragraph (e) of this section.

(3) *Treatment of farm land in the hands of transferee.* See paragraph (f) of this section for treatment of the transferee in the case of a disposition to which this paragraph applies.

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

Example (1). On January 4, 1975, A, an individual calendar year taxpayer, owns a parcel of farm land, which he acquired on March 25, 1970, having an adjusted basis of $15,000 and a fair market value of $40,000. On that date he transfers the parcel to corporation M in exchange for stock in the corporation worth $40,000 in a transaction qualifying under section 351. On the date of such transfer, the aggregate of the deductions allowed under sections 175 and 182 with respect to the land is $18,000. Without regard to section 1252, A would recognize no gain under section 351 upon the transfer and M's basis for the land would be determined under section 362 (a) by reference to its basis in the hands of A. Thus, as a result of the disposition, no gain is recognized as ordinary income under section 1251(c)(1) or section 1252(a)(1) by A since the amount of gain recognized under such sections is limited to the amount of gain which is recognized under section 351 (determined without regard to sections 1251 and 1252). See paragraph (c)(1) of § 1.1251–4 and subparagraph (1) of this paragraph. For treatment of the farm land in the hands of B, see paragraph (f)(1) of this section. For effect of the transfer on the excess deductions account of A and of B, see paragraph (e)(1) of § 1.1251–2.

Example (2). Assume the same facts in example (1), except that A transferred the land to M for stock in the corporation worth $32,000 and $8,000 cash. The gain realized is $25,000 (amount realized, $40,000, minus

adjusted basis, $15,000). Without regard to section 1252, A would recognize $8,000 of gain under section 351(b). Assume further that no gain is recoognized as ordinary income under section 1251(c)(1). Therefore, since the applicable percentage, 100 percent, of the aggregate of the deductions allowed under sections 175 and 182, $18,000, is lower than the gain realized, $25,000, the amount of gain to be recognized as ordinary income under section 1252(a)(1) would be $18,000 if the provisions of subparagraph (1) of this paragraph do not apply. Since under section 351(b) gain in the amount of $8,000 would be recognized to the transferor without regard to section 1252, the limitation provided in subparagraph (1) of this paragraph limits the gain taken into account by A under section 1252(a)(1) to $8,000.

Example (3). Assume the same facts as in example (2), except that $5,000 of gain is recognized as ordinary income under section 1251(c)(1). The amount of gain recognized as ordinary income under section 1252(a)(1) is $3,000 computed as follows:

(1) Amount of gain under section 1252(a)(1) (determined without regard to subparagraph (1) of this paragraph):	
(a) Aggregate of deductions allowed under sections 175 and 182	$18,000
(b) Minus: Gain recognized as ordinary income under section 1251(c)(1)	$5,000
(c) Difference	$13,000
(d) Multiply: Applicable percentage for property disposed of within the fifth year after it was acquired	100%
(e) Amount in paragraph (a)(1)(i)(*a*) of § 1.1252-1	$13,000
(f) Gain realized (amount realized $40,000, less adjusted basis, $15,000)	$25,000
(g) Minus: Amount in line (b)	$5,000
(h) Amount in paragraph (a)(1)(i)(*b*) of § 1.1252-1	$20,000
(i) Lower of line (e) or (h)	$13,000
(2) Limitation in subparagraph (1) of this paragraph:	
(a) Gain recognized (determined without regard to section 1252)	$8,000
(b) Minus: Gain recognized as ordinary income under section 1251(c)(1)	$5,000
(c) Difference	$3,000
(3) Lower of line (1)(i) or line (2)(c)	$3,000

Thus, the entire gain recognized under section 351(b) (determined without regard to sections 1251 and 1252), $8,000, is recognized as ordinary income since that amount is equal to the sum of the gain recognized as ordinary income under section 1251(c)(1), $5,000, and under section 1252(a)(1), $3,000.

(d) *Limitation for like kind exchanges and involuntary conversions*—(1) *General rule.* If farm land is disposed of and gain (determined without regard to section 1252) is not recognized in whole or in part under section 1031 (relating to like kind exchanges) or section 1033 (relating to involuntary conversions), then the amount of gain recognized as ordinary income by the transferor under section 1252(a)(1) shall not exceed the sum of—

(i) The excess (if any) of (*a*) the amount of gain recognized on such disposition (determined without regard to section 1252) over (ii) the amount (if any) of gain recognized as ordinary income under section 1251(c)(1), plus

(ii) The fair market value of property acquired which is not farm land and which is not taken into account under subdivision (i) of this subparagraph (that is, the fair market value of property other than farm land acquired which is qualifying property under section 1031 or 1033, as the case may be).

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

Example (1). (i) Assume the same facts as in example (2) (ii) of paragraph (d)(3) of § 1.1251-4. Assume further that the aggregate of the amount of section 175 and 182 deductions allowable is equal to the amount allowed. Under paragraph (a)(1) of § 1.1252-1, $18,000 would be recognized as ordinary income under section 1252(a)(1) (determined without regard to subparagraph (1) of this paragraph), computed as follows:

(1) Aggregate of deductions allowed under sections 175 and 182	$18,000
(2) Minus: Gain recognized as ordinary income under section 1251(c)(1)	0
(3) Difference	$18,000
(4) Multiply: Applicable percentage for property disposed of within the fifth year after it was acquired	100%
(5) Amount in paragraph (a)(1)(i)(*a*) of § 1.1252-1	$18,000
(6) Gain realized (amount realized, $67,500, less adjusted basis, $48,000)	$19,500
(7) Minus: Amount in line (2)	0
(8) Amount in paragraph (a)(1)(i)(*b*) of § 1.1252-1	$19,500
(9) Lower of line (5) or line (8)	$18,000

(ii) Although no gain was recognized under section 1251(c)(1) and the stock purchased by A for $67,500 is farm recapture property for purposes of section 1251, it is not farm land for purposes of section 1252. Nevertheless, although no gain would be recognized under sections 1033(a)(3) and 1251(c)(1) (determined without regard to section 1252), the limitation under subparagraph (1) of this paragraph is $67,500 (that is, the fair market value of property other than farm land acquired which is qualifying property under section 1033). Since the amount of gain which would be recognized as ordinary income under section 1252(a)(1) (determined without regard to subparagraph (1) of this paragraph), $18,000 (as computed in subdivision (i) of this example), is lower than the amount of such limitation, $67,500, accordingly, only $18,000 is recognized as ordinary income under section 1252(a)(1). For determination of basis of the stock acquired, see subparagraph (5) of this paragraph.

Example (2). (i) Assume the same facts as in example (1) of this subparagraph, except that the cost of the stock was $62,500 (its fair market value). Thus, the amount of gain recognized on the disposition under section 1033(a)(3) (determined without regard to sections 1251 and 1252) is $5,000, that is, $67,500 minus $62,500. Assume further that $5,000 (the amount of gain recognized under section 1033(a)(3) (so determined)) was recognized as ordinary income under section 1251(c)(1). The amount of gain recognized as ordinary income under section 1252(a)(1) is $13,000, computed as follows:

(1) Amount of gain under section 1252(a)(1) (determined without regard to subparagraph (1) of this paragraph):	
(a) Aggregate of deductions allowed under sections 175 and 182	$18,000
(b) Minus: Gain recognized as ordinary income under section 1251(c)(1)	$5,000
(c) Difference	$13,000
(d) Multiply: Applicable percentage for property disposed of within the fifth year after it was acquired	100%
(e) Amount in paragraph (a)(1)(i)(*a*) of § 1.1252-1	$13,000
(f) Gain realized (amount realized, $67,500 (less adjusted basis, $48,000)	$19,500
(g) Minus: Amount in line (b)	$5,000
(h) Amount in paragraph (a)(1)(i)(*b*) of § 1.1252-1	$14,500
(i) Lower of line (e) or (h)	$13,000
(2) Limitation in subparagraph (1) of this paragraph:	
(a) Gain recognized (determined without regard to section 1252)	$5,000
(b) Minus: Gain recognized as ordinary income under section 1251(c)(1)	$5,000
(c) Difference	0
(d) Plus: The fair market value of property other than farm land acquired which is qualifying property under section 1033	$62,500
(e) Sum of lines (c) and (d)	$62,500
(3) Lower of line (1)(i) or line (2)(e)	$13,000

(3) *Application to single disposition of farm land and property of different class.* (i) If upon a sale of farm land gain would be recognized under section 1252(a)(1), and if such land together with property of a different class or classes is disposed of in one transaction in which gain is not recognized in whole or in part under section 1031 or 1033 (without regard to section 1252(a)(1)), then rules consistent with the principles of paragraph (d)(6) of § 1.1250-3 (relating to gain from disposition of certain depreciable realty)

shall apply for purposes of allocating the amount realized to each of the classes of property disposed of and for purposes of determining what property the amount realized for each class consists of.

(ii) For purposes of this subparagraph, the classes of property other than farm recapture property (as defined in section 1251(e) and paragraph (a)(1) of § 1.1251-3) are (*a*) section 1245 property, (*b*) section 1250 property, and (c) other property.

(iii) For purposes of this subparagraph, the classes of farm recapture property are (*a*) land, (*b*) section 1245 property, and (c) other property.

(4) *Treatment of farm land received in like kind exchange or involuntary conversion.* See paragraph (f)(4) of this section for treatment of farm land received by a transferor in a transaction described in subparagraph (1) of this paragraph.

(5) *Basis adjustment.* In order to reflect gain recognized under section 1252(a)(1) if property is acquired in a transaction to which subparagraph (1) of this paragraph applies, its basis shall be determined under the rules of section 1031(d) or 1033(c).

(e) *Partnerships* [Reserved]

(f) *Treatment of farm land received by a transferee in a disposition by gift and certain tax-free transactions*—(1) *General rule.* If farm land is disposed of in a transaction which is either a gift to which paragraph (a)(1) of this section applies, or a completely tax-free transfer to which paragraph (c)(1) of this section applies, then for purposes of section 1252—

(i) The aggregate of the deductions allowed under sections 175 and 182 in respect of the land in the hands of the transferee immediately after the disposition shall be an amount equal to the amount of such aggregate in the hands of the transferor immediately before the disposition, and

(ii) For purposes of applying section 1252 upon a subsequent disposition by the transferee (including a computation of the applicable percentage), the holding period of the transferee shall include the holding period of the transferor.

(2) *Certain partially tax-free transfers.* If farm land is disposed of in a transaction (for purposes of this subparagraph referred to as the "first transaction") which either is in part a sale or exchange and in part a gift to which paragraph (a)(2) of this section applies (for purposes of this paragraph referred to as a "bargain sale"), or is a partially tax-free transfer to which paragraph (c)(1) of this section applies, then for purposes of section 1252—

(i) The farm land received by the transferee shall consist of an "old element" and a "new element",

(ii) Immediately after the first transaction—

(*a*) In respect of the old element, the holding period of the farm land in the hands of the transferee shall be the same as it was in the hands of the transferor, and the aggregate of the deductions allowed under sections 175 and 182 shall be an amount equal to the amount of such aggregate in the hands of the transferor immediately before the first transaction, minus the aggregate of the gain recognized under sections 1251(c)(1) and 1252(a)(1) by the transferor upon the first transaction, and

(*b*) In respect of the new element, the transferee's holding period (for purposes of determining the applicable percentage) shall not include any period before he actually acquired the land,

(iii) Immediately after the first transaction, the transferee's adjusted basis for the property shall be allocated between the old element and the new element—

(*a*) In the case of a bargain sale, in the proportion that (*1*) the portion of the fair market value of the property transferred as a gift (i.e., the excess of its fair market value over the purchase price) bears to (2) the portion of the property not transferred as a gift (i.e., the purchase price), and

(*b*) In the case of property transferred in a partially tax-free transfer to which paragraph (c)(1) of this section applies, in the proportion that (*1*) the portion of the fair market value of the property received as consideration without recognition of gain, bears to (2) the portion of the fair market value of the property received with recognition of gain,

(iv) If the land is subsequently disposed of by the transferee (for purposes of this subparagraph referred to as in a "second transaction"),

(*a*) The amount realized in the case of a sale, exchange, or involuntary conversion (or the fair market value of the property in the case of any other disposition),

(*b*) The amounts of any net capital improvements in respect of the land between the first and second transactions, and

(*c*) The aggregate of the deductions allowed in respect of the land under sections 175 and 182 for the period between the first and second transactions,

shall each be allocated to the old element and the new element in proportion to the adjusted basis of each such element immediately after the first transaction,

(v) If upon the second transaction paragraph (g)(2)(vii) of § 1.1251-4 must be applied to allocate gain recognized as ordinary income under section 1251(c)(1) to the oldest element first (by reason of the amount of the balance in the excess deductions account), then such paragraph (g)(2)(vii) shall also apply for purposes of this subparagraph, and

(vi) Upon the second transaction the amount of gain which shall be recognized as ordinary income under section 1252(a)(1) shall be the sum of the separately computed gain for each element, computed under the rules of this subparagraph.

(3) *Examples.* The provisions of subparagraphs (1) and (2) of this paragraph may be illustrated by the following examples:

Example (1). Assume the same facts as in example (1) of paragraph (a)(4) of this section. Therefore, on the date B receives the farm land in the gift transaction, under subparagraph (1) of this paragraph the aggregate of the deductions allowed under sections 175 and 182 in respect of the farm land in the hands of B is the amount in the hands of A, $24,000, and for purposes of applying section 1252 upon a subsequent disposition by B (including a computation of the applicable percentage) the holding period of B includes the holding period of A.

Example (2). (i) Assume the same facts as in example (2) of paragraph (a)(4) of this section. Therefore, under subparagraph (2)(i) of this paragraph, on the date B receives the farm land in the part-sale-part-gift transaction it consist of an old element and a new element. Since B paid $50,000 for the entire parcel of land, an amount in excess of A's adjusted basis, B's adjusted basis for the land is $50,000. Under subparagraph (2)(iii) of this paragraph, B's adjusted basis is allocated to the old element and the new element in the proportion that the fair market value of the portion received by B as a gift, $15,000, i.e., the excess of the fair market value, $65,000, over the purchase price, $50,000 bears to the fair market value of the portion received by B as a purchase, $50,000. Thus, B's adjusted basis for the old element is $11,538, i.e., $50,000, multiplied by the fraction, $15,000/($15,000 plus $50,000), and B's adjusted basis for the new element is $38,462, i.e., $50,000, multiplied by the fraction, $50,000/($15,000 plus $50,000). B's holding period for purposes of determining the applicable percentage for the old element includes the holding period of A while with respect to the new element the holding period begins as of the date of acquisition by B (see subparagraph (2)(ii) of this paragraph). The aggregate of the section 175 and 182 deductions allowed to B in respect of the old element of the farm land, determined as of the date of receipt by B, is $14,000 (the aggregate in the hands of A, $24,000, reduced by the sum of the gain recognized as ordinary income under section 1251(c)(1), $3,000, and under section 1252(a)(1), $7,000). See subparagraph (2)(ii) of this paragraph.

(ii) Assume further that B is allowed an aggregate of $6,000 of deductions under sections 175 and 182 during the period he holds the farm land, and of such aggregate $4,500 is attributable to 1976 and $1,500 is attributable to 1977; that B makes net capital improvements on the land which increase its basis by $3,000; that B recognizes gain of $4,000 as ordinary income under section 1251(c)(1) upon selling the farm land for $80,000 on December 16, 1978; and that of the $4,000 gain recognized as ordinary income under section 1251(c)(1), all of such sum is attributable to the old element. On the sale of the entire farm land, B recognizes gain on the old and new elements respectively of $7,834 and $19,166 as ordinary income under section 1252(a)(1), computed under paragraph (a)(1) of § 1.1252-1 and subparagraph (2) of this paragraph as follows:

	Total	Old element	New element
(1) Allocation ratio for lines (2)(b), (7)(a), (7)(b), and (7)(c):			
(a) Adjusted basis immediately after first transaction	$50,000	$11,538	$38,462
(b) Percent		23.08%	76.92%
(2) Aggregate of deductions allowed under sections 175 and 182:			
(a) As of date of receipt of farm land by B	$14,000	$14,000	$0
(b) After acquisition by B, as allocated	$6,000	$1,385	$4,615
		$15,385	$4,615
(3) Minus: Gain recognized as ordinary income under section 1251(c)(1)	$4,000	$4,000	$0
(4) Difference (line (2)(c) minus line (3))		$11,385	$4,615
(5) Multiply by appropriate applicable percentage for element disposed of within specified year after it was considered acquired:			
Eighth year		40%	
Second year			100%
(6) Amount in paragraph (a)(1)(i)(a) of § 1.1252-1		$4,554	$4,615
(7) Gain realized:			
(a) Amount realized, as allocated	$80,000	$18,464	$61,536
(b) Adjusted basis after first transaction, as allocated	$50,000	$11,538	$38,462
(c) Net capital improvements, as allocated	$3,000	$692	$2,308
(d) Gain realized (line (a) minus sum of lines (b) and (c))		$6,234	$20,766
(e) Total gain realized	$27,000		
(8) Minus amount in line (3)		$4,000	$0
(9) Amount in paragraph (a)(1)(i)(b) of § 1.1252-1, applied in accordance with paragraph (a)(2) of this section		$2,234	$20,766
(10) Gain recognized as ordinary income under section 1252(a)(1):			
(a) For each element lower of line (6) or line (9)		$2,234	$4,615
(b) For all elements	$6,849		

With respect to the property, the total gain realized, $27,000, minus the sum of the total gain recognized as ordinary income under section 1251(c)(1), $4,000, and under section 1252(a)(1), $6,849, equals $16,151. Consequently, $16,151 may be treated as gain from the sale or exchange of property described in section 1231.

Example (3). Assume the same facts as in example (3) of paragraph (g)(3) of § 1.1251-4. Assume further that the aggregate of the amount of section 175 and 182 deductions allowable is equal to the amount allowed. On the sale of the farm land, B recognizes gain on the old and new elements respectively of zero and $3,000 as ordinary income under section 1252(a)(1), computed under paragraph (a)(1) of § 1.1252-1 and subparagraph (2) of this paragraph as follows:

	Total	Old element	New element
(1) Allocation ratio for lines (2)(b), (7)(a), (7)(b), and (7)(c):			
(a) Adjusted basis immediately after first transaction	$50,000	$11,538	$38,462
(b) Percent		23.08%	76.92%
(2) Aggregate of deductions allowed under sections 175 and 182:			
(a) As of date of receipt of farm land by B	$4,000	$4,000	$0
(b) After acquisition by B, as allocated	$9,000	$2,077	$6,923
(c) Total deductions allowed		$6,077	$6,923
(3) Minus: Gain recognized as ordinary income under section 1251 (c)(1)	$10,000	$6,003	$3,997
(4) Difference		$74	$2,926
(5) Multiply by appropriate applicable percentage for element disposed of within specified year after it was considered acquired:			
Ninth year		20%	
Fifth year			100%
(6) Amount in paragraph (a)(1)(i)(a) of § 1.1252-1		$15	$2,926
(7) Gain realized:			
(a) Amount realized, as allocated	$80,000	$18,464	$61,536
(b) Adjusted basis after first transaction, as allocated	$50,000	$11,538	$38,462
(c) Net capital improvements, as allocated	$4,000	$923	$3,077
(d) Gain realized (line (a) minus sum of lines (b) and (c))		$6,234	$20,766
(e) Total gain realized	$27,000		
(8) Minus amount in line (3)		$6,003	$3,997
(9) Amount in paragraph (a)(1)(i)(b) of § 1.1252-1, applied in accordance with paragraph (a)(2) of this section		$231	$16,769
(10) Gain recognized as ordinary income under section 1252(a)(1):			
(a) For each element lower of line (6) of line (9)		$15	$2,926
(b) For all elements	$2,941		

With respect to the property, the total gain realized, $27,000, minus the sum of the total gain recognized as ordinary income under section 1251(c)(1), $10,000, and under section 1252(a)(1), $2,941, equals $14,059. Consequently, $14,059, may be treated as gain from the sale or exchange of property described in section 1231.

(4) *Treatment of farm land received in like kind exchange or involuntary conversion.* If farm land is disposed of in a transaction described in paragraph (d)(1) of this section, then for purposes of section 1252, the rules of subparagraph (1) or (2) of this paragraph (as the case may be) shall be applied by treating the acquisition of the farm land by the transferee in either such subparagraph as if it were an acquisition of property qualifying under section 1031 or 1033 by the transferor.

(g) *Disposition of farm land not specifically covered.* If farm land is disposed of in a transaction not specifically covered under § 1.1252-1 and this section, then the principles of section 1245 shall apply.

[FR Doc.71-18615 Filed 12-27-71;8:45 am]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 907]

NAVEL ORANGES GROWN IN ARIZONA AND CALIFORNIA

Proposed Expenses and Rate of Assessment and Carryover of Unexpended Funds

Consideration is being given to the following proposals submitted by the Navel Orange Administrative Committee, established under marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907; 35 F.R. 16359), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), as the agency to administer the terms and provisions thereof: (1) That the expenses that are reasonable and likely to be incurred by the Navel Orange Administrative Committee during the period from November 1, 1971 through October 31, 1972, will amount to $374,200; (2) that there be fixed, at $0.013 per carton of oranges, the rate of assessment payable by each handler in accordance with § 907.41 of the aforesaid marketing agreement and order; and (3) that unexpended funds in excess of expenses incurred during the fiscal year and ended October 31, 1971, in the amount of $28,325, be carried over as a reserve in accordance with § 907.42 of the said marketing agreement and order.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals should file same in quadruplicate with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the 10th day after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: December 22, 1971.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-18906 Filed 12-27-71;8:50 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 51a]

DENTAL HEALTH

Special Project Grants for Children

Notice is hereby given that the Administrator, Health Services and Mental Health Administration, with the approval of the Secretary of Health, Education, and Welfare, proposes to add Subpart C to Part 51a of the Public Health Service regulations (42 CFR Part 51a) governing the award of grants for dental health projects, as set forth below. The present Part 51a, entitled "Special Project Grants for Family Planning Services," is to be redesignated as Subpart B of such Part 51a, and Subpart A thereof is to be reserved.

The proposed Subpart C implements the authority to make project grants for dental health services to children as set forth in section 510 of the Social Security Act, 42 U.S.C. 710, Public Law 90-248.

Written comments concerning the proposed amendments are invited from interested persons. Inquiries may be addressed, and data, views, and arguments relating to the proposed regulations may be presented in writing, in triplicate, to the Director, Maternal and Child Health Services, Room 12-05, Health Services and Mental Health Administration, 5600 Fishers Lane, Rockville, MD 20852. All comments received in response to this notice will be available for public inspection in the above-named office on weekdays between the hours of 8:30 a.m. and 5 p.m. Consideration will be given to all relevant material received not later than 30 days after publication of this notice in the FEDERAL REGISTER in preparing the final version of the regulations.

It is therefore proposed to amend Chapter I of Title 42 in the manner set forth below.

Dated: September 23, 1971.

VERNON E. WILSON,
Administrator, Health Services and Mental Health Administration.

Approved: December 18, 1971.

ELLIOT L. RICHARDSON,
Secretary.

1. The Title of Part 51a of Title 42 is amended to read as follows:

PART 51a—GRANTS FOR MATERNAL AND CHILD HEALTH AND CRIPPLED CHILDREN'S SERVICES

2. The present Part 51a is redesignated as Subpart B of Part 51a, entitled "Special Project Grants for Family Planning Services," and the sections thereof (presently §§ 51a.1 through 51a.20) renumbered §§ 51a.201 through 51a.220, respectively.

3. Subpart A of Part 51a is reserved.

4. A new Subpart C of Part 51a is added, to read as follows:

Subpart C—Special Project Grants for Dental Health of Children

AUTHORITY: The provisions of this Subpart C issued under sec. 1102, 49 Stat. 647; 42 U.S.C. 1302; sec. 510, 81 Stat. 927; 42 U.S.C. 710.

§ 51a.301 Applicability.

The regulations in this subpart are applicable to the award of grants under section 510 of the Social Security Act (42 U.S.C. 710) to promote the dental health of children and youth of school or preschool age, particularly in areas with concentrations of low income families.

§ 51a.302 Definitions.

As used in this subpart:

(a) "Act" means the Social Security Act, as amended.

(b) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(c) "State" means one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(d) "Nonprofit private agency, institution, or organization" means an agency, institution, or organization, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

§ 51a.303 Eligibility.

To be eligible for a grant under this subpart, an applicant must be (a) the State health agency of a State; (b) with the consent of such State agency, the health agency of any political subdivision of the State; or (c) any health oriented public or nonprofit private agency, institution, or organization which has the capability of providing dental care.

§ 51a.304 Application for a grant.

(a) An application for a grant under this subpart shall be submitted to the Secretary in such form and manner and at such time as the Secretary may prescribe.[1] The application shall contain a full and adequate description of the project and of the manner in which the applicant intends to conduct the project and carry out the requirements of this subpart, and a budget and justification of the amount of grant funds requested, and such other pertinent information as the Secretary may require.

(b) The application shall be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the regulations of this subpart and any additional conditions of the grant.

[1] Applications and instructions may be obtained from the Regional Health Director of the Health Services and Mental Health Administration at the Regional Office of the Department of Health, Education, and Welfare for the region in which the project is to be conducted.

§ 51a.305 Project requirements.

An approvable application must contain each of the following:

(a) Assurances that;

(1) Services will be made available.

(i) Without the imposition of any durational residence requirement;

(ii) With respect for the dignity of the individual;

(iii) Without any requirement that there be a court commitment;

(iv) Without regard to religion, sex, or creed,

(2) In cases involving treatment, correction of defects or aftercare provided under the project, services will be made available only to children who would not otherwise receive such services because they are from low-income families or for other reasons beyond their control. In determining such eligibility the grantee shall consider the family's size and income, the medical diagnosis, the costs of required care and the family's other financial responsibilities.

(3) Under special circumstances, services will be made available to certain patients from outside a project area or age group designated in the approved project plan if the project director considers that it will best promote the purposes of the project and section 510 of the Act.

(4) In the case of hospital care or prostheses, services will be made available only to persons who are receiving services provided for or arranged by the project in accordance with its standards and policies.

(5) No charge will be made to any person for services under the project, except to the extent that payments will be made by a third party (including a government agency) which is authorized or is under legal obligation to pay such charges. Where the cost of care and services furnished by or through the project is to be reimbursed under Title XIX of the Social Security Act, a written agreement with the Title XIX agency is required. Reimbursement may be either to the project or, in lieu thereof, directly to the provider in accordance with the above referred to agreement.

(6) All services purchased for project patients will be authorized by the project director or his designee on the project staff.

(7) The reasonable cost of inpatient hospital care provided in connection with the conduct of the project will be paid in accordance with standards approved by the Secretary.

(8) Determination of eligibility for services under the project will be made

by the project director or someone on the project staff designated by him, and shall be in accordance with the Act, and the policies and procedures promulgated thereunder and in accordance with the approved project.

(9) The project will be under the direction of a single project director, responsible for the overall direction of the project who shall be a full time employee of the project: *Provided*, That, the Secretary may in particular cases, approve the appointment of a director who is employed less than full time where the Secretary finds that such appointment is consistent with the purposes of the program.

(b) Provision for comprehensive dental care and services, including diagnosis, screening, preventive services, treatment, correction of defects, and aftercare. In determining whether comprehensive dental care and services will be provided the Secretary will consider, among other things, the following:

(1) Existing practices.

(2) Coordination and continuity of care and services, including active follow-up of cases.

(3) Procedures utilized to reach children in need of such services such as, publicity, provision of services at schools, community centers, and other places where concentrations of eligible children may be found.

(4) The degree of coordination with, and utilization of other State or local health, welfare, and education programs, as well as other federally supported health service programs.

(c) A description of the methods to be utilized by the grantee in establishing the rates of payment for dental care (which may include payments on a prepaid capitation basis) including speciality services, prostheses and appliances, and aftercare, and a substantiation of the fact that the rates are reasonable and necessary to maintain standards relating to the provision of services established pursuant to § 51a.-307. Grantees will enter into agreements with providers of services and will maintain a schedule of rates for such services.

(d) A description of the standards required for personnel and facilities utilized in the provision of services under the program. These standards for personnel and facilities must (1) be those which are found upon investigation by the grantee to be best adapted for the attainment of the specific purposes of the project, (2) assure a reasonably high standard of care, and (3) be in substantial accord with national standards as accepted by the Secretary or standards prescribed by the Secretary. However, if a project is planned for an area in which it is not possible to meet standards accepted or prescribed by the Secretary, the best available resources must be used, and steps must be taken to improve care. In such case, the application must include a description of such proposed remedial action.

§ 51a.306 Research.

In addition to the project requirements imposed by § 51a.305, an approvable project may include research looking toward the development of new methods of diagnosis or treatment, or demonstration of the utilization of dental personnel with various levels of training.

§ 51a.307 Evaluation and grant award.

(a) Within the limits of funds available for such purpose, the Secretary may award grants to assist those project applications which will in his judgment best promote the purposes of section 510 of the Social Security Act, taking into account:

(1) The need for the services to be provided;

(2) The quality of the services offered;

(3) Procedures utilized to assure prompt thorough service;

(4) The degree to which the project plan adequately provides for the elements set forth in § 51a.305.

(b) The amount of any award shall be determined by the Secretary on the basis of his estimate of the sum necessary for the proper performance of the project. Provided, however, that no grant shall be made for an amount equal to more than 75 percent of the cost of the project. In determining the grantee's share of project costs, costs for which Federal funds from other sources have been or may be claimed or received or costs used to match other Federal grants unless otherwise authorized by Federal statute, or costs to be met from the Federal share of grant related income (except as may be permitted by Chapter 1-420 of the Department of Health, Education, and Welfare Grants Administration Manual[3]), may not be included.

(c) All grant awards shall be in writing, shall set forth the amount of funds granted and the period for which support is recommended.

(d) Neither the approval of any project nor any grant award shall commit or obligate the United States in any way to make any additional, supplemental, continuation or other award with respect to any approved project or portion thereof, but this provision shall not preclude the Secretary from making upward adjustments to actual costs as to amounts awarded on a provisional basis. For continuation support, grantees must make separate application periodically at such times and in such form as the Secretary may direct.

§ 51a.308 Payments.

The Secretary shall from time to time make payments to a grantee of all or a portion of any grant award, either in advance or by way of reimbursement for expenses incurred or to be incurred to the extent he determines such payments necessary to promote prompt initiation and advancement of the approved project. Such payments may include reimbursement to a grantee for services rendered on a prepaid capitation basis.

§ 51a.309 Use of project funds.

(a) Any funds granted pursuant to this subpart, as well as other funds to be used in the performance of the approved project shall be expended solely for carrying out the approved project in accordance with the statute, the regulations of this subpart, the terms and conditions of the award and cost principles set forth in the Department of Health, Education, and Welfare Grants Administration Manual.[4]

(b) Prior approval by the Secretary of revision of the budget and project plan is required whenever there is to be a significant change in the scope or nature of project activities.

(c) In the event that funds for the performance of the project are so inadequate as to require revision of the approved project plan or budget, such revision may (subject to the provisions of paragraph (a) of this section) curtail the geographic area serviced or similar factors but shall not curtail the comprehensiveness of health services furnished

§ 51a.310 Civil rights.

Attention is called to the requirements of title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d, et seq.) and in particular section 601 of such Act which provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such title VI, which applies to grants made under this subpart, has been issued by the Secretary of Health, Education, and Welfare with the approval of the President (45 CFR Part 80).

§ 51a.311 Confidentiality of information.

All information as to personal facts and circumstances obtained by the project staff shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the individual's consent except as may be necessary to provide services to the individual. Information may be disclosed in summary, statistical, or other form which does not identify particular individuals.

§ 51a.312 Inventions and discoveries.

Any grant award under this subpart is subject to the regulations of the Department of Health, Education, and Welfare as set forth in 45 CFR Parts 6 and 8, as amended. Such regulations shall apply to any activity for which grant funds are in fact used whether within the scope of the project as approved or otherwise. Appropriate measures shall be taken by the grantee and by the Secretary to assure that no contracts, assignments or other arrangements inconsistent with the grant obligation are continued or entered into and that all personnel involved in the supported activity are aware of and comply with such obligation. Laboratory notes, related technical data and infor-

[3] Available for purchase at the Government Printing Office, GPO 894-523.

[4] *Provided, however*, That, with respect to grants awarded prior to July 1, 1972, funds may not be used for the payment of indirect costs.

mation pertaining to inventories or discoveries shall be maintained for such periods, and filed with or otherwise made available to the Secretary or those he may designate, at such times and in such manner as he may determine necessary to carry out such Department regulations.

§ 51a.313 Publications and copyright.

Except as may otherwise be provided under the terms and conditions of the award, the grantee may copyright without prior approval any publications, films, or similar materials developed or resulting from a project supported by a grant under this subpart, subject, however, to a royalty-free, nonexclusive license or right in the Government to reproduce, translate, publish, use, disseminate, and dispose of such materials and to authorize others to do so.

§ 51a.314 Grantee accountability.

(a) *Accounting for grant award payments.* All payments made by the Secretary shall be recorded by the grantee in accounting records separate from the records of all other grant funds, including funds derived from other grant awards. With respect to each approved project the grantee shall account for the sum total of all amounts paid by presenting or otherwise making available evidence satisfactory to the Secretary, of expenditures for direct and indirect costs meeting the requirements of this part: *Provided, however,* That when the amount awarded for indirect cost was based on a predetermined fixed percentage of estimated direct costs, the amount allowed for indirect costs shall be computed on the basis of such predetermined fixed-percentage rates applied to the total, or a selected element thereof, of the reimbursable direct costs incurred.

(b) *Accounting for equipment, materials, or supplies.* Expenditures of grant funds for movable or fixed equipment, materials or supplies, all of which are termed in this paragraph as "material", may be charged to grant funds as direct costs only to the extent such material is required for the conduct of the approved project. Material on hand on the date of termination (excluding expendable supplies within such limitations as the Secretary may prescribe) shall be accounted for, or accountability waived, by one or a combination of the following methods:

(1) *Retention of material for other health projects.* Material may be used without adjustment of accounts on other projects within the scope of section 510 of the Act, and no other accounting for such material shall be required: *Provided,* However, (i) that during such period of use no charge for depreciation, amortization or for other use of the material shall be made against any existing or future Federal grant or contract, and (ii) if within the period of their useful life the material is transferred by sale or otherwise for use outside the scope of the Act, the Federal portion of the fair market value at the time of transfer shall be refunded to the Federal Government.

(2) *Sale or other disposition of material, crediting of proceeds or value.* The material may be sold by the grantee and the net proceeds of sale credited to the grant account for project use, or it may be used or disposed of in any manner by the grantee by crediting to the grant account the Federal share of the fair market value on the termination date. To the extent material purchased from grant funds is used for credit or trade-in on the purchase of new material, the accounting obligation shall apply to the same extent to such new material.

(3) *Transfer of title to the Federal Government.* To the extent the Secretary so requires or approves, title to material will be transferred to the Federal Government for such authorized use or disposition as he may direct.

(c) *Accounting for grant related income*—(1) *Interest.* Pursuant to section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), a State will not be held accountable for interest earned on grant funds, pending their disbursement for grant purposes. A State, as defined in section 102 of the Intergovernmental Cooperation Act, means any one of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of the State. All grantees other than a State, as defined in this section, must return all interest earned on grant funds to the Federal Government.

(2) *Royalties.* Royalties earned from publications or similar material produced from a grant must first be used to reduce the Federal share of the grant to cover the costs of publishing or producing the materials. Royalties in excess of the costs of publishing or producing the materials shall be distributed as in subparagraph (3) of this paragraph.

(3) *Other income.* Other income earned by the grantee shall be disposed of in accordance with one of the alternatives specified in Chapter 1–420 of the Grants Administration Manual as determined by the Secretary in the grant award.

(d) *Grant closeout*—(1) *Date of final accounting.* A grantee shall render, with respect to each approved project, a full account, as provided herein, as of date of the termination of grant support. The Secretary may require other special and periodic accounting.

(2) *Final settlement.* There shall be payable to the Federal Government as final settlement with respect to each approved project the total sum of:

(i) Any amount not accounted for pursuant to paragraph (a) of this section.

(ii) Any credits for material on hand as provided in paragraph (b) of this section.

(iii) Any credits for earned interest pursuant to paragraph (c) (2) and (3) of this section.

(iv) Any other settlements required pursuant to paragraph (c) (2) and (3) of this section.

Such total sum shall constitute a debt owed by the grantee to the Federal Government and shall be recovered from the grantee or its successors or assignees by setoff or other action as provided by law.

§ 51a.315 Records, reports, and inspection.

(a) *Records and reports.* Each grant awarded pursuant to this part shall be subject to the condition that the grantee shall maintain such operational (including health and medical) and accounting records, identifiable by grant number, and file with the Secretary such operational and fiscal reports relating to the use of grant funds, as the Secretary may find necessary to carry out the purposes of the Act and the regulations. All records shall be retained for 3 years after the close of the budget period. Such records may be destroyed at the end of such 3-year period if the applicant has been notified of the completion of the Federal audit by such time. If the applicant has not been so notified, such records shall be retained (1) for 5 years after the close of the budget period or (2) until the grantee is notified of the completion of the Federal audit, whichever comes first. In all cases where audit questions have arisen before the expiration of such 5-year period, records shall be retained until resolution of all such questions.

(b) *Inspection and audit.* Any application for a grant under this part shall constitute the consent of the applicant to inspection of the facilities, equipment and other resources of the applicant at reasonable times by persons designated by the Secretary and to interview with principal staff members to the extent that such resources and personnel are, or will be, part of the project. In addition, the acceptance of any grant under this part shall constitute the consent of the grantee to inspections and fiscal audits by such persons of the supported activity and of progress and fiscal records relating to the use of grant funds.

§ 51a.316 Additional conditions.

The Secretary may with respect to any grant award impose additional conditions prior to or at the time of any award when in his judgment such conditions are necessary to assure or protect advancement of the approved project, the interests of public health, or the conservation of grant funds.

§ 51a.317 Early termination and withholding of payments.

Whenever the Secretary finds that a grantee has failed in a material respect to comply with the Act, the regulations of this part or any of the assurances thereunder, or the terms of the grant, he may, on reasonable notice to the grantee, withhold further payments, and take such other action, including the termination of the grant, as he finds appropriate to carry out the purposes of the Act and regulations. Noncancelable obligations of the grantee properly incurred prior to the receipt of the notice of termination will be honored. The grantee shall be promptly notified of such termination in writing and given the reasons therefor.

[FR Doc.71-18833 Filed 12-27-71;8:45 am]

[42 CFR Part 56]

GRANTS FOR MIGRANT HEALTH SERVICE

Notice of Proposed Rule Making

Section 310 of the Public Health Service Act (42 U.S.C. 242h) authorizes the Secretary of the Department of Health, Education, and Welfare to make grants for projects providing health services to, improving the health services of, or otherwise improving the health conditions of, domestic agricultural migratory workers, seasonal agricultural workers, and their families.

Notice is hereby given that Administrator, Health Services and Mental Health Administration, with the approval of the Secretary of the Department of Health, Education, and Welfare, proposes to adopt the regulations set forth in tentative form below. Written comments concerning the regulations are invited from interested persons. Inquiries may be addressed, and data, views, and arguments relating to the proposed regulations may be presented in writing, in triplicate, to Chief, Migrant Health Branch, Division of Health Care Services, Community Health Service, Health Services and Mental Health Administration, 5600 Fishers Lane, Parklawn Building, Room 6A-46, Rockville, MD 20852. All comments received in response to this notice will be available for public inspection at the above referred to address on weekdays between the hours of 8:45 a.m. and 5:15 p.m. All relevant material received not later than 30 days after publication of this notice in the FEDERAL REGISTER will be considered.

It is therefore proposed to adopt the following new Part 56 of the Public Health Service regulations.

Dated: October 15, 1971.

VERNON E. WILSON,
Administrator, Health Services and Mental Health Administration.

Approved: December 18, 1971.

ELLIOT L. RICHARDSON,
Secretary.

Sec.

AUTHORITY: V provisions of this Part 56 issued under sec. 215, 58 Stat. 690, as amended; 42 U.S.C. 216; sec. 310, 76 Stat. 592, as amended; 42 U.S.C. 242h.

§ 56.101 Applicability.

The regulations in this part are applicable to the award of grants under section 310 of the Public Health Service Act (42 U.S.C. 242h) for projects providing health services to, improving health services of, or otherwise improving the health conditions of, domestic agricultural migratory workers, seasonal agricultural workers, and their families.

§ 56.102 Definitions.

As used in this part:

(a) "Act" means section 310 of the Public Health Service Act, as amended (42 U.S.C. 242h).

(b) "State" means any of the several States, the District of Columbia, Puerto Rico, and the Virgin Islands.

(c) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(d) "Domestic Agricultural Migratory Worker" means an individual residing in a State whose principal occupation is in agriculture on a seasonal basis, who establishes for the purpose of such employment a temporary place of abode and who has been so employed within the last 24 months.

(e) "Seasonal Agricultural Worker" means an individual residing in a State whose principal occupation is in agriculture on a seasonal basis, who has been so employed within the last 24 months and who has not established a temporary place of abode.

(f) "Agriculture" means farming in all its branches including but not limited to cultivation and tillage of the soil, the production, cultivation, growing, and harvesting of any commodity grown on, in or as an adjunct to or part of an item grown in or on the land including any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

§ 56.103 Eligibility.

(a) *Eligible applicants.* Any public or other nonprofit institution, agency, or organization is eligible for a grant award.

(b) *Eligible projects.* Grants may be made by the Secretary under the Act to pay part of the cost of a project:

(1) To establish and operate family health service clinics for domestic agricultural migratory workers and their families including training persons to provide services in the establishing and operating such clinics,

(2) To improve and provide a continuity in health services for, and to improve the health conditions of, domestic agricultural migratory workers and their families, including necessary hospital care, and including training persons to provide health services for or otherwise improve health conditions of such migratory workers and their families; or

(3) To provide health services to persons (and their families) who perform seasonal agricultural services similar to the services performed by domestic agricultural migratory workers if the Secretary finds that the project is located in an area where migratory workers reside and the provision of such services will contribute to the improvement of the health conditions of such migratory workers and their families.

§ 56.104 Application for grant.

(a) An application for a grant under this part shall be submitted to the Secretary in such form and manner and at such time as the Secretary may prescribe.

(b) The application shall contain a budget and a narrative plan of the manner in which the applicant intends to conduct the project and carry out the requirements of this part.

(c) Such application shall be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant, the obligations imposed by the statute, and terms and conditions of any award, including the regulations of this part.

(d) Such application shall set forth the membership of the Project Policy Board (hereinafter referred to as the board) described in § 56.105 and shall also be executed by the chairman or such other representative selected by the board, authorized to act for the board and to assume on its behalf the obligations imposed by the Act and by the terms and conditions of any award, and the regulations of this part. Such execution shall constitute the acceptance by the board of the terms and conditions of the grant and obligate it to perform its functions under the approved project in accordance with the terms thereof, the Act and the regulations of this part.

§ 56.105 Project Policy Board.

(a) A Project Policy Board shall be established by an applicant as follows:

(1) *Size.* The board shall be sufficiently large to provide adequate participation by the population to be served and shall have its chairman or other such leadership elected by the members of the board.

(2) *Appointment and composition.* The grantee shall appoint the members of the board to serve for a period of 1 year: *Provided, however,* That at least 51 percent of those appointed shall be from the population to be served and shall be democratically selected by such population.

(3) *Meetings.* The board shall meet as often as necessary but not less than once a month during the time project services are being offered.

(4) *Functions.* (i) The board, after consultation with appropriate project staff shall from time to time establish, amend, and revise general policy in areas indicated in subdivision (ii) of this subparagraph with regard to the operation of the project: *Provided, however,* That in establishing such policy the board shall not—

(a) Establish any policy which is inconsistent with the Act or these regulations or which prevents the fulfillment of obligations imposed under the grant, or

(b) Involve itself in the day-to-day administration of the project, including the hiring or firing of any specific personnel except the project director, who shall be hired or fired only with the approval of the board.

(ii) The areas in which the board shall establish, amend, and revise general policy shall include at least the following:

(a) Selection and dismissal of personnel, including qualifications, salary and benefits, and grievance procedures;

(b) Selection and elimination of health care services;

(c) Eligibility for services;

(d) Hours and location of services;

(e) Priorities for allocation of project funds among services; and

(f) Methods of evaluating the project.

(b) Professional Advisory Committee: Where the membership of the board includes less than three representatives of the community knowledgeable about the health needs of the population to be served (other than members of the population to be served), a Professional Advisory Committee, consisting of at least three but not more than nine members, drawn from such representatives of the community shall be established by the grantee to advise the board in matters of general policy concerning operation of the project. Membership on the Professional Advisory Committee shall be by appointment by the grantee for a term of no more than 3 consecutive years.

§ 56.106 Project elements.

(a) An approvable application must provide:

(1) That all project elements will be provided in a manner calculated to preserve human dignity and to maximize acceptability and utilization of services.

(2) That persons broadly representative of all elements of the population to be served and others in the community knowledgeable about such needs have been given an opportunity to participate in the development of such program and will be given an opportunity to participate in the implementation of such program.

(3) That the project will deliver or arrange for the delivery of family-oriented primary health care which shall include, but not be limited to:

(i) Ambulatory patient diagnosis, treatment, and followup care for acute and chronic conditions;

(ii) Preventive, maternal, child health, and family planning services integrated into the delivery of treatment services;

(iii) Emergency medical and dental care; and

(iv) Diagnostic, preventive, and basic restorative dental care.

(4) That the project has established a system for maintaining health services records.

(5) That the project will arrange for:

(i) Referral of complex, difficult, or unusual cases and adequate followup to insure continuity of care;

(ii) Hospitalization of patients and hospital staff privileges for project physicians; and

(iii) Transportation, if required for patient care.

(6) That no person shall be denied service by reason of his inability to pay therefor: *Provided, however,* That a charge for the provision of services will be made to the extent that a third party (including a Government agency) is authorized or is under legal obligation to pay such charge: *And further provided,* That where the cost of care and services furnished by or through the project is to be reimbursed under title XIX of the Social Security Act, a written agreement with the title XIX agency is required.

(7) That subject to the provisions of subparagraph (6) of this section, charges to be made for services rendered pursuant to the project, must be in accordance with a schedule submitted and approved as part of the project. Such schedule may provide for services to be rendered on a prepaid capitation basis. In those cases in which the project will provide services by contract or other similar arrangement with the actual providers of services, a plan shall be provided establishing rates and methods of payment (including payment on a prepaid capitation basis) for medical care. Such payment must be made pursuant to agreements with a schedule of rates, and payment procedures maintained by the grantee. The grantee must be prepared to substantiate that such rates are reasonable and necessary.

(8) That a Project Policy Board will be established in accordance with § 56.105; and

(9) That the project shall provide and implement methods of evaluating the performance of activities being carried out under the grant to assure that such activities are carried out in accordance with the regulations of this part.

(b) An approvable application must also include the following elements unless the Secretary determines that the applicant has established good cause for their omission:

(1) That in developing and operating the project, arrangements have been made for the provision of the following ancillary services: Nutrition, respiratory disease care, accident prevention, environmental health services, and health and sanitation education;

(2) That paramedical and allied health professional personnel have been or will be employed by the project; and

(3) That a plan for education of the population to be served as to the availability and location of supplementary health facilities and services has been or will be developed.

§ 56.107 Grant evaluation and award.

(a) Within the limits of funds available for such purpose, the Secretary may award grants to cover part of the cost of projects to those applicants whose projects will in his judgment best promote the purposes of the Act taking into account.

(1) The overall significance of the project in terms of the numbers of persons served, the relative need to be met, the duration of services to be provided, and the general quality of the project's plan in accordance with the project elements cited in § 56.106;

(2) The administrative and management capability and competence of the applicant;

(3) The competence of the staff in relation to the services to be provided;

(4) The extent to which the project will provide a continuity of patient care; and

(5) The comments and evaluations of the population to be served relative to the proposed project.

(b) The amount of any award shall be determined by the Secretary on the basis of his estimate of the sum necessary for all or a designated portion of direct project costs plus an additional amount for indirect costs, if any, which will be calculated by the Secretary either (1) on the basis of his estimate of the actual indirect costs reasonably related to the project, or (2) on the basis of a percentage of all, or a portion of, the estimated direct costs of the project when there are reasonable assurances that the use of such percentage will not exceed the approximate actual indirect costs. Such award may include an estimated provisional amount for indirect costs or for designated direct costs (such as hospital per diem rates or fringe benefit rates) subject to upward (within the limits of available funds) as well as downward adjustments to actual costs when the amount properly expended by the grantee for provisional items has been determined by the Secretary: *Provided, however,* That no grant shall be made for an amount equal to the total cost as found necessary by the Secretary for the carrying out of the project. In determining the grantee's share of project costs, costs for which Federal grants from other sources have been or may be claimed or received or costs used to match other Federal grants except as may be otherwise provided by law, or costs to be met from the Federal share of grant related income (except as may be permitted by chapter 1–420 of the Department of Health, Education, and Welfare Grants Administration Manual[1]) may not be included.

(c) Except as may otherwise be provided by the regulations of this part, the identification of direct and indirect costs will be consistent with the generally accepted and established accounting practices that the grantee applies to its own activities and in conformance with the applicable principles set forth in chapters 1–76, 2–65, 2–66, and 5–60 of the Department of Health, Education, and Welfare Grants Administration Manual.

(d) All grant awards shall be in writing, shall set forth the amount of funds

[1] The Department Grants Administration Manual is available for inspection at the Public Information Office of the several Department Regional Offices and available for purchase at the Government Printing Office, GPO Document No. 894–523.

granted and the period for which support is recommended.

(e) Neither the approval of any project nor any grant award shall commit or obligate the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved project or portion thereof. For continuation support, grantees must make separate applications annually at such times and in such form as the Secretary may direct.

§ 56.108 Grant payments.

The Secretary shall from time to time make payments to a grantee of all or a portion of any grant award, either in advance or by way of reimbursement for expenses incurred or to be incurred in the performance of the project to the extent he determines such payments necessary to promote prompt initiation and advancement of the approved project. Such payments may include reimbursement to a grantee for services rendered on a prepaid capitation basis.

§ 56.109 Use of project funds.

(a) Any funds granted pursuant to this part as well as other funds to be used in performance of the approved project shall be expended solely for carrying out the approved project in accordance with the statute, the regulations of this part, the terms and conditions of the award and cost principles set forth in the Department of Health, Education, and Welfare Grants Administration Manual.

(b) Project funds may be used to reimburse members of the Project Policy Board for actual expenses: *Provided*, That Domestic Agricultural Migratory Workers and Seasonal Agricultural Workers may also be reimbursed for wages lost by reason of attendance at meetings.

(c) Prior approval by the Secretary of revision of the budget and project plan is required whenever there is to be a significant change in the scope or nature of project activities.

§ 56.110 Civil rights.

Attention is called to the requirements of title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d et seq.) and in particular section 601 of such Act which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such title VI, which applies to grants made under this part, has been issued by the Secretary of Health, Education, and Welfare with the approval of the President (45 CFR Part 80). In addition, no person shall on the grounds of age, sex, creed, or marital status (unless otherwise medically indicated) be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Nor shall any person be denied employment in or by such program or activity so receiving Federal financial assistance on the grounds of age, sex, creed, or marital status.

§ 56.111 Confidentiality.

Each grant award is subject to the condition that all information obtained by the personnel of the project from participants in the project related to their examination, care, and treatment, shall be held confidential, and shall not be divulged without the individual's consent except as may be required by law or as may be necessary to provide service to the individual. Information may be disclosed in summary, statistical, or other form which does not identify particular individuals.

§ 56.112 Inventions or discoveries.

Any grant award pursuant to § 56.107 is subject to the regulations of the Department of Health, Education, and Welfare as set forth in 45 CFR Parts 6 and 8, as amended. Such regulations shall apply to any activity for which grant funds are in fact used whether within the scope of the project as approved or otherwise. Appropriate measures shall be taken by the grantee and by the Secretary to assure that no contracts, assignments or other arrangements inconsistent with the grant obligation are continued or entered into and that all personnel involved in the supported activity are aware of and comply with such obligations. Laboratory notes, related technical data, and information pertaining to inventions and discoveries shall be maintained for such periods, and filed with or otherwise made available to the Secretary, or those he may designate at such times and in such manner, as he may determine necessary to carry out such Department regulations.

§ 56.113 Publications and copyright.

Except as may otherwise be provided under the terms and conditions of the award, the grantee may copyright without prior approval any publications, films or similar materials developed or resulting from a project supported by a grant under this part, subject, however, to a royalty-free, nonexclusive, and irrevocable license or right in the Government to reproduce, translate, publish, use, disseminate, and dispose of such materials and to authorize others to do so.

§ 56.114 Grantee accountability.

(a) *Accounting for grant award payments.* All payments made by the Secretary shall be recorded by the grantee in accounting records separate from the records of all other grant funds, including funds derived from other grant awards. With respect to each approved project the grantee shall account for the sum total of all amounts paid by presenting or otherwise making available evidence satisfactory to the Secretary of expenditures for direct and indirect costs meeting the requirements of this part: *Provided, however*, That when the amount awarded for indirect cost was based on a predetermined fixed-percentage of estimated direct costs, the amount allowed for indirect costs shall be computed on the basis of such predetermined fixed-percentage rates applied to the total, or a selected element thereof, of the reimbursable direct costs incurred.

(b) *Accounting for equipment.* As used in this section the term "equipment" means an article of property procured or fabricated which is complete in itself, is of a durable nature, and has an expected service life of more than 1 year. Equipment on hand on the date of termination for which accounting is required in accordance with the procedures set forth in chapter 1–410–50 of the Department of Health, Education, and Welfare Grants Administration Manual shall be identified and reported by the grantee in accordance with such procedures, and, accounted for by one or a combination of the following methods, as determined by the Secretary:

(1) *Retention of equipment for other migrant health projects.* Equipment may be used, without adjustment of accounts, on other grant supported projects (whether or not federally supported) within the scope of the Act, and no other accounting for such equipment shall be required: *Provided, however,* (i) That during such period of use no charge for depreciation, amortization, or for other use of the equipment shall be made against any existing or future Federal grant or contract, and (ii) if, within the period of its useful life, the equipment is transferred by sale or otherwise for use outside the scope of the Act, the Federal portion of the fair market value at the time of transfer shall be refunded to the Federal Government.

(2) *Sale or other disposition of equipment, crediting of proceeds or value.* The equipment may be sold by the grantee and the net proceeds of the sale credited to the grant account for project use, or they may be used or disposed of in any manner by the grantee by crediting to the grant account the Federal share of the fair market value on the termination date. To the extent equipment purchased from grant funds is used for credit or trade-in on the purchase of new equipment, the accounting obligation shall apply to the same extent to such new equipment.

(3) *Return or transfer of equipment.* The equipment may be returned to the Federal Government by the grantee or, in accordance with the provisions of chapter 1–410–50B of the Department of Health, Education, and Welfare Grants Administration Manual may be transferred to another grantee for the purpose of continuing the project for which the equipment was purchased.

(c) *Accounting for grant related income*—(1) *Interest.* Pursuant to section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), a State will not be held accountable for interest earned on grant funds, pending their disbursement for grant purposes. A State, as defined in section 102 of the Intergovernmental Cooperation Act, means any one of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State.

but does not include the governments of the political subdivisions of the State. All grantees other than a State, as defined in this subsection, must return all interest earned on grant funds to the Federal Government.

(2) *Royalties.* Royalties earned from publications or similar material produced from a grant must first be used to reduce the Federal share of the grant to cover the costs of publishing or producing the materials. Royalties in excess of the costs of publishing or producing the materials shall be distributed as in subparagraph (3) of this paragraph.

(3) *Other Income.* Other income earned by the grantee shall be disposed of in accordance with one of the alternatives specified in chapter 1-420 of the Grants Administration Manual as determined by the Secretary in the grant award.

(d) *Grant closeout*—(1) *Date of final accounting.* A grantee shall render, with respect to each approved project, a full account, as provided herein, as of date of the termination of grant support. The Secretary may require other special and periodic accounting.

(2) *Final settlement.* There shall be payable to the Federal Government as final settlement with respect to each approved project the total sum of:

(i) Any amount not accounted for pursuant to paragraph (a) of this section;

(ii) Any credits for material on hand as provided in paragraph (b) of this section;

(iii) Any credits for earned interest pursuant to paragraph (c)(1) of this section;

(iv) Any other settlements required pursuant to paragraph (c) (2) and (3) of this section.

Such total sum shall constitute a debt owed by the grantee to the Federal Government and shall be recovered from the grantee or its successors or assignees by set off or other action as provided by law.

§ 56.115 Records, reports, inspection, and audit.

(a) *Records and reports.* Each grant awarded pursuant to this part shall be subject to the condition that the grantee shall maintain such operational and accounting records, identifiable by grant number, and file with the Secretary such operational and fiscal reports relating to the use of grant funds, as the Secretary may find necessary to carry out the purposes of the Act and the regulations. All records shall be retained for 3 years after the close of the budget period. Such records may be destroyed at the end of such 3-year period if the applicant has been notified of the completion of the Federal audit by such time. If the applicant has not been so notified, such records shall be retained (1) for 5 years after the close of the budget period or (2) until the grantee is notified of the completion of the Federal audit, whichever comes first. In all cases where audit questions have arisen before the expiration of such 5-year period, records shall be retained until resolution of all such question.

(b) *Inspection and audit.* Any application for a grant under this part shall constitute the consent of the applicant to inspections of the facilities, equipment, and other resources of the applicant at reasonable times by persons designated by the Secretary and to interview with principal staff members to the extent that such resources and personnel are, or will be, part of the project. In addition, the acceptance of any grant under this part shall constitute the consent of the grantee to inspections and fiscal audits by such persons of the supported activity and of records relating to the use of grant funds.

§ 56.116 Additional conditions.

The Secretary may with respect to any grant award impose additional conditions prior to or at the time of any award when in his judgment such conditions are necessary to assure or protect advancement of the approved project, the interests of public health, or the conservation of grant funds.

§ 56.117 Early termination and withholding of payments.

Whenever the Secretary finds that a grantee has failed in a material respect to comply with the Act, the regulations of this part, or the terms of the grant, he may, on reasonable notice to the grantee, withhold further payments, and take such other action, including the termination of the grant, as he finds appropriate to carry out the purposes of the Act and regulations. Noncancelable obligations of the grantee properly incurred prior to the receipt of the notice of termination will be honored. The grantee shall be promptly notified of such termination in writing and given the reasons therefor.

[FR Doc.71-18851 Filed 12-27-71;8:46 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 71-GL-22]

CONTROL ZONE TRANSITION AREA

Supplemental Proposed Designation and Alteration

In a notice of proposed rule making published in the FEDERAL REGISTER on November 27, 1971 (36 F.R. 22686), F.R. Doc. 71-17317, the Federal Aviation Administration proposed to alter the transition area at Columbus, Ohio.

Subsequent to publication of the notice, the Federal Aviation Administration has determined that the weather reporting and communications requirements for a control zone at Bolton Field, Columbus, Ohio, can be met. Therefore, it is necessary to issue a supplemental notice of proposed rule making designating a control zone at Bolton Field to adequately protect the approach in addition to the transition area described in the original notice of proposed rule making.

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, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 3166 Des Plaines Avenue, Des Plaines, IL 60018. All communications received within 45 days after publication of this supplemental 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 the Federal Aviation Administration 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 the supplemental notice in order to become part of the record for consideration. The proposal contained in this supplemental 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 Administration, 3166 Des Plaines Avenue, Des Plaines, IL 60018.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation regulations as hereinafter set forth:

In § 71.171 (36 F.R. 2055), the following control zone is added:

COLUMBUS, OHIO (BOLTON FIELD)

Within a 5-mile radius of the Bolton Field (latitude 39°54'07" N., longitude 83°08'12" W.). This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will, therefore, be continuously published in the Airman's Information Manual.

In § 71.181 (36 F.R. 2140), the following transition area is amended:

Columbus, Ohio (Bolton Field): Add "within a 6½-mile radius of Bolton Field (latitude 39°54'07" N., longitude 83°08'12" W.)" to the 700-foot transition area description.

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Des Plaines, Ill., on December 7, 1971.

R. O. ZIEGLER,
Acting Director,
Great Lakes Region.

[FR Doc.71-18859 Filed 12-27-71;8:46 am]

Hazardous Materials Regulations Board

[49 CFR Part 195]

[Notice 71-27A; Docket No. HM-6D]

TESTING OF RELIEF VALVES ON PIPELINE LPG TANKS

Extension of Time for Comments

On November 1, 1971, the Department issued Notice 71-27 that was published in the FEDERAL REGISTER November 4, 1971. It proposed that § 195.428 would be amended to extend from 6 months to 5 years the interval required of pipeline carriers for testing relief valves on horizontal pressure storage vessels containing liquefied petroleum gas (LPG).

While the comment period extended through December 5, 1971, very few comments were received. Due to a delay in mailing of the proposed amendment, it is believed that some interested persons did not have adequate time to comment. For this reason the comment period is being extended for an additional 45 days.

The extension of time for comment will permit interested persons who have not commented to submit written information, views, or arguments. Communications should be identified by notice number and docket number and submitted in duplicate to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, Washington, D.C. 20590. Comments received by January 20, 1972 will be considered before final action is taken on the proposal. All comments received will be available for examination by interested persons in the Rules Docket at the Office of Hazardous Materials.

This notice is issued under the authority of sections 831-835 of title 18, United States Code; section 6 (e) (4) and (f) (3) (A) of the Department of Transportation Act, 49 U.S.C. 1655 (e) (4) and (f) (3) (A); and § 1.49(f) of the Regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(f).

Issued in Washington, D.C., on December 22, 1971.

JOHN W. INGRAM,
Administrator,
Federal Railroad Administration.

[FR Doc.71-18916 Filed 12-27-71;8:51 am]

FEDERAL RESERVE SYSTEM

[12 CFR Part 225]

[Reg. Y]

BANK HOLDING COMPANIES

Procedures for Engaging in Certain Nonbanking Activities

Section 4(c) (8) of the Bank Holding Company Act provides, among other things, that determinations that activities are closely related to banking may be made "by order or regulation" and that the Board may differentiate between activities commenced de novo and activities commenced by the acquisition of a going concern.

Pursuant to these provisions and the provisions of section 5 of the Act, the Board initiated a rule making proceeding. Notice of the proposed rule making was published in the FEDERAL REGISTER on January 29, 1971, and public hearings on the proposals were held before members of the Board on April 14, April 16, and May 12, 1971. After full consideration of all comments and views presented by interested persons, the Board adopted amendments to Regulation Y on May 20, June 10, August 5, and August 19, 1971.

By the May 20 amendments, the Board adopted procedures under which holding companies may engage in activities that the Board has determined to be closely related to banking. With respect to an activity to be engaged in de novo, a holding company (1) must publish notice of a proposed activity in a local newspaper, (2) within 30 days of publication, must furnish the appropriate Reserve Bank with copies of said notice, and (3) 45 days after furnishing said information to said Reserve Bank, may engage in the proposed de novo activity unless the holding company is notified to the contrary within that time or unless permitted to consummate at an earlier date. Where an acquisition of a going concern is involved, the holding company must file a formal application and await Board consideration of the public interest aspects of the transaction, namely, a Board determination whether the proposed acquisition can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

On August 19, 1971, the Board adopted simplified procedures with respect to (1) operating a finance company with assets of less than $10 million; (2) engaging in activities that are shifted from a bank to its holding company or an affiliated subsidiary in the holding company system; and (3) engaging in certain insurance agency activities.

As a result of its continuing review of Regulation Y, the Board proposes to amend its procedures regarding activities authorized under section 4(c) (8) of the Act. The proposals herein are based on the oral and written presentations made in connection with the Board's rule making proceeding (including the hearings on April 14, April 16, and May 12) and the Board's experience under the regulatory provisions that resulted from that rule making proceeding.

In view of the extensive consideration given to the public interest factors of holding companies engaging in bank related activities, the Board believes that, with respect to the designated activities, de novo entry by a bank holding company can reasonably be expected to produce benefits to the public and that such benefits can reasonably be expected to outweigh possible adverse effects within the meaning of section 4(c) (8) of the Act. Accordingly, the Board believes that a regulation providing procedures for de novo entry by a holding company into such activities, without the necessity for further opportunity for hearing, is warranted. Adoption of the proposal herein would mean that de novo entry into any of the activities specified in § 225.4(a) (except § 225.4(a) (9) (iii) (*b*)) may be consummated under the proposed procedures without any further opportunity for hearing. However, the Board in its discretion, may afford interested persons a hearing, whenever the Board finds that the circumstances of a particular matter so warrant.

In connection with finance companies, the proposal incorporates the simplified procedures which the Board adopted on August 19, but with the following modifications:

(a) The holding company must publish notice of the acquisition within 30 days after consummation of the transaction, and

(b) A finance company whose insurance involvement is limited to making available to its borrowers (at each borrower's option) credit life and/or credit disability insurance covering the balance on the borrower's debt, through a group insurance policy in which the finance company is the assured policyholder, may be acquired under the proposed simplified procedures.

With respect to the shifting of activities to a collateral affiliate or a parent holding company, the proposal makes no substantial change in the current provisions of § 225.4(b) (3) (i) (*b*).

Pending consideration of the proposals herein, the Board has suspended the operation of § 225.4(b) (3) of Regulation Y until further notice.

To aid in the consideration of this matter by the Board, interested persons are invited to submit relevant data, views, or arguments. Any such material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 1, 1972. Such material will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's rules regarding availability of information.

Under the proposal, § 225.4 of Regulation Y would be amended as follows:

The fourth sentence of the opening portion of § 225.4(a), starting with the words "The following activities" and ending with the first colon, would be replaced by the following sentences; and paragraph (b) (1) and (3) would be amended to read as follows:

§ 225.4 Nonbanking activities.

(a) *Activities closely related to banking or managing or controlling banks.* * * * With respect to the activities designated below, the Board has determined that de novo entry by a bank holding company can reasonably be expected to produce benefits to the public

and that such benefits can reasonably be expected to outweigh possible adverse effects within the meaning of section 4(c)(8) of the Act except that, with respect to the activities in subparagraph (9)(iii)(*b*) of this paragraph, the Board has determined only that the activities are closely related to banking. Accordingly, the procedures of paragraph (b)(1) of this section are prescribed for de novo entry into the designated activities. With respect to the acquisition of a going concern, the Board has concluded that the activities designated below are closely related to banking but the bank holding company must await a Board determination whether the proposed acquisition can reasonably be expected to produce benefits to the public that outweigh possible adverse effects within the meaning of section 4(c)(8) of the Act. Accordingly, the procedures of § 225.4(b)(2) are prescribed for the acquisition of a going concern.

(b)(1) *De novo entry.* A bank holding company may engage de novo (or continue to engage in an activity earlier commenced de novo) directly or indirectly, solely in activities described in paragraph (a) of this section (except insurance agency activities under paragraph (a)(9)(iii)(*b*) of this section) 45 days after the holding company has informed its Reserve Bank of its proposal to engage in such activity, unless the company is notified to the contrary within that time or is permitted to consummate the transaction at an earlier date. Every such notification shall be accompanied by a copy of a publication (in substantially the same form as F.R. Y-4A) of the proposal to engage in the activities published within the preceding 30 days in a newspaper(s) of general circulation in the communities to be served. Such notification to the Reserve Bank shall provide information as to the general nature and extent of the activities to be engaged in. Whenever necessary to effectuate the purposes of the Act, the Board may require suspension or discontinuation of any action taken, or divestiture of any interest acquired, on the authority of this provision, and may withdraw such authority with respect to any particular holding company. The Board has determined that (with the exception noted above) the activities described in paragraph (a) of this section are so closely related to banking as to be a proper incident thereto and that de novo entry into said activities can reasonably be expected to produce benefits to the public that outweigh possible adverse effects within the meaning of section 4(c)(8) of the Act. Accordingly, unless the Board at its discretion affords interested persons an opportunity to present further oral or written views or data or orders a hearing, a transaction may be consummated under this subparagraph without any further notice or opportunity for hearing. If adverse comments of a substantive nature are received by the Reserve Bank within 30 days after the company has published its proposal[1] or, if it otherwise appears appropriate in a particular case, the Reserve Bank may inform the company that (i) the proposal shall not be consummated until specifically authorized by the Reserve Bank or by the Board or (ii) the proposal shall be processed in accordance with the procedures of subparagraph (2) of this paragraph (b). A bank holding company may engage de novo in insurance agency activities under paragraph (a)(9)(iii)(*b*) of this section only in accordance with the procedures of subparagraph (2) of this paragraph (b).

* * * * *

(3) *Simplified procedures.* The procedures of subparagraphs (1) and (2) of this paragraph (b) shall not apply with respect to a holding company or a subsidiary thereof engaging in the following:

(i) Making, acquiring, or servicing loans or other extensions of credit for personal, family, or household purposes: *Provided,* That the commencement or expansion of such activity does not involve an acquisition of assets of $10 million or more (or the acquisition of shares of a company having such assets) and incidental insurance activities are limited to the making available to a borrower, at the borrower's option, credit life insurance[2] and/or credit disability insurance[3] on a group basis under which the creditor is issued a group master policy as a policyholder and the borrower receives a certificate of insurance evidencing his coverage and stating the principal provisions of the group policy; except that (*a*) no holding company may acquire more than $50 million in assets in any calendar year under the provisions of this subdivision, (*b*) within 30 days after the consummation of such an acquisition, the holding company shall inform its Reserve Bank of the acquisition, and every such notification shall be accompanied by a copy of a notice of the acquisition published within the preceding 30 days in a newspaper(s) of general circulation in the communities to be served, and (*c*) whenever necessary to effectuate the purposes of the Act, the Board may require suspension or discontinuation of any action taken, or divestiture of any acquisition made, on authority of this provision, and may withdraw such authority with respect to any particular holding company;

(ii) Engaging in activities described in paragraph (a) of this section that are shifted from a bank in the holding company system and were engaged in by the bank either de novo or as a result of a merger transaction described in and approved by a Federal supervisory agency pursuant to section 18(c) of the Federal Insurance Act (12 U.S.C. 1828(c)), 45 days after the holding company has informed its Reserve Bank of its proposal to shift such activity, unless the company is notified to the contrary within that time or is permitted to consummate the transaction at an earlier date. Such notification shall provide information as to the general nature and extent of the activities to be shifted and the locations involved. Whenever necessary to effectuate the purposes of the act, the Board may require suspension or discontinuation of any action taken, or divestiture of any interest acquired, on authority of this provision, and may withdraw such authority with respect to any particular holding company.

By order of the Board of Governors, December 21, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-18990 Filed 12-27-71;9:22 am]

[1] If a Reserve Bank decides that adverse comments are not of a substantive nature, the person submitting the comments may request review by the Board of that decision in accordance with the provisions of § 265.3 of the Board's rules regarding delegation of authority (12 CFR 265.3) by filing a petition for review with the Secretary of the Board.

[2] Credit life insurance insures the creditor against loss in case of death of a borrower. The amount of insurance may be constant or decreasing depending upon whether the loan is to be repaid in one payment or, as in an installment contract, in a series of payments.

[3] Credit disability insurance insures the creditor against loss resulting from a borrower's inability to make installment payments when he is disabled. This type of insurance is sometimes called "accident and health".

POSTAL SERVICE

[39 CFR Part 775]

ENVIRONMENTAL STATEMENTS

Proposed Guidelines on Preparation and Coordination

In order to facilitate and promote compliance on a voluntary basis with the requirements of the National Environmental Policy Act of 1969 (83 Stat. 852), and particularly section 102(2) thereof (42 U.S.C. 4332); Guidelines for Statements on Proposed Federal Actions Affecting the Environment, Council on Environmental Quality (36 F.R. 7724, Apr. 23, 1971); and Executive Order 11514, Protection and Enhancement of Environmental Quality, March 5, 1970 (35 F.R. 4247, Mar. 7, 1970), particularly section 2(b) thereof regarding the preparation and coordination of environmental statements, the Postal Service has prepared guidance to be used by all elements of the Service in preparing and processing environmental statements as required by the Act.

Interested persons are invited to submit such written comments and suggestions concerning the proposed regulations as they may desire. Communications should identify the subject matter by the above title and should be submitted in duplicate to the Director, Program Management Office, Mail Process-

ing Group, Room 5113, 1100 L Street NW., Washington, DC 20005. All communications received on or before January 15, 1972, will be considered before issuing the regulations. The proposals contained in this notice may be changed in light of the comments received. A copy of each submittal will be available for public inspection during business hours, both before and after the closing date set forth above, in the Office of the Director, Program Management Office, Mail Processing Group.

Following are the specific regulations proposed by the Postal Service. It is planned to codify the regulations under a new Part 775 in Subchapter J of Title 39, Code of Federal Regulations, when they are adopted.

Accordingly, it is proposed to amend the regulations of the Postal Service as follows:

In Title 39, Code of Federal Regulations, Subchapter J is added, to read as follows:

SUBCHAPTER J—SPECIAL REGULATIONS

PART 775—THE ENVIRONMENT

Sec.

AUTHORITY: The provisions of the Part 775 issued under 39 U.S.C. 401.

§ 775.1 Basic policy.

(a) At the earliest practicable stage in the planning process and in all instances prior to decision, the environmental consequences of any proposed action shall be assessed.

(b) Actions that were initiated prior to the enactment of the National Environmental Policy Act of 1969 (hereafter the "Act") and for which the environmental consequences have not been assessed should be reviewed to insure that any remaining action is consistent with the provisions of this Part 775.

(c) Insofar as practicable, and with appropriate consideration of assigned functions and of economic and technical factors, programs and actions shall be planned, initiated, and carried out in a manner to avoid adverse effects on the quality of the human environment. When this is not feasible, all reasonable measures shall be taken to neutralize or mitigate any adverse environmental impact of the actions.

(d) Whenever an environmental assessment of a recommendation or report on a proposal for legislation, or of a proposed or continuing major action, indicates under the criteria contained herein that the resulting action may significantly affect the quality of the human environment or may be highly controversial with regard to environmental impact, a detailed environmental statement shall be prepared and processed pursuant to the guidance herein contained or referenced.

§ 775.2 Applicability of statutes.

(a) To the extent that the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347), the Clean Air Act, as amended (42 U.S.C. 1857–18571), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1150 et seq.), the Solid Waste Disposal Act (42 U.S.C. 3251–3259), the Atomic Energy Act, as amended (42 U.S.C. 2011–2296), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135 et seq.), the Rivers and Harbors Act of 1899, as amended (33 U.S.C. 401 et seq.), and other Federal antipollution Acts, are Federal laws "dealing with public or Federal contracts, property, works, * * *, budgets, or funds" within the meaning of section 410(a) of title 39, United States Code, they, and any Executive orders or other regulations based upon them, are inapplicable to the exercise of the powers of the Postal Service. However, it is the policy of the Postal Service to comply voluntarily with such statutes, orders, and regulations (including all State and local requirements made applicable to Federal agencies by virtue of, or pursuant to, Federal statutes) to the extent practical and feasible consistent with the public interest and fulfillment of the primary mission of the Postal Service.

(b) The regulations embodied in this part, adopted in furtherance of the policy of voluntary compliance outlined in paragraph (a) of this section, shall not be deemed to be a consent to suit by a party outside the Postal Service and are not enforceable against the Postal Service by such a party. No party outside the Postal Service is authorized to use the mere noncompliance with these regulations against the Postal Service in any manner.

§ 775.3 Relationship with the Corps of Engineers.

(a) The March 11, 1971, agreement between the Postal Service and the Corps of Engineers provides that the Corps will follow its civil works procedures in entering into and administering contracts for real estate and the design and construction of facilities. Accordingly, projects entailing direct land acquisition and design and construction on behalf of the Postal Service will be subject to such procedures for implementing the Act as are applicable to the Corps.

(b) The June 28, 1971, agreement between the Corps of Engineers and the Postal Service provides that the Corps will execute the Postal Service leasing program in accordance with the Postal Service's leasing authorities, policies, guidelines, and determinations.

(c) In view of the above, the procedures prescribed in this part are applicable to legislative recommendations and to major actions (other than direct acquisition of real property, design, and construction).

§ 775.4 Responsibility for environmental determinations; preparation of statements.

An organizational element within the Postal Service, or the Corps of Engineers (whichever is applicable), having responsibility for administering an activity, project, or contract, shall make the initial determination as to whether a proposed action is a major action or not, and whether or not it has significant impact on the human environment; shall secure comments; and shall prepare both the draft and final environmental statements, in accordance with this part. Overall responsibility for insuring compliance with the procedures is centralized in the Senior Assistant Postmaster General for Mail Processing (SAPMG). The Office of Program Management, Mail Processing Group, shall serve as the point of contact with the SAPMG and shall maintain the permanent Postal Service files of all draft and final environmental statements.

§ 775.5 Determination of what is a major Federal action significantly affecting the quality of the human environment.

The determination of what is a major Federal action significantly affecting the quality of the human environment is in large part a matter of judgment, involving the assessment of the circumstances of the proposed action. Making this determination shall be part of the normal decisionmaking process.

(a) Types of major Federal actions requiring environmental statements include:

(1) Recommendations or reports on legislation authorizing activities which would have a significant environmental impact. The requirement to file a statement applies both to Postal Service recommendations for legislation, and Postal Service reports on legislation initiated elsewhere. In the latter case only the agency which has primary responsibility for the subject matter involved will prepare the statement.

(2) Postal Service projects and contracts (such as, for example, leasing agreements or truck terminal contracts, but exclusive of projects and contracts subject to Corps of Engineers procedures) entailing construction of more than 50,000 square feet and those entailing construction of less than 50,000 square feet but entailing an activity or use which will have an actual or probable impact upon the quality of human environment;

(3) Any proposed action which is likely to be "environmentally controversial."

(b) Actions significantly affecting the human environment can be construed to be those that:

(1) Degrade environmental quality even if beneficial effects outweigh the detrimental ones;

(2) Curtail range of possible beneficial uses of the environment including irreversible and irretrievable commitments of resources;

(3) Serve short-term rather than long-term environmental goals;

(4) May be localized in their effect, but nevertheless, have a harmful environmental impact; or

(5) Are attributable to many small actions, possibly taken over a period of time, that collectively have an adverse impact on the environment.

(c) Environmental subject areas include, but are not limited to:

(1) Actions which directly and indirectly affect human beings through water, air, and noise pollution, undesirable land use patterns, solid waste disposal, pesticide and herbicide use, and transportation and handling of hazardous materials;

(2) Human population distribution changes and its effect upon urban congestion (including vehicular traffic), water supply, sewage treatment facilities, other public services, and threats to health; and

(3) Ecological systems such as wildlife, fish, and other marine life.

§ 775.6 Major actions having no environmental impact.

If a proposed major action is determined not to affect significantly the quality of the human environment and not to warrant the preparation of an environmental statement, the organization administering the project or contract shall immediately notify the SAPMG in writing, through the Office of Program Management. If concurred in by the Office of Program Management, the Office of Program Management will notify the Corps of Engineers or responsible Postal Service organization (whichever is applicable) to proceed with the action. Justification for each determination shall be fully documented in the project files.

§ 775.7 Actions having an environmental impact.

If the SAPMG or organization administering the project or contract determines that the action constitutes a major Federal action significantly affecting the quality of the human environment, an environmental statement shall be prepared by the Corps of Engineers or the appropriate Postal Service organization (whichever is applicable).

§ 775.8 Responsibility for environmental statement preparation in multi-agency actions.

Except as otherwise provided in §§ 775.6 and 775.7 when two or more agencies are involved in an action, the "lead agency" (the one having primary authority for committing the Federal Government to a course of action) shall be responsible for the preparation of the statement.

§ 775.9 Preparation of draft environmental statements.

(a) Each environmental statement shall be prepared in accordance with the precept in section 102(2)(A) of the Act that all agencies of the Federal Government "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on man's environment." Each statement must reflect that the particular economic and technical benefits of its proposed action have been assessed and then weighed against the environmental costs.

(b) It is advisable, in the early stages of drafting an environmental statement, for the responsible official to consult with those Federal, State, and local agencies possessing environmental expertise on potential impacts of a proposed action. This will assist in providing the necessary data and guidance for the analyses required to be included in environmental statements as described below.

(c) Environmental statements shall contain:

(1) A description of the proposed action, a reasonable number of alternatives including the information and technical data adequate to permit a careful assessment of the environmental impact of proposed action by commenting agencies, or both. If appropriate, three copies of site maps and topographic maps at suitable scales showing the property and the surrounding area shall be provided.

(2) The probable impact of the proposed action on the environment, including impact on ecological systems such as wildlife, fish, and marine life. Consequences of direct and indirect impacts on the environment shall be included in the analysis. For example, any effect of the action on population distribution or concentration shall be estimated and an assessment made of the effect of any possible change in population patterns upon the resources of the area including land use, water supply, public services, and traffic patterns.

(3) Any probable adverse environmental effects that cannot be avoided, such as water or air pollution, undesirable land use patterns, damage to life systems, urban congestion, threats to health, or other consequences adverse to the environmental goals set out in section 101(b) of the Act.

(4) Section 102(2)(D) of the Act requires the responsible agency to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." A rigorous exploration and objective evaluation of possible alternative actions that might avoid some or all of the adverse environmental effects is essential. Sufficient analysis of such alternatives and their costs and impact on the environment shall accompany the proposed action through the agency review process so as not to prematurely foreclose consideration by the SAPMG of options which might have less detrimental effects.

(5) The relationship between local short-term uses of man's environment and maintenance and enhancement of long-term productivity shall be discussed. This in essence requires assessment of the action for cumulative and long-term effects from the perspective that each generation is trustee of the environment for succeeding generations.

(6) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented shall be considered. Identify the extent to which the action curtails the range of beneficial uses of the environment.

(7) The economic and environmental costs and benefits of the proposed action must be balanced. Alternate courses of action must be discussed as to their effect upon this cost and benefit balance. If a formal cost benefit analysis on the proposed action is prepared, it shall be submitted with the statement.

(d) Environmental statements shall be in the following format:

(1) Draft and final environmental statements shall be prepared on 8½" x 11" paper in clear black type;

(2) A summary sheet shall be prepared in accordance with the format prescribed in Appendix 1 of the Guidelines of the Council on Environmental Quality (36 F.R. 7727) and shall be attached to the environmental statement.

§ 775.10 Submission and distribution of draft environmental statements.

(a) Thirty copies of the draft environmental statements shall be transmitted to the Office of Program Management.

(b) The Corps of Engineers or the Postal Service organization having responsibility for administering a contract or a project shall determine, on the basis of the areas of expertise identified in Appendix 2 of the guidelines cited above, which Federal agencies should be asked for comments, and shall send a copy of the draft environmental statement to each such Federal agency; to each affected State and local agency; and, in addition, shall send seven copies to the Environmental Protection Agency whenever the statement relates to air or water quality, noise abatement and control, pesticide regulation, solid waste disposal, or radiation criteria and standards. Ten copies shall be sent to the Council on Environmental Quality.

(c) Each agency shall be given 30 calendar days in which to submit comments (except that EPA shall be given 45 calendar days) and shall be advised that if no reply is received within the specified period, it will be presumed that there is no objection to the draft statement. The transmittal letters shall also indicate that the statement is based on information currently available.

§ 775.11 Preparation of final environmental statements.

If a draft environmental statement is prepared, a final statement must also be prepared by the Postal Service organization or the Corps of Engineers (whichever is responsible for administering the project or contract) before the proposed action can be initiated. Preparation of

the final statement entails attaching all comments received on the draft statement from Federal, State, and local agencies and officials, and a revision of the text of the draft to take those comments into consideration. If some environmental aspects of a project have been certified by an agency having appropriate jurisdiction or special expertise, the Postal Service still has the overall responsibility for project evaluation.

§ 775.12 Submission and distribution of final environmental statements.

The corps of Engineers or the Postal Service organization responsible for administering the project or contract (whichever is applicable) shall transmit two copies of the final environmental statement as soon as practicable, together with the original and two copies of each agency's comments, to the Office of Program Management for review and approval. Ten copies shall be sent to the Council on Environmental Quality.

§ 775.13 Time requirements for preparation and submission of draft and final environmental statements.

(a) To the maximum extent practicable, no action is to be taken sooner than 90 calendar days after a draft environment statement has been circulated for comment, and furnished to the Council on Environmental Quality. Action also is not to be taken sooner than 30 calendar days after the final text of the environmental statement has been made available to the Council and the public. If the final text of an environmental statement has been furnished to the Council and made public, the 30-day period and 90-day period may run concurrently to the extent that they overlap.

(b) Time requirements prescribed herein shall be followed to the maximum practicable extent, except where (1) advance public disclosure of a proposed action will result in significantly increased costs to the Government; (2) emergency circumstances make it necessary to proceed without conforming to time requirements; or (3) there would be impaired program effectiveness if such time requirements were followed.

LOUIS A. COX,
Solicitor.

[FR Doc.71-18862 Filed 12-27-71;8:46 am]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 121]

FLUID MILK

Suspension of Effective Date of Size Standard and Notice of Public Hearing

On November 27, 1971, there was published in the FEDERAL REGISTER (36 F.R. 22669) a notice that Part 121 of Chapter I of Title 13 of the Code of Federal Regulations was amended by deleting from Schedule B of § 121.3-8 the 750-employee size standard for fluid milk (Census Classification Code 2026). The notice further stated that this amendment would become effective 30 days after publication in the FEDERAL REGISTER.

In order to provide the public with further opportunity to comment on this amendment, the effective date of this amendment noted above is hereby suspended pending a public hearing thereon and further consideration by SBA. This public hearing will be held on February 24, 1972, at 10 a.m., e.s.t., in Room 214 of the offices of the Small Business Administration, 1441 L Street NW., Washington, DC. Persons wishing to testify should notify on or before February 14, 1972, the Size Standards Staff, Office of Assistant Administrator for Administration at the above address. Additional written comments may also be submitted to the Size Standards Staff prior to the date of the hearing.

Dated: December 23, 1971.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.71-18938 Filed 12-23-71;10:26 am]

Notices

DEPARTMENT OF THE TREASURY

Customs Bureau

[T.D. 72-5]

LIGHTWEIGHT LUGGAGE

Restriction on Importation

Pursuant to the direction of the President, dated December 13, 1971, the Bureau of Customs has notified all appropriate Customs officers that pursuant to section 337(f), Tariff Act of 1930, as amended (19 U.S.C. 1337(f)), lightweight luggage manufactured in accordance with the claims of U.S. Letters Patent Nos. 3,298,480 and Re. 26,443, held by Atlantic Products Corp. of Trenton, N.J., may not be entered or released from Customs custody except pursuant to a special bond in an amount equal to the domestic value of the merchandise. The filing of this special bond is in addition to all other entry requirements including the filing of an appropriate entry bond. The format and conditions of the special bond are set forth in T.D. 45474.

The restricted articles are those which embody the inventions set out in (1) Claim 4 in U.S. Letters Patent No. 3,298,480 and (2) Claim 5 in Reissued Patent No. 26,443 described as follows:

(1) Claim 4—A carrying case comprising a generally tubular frame, carrying handle means connected to a central portion of said tubular frame, front and rear side panels of flexible material extending across the opposite ends of said tubular frame; first stitch line means extending through one end of said frame and the periphery of said front panel; second stitch line means extending through the other end of said frame and the periphery of said rear panel whereby said first and second stitch line means secure said front and rear panels to said frame; said front panel comprising a separate U-shaped central flap portion extending down from one end of said front panel and a body portion receiving said flap portion as a closure; a coiled plastic zipper connecting said flap portion to said body; said zipper extending along the full length of the junction between said flap portion and said body portion with both ends of said zipper extending beyond the said one end of said front panel; said first stitch line means extending directly through said both ends of said zipper.

(2) Claim 5—In a carrying bag; a main enclosed frame having first and second side panels enclosing the ends of said frame; one of said side panels having a U-shaped flap therein cooperating with a U-shaped opening therein; and zipper means extending between the edge of said U-shaped flap and the edge of said U-shaped opening to secure said flap to said one of said side panels and to provide access to the interior of said bag when said zipper means is open; said zipper means comprising first and second cooperating zipper halves having respective extending fabric portions for securement of said zipper halves; first and second connection means; said fabric portion of said first zipper portion enveloping around the full length of the said edge of said U-shaped opening and connected along the full length of the said edge of said U-shaped opening in said one of said panels by said first connection means; said fabric portion of said second zipper portion enveloping around the full length of the said edge of said U-shaped flap and connected along the full length of said edge of said U-shaped flap by said second connection means; said first zipper half having a free edge extending outwardly from the exterior surface of said one of said panels adjacent its said edge; said second zipper half having a free edge extending outwardly from the interior surface of said flap.

These articles are generally classified under item 706.60, TSUS.

[SEAL] LEONARD LEHMAN,
Acting Commissioner of Customs.

[FR Doc.71-18902 Filed 12-27-71;8:50 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Wyoming 32092]

WYOMING

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 17, 1971.

The Bureau of Reclamation, U.S. Department of the Interior, has filed an application, Serial No. Wyoming 32092, for the withdrawal of land described below, from all forms of appropriation under the public land laws, including the mining laws but not the mineral leasing laws, subject to valid existing rights.

The applicant wishes to assure tenure of the land as it is required for the operation and maintenance of the Pathfinder Irrigation District and project works.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal, may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 2120 Capitol Avenue, Cheyenne, WY 82001.

The Department's regulations 43 CFR 2351.4(c) provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant, a public hearing will be held at a convenient time and place, which will be announced.

The land involved in the application is:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 26 N., R. 64 W.,
Sec. 8, lot 5.

The area described contains 40.52 acres.

DANIEL P. BAKER,
State Director.

[FR Doc.71-18881 Filed 12-27-71;8:48 am]

[Wyoming 32093]

WYOMING

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 17, 1971.

The Bureau of Reclamation, U.S. Department of the Interior, has filed an application, Serial No. W-32093, for the withdrawal of lands described below, from all forms of appropriation under the public land laws, including the mining laws but not the mineral leasing laws, subject to valid existing rights.

The applicant wishes to assure tenure of the land as it is required for storage purposes in connection with the Pathfinder Reservoir, North Platte Project.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 2120 Capitol Avenue, Cheyenne, WY 82001.

The Department's regulations 43 CFR 2351.4(c) provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing potential demand for the lands and their

resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's and to reach agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant, a public hearing will be held at a convenient time and place, which will be announced.

The lands involved in the application are:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 27 N., R. 84 W., Sec. 30, NW¼SE¼;
T. 28 N., R. 84 W., Sec. 21, NE¼SE¼.

The area described aggregate 80 acres.

DANIEL P. BAKER,
State Director.

[FR Doc.71-16882 Filed 12-27-71;8:48 am]

Geological Survey

CARLSBAD, N. MEX.

Known Potash Area Revised

Pursuant to authority contained in 43 U.S.C. 31, 43 U.S.C. 1451 (note, Transfer of Functions), and Secretary's Order 2563 (15 F.R. 3193), Federal lands classified as subject to the potash leasing provisions of the Mineral Leasing Act of 1920 (30 U.S.C. 283), amended, have been revised as follows, giving name of area, effective date, and total acreage:

(31) NEW MEXICO

Carlsbad (revised); May 1, 1971; 271,747.

A diagram showing the boundaries of the revised leasing area has been filed with the appropriate land office of the Bureau of Land Management and is also of record in the Geological Survey, Washington, D.C.

Dated: December 20, 1971.

W. A. RADLINSKI,
Acting Director.

[FR Doc.71-18880 Filed 12-27-71;8:48 am]

FEDERAL MINING, OIL AND GAS, AND GEOTHERMAL LESSEES

Delay in Approval of Applications for Permits to Drill Wells and Mining Plans

On November 19, 1971, there appeared on page 22078 of the FEDERAL REGISTER, a notice of new procedures to become effective January 1, 1972, with respect to the approval of applications for permits to drill exploratory oil and gas or geothermal wells and original mining plans or major mining plan changes filed in accordance with Department of the Interior regulations applicable to Federal mineral leases on public domain and acquired lands.

The effective date of the new procedures is hereby changed from January 1, 1972, to April 1, 1972. Interested parties are invited to submit written comments, suggestions, or objections with respect to the new procedures to the Director, U.S. Geological Survey, Washington, DC 20242 on or before January 31, 1972.

W. T. PECORE,
Under Secretary of the Interior.

DECEMBER 22, 1971.

[FR Doc.71-18915 Filed 12-27-71;8:51 am]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

SUGAR QUOTA FOR CALENDAR 1972

Notice of Determination

Section 204(a) of the Sugar Act of 1948, as amended by Public Law 92-138, approved on October 14, 1971, provides in part that "The Secretary shall, at the time he makes his determination of requirements of consumers for each calendar year and on December 15 preceding each calendar year, and as often thereafter as the facts are ascertainable by him but in any event not less frequently than each 60 days after the beginning of each calendar year, determine whether, in view of the current inventories of sugar, the estimated production from the acreage of sugarcane or sugar beets planted, the normal marketings within a calendar year of new-crop sugar, and other pertinent factors, any area or country will not market the quota for such area or country."

In accordance with the provisions of section 204(a) of the Sugar Act of 1948, as amended by secs. 5, 19, Public Law 92-138 approved October 14, 1971, and on the basis of information currently ascertainable by the Department of Agriculture, it is hereby determined as of December 15, 1971, that no area or country will not market the 1972 sugar quota for such area or country except as heretofore determined and set forth in § 811.11 36 F.R. 21871 published November 17, 1971.

Signed at Washington, D.C., on December 21, 1971.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.71-18873 Filed 12-22-71;12:00 pm]

DEPARTMENT OF COMMERCE

Office of Import Programs

HARVARD MEDICAL SCHOOL

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 71-00433-33-46070. Applicant: Harvard Medical School, 25 Shattuck Street, Boston, MA 02115. Article: Scanning electron microscope, Model JSM-U3. Manufacturer: Japan Electron Optics Laboratory Co., Japan.

Intended use of article: The article will be used for studies of the male germ cell and reproductive tract and of the female gamete. Projects concern the 3-dimensional configuration of sperm and sperm-egg interactions as revealed by scanning electron microscopy; stereoscan observations on cyclic variations in the oviductal and endometrial surface and on egg-endometrial relationships at implantation; and sterology of the luminal surface of the seminiferous epithelium, the rete testis, and the free surface of the epididymal epithelium.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a guaranteed resolution of 100 Angstroms. Comparable domestic instruments provide resolving powers of 150 to 200 Angstroms. We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated June 11, 1971, that the best resolution available is pertinent to the purposes for which the foreign article is intended to be used. HEW further advises that it knows of no available domestic scanning electron microscope which can be used for the purposes for which the article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.71-18896 Filed 12-27-71;8:49 am]

JOHNS HOPKINS UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 72-00030-00-43780. Applicant: The Johns Hopkins University, Purchasing Department, Charles and 34th Streets, Baltimore, MD 21218. Article: Bronchofiberscope accessories. Manufacturer: Machida Co., Japan.

Intended use of article: The articles are replacement parts for an existing bronchofiberscope.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The application relates to accessories for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used.

The Department of Commerce knows of no similar accessories being manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.71-18896 Filed 12-27-71;8:49 am]

NATIONAL INSTITUTES OF HEALTH

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No.: 72-00043-00-46040. Applicant: National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20014. Article: Spare parts kit for electron microscope. Manufacturer: Siemens AG, West Germany.

Intended use of article: The article is an accessory for an existing electron microscope.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The application relates to an accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used.

The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

SETH M. BODNER,
Director,
Office of Import programs.

[FR Doc.71-18897 Filed 12-27-71;8:49 am]

NORTHWESTERN UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 72-00059-00-46040. Applicant: Northwestern University, 360 Huntington Avenue, Boston, MA 02115. Article: Charge neutralizer and control box. Manufacturer: Japan Electron Optics Laboratory Co., Ltd., Japan.

Intended use of article: The articles are accessories for an existing electron microscope.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The application relates to accessories for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used.

The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.71-18898 Filed 12-27-71;8:49 am]

ST. LOUIS UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 72-00025-00-11000. Applicant: St. Louis University, 221 North Grand Boulevard, St. Louis, MO 63103. Article: Mass market, Model LKB 9010. Manufacturer: LKB Produkter, A.B., Sweden.

Intended use of article: The article is an accessory for an existing mass spectrometer.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The application relates to an accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used.

The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.71-18899 Filed 12-27-71;8:49 am]

UNIVERSITY OF CALIFORNIA

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 72-00049-00-46040. Applicant: University of California, Scripps Institution of Oceanography, Post Office Box 109, La Jolla, CA 92037. Article: Anticontamination device. Manufacturer: Siemens A.G., West Germany.

Intended use of article: The article is an accessory for an existing electron microscope.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The application relates to an accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used.

The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.71-18893 Filed 12-27-71;8:49 am]

UNIVERSITY OF COLORADO

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 71-00435-33-46070. Applicant: University of Colorado, Department of Molecular, Cellular, and Developmental Biology, Boulder, CO 80302. Article: Scanning electron microscope, Model S-4. Manufacturer: Cambridge Scientific Instruments, Ltd., United Kingdom.

Intended use of article: The article will be used to examine and record (in micrographs) the surface contours of biological materials. More specifically it will be used to collect information on surface contours of a wide variety of animal and plant tissues for future teaching material in courses on cell biology and the plant cell. The surfaces of isolated normal and cancerous cells will be studied, as well as the development and differentiation of cell surfaces in order to determine origin of surface membranes and how small units of membrane are integrated into cell surface.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (March 4, 1971).

Reasons: The foreign article provides a dual pump system which permits the vacuum in the column and the specimen chamber to be independently maintained. We are advised by the Department of Health, Education, and Welfare in its memorandum dated June 11, 1971, that the dual pumping system provided by the foreign article is pertinent to the purposes for which the article is intended to be used. HEW further advises that it knows of no comparable scanning electron microscope being manufactured in the United States which provided this pertinent capability at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States at the time the foreign article was ordered.

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.71-18894 Filed 12-27-71;8:49 am]

YALE UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 71-00353-33-46040. Applicant: Yale University, Purchasing Department, 20 Ashmun Street, New Haven, CT 06520. Article: Electron microscope, Model HS-8. Manufacturer: Hitachi, Ltd., Japan.

Intended use of article: The article will be used mainly for the training of postdoctoral fellows, medical students and graduate students from the Department of Anatomy and other departments. The Anatomy courses include Relationship of Fine Structure to Function of Cytoplasmic Organelles, Methods in Anatomy, and Research. The experiments combine the use of electron microscopy and cytochemistry related to biological problems.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The applicant requires an electron microscope which is suitable for instruction in the basic principles of electron microscopy. The foreign article is a relatively simple, medium resolution electron microscope designed for confident use by beginning students with a minimum of detailed programing. The most closely comparable domestic instrument is the Model EMU-4C electron microscope manufactured by the Forgflo Corp. The Model EMU-4C electron microscope is a relatively complex instrument designed for research, which requires a skilled electron microscopist for its operation. We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated June 30, 1971 that the relative simplicity of design and ease of operation of the foreign article is pertinent to the applicant's educational purposes. We, therefore, find that the Model EMU-4C electron microscope is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.71-18889 Filed 12-27-71;8:48 am]

ATOMIC ENERGY COMMISSION

[Docket No. 40-8027]

KERR-McGEE CORP.

Notice of Availability of Applicant's Environmental Report

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations, 10 CFR Part 50, Appendix D, notice is hereby given that a copy of a report entitled "Applicant's Environmental Report—Uranium Hexafluoride Plant," submitted by Kerr-McGee Corp. and dated November 1971, is being placed for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20545. A copy of the report is also being placed for public inspection in the Oklahoma State Clearinghouse, Office of Community Affairs and Planning, 507 Will Rogers Building, Oklahoma City, Okla. 73105; in the Metropolitan Clearinghouse Arkhoma Regional Planning Commission, 104

North 16th Street, Fort Smith, AR 72901; and in the Sallisaw City Library, 111 North Elm, Sallisaw, OK 74955.

The report discusses environmental considerations involved in the operation by Kerr-McGee Corp., of its uranium hexafluoride plant located in Sequoyah County, Okla. Comments on the report may be submitted by interested persons to the Director, Division of Materials Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

After the report has been reviewed by the Commission's regulatory staff, a Draft Detailed Statement on environmental considerations related to the licensed activity will be prepared. Upon completion of the Draft Detailed Statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of the availability of the Applicant's Environmental Report and the Draft Detailed Statement. The summary notice will request, within thirty (30) days or such longer period as the Commission may determine to be practicable, comments from interested persons on the proposed action and on the Draft Detailed Statement. The summary notice will also contain a statement to the effect that the comments of the Federal agencies and State and local officials thereon will be made available when received.

Dated at Bethesda, Md., this 20th day of December 1971.

For the Atomic Energy Commission.

S. H. SMILEY,
Director,
Division of Materials Licensing.

[FR Doc.71-18875 Filed 12-27-71;8:47 am]

[Docket No. 70-1193]

KERR-McGEE CORP.

Notice of Availability of Applicant's Environmental Report

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulation in 10 CFR Part 50, Appendix D, notice is hereby given that a copy of a report entitled "Applicant's Environmental Report—Plutonium Fuel Plant," submitted by Kerr-McGee Corp. and dated November 1971, is being placed for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20545. A copy of the report is also being placed for public inspection in the Oklahoma State Clearinghouse, Office of Community Affairs and Planning, 507 Will Rogers Building, Oklahoma City, Okla. 83105, and in the Carnegie Library, 402 East Oklahoma Street, Guthrie, OK 73044. The report discusses environmental considerations involved in the operation by Kerr-McGee Corp. of its plutonium fuel plant located in Logan County, Okla. Comments on the report may be submitted by interested persons to the Director, Division of Materials Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

After the report has been reviewed by the Commission's regulatory staff, a Draft Detailed Statement on environmental considerations related to the licensed activity will be prepared. Upon completion of the Draft Detailed Statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of the availability of the Applicant's Environmental Report and the Draft Detailed Statement. The summary notice will request, within thirty (30) days or such longer period as the Commission may determine to be practicable, comments from interested persons on the proposed action and on the Draft Detailed Statement. The summary notice will also contain a statement to the effect that the comments of the Federal agencies and State and local officials thereon will be made available when received.

Dated at Bethesda, Md., this 20th day of December 1971.

For the Atomic Energy Commission.

S. H. SMILEY,
Director,
Division of Materials Licensing.

[FR Doc.71-18876 Filed 12-27-71;8:47 am]

[Docket Nos. 50-272, 50-311]

PUBLIC SERVICE ELECTRIC AND GAS CO.

Notice of Availability of Applicant's Report and Supplemental Environmental Report

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that an Environmental Report and a Supplemental Environmental Report—Operating License Stage, Salem Nuclear Generating Station, submitted by the Public Service Electric and Gas Co., has been placed in the Commission's Public Document Room at 1717 H Street NW., Washington, DC, and in the Salem Free Public Library, 112 West Broadway, Salem, NJ 08079. The reports are also being made available to the public at the Division of State and Regional Planning, Department of Community Affairs, Post Office Box 1978, Trenton, NJ 08625, and at the Wilmington Metropolitan Area Planning and Coordinating Council, 4613 Robert Kirkwood Highway, Wilmington, DE 19808.

These reports discuss environmental considerations related to the proposed operation of the Salem Nuclear Generating Station, Units 1 and 2, located in Salem County, N.J.

After the reports have been analyzed by the Commission's Director of Regulation or his designee, a draft detailed statement of environmental considerations related to the proposed action will be prepared. Upon preparation of the draft detailed statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the draft detailed statement. The summary notice will request comments from interested persons on the proposed action and on the draft statement. The summary notice will also contain a statement to the effect that the comments of Federal agencies and State and local officials thereon will be available when received.

Dated at Bethesda, Md., this 17th day of December 1971.

For the Atomic Energy Commission.

R. C. DEYOUNG,
Assistant Director for Pressurized Water Reactors, Division of Reactor Licensing.

[FR Doc.71-18877 Filed 12-27-71;8:47 am]

CIVIL AERONAUTICS BOARD

[Docket No. 23956; Order 71-12-93]

AMERICAN AIRLINES, INC.

Order Vacating Suspension and Dismissing Investigation to Establish Reduced Charter Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 21st day of December 1971.

By Order 71-11-18, dated November 3, 1971, the Board suspended and set for investigation a proposal of American Airlines, Inc. (American) to establish reduced charter rates of $3.26 per charter mile and $3 per ferry mile for application between the continental United States and Hawaii on its B-707-323 aircraft having 160 to 175 seats. The primary purpose of the proposal was to enable American to provide services in connection with a tour program of American International Air Service (AITS) announced in July 1971.

American and AITS have petitioned the Board for reconsideration of Order 71-11-18, and request that the complaints filed against American's proposal be dismissed. In support of its petition, American asserts that its proposed rates would simply meet competition, particularly per passenger-mile rates of Overseas National Airways, Inc. (ONA) and Trans International Airlines, Inc. (TIA) for their stretched DC-8 equipment. It contends that there is no requirement in the Board's regulations that rates of the competing carrier(s) be provided on comparable aircraft, since a rate can only be competitive if it results in substantially similar charges per passenger mile. American further asserts that, although § 221.165 of the Board's Economic regulations does not require cost data justifying its proposed rates, the rates are in fact justified on a cost basis, and submits data which purports to show that its costs for B-707-300C aircraft in the charter service to be provided are $3.25 per plane mile.

AITS contends that the fact that American's proposed rate is no more than competitive with and actually is slightly higher than prevailing rates of

other carriers on a seat-mile basis is sufficient by traditional Board standards to establish that the rates are reasonable and not uneconomic.

Continental Air Lines, Inc. (Continental) has filed an answer in opposition to American's petition for reconsideration. Continental alleges that American has not established that either ONA or TIA is providing competitive services under the charter rates which it cites, and that these unused rates were filed 2½ to 3 years ago when costs were far lower than they are now. Continental further alleges that American's cost presentation is not such as to justify reversal of a suspension order, and notes that American's 1971 cost experience shows that the proposed rates, which are supported on the basis of 1970 data, are uneconomically low.[1]

The rates proposed by American were suspended because they reflected significant reductions from present levels which, on the basis of reported system results, raised a question whether they were adequate to cover the cost of providing the service. American has now furnished data in its petition for reconsideration which we believe demonstrates that reported unadjusted unit costs are not wholly representative of the economic reasonableness of its proposed charter rates. We note, for example, that reported seat-mile costs of American's B–707–300C aircraft for 1970 were based on an average of 139 available seats, whereas American's proposed charter operation will entail an average of 171 available seats. This factor alone produces a significantly lower seat-mile cost than the rate of 1.334 cents cited in Order 71–11–18. The cost estimates submitted by American in its petition for reconsideration do not appear to be unreasonable, and we are not pursuaded that they are refuted by the reported data relied upon by Continental in its answer.

In view of the foregoing, there appears to be a valid economic basis upon which to permit the rates to become effective as proposed.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That:

1. The motions of American Airlines, Inc., and Continental Air Lines, Inc., for leave to file otherwise unauthorized documents are denied;

2. The suspension of the rates, and rules, regulations, and practices affecting such rates and provisions directed in Order 71–11–18 is vacated;

3. The investigation in Docket 23956 is dismissed; and

4. A copy of this order be served upon American Airlines, Inc., Continental Air Lines, Inc., World Airways, Inc., and American International Air Service.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary.*

[FR Doc.71–18917 Filed 12–27–71;8:51 am]

[1] On Dec. 1, 1971, American filed a motion for leave to file an otherwise unauthorized document claiming that Continental's answer contains errors of fact that make its conclusions misleading. On December 13, 1971, Continental filed a motion for leave to file an otherwise unauthorized document in reply to the aforementioned document submitted by American. The carriers' motions for leave to file otherwise unauthorized documents will be denied.

[Docket No. 24073; Order 71–12–100]

BRANIFF AIRWAYS, INC.

Order of Investigation and Suspension to Revise Hawaiian Group Fares

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 22d day of December 1971.

By tariff revisions[1] marked to become effective December 24, 1971, Braniff Airways, Inc. (Braniff), proposes to cancel certain GIT fares to Hawaii and replace them with round-trip group fares priced at the same level. The present GIT fares apply to group sizes of 88, 105, and 154 originating at Chicago, Des Moines, Kansas City, and Omaha, and the proposal would, in effect, eliminate the prepaid tour add-on of at least $175 and the 13–30-day return limits. In addition, the advance reservation and ticket purchase requirements would be reduced from 30 days to 7 and 5 days, respectively. The fares do not bear an expiration date.

In support of its proposal Braniff alleges that the new fares are to meet competitive fares of United Air Lines, Inc. (United). Braniff states that United's existing one-way group fares in the Chicago market are equal to one-half of its proposed fares, and that the proposed fares to the remaining cities are available via United by application of the intermediate point rule, although they are not specifically published. Braniff's proposed fares to those cities are held to the Chicago level.

Upon consideration of the tariff proposal and all other relevant matters, the Board finds that the proposal may be unjust, unreasonable, unjustly discriminatory, unduly preferential, or otherwise unlawful and should be investigated. The Board further concludes that the fares should be suspended pending investigation.

Although Braniff is allegedly filing to meet competition, the fares it purports to meet bear an expiration date of May 31, 1972, whereas Braniff's fares contain no expiration date. As we indicated in connection with earlier filings by Continental and United,[2] we seriously question whether relatively unrestricted fares of such a low level will prove to be economic during the peak summer period. To the extent the fares prove generative they will tend to create pressure for capacity increases, and we believe the possibility of diversion from higher fare services can be expected to increase substantially during peak travel periods.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That:

1. An investigation is instituted to determine whether the proposed YG9, YG10, and YG11 Class Fares and cancellation of the YGIT1, YGIT2, and YGIT3 Class Fares between Chicago and Honolulu/Hilo on 28th Revised Page 199, between Des Moines and Honolulu/Hilo on 28th Revised Page 205, between Honolulu/Hilo and Kansas City on 24th Revised Page 206–B, and between Honolulu/Hilo and Omaha on 25th Revised Page 207 of Airline Publishers, Inc., Agent's CAB No. 136, and rules, regulations, or practices affecting such fares and provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful fares and provisions, and rules, regulations, and practices affecting fares and provisions;

2. Pending hearing and decision by the Board, the proposed YG9, YG10, and YG11 Class Fares and cancellation of the YGIT1, YGIT2, and YGIT3 Class Fares between Chicago and Honolulu/Hilo on 28th Revised Page 199, between Des Moines and Honolulu/Hilo on 28th Revised Page 205, between Honolulu/Hilo and Kansas City on 24th Revised Page 206–B, and between Honolulu/Hilo and Omaha on 25th Revised Page 207 of Airline Publishers, Inc., Agent's CAB No. 136, are suspended and their use deferred to and including March 22, 1972, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The proceeding ordered herein be assigned for hearing before an Examiner of the Board at a time and place hereafter to be designated; and

4. Copies of this order be filed with the aforesaid tariff and be served upon Braniff Airways, Inc., which is hereby made a party to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary.*

[FR Doc.71–18918 Filed 12–27–71;8:51 am]

[1] Revisions to Airline Tariff Publishers, Inc., Agent, Tariff CAB No. 136.

[2] Orders 71–10–133, Oct. 29, 1971, and 71–9–113, Sept. 29, 1971.

[Docket No. 23513]

CONAIR LTD.

Foreign Air Carrier Permit Application; Notice of Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on January 21, 1972, at 10 a.m. (local time) in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner William J. Madden.

Notice is also given that the hearing may be held immediately following conclusion of the prehearing conference unless a person objects or shows reason for postponement on or before January 14, 1972.

Dated at Washington, D.C., December 21, 1971.

[SEAL] RALPH L. WISER, *Chief Examiner.*

[FR Doc.71-18920 Filed 12-27-71;8:51 am]

[Docket No. 23661; Order 71-12-87]

EASTERN AIR LINES, INC.

Order of Certificate of Public Convenience and Necessity

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 20th day of December 1971.

On July 26, 1971, Eastern Air Lines, Inc. (Eastern) filed an application to delete Reading Pa., from its certificate of public convenience and necessity for Route 71. On October 6, 1971, Eastern filed a motion requesting expeditious action on its application and, alternatively, that the Board issue an order to show cause why its application in Docket 23661 should not be granted. Eastern is presently authorized to suspend service temporarily at Reading subject to a substitute service agreement with Suburban Air Lines.[1]

In support of its motion, Eastern alleges, inter alia, that the history of certificated and substitute service at Reading has demonstrated that the public demand is insufficient to support air service on an economical basis. Eastern states that frequent and convenient surface transportation is available between Reading and its principal communities of interest. Eastern further requests that a hearing be held on an expedited basis so that it can be completed prior to the expiration of the present substitute service arrangements with Suburban Air Lines.

An answer in opposition to Eastern's motion for expeditious action was filed by the Reading Airport Authority (Reading) alleging, inter alia, that deletion at Reading would leave the city without north-south certificated service, and that Reading is entitled to a hearing on the matters raised by Eastern's deletion application. Reading also requests that a full and ample time be afforded it to obtain evidence and to prepare and present exhibits in support of its position.

Upon consideration of the pleadings and all the relevant facts, we have concluded that Eastern has made a sufficient showing to warrant a hearing on its deletion application. The matters raised by Reading will be fully considered at the hearing. However, we do not believe that Eastern has made a sufficient showing to warrant expeditious treatment of its application.[2]

Accordingly, it is ordered, That:

1. The application of Eastern Air Lines, Inc., in Docket 23661, be and it hereby is set for hearing at a time and place to be hereafter designated; and

2. A copy of this order shall be served upon Eastern Air Lines, Inc.; Suburban Air Lines; Mayor, city of Reading; Governor, State, of Pennsylvania; Pennsylvania Public Service Commission; Chairman, Reading Airport Authority; U.S. Postal Service; and Allegheny Airlines, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary.*

[FR Doc.71-18919 Filed 12-27-71;8:51 am]

[Docket No. 24006]

WINDWARD ISLANDS AIRWAYS INTERNATIONAL, N.V.

Foreign Air Carrier Permit Application; Notice of Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on January 11, 1972, at 10 a.m. (local time) in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner Louis W. Sornson.

Notice is also given that the hearing may be held immediately following conclusion of the prehearing conference unless a person objects or shows reason for postponement on or before January 4, 1972.

Dated at Washington, D.C., December 21, 1971.

[SEAL] RALPH L. WISER, *Chief Examiner.*

[FR Doc.71-18921 Filed 12-27-71;8:51 am]

TARIFF COMMISSION

[337-29]

ARTICLES COMPRISED OF PLASTIC SHEETS HAVING AN OPENWORK STRUCTURE

Notice of Findings and Recommendations

Upon completion of its investigation (337-29) under section 337 of the Tariff Act of 1930, in response to a complaint of Ben Walters, Ben Walters, Inc., and Kage Co., Inc., the Commission finds violation of section 337(a) of the Tariff Act of 1930 by unfair methods of competition and unfair acts in the importation and sale of articles comprised of plastic sheets having an openwork structure manufactured in accordance with the process embraced within the claims of U.S. Patent No. 2,761,177 owned by complainant Ben Walters, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

Accordingly, the Commission recommends that, in accordance with section 337(e) of the Tariff Act of 1930, the President directs the Secretary of the Treasury to instruct customs officers to exclude from entry into the United States articles comprised of plastic sheets having an openwork structure manufactured in accordance with the process embraced within the claims of U.S. Patent No. 2,761,177 through September 3, 1973, the date of expiration of complainant's patent.

Under the statute (19 U.S.C. 1337(c)) a rehearing before the Commission may be requested. In accordance with § 201.14 of the Commission's rules of practice and procedure (19 CFR 201.14) a motion for a rehearing may be granted for good cause shown. Any such motion for a rehearing must be in writing and filed with the Secretary of the U.S. Tariff Commission, Washington, D.C. 20436, within twenty (20) days after publication of this notice. The motion must state clearly the grounds which are relied upon for the granting of a rehearing and must be accompanied by 19 true copies.

Issued December 21, 1971.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.71-18857 Filed 12-27-71;8:46 am]

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF HEARINGS

DECEMBER 22, 1971.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the official docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

[1] Order 69-8-76, Aug. 13, 1969. The temporary suspension granted therein was to be effective for a period of 3 years unless sooner terminated by the Board.

[2] In view of the present crowded state of the Board's docket, it is possible that we will be unable to issue a decision in this proceeding prior to the termination of the substitute service agreement with Suburban Air Lines. The Board expects that Eastern will continue to fulfill its obligation to serve Reading while the deletion case is pending, by providing service with its own equipment or by providing service through a Board-approved replacement arrangement.

MC 119669 Sub 21, Tempoo Transportation, Inc., assigned January 14, 1972, at Chicago, Ill., is advanced to January 13, 1972, at Chicago, Ill., in a hearing room to be designated later.

MC 73165 Sub 299, Eagle Motor Lines, Inc., assigned January 12, 1972, at Chicago, Ill., is canceled and transferred to modified procedure.

MC 11545 Sub 157, Home Transportation Co., Inc., assigned January 12, 1972, at Chicago, Ill., is canceled and transferred to modified procedure.

MC 115162 Sub 219, Poole Truck Line, Inc., assigned January 12, 1972, at Chicago, Ill., is canceled and transferred to modified procedure.

MC 123407 Sub 80, Sawyer Transport, Inc., assigned January 12, 1972, at Chicago, Ill., is canceled and transferred to modified procedure.

MC 123048 Sub 188, Diamond Transportation System, Inc., now assigned January 13, 1972, at Chicago, Ill., is canceled and transferred to modified procedure.

MC 115841 Sub 408, Colonial Refrigerated Transportation, Inc., assigned January 28, 1972, at Atlanta, Ga., is canceled and transferred to modified procedure.

MC 151 Sub 45, Lovelace Truck Service, Inc., now assigned January 10, 1972, at Indianapolis, Ind., canceled and application dismissed.

MC 116947 Sub 20, Hugh H. Scott, d.b.a. Scott Transfer Co., now being assigned hearing January 28, 1972, in Room 305, 1252 West Peachtree Street, Atlanta, GA.

MC 113495 Sub 52, Gregory Heavy Haulers, Inc., now being assigned hearing January 31, 1972, in Room 556, Federal Office Building, 275 Peachtree Street NE., Atlanta, GA.

MC 68078 Sub 34, Central Motor Express, Inc., now assigned January 31, 1972, at Nashville, Tenn., will be held at the Albert Pick Motel, 320 Murfreesboro Road, instead of Room 651, U.S. Courthouse, 801 Broadway.

MC 124306 Sub 11, Kenan Transport, now assigned January 10, 1972, at Richmond, Va., postponed to January 18, 1972, in Conference Room 1035, Federal Office Building, Richmond, Va.

MC 119531 Sub 151, Dieckbrader Express, Inc., assigned February 15, 1972, at Chicago, Ill., is canceled and application dismissed.

MC-FC-72239, Denny Truck Lines, Transferee & Stevens Truck Lines, Internal Revenue Service—successor in interest, transferor, MC-F-11167, H. C. Gabler—purchase (portion)—Stevens Truck Lines, MC-F-11199, Mercury Motor Express, Stevens Truck Lines, MC 11197, Rogers Transfer—purchase (portion)—Stevens Truck Lines, MC-F-11230, Bowan Trucking—purchase (portion)—Stevens Truck Lines, Internal Revenue Service, successor in interest, MC-F-11231, Davis & Randall—purchase (portion)—Stevens Truck Lines, MC-F-11266, Redwing Refrigerated—purchase (portion)—Stevens Truck Lines, MC 135454 (Sub-No. 3), Denny Truck Lines, all now assigned for hearing January 31, 1972, at the Offices of Interstate Commerce Commission, Washington, D.C.

MC 135529 Sub 2, Cook Transports, Inc., assigned January 24, 1972, will be held in Room 802, Public Service Commission, 100 North Senate Avenue, Indianapolis, IN, instead of Room 1011.

MC 23618 Sub 16, McAlister Trucking Co., MC 43867 Sub 22, Alton Leander McAlister, MC 54847 Sub 9, Intracoastal Truck Line, Inc., MC 60157 Sub 16, C. A. White Trucking Co., MC 74321 Sub 51, B. F. Walker, Inc., MC 79999 Sub 11, E. Jack Walton Trucking Co., MC 93318 Sub 17, Joe D. Hughes, Inc., MC 99776 Sub 7, Buckner Trucking, Inc., MC 103066 Sub 29, Stone Trucking Co., MC 106407 Sub 27, T. E. Mercer Trucking Co., MC 106509 Sub 22, Younger Transportation, Inc., MC 106775 Sub 29, Atlas Truck Line, Inc., MC 107678 Sub 43, Hill & Hill Truck Line, Inc., MC 108942 Sub 5, C. G. Todd Trucking Co., MC 109064 Sub 25, Tex-O-Ka-N Transportation Co., MC 110817 Sub 16, E. L. Farmer & Co., MC 119176 Sub 10, The Squaw Transit Co., MC 119774 Sub 27, Mary Ellen Stidham, N. M. Stidham, Inez Mankins & James E. Mankins Sr., doing business as Eagle Trucking Co., MC 119897 Sub 12, A-1 Transportation Co., MC 120257 Sub 12, K. L. Breeden & Sons, Inc., now being assigned March 6, 1972, in Room 8212, Federal Building, 515 Rusk Street, Houston, TX.

MC 126196 Sub 6, Luverne S. Christensen, doing business as Christensen Truck Line, assigned for hearing February 9, 1972, at Minneapolis, Minn., canceled and reassigned for hearing on February 10, 1972, at Minneapolis, Minn., in a hearing room to be later designated.

MC 115826 Sub 232, W. J. Digby, Inc., now being assigned January 17, 1972, in Room B-230, U.S. Custom House, 19th and Stout Streets, Denver, CO.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-18913 Filed 12-27-71;8:51 am]

FOURTH SECTION APPLICATION FOR RELIEF

DECEMBER 10, 1971.

Protests to the granting of an application must be prepared in accordance with § 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42316—*Brewers Grits to Memphis, Tenn.* Filed by Southwestern Freight Bureau, agent (No. B-274), for interested rail carriers. Rates on Brewers Grits, in carloads, from Atchison, Kans., Kansas City, Mo.-Kans., and St. Joseph, Mo. to Memphis, Tenn.

Grounds for relief—Market competition.

Tariff—Supplement 16 to Southwestern Freight Bureau, agent tariff I.C.C. 4971. Rates are published to become effective January 10, 1972.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-18911 Filed 12-27-71;8:50 am]

FOURTH SECTION APPLICATION FOR RELIEF

DECEMBER 22, 1971.

Protests to the granting of an application must be prepared in accordance with § 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42323—Filed by Western Trunk Line Committee, agent (No. A-2653), for interested rail carriers. Rates on foodstuffs, canned or preserved, and potatoes, fresh frozen or cooked frozen, in carloads, from Parma, Colo. to points in official territory.

Grounds for relief—Market competition, short-line distance formula and grouping.

Tariff—Supplement 282 to Western Trunk Line Committee, agent tariff I.C.C. A-4620. Rates are published to become effective January 25, 1972.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-18912 Filed 12-27-71;8:50 am]

[Notice 800]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 22, 1971.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), 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-73018. By order of December 17, 1971, the Motor Carrier Board approved the transfer to Charles William Nolan and Freda Rush Nolan, a partnership, doing business as Nolan Moving & Storage Co., Belvidere, N.J., of the operating rights in certificate No. MC-13263 issued March 22, 1946, to R. D. La Rue and Harry La Rue, a partnership, doing business as R. D. La Rue & Son, Hackettstown, N.J., authorizing the transportation of household goods, as defined in Practices of Motor Common Carriers of Household Goods, 17 M.C.C., between Hackettstown, N.J., on the one hand, and, on the other, New York, N.Y., Long Island, N.Y., and points in those parts of Pennsylvania on and south of U.S. Highway 6 and east of the Susquehanna River. Bowes & Millner, 744 Broad Street, Newark, NJ 07102, representatives for applicants.

No. MC-FC-73144. By order of December 16, 1971, the Motor Carrier Board approved the transfer to Kocak Van Lines, Inc., Rural Delivery No. 1 Burr Avenue, Binghamton, NY 13903 of the operating rights in certificate No. MC-52360 issued August 14, 1959, to Crispell Brothers, Inc., 716 West Clinton Street, Ithaca, NY 14850, authorizing the transportation of household goods, as defined by the Commission, between Ithaca, N.Y., and points within 50 miles thereof, on the

one hand, and, on the other, points in Connecticut, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Virginia; and betwen Ithaca, N.Y., and points within 50 miles thereof, on the one hand, and, on the other, points in Delaware, Maine, Maryland, Massachusetts, New Hampshire, Rhode Island, Vermont, West Virginia, and the District of Columbia.

No. MC-FC-73208. By order of December 17, 1971, the Motor Carrier Board approved the transfer to George Readding, Vineland, N.J., of certificate No. MC-977, issued November 16, 1967, to Henry R. Tomkinson Associates, Inc., doing business as Henry's Warehouse, Egg Harbor City, N.J., authorizing the transportation of: Household goods, as defined by the Commission, between Egg Harbor City, N.J., and points within 20 miles thereof, on the one hand, and, on the other, points in New Jersey, Pennsylvania, Delaware, Maryland, New York, and the District of Columbia. Alexander Markowitz, 1180 Karin Street, Post Office Box 793, Vineland, NJ 08360, representative for applicants.

No. MC-FC-73334. By order of December 16, 1971, the Motor Carrier Board approved the transfer to Southern Ohio Truck Lines, Inc., Hamilton, Ohio, of a portion of the operating rights in Certificate No. MC-123429 issued February 10, 1971, to McDowell Truck Line, Inc., Chicago, Ill., authorizing the transportation of various commodities from and to specified points and areas in Ohio and Indiana. Earl N. Merwin, 85 East Gay Street, Columbus, OH 43215. Attorney for applicants.

No. MC-FC-73344. By order of December 16, 1971, the Motor Carrier Board approved the transfer to Banana Transport, Inc., 12712 Oregon Avenue, Tampa, FL 33612, of the operating rights in certificate No. MC-118370 issued November 3, 1960, to William Henry Snelling, Jr., 406 East Chelsea Street, Tampa, FL 33603, authorizing the transportation of bananas, from Tampa, Fla., to Jacksonville, Fla., Atlanta, Ga., Winston-Salem, N.C., Cincinnati, Ohio, Columbia, S.C., Nashville Tenn., and Galveston, Tex.

No. MC-FC-73355. By order of December 16, 1971, the Motor Carrier Board approved the transfer to Hall's Express Service, Inc., Canastota, N.Y., of the operating rights in Certificates No. MC-14749 and MC-14749 (Sub-No. 2) issued to Robert A. Reader, doing business as Reader's Express, West Winfield, N.Y., July 9, 1965, and October 25, 1966, respectively, authorizing the transportation of general commodities, with exceptions between specified points in New York. John J. Brady, Jr., 75 State Street, Albany, NY 12207 Attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-18914 Filed 12-27-71;8:51 am]

NATIONAL ADVISORY COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH

ADVICE, CONSULTATIONS, AND RECOMMENDATIONS UNDER WILLIAMS-STEIGER OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Notice of Meeting Open to the Public

Notice is hereby given that the next meeting of the National Advisory Committee on Occupational Safety and Health will commence at 9 a.m., on January 4 and 5, 1972, in the Department of Health, Education, and Welfare, North Building, 330 Independence Avenue SW., Washington, D.C.

The National Advisory Committee on Occupational Safety and Health is established under section 7(a) of the Williams-Steiger Occupational Safety and Health Act (29 U.S.C. 656). The Committee is directed to advise, consult with, and make recommendations to the Secretary of Labor and the Secretary of Health, Education, and Welfare on matters relating to the administration of the Act.

The meeting of the Committee shall be open to the public. A verbatim transcript shall be kept. The transcript shall be available for public inspection and copying at the office of the Committee's Executive Secretary, which is located in Room 1120, 1726 M Street NW., Washington, DC. Copies may also be obtained by making arrangements at the meeting with the Executive Secretary. If copies are subsequently requested, the applicants shall be referred to the reporting service.

Signed at Washington, D.C., this 22d day of December 1971.

ROGER W. GRANT,
Executive Secretary.

[FR Doc.71-18865 Filed 12-27-71;8:46 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docketa Nos. 19373-19374; FCC 71-1262]

CALOJAY ENTERPRISES, INC., AND COMMUNITY COMMUNICATIONS CORP.

Order Designating Applications for Consolidated Hearing on Stated Issues

In regard applications of Calojay Enterprises, Inc. [WTLC(FM)], Indianapolis, Ind., for renewal of license Community Communication Corp., Indianapolis, Ind., for construction permit, Docket No. 19373, File No. BRH-1212; Docket No. 19374, File No. BPH-7173.

1. Now under consideration are: (a) The captioned applications of Calojay Enterprises, Inc. (Calojay), and Community Communications Corp. (CCC) for authority to operate an FM broadcast station on channel 289, Indianapolis, Ind.; (b) a petition to deny CCC's application filed by Calojay; and (c) opposition, reply and related pleadings.[1]

2. Calojay is the present licensee of FM broadcast station WTLC, Indianapolis, Ind., which operates on channel 289. Its current application for renewal of station WTLC(FM) was filed on May 4, 1970. On June 29, 1970, CCC filed its present application for a new commercial FM broadcast station to operate on channel 289, Indianapolis. The pleadings filed by Calojay in opposition to CCC's application allege that CCC has failed to demonstrate its financial qualifications; that the First National Bank and Trust Company of Plainfield, Ind., is an undisclosed party to CCC's application; and that CCC's proposed transmitter site does not meet certain technical requirements.[2]

3. We find that CCC will require funds of at least $130,564 to construct and operate the proposed station for three months, as follows: equipment not covered by deferred credit, $589; down payment on equipment, $14,000; first-year principal payments on equipment, $14,000; first-year interest payments on equipment, $4,900; interest payments on bank loan, $9,000; preoperating expenses, $15,000; 3-months' operating expenses, $53,075;[3] and miscellaneous expenses, $20,000. To meet this requirement CCC claims the availability of $1,000 cash, stock subscriptions of $35,000, and a $100,000 bank loan from the First National Bank and Trust Company of Plainfield, Ind. (First National). The availability of the cash has been established. Each of the stock subscribers has submitted a loan agreement from First National in sufficient amount to enable him to purchase his stock. Where a loan runs to a stock subscriber, not to the applicant, it is not necessary to specify the terms of repayment of that loan. All that is required is that a balance sheet be submitted by the subscriber giving us a basis for determining whether the bank could reasonably make such a loan. All the subscribers have submitted adequate balance sheets except Mr. Ralph E. Hanley, who has submitted none. We are therefore unable to determine whether Mr. Hanley will be able to meet his $2,700 commitment. Accordingly, CCC has established the availability of $32,300 from stock subscriptions.

[1] Supplements to Calojay's petition to deny, accompanied by appropriate motions for leave to supplement, were filed Aug. 19, 1970, and Oct. 13, 1970. An opposition to the second supplement was filed by CCC, and a reply by Calojay. We hereby grant Calojay's motions for leave to supplement and will consider all of the above pleadings on their merits.

[2] A site availability issue has become moot in view of subsequent amendments.

[3] This figure was derived from CCC's exhibit 4 to section III of its application. Adjustments were made, however, to reflect that our computations have segregated interest on the bank loan. We have historically used a 1-year standard for cost of capital. We have also adjusted the operating costs to reflect the higher estimate for lease expenses for the studio and transmitter space indicated by CCC in a subsequent pleading.

4. As originally filed, the $100,000 commitment from First National was at 9 percent annual interest rate, with no principal payments coming due within 12 months. The commitment is contingent upon the grant of the application and "no adverse changes in existing situations." The terms of the loan were later clarified to indicate that the security for the loan would be the guarantee of each of the principals, who have indicated their willingness to undertake that guarantee; that other terms will be determined at the time the loan is taken down, but that those terms will be similar to those the bank makes in its usual business loans; and that the entire loan will not be recalled at the end of the 1-year moratorium on principal payments. Calojay alleges that the quoted contingency makes the bank letter less than a firm commitment and that the terms of repayment of the loan are not adequately set out in that there is no period indicated within which the loan must be repaid. We understand that most bank commitments filed in applications do not contain all the details that will be worked out at the time the loan is made. Our concern goes primarily to those aspects that reflect on the applicant's financial qualifications and that might reflect on the control of the applicant. This latter aspect will be further discussed in paragraph 9, below. We agree with Calojay that the present bank letter does raise questions as to its availability. If the phrase "no adverse changes in existing situations" was tied to the financial situation of the principals of CCC, we would raise no question. However, the phrase is not so restricted and could apply to "situations" beyond the applicant's control. Accordingly, an issue as to the availability of the loan will be specified. Turning to Calojay's second allegation, the typical loan commitment includes the number of years or months over which the loan is to be repaid. The question here is whether the absence of the period allowed for repayment complies with our requirement, set out in paragraph 4(e), section III of the application form, that the bank commitment specify the "terms of payment or repayment" of the loan. The goal of our financial standards is to provide a reasonable assurance that a particular applicant will be able to operate a proposed station on a continuing basis. A bank loan repayable in a short period is a factor we wish to consider in making our determination. We therefore believe that a bank commitment that fails to specify the period of time over which the loan must be repaid, without more, does not adequately describe the terms of repayment. Accordingly, an appropriate issue will be specified.

5. We usually require applicants for new facilities to demonstrate the availability of sufficient funds to construct and operate a proposed station for 1 year. If revenues are proposed to meet part of the first-year operating expenses, firm advertising commitments must be submitted. However, in situations where a new applicant is competing against an applicant for renewal of license of a station with an established record of revenues, our former less stringent standard has been applied. That is, the applicant must show the availability of sufficient funds to construct and operate the proposed station for three months without revenues. Calojay contends that the 1-year standard should apply to CCC for essentially two reasons. First, the station does not have a long enough record of established revenues. And second, CCC plans to modify the station's format so that the revenues available to CCC will decrease. We accept neither proposition. CCC proposes to continue programing that is oriented toward the Black population of Indianapolis. Thus, we are not confronted with a substantially different format. While it is true that CCC will present higher percentages of news and public affairs programing,[4] and proposes some change in the format, we do not believe that the differences are such that a significant change in available revenues will occur. Calojay's assertions to the contrary are too general to lead us to a different conclusion.

6. Calojay cites Azalea Corporation, FCC 67-756, 10 R.R. 2d 717 (Rev. Bd. 1967) in support of applying the 1-year standard to CCC. In that case, however, the station whose license renewal was sought had been silent for 1 year. We indicated that it was reasonable to assume that advertisers and the station's audience had gone elsewhere. This was especially true since another station in the market had adopted the format of the silent station. In contrast, station WTLC (FM) continues to operate and there is no other station in Indianapolis with the same format. We are also of the view that the station's history of revenues is long enough[5] and the revenues generated substantial enough to warrant the use of the 3-month standard. We conclude that if CCC can demonstrate the availability of sufficient funds to construct and operate the proposed station for 3 months without revenues, we will have been provided with a reasonable assurance that the station can be operated by CCC on a continuing basis.

7. Our analysis in paragraph 3, above, found CCC's 3-month operating expenses to be $53,075, or an annual budget of $212,300. Calojay alleges that CCC has seriously underestimated its operating expenses. In support of its position, it has submitted an affidavit of Mr. Thomas W. Mathis, the general manager of station WTLC(FM). We note that economically viable FM operations vary widely as to the number of employees, expenses, and the ratio of expenses to employees. Thus, a comparison of CCC's proposed expenses with those of Calojay would not necessarily establish deficiencies in CCC's proposal where differences in various expenses appear. While Mr. Mathis' experience is entitled to weight, that experience must be brought to bear on CCC's proposed operation, including the specific allegations of fact required by section 309(d) of the Communications Act. A statement that the $153,000 allocated by CCC to sales, wages and taxes represents "a bare minimum" is not a specific allegation raising a question to be resolved in hearing. Mr. Mathis has also set out a list of expenses incurred by Calojay that CCC has allegedly failed to include in its estimated expenses. However, the $6,000 Mr. Mathis alleges has been "omitted" for utilities would appear to be included in the $15,000 budgeted for technical expenses; much of the $5,335 "omitted" for telephone and telegraph would appear to be included in the funds allocated to obtaining news service; most of the $4,899 "omitted" for office and building maintenance would not be applicable to CCC since it proposes to lease both studio and transmitter space; and the bulk of the $3,565 "omitted" by CCC for legal and accounting services would appear to be included in the $12,500 set aside for legal fees. Other smaller items listed by Mr. Mathis appear to fall well within the $10,000 allocated to general and administrative expenses. Mr. Mathis also states that Calojay had to write off $12,000 in bad debts in 1969 and, therefore, suggests this to be an additional omission on CCC's part. However, bad debts are an outgrowth of the sale of commercial time, valued at $224,752 in Calojay's case. If we are to assume that a bad debt reserve is required, we must also assume that the revenues are available. Their availability would only serve to support CCC's financial qualifications. Thus, we are faced with a situation where the estimated expenses appear well within the normal range for an FM station,[6] but which are challenged by allegations that are not sufficiently specific to require the broad financial inquiry sought by Calojay.

8. There is one aspect of CCC's financial plan, the rental costs of the transmitter-antenna-studio site in the Merchants National Bank Building,

[4] Both applicants propose to operate 168 hours per week. The breakdown of their respective programing is as follows:

	Calojay	CCC
	Percent	
News	7.44	12.5
Public affairs	1.99	2.5
Other, exclusive of entertainment and sports	4.17	5.3

[5] Calojay has made part of the public record station WTLC(FM)'s Form 324's for the years 1967-69. It should be noted, however, that the station's license was transferred to Calojay (BTC-5431) in December 1967, and that the prior licensee had a substantially different format (classical music). Thus, the first full year of operation was 1968, and the revenues for that year would indicate the beginning year as to acceptance of the new format. The Form 324 for 1970, was filed after the pleadings and is not part of the public record. However, revenues and profits for that year show substantial increases. The 1968-69 Form 324's reflect the following:

	1968	1969
Revenues	$130,115	$224,752
Expenses	156,572	232,543
Losses	(17,457)	(7,791)
Depreciation	4,924	9,859
Payments to principals	14,820	0
Cash flow	1,287	2,068

[6] It is interesting to note that CCC's proposed budget, albeit with a slightly larger staff, is very close to Calojay's 1969 total revenues.

about which Mr. Mathis' allegations are sufficiently specific. However, the increase in CCC's costs over the 3-month period, from $1,825 to $3,500, will be absorbed by the surplus of funds available to CCC, assuming an appropriate resolution of the questions pertaining to the bank loan. Thus, no financial issue is required on this score.

9. Calojay also requests the designation of an issue which would determine whether the First National Bank is an undisclosed party to the CCC application because it has offered to loan CCC and its principals essentially all of the funds required for their proposed station. However, both CCC and First National have stated that the only security for the loans is the guarantee of the principals that there has been no pledge of CCC's stock to First National, and that First National has no interest in acquiring control over CCC in any event. Calojay's contentions in this regard are based solely on conjecture, and lack specific allegations of fact. The case cited by Calojay in support of its position[7] involved a situation where there were specific allegations as to the degree of control of the licensee that went beyond that of lender-borrower. That is not the case here and no issue will be specified, General Media Television, Inc., 29 FCC 2d 482, 21 R.R. 2d 1183 (1971).

10. Finally, Calojay raises questions as to whether or not CCC's proposed antenna location complies with § 73.315 of the Commission's rules. CCC proposes to sidemount its antenna on the tower of station WNAP(FM), atop the Merchants National Bank Building in downtown Indianapolis. The Merchants National Bank Building is located approximately one quarter of a mile north and slightly east of the Indiana National Bank Tower (INB Tower), a building 155 feet taller than the center of radiation of CCC's antenna. Calojay contends that the presence of the INB Tower would so obstruct the signal of CCC's proposed station that it would fail to place a predicted 3.16 mv/m minimum field strength signal over the entire community of Indianapolis as required by § 73.315(a) of the rules. The INB Tower subtends an arc of only 8°, and when CCC's 3.16 mv/m contour is calculated by the method specified in § 73.313(c) of the Commission's rules, this contour does encompass the entire city of Indianapolis. Calojay, however, has attempted to challenge this conclusion by using a supplementary method of calculation based upon Technical Note No. 101 (revised), "Transmission Loss Predictions for Tropospheric Communication Circuit," National Bureau of Standards, January 1, 1967. Section 73.313(e) of the rules permits the use of supplementary showings in areas of widely uneven terrain in situations where our normal method of calculation may be substantially misleading, but such is not the case in Indianapolis where the terrain is level and CCC's antenna site provides line-of-sight coverage over all of the city except the 8° arc blocked by the INB Tower.

11. Although § 73.315(b) of the rules states that an antenna location should be chosen so that there would be no major obstructions in the line-of-sight from the antenna over the principal city to be served, this section is not intended to prohibit an applicant from selecting a partially obstructed antenna location. The Goodwill Station, 25 FCC 2d 159, 189 (1958), and a § 73.315(b) issue will only be specified where there is substantial evidence that an applicant's coverage estimates are unrealistic. For example, in BBPS Broadcasting Corporation, 5 FCC 2d 969 (Rev. Bd. 1966), a petitioner conducted ground profile studies along 11 radials to demonstrate that more than one-half of the applicant's city of license would be shadowed by a land barrier which extended over a 55° arc.[8] In the present instance, Calojay has presented only scant and questionable evidence that CCC's proposed antenna site, which is located within the proposed city of license, would result in undue shadowing. Accordingly, we are of the opinion that it is not necessary to designate a § 73.315(b) issue against CCC or to require CCC to conduct additional propagation tests under § 73.315(d) of the rules.[9]

12. The data submitted by Calojay and CCC indicate that there would be significant differences in the size of the areas and populations which would receive service from their respective proposals. Consequently, for the purposes of comparison, the areas and populations which fall within the respective 1 mv/m contours, together with the availability of other primary aural service (1 mv/m for FM) in such areas will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

13. Station WTLC(FM)'s transmitter is located 95 miles from that of station WPFB–FM, Middletown, Ohio. Under our present rules, § 73.207, 105 miles would be required, but the existing spacing between stations WTLC(FM) and WPFB–FM was exempt when our present standards were adopted. The site proposed by CCC is 99 miles from that of station WPFB–FM. Since the spacing between the two stations will be improved, we shall provide that the provisions of § 73.207 will be waived in the event of a grant of CCC's application.

14. Calojay Enterprises, Inc., is qualified to continue to own and operate FM station WTLC(FM), and except as indicated below, Community Communications Corporation is also qualified to construct, own and operate a new FM broadcast station on channel 289, Indianapolis, Indiana. The applications are, however, mutually exclusive in that operation by both applicants as proposed would result in mutually destructive interference. We are, therefore, unable to make the statutory finding that a grant of both applications would serve the public interest, convenience and necessity, and they must be designated for hearing in a consolidated proceeding on the issues set forth below.

15. *Accordingly, it is ordered*, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications of Calojay Enterprises, Inc., and Community Communications Corp. are designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent Order, on the following issues:

(1) To determine with respect to Community Communications Corporation:

(a) Whether a $100,000 loan will be available and, if so, the period over which the loan must be repaid;

(b) In light of the evidence adduced under (a) above whether Community Communications Corp. is financially qualified.

(2) To determine which of the proposals would better serve the public interest.

(3) To determine, in light of the evidence adduced under the above issues, which of the applications should be granted.

16. *It is further ordered*, That the petition to deny filed by Calojay Enterprises, Inc., is granted to the extent indicated above, and is denied in all other respects.

17. *It is further ordered*, That in the event the application of Community Communications Corporation is granted, the provisions of § 73.207 are waived to permit operation from the proposed transmitter site.

18. *It is further ordered*, That the applicants shall file a written appearance stating an intention to appear and present evidence on the specified issues, within the time and in the manner required by § 1.221(c) of the rules.

19. *It is further ordered*, That the applicants shall give notice of the hearing, jointly if feasible, within the time and in the manner specified in § 1.594 of the rules, and shall seasonably file the statement required by § 1.594(g).

Adopted: December 15, 1971.

Released: December 21, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[10]

[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-18891 Filed 12-27-71;8:48 am]

[7] "WLOX Broadcasting Company v. FCC," 260 F. 2d 712, 17 R.R. 2120 (D.C. Cir. 1958). In another case cited by Calojay, Medford Broadcasters, Inc., 16 FCC 2d 684, 15 R.R. 2d 780 (Rev. Bd. 1969), the Review Board declined to add a real-party-in-interest issue because the petitioner had failed to show that the loan was "based on other than a normal creditor-debtor relationship between friends," 16 FCC 2d at 685, 15 R.R. 2d at 782.

[8] See also, El Camino Broadcasting Corporation, 10 FCC 2d 505, 11 R.R. 2d 607 (Rev. Bd., 1967).

[9] CCC proposes to mount its antenna on the side of an existing tower. This practice is very common. In fact, Calojay's existing antenna is side mounted. Nonetheless, Calojay claims that this side mounting often results in a distorted radiation pattern. No specific evidence has been alleged as to how CCC's proposal would violate the Commission's rules. We know that side mounting may cause a distorting effect. Absent a showing that such distortion violates our rules, no further inquiry is warranted.

[10] Commissioner Bartley concurring in the result; Commissioner Johnson absent.

[Dockets Nos. 19375, etc.; FCC 71-1263]

CAPE FEAR BROADCASTING CO. ET AL.

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

In regard applications of: Cape Fear Broadcasting Co. (WFNC), Fayetteville, N.C., has CP: 940 kc., 1 kw., 50 kw.-LS, DA-2, U, requests: 940 kc., 1 kw., 50 kw.-LS, DA-N, U, for modification of construction permit, Docket No. 19375, File No. BMP-12791, Virginia Peninsula Broadcasting Corp., Newport News, Va., requests: 940 kc., 1 kw., day, Docket No. 19376, File No. BP-18659, Vernon H. Baker, trading as, Town and Country Radio, Smithfield, Va., requests: 940 kc., 5 kw., DA, day, for construction permits, Docket No. 19377, File No. BP-18660.

1. The Commission has before it: (i) The above-captioned mutually exclusive applications; (ii) the petition for special temporary authority and conditional grant of modification of outstanding construction permit, filed August 4, 1970, by Cape Fear Broadcasting Co. (Cape Fear), licensee of standard broadcast station WFNC, Fayetteville, N.C.; (iii) the opposition to petition filed August 19, 1970, by Virginia Peninsula Broadcasting Corp. (Peninsula); and, (iv) the reply to opposition filed August 31, 1970, by Cape Fear.

2. In October of 1959, the Commission designated the mutually exclusive applications of The Tidewater Broadcasting Co. and Edwin R. Fischer for new class II daytime only AM stations to operate on 940 kilocycles with 10,000 watts of power and a nondirectional antenna for comparative hearing.[1] This matter was eventually resolved in The Tidewater Broadcasting Co., Inc., 12 FCC 2d 471 (1968), rehearing denied, 14 FCC 2d 646 (1968), affirmed, "Edwin R. Fischer v. F.C.C.," 417 F. 2d 551 (1969), wherein both applications were denied because of their failure to comply with the Commission's policy statement on section 307(b) considerations for standard broadcast facilities involving suburban communities, 2 FCC 2d 190 (1965).[2] The Commission, however, waived the rule (section 1.519) prohibiting repetitious proposals so as to permit the applicants and other interested parties to file new applications for the same or different communities. The present applications are the successors to that proceeding.

3. Station WFNC is a class II station operating on 940 kilocycles with 10 kilowatts of power during the daytime and 1 kilowatt at night. On November 19, 1965, Cape Fear filed an application (BP-17017) to increase its daytime power to 50 kilowatts and to use a directional antenna which was granted in Cape Fear Broadcasting Co. (WFNC), 12 FCC 2d 736 (1968). However, Cape Fear has not yet constructed these facilities due to the fact that the Tidewater decision was released 1 month after it obtained its authorization, thereby allowing it to file an application for an omnidirectional 50-kilowatt operation which could not have been filed previously because it would have been mutually exclusive with the pending Tidewater Broadcasting Co. application which at that time was entitled to protected status. Cape Fear now requests a conditional grant of its application under section 1.592 of the Commission's rules,[3] or alternatively, a waiver of that section, so as to permit it to operate its proposed omnidirectional facilities on an interim basis. In support of this request, Cape Fear alleges that: A conditional grant would not prejudice the other applicants in hearing and might serve to prevent economic waste; the other applications are defective and not likely to be successful in hearing; and, a conditional grant would bring an additional primary service to 16,000 persons above and beyond the 276,920 persons who would benefit from Cape Fear's presently authorized, but unbuilt, 50 kilowatt directional operation. In opposition to Cape Fear's request, Peninsula claims that a conditional grant would violate its right to a full and fair hearing under the Ashbacker doctrine,[4] and that there appears to be no compelling public need for an interim operation in this case, as Cape Fear's proposed gain area is not underserved.

4. The Commission may in some circumstances award an interim authorization to one of several competing applicants without a full Ashbacker hearing when it is clear that the public interest would thus be served, however, this public interest must be such as to outweigh any prejudical impact an interim grant might have on the decision concerning the regular operation, "Community Broadcasting Co. v. F.C.C.", 274 F. 2d 753 (1960); "Beloit Broadcasters, Inc., v. F.C.C., 365 F. 2d" 962 (1966). Thus, the primary question to be resolved is whether or not the public interest requires the prompt establishment of Cape Fear's omnidirectional facilities for an indefinite interim period. We conclude that there is no such pressing public need for an additional standard broadcast signal in Cape Fear's proposed gain area. It is true that we previously found that Cape Fear's 50 kilowatt directional operation would serve the public interest by bringing a new primary service to 276,920 persons residing in an area of 5,608 square miles, but we also noted that this area is not an underserved area and that a large majority of the population there receives from three to sixteen other primary services, Cape Fear Broadcasting, supra., 738.[5] This appears to be even more the case with the 16,000 additional persons who would receive another primary service as a result of Cape Fear's proposed omnidirectional operation, as the majority of them reside in the vicinity of the urban areas of Raleigh, Goldsboro, and Wilmington, N.C.

5. It should also be noted that Cape Fear has filed several applications for extensions of time within which to complete construction of its directional facilities, and the Commission has routinely granted these applications on the basis that it would cost Cape Fear some $47,500 to build another antenna tower and acquire equipment which would not be needed in the event it is eventually granted authority to operate omnidirectionally. By allowing Cape Fear such discretion in determining when station WFNC will commence its authorized 50-kilowatt directional service, the Commission is not only seeking to prevent economic hardship, but is implicitly stating that there is no pressing need for the immediate activation of this service.

6. Cape Fear further alleges that it should be granted interim authority because neither of the other two applicants is likely to prevail in hearing due to the fact that their applications do not comply with the Commission's rules and policies, and points out that the Commission in the Tidewater case, supra, in waiving § 1.519 of the rules to allow the parties to file repetitious applications, stated that their new applications should be realistically designed to serve the needs of their specified communities and:

> * * * may specify the same or a different community, so long as they comply with all of the technical provisions of our rules including §§ 73.30, 73.21, and 73.188(b) (1) and (2) for stations in that community. 479.

Cape Fear claims that Peninsula's application does not comply with § 73.188(b) (1) and (2) in that it does not provide for coverage of the business and residential areas of Newport News with a sufficiently strong signal, but no such defect appears in the Town and Country Radio application. Cape Fear

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[1] FCC 59-1079. The Tidewater Broadcasting Co. proposed a station which would serve Smithfield, Va., while Edwin R. Fischer proposed to serve Newport News, Va. The present applicants are now proposing to serve the same two communities.

[2] It was found, among other things, that the operation of both of the proposed stations would have involved extensive penetration of the larger communnity of Norfolk, Va., by the proposed 5 mv/m contours.

[3] Section 1.592 provides in pertinent part:

(a) Where a grant of an application would preclude the grant of any application or applications mutually exclusive with it, the Commission may, if the public interest will be served thereby, make a conditional grant of one of the applications and designate all of the mutually exclusive applications for hearing * * * Such conditional grants will be issued only where it appears: * * *

(2) That public interest requires the prompt establishment of broadcast service in a particular community or area; or, * * *

(4) That a grant of one application would be in the public interest, and that it appears from an examination of the remaining applications that they cannot be granted because they are in violation of provisions of the Communications Act, other statutes, or the provisions of this chapter.

[4] "Ashbacker Radio Corp., v. F.C.C.", 326 U.S. 327 (1945).

[5] Only 3,379 persons will receive a second primary service as a result of Cape Fear's authorized 50-kilowatt directional operation and only 2,767 persons will receive a third primary service.

contends, however, that Town and Country has still not submitted a realistic proposal to serve the city of Smithfield because its 5 mv/m contour would penetrate the city of Newport News, and that such penetration was one of the grounds upon which its predecessor application was denied. According to Cape Fear, the Commission should therefore make a prehearing finding that this penetration will once again disqualify the Smithfield applicant. We do not believe an interim operation should be granted on this basis. Having waived § 1.519 and accepted Town and Country's application, we are now bound to accord all of the applicants in the hearing their full range of procedural rights. A judgment as to whether Town and Country is realistically proposing to serve Smithfield or Newport News should be made after we have had an opportunity to review all of the evidence pertaining to that issue. Likewise, Peninsula will be given an opportunity to establish that it can either meet the coverage requirements or justify a waiver of the rules. Although Cape Fear was prevented from applying for an omnidirectional operation in the first instance due to conditions beyond its control, neither were the developments in this case within the control of any single party, and Cape Fear is not entitled to a conditional grant as a matter of right merely because it has demonstrated that no particular harm would result from such a grant. Since there is no urgent public need or interest which would warrant a waiver of section 1.592 in this case, Cape Fear's request will be denied.

7. As noted in paragraph 2, supra, the two previous applications were denied because they failed to meet the standards set out in the Commission's 307(b)—suburban policy. Likewise, since the proposed 5 mv/m contours of both the Peninsula and Town and Country applications penetrate Norfolk and Newport News,* respectively, a presumption that they are realistically proposing to serve the larger communities rather than their specified communities arises under the aforementioned 307(b)—suburban policy. Since the applicants have not attempted to rebut that presumption at the prehearing stage, appropriate issues will be included in the forthcoming hearing.

8. Examination of Peninsula's application indicates that it does not provide 5 and 25 mv/m coverage of the residential and business districts of Newport News as required by § 73.188(b) (1) and (2) of the rules. Peninsula has requested a waiver of the rule, but we believe that an issue should be specified so that the matter can be explored in hearing.

9. Peninsula estimates that it will need $88,575 to construct and operate the station for 1 year without revenue. To meet this expense, it relies upon a $100,000 bank loan. The bank loan commitment letter, however, is not current and does not specify the terms of repayment as required by the instruction to section III of the application form. Thus, a financial issue with respect thereto will be included.

10. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

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

(1) To determine the areas and populations which would receive primary service from the proposals of Virginia Peninsula Broadcasting Corp. and Town and Country Radio and the availability of other primary aural service (1 mv/m or greater in the case of FM) to such areas and populations.

(2) To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of station WFNC and the availability of other primary aural service (1 mv/m or greater in the case of FM) to such areas and populations.

(3) To determine the terms and conditions of the loan to Virginia Peninsula Broadcasting Corp., whether it is still available, and, in light thereof, whether the applicant is financially qualified.

(4) To determine whether the proposal of Virginia Peninsula Broadcasting Corp. will realistically provide a local transmission facility for its specified station location or for another larger community, in light of all the relevant evidence, including, but not necessarily limited to, the showing with respect to:

(a) The extent to which the specified station location has been ascertained by the applicant to have separate and distinct programing needs;

(b) The extent to which the needs of the specified station location are being met by existing aural broadcast stations;

(c) The extent to which the applicant's program proposal will meet the specific unsatisfied programing needs of its specified station location; and

(d) The extent to which the projected sources of the applicant's advertising revenues within its specified station location are adequate to support its proposal, as compared with its projected sources from all other areas.

(5) To determine, in the event that it is concluded pursuant to the foregoing issue that the proposal will not realistically provide a local transmission service for its specified station location, whether such proposal meets all of the technical provisions of the rules for standard broadcast stations assigned to the most populous community for which it is determined that the the proposal will realistically provide a local transmission service, namely Norfolk, Va.

(6) To determine whether the proposal of Town and Country Radio will realistically provide a local transmission facility for its specified station location or for another larger community, in light of all the relevant evidence, including, but not necessarily limited to, the showing with respect to:

(a) The extent to which the specified station location has been ascertained by the applicant to have separate and distinct programing needs;

(b) The extent to which the needs of the specified station location are being met by existing aural broadcast stations;

(c) The extent to which the applicant's program proposal will meet the specific unsatisfied programing needs of its specified station location; and

(d) The extent to which the projected sources of the applicant's advertising revenues within its specified station location are adequate to support its proposal, as compared with its projected sources from all other areas.

(7) To determine, in the event that it is concluded pursuant to the foregoing issue that the proposal will not realistically provide a local transmission service for its specified station location, whether such proposal meets all of the technical provisions of the rules for standard broadcast stations assigned to the most populous community for which it is determined that the proposal will realistically provide a local transmission service, namely Newport News, Va.

(8) To determine whether the proposal of Virginia Peninsula Broadcasting Corp. would provide coverage of Newport News as required by § 73.188(b) (1) and (2) of the rules, and, if not, whether circumstances exist which would warrant a waiver.

(9) To determine, in light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

(10) To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to section 307(b), which of the operations proposed in the above-captioned applications would, on a comparative basis, better serve the public interest.

(11) To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if any, of the applications should be granted.

(12) *It is further ordered*, That the petition for special temporary authority and conditional grant filed by Cape Fear Broadcasting Co. is denied.

(13) *It is further ordered*, That, in the event of a grant of the application of Cape Fear Broadcasting Corp., the construction permit shall contain the following condition:

Permittee shall submit new common point impedance measurements and sufficient field intensity measurement data to show clearly that the nighttime directional antenna array remains adjusted within authorized limits.

(14) *It is further ordered*, That, in the event of a grant of the application of Virginia Peninsula Broadcasting Corp., the construction permit shall contain the following conditions:

*The 1970 populations of Norfolk, Newport News, and Smithfield are 307,951, 138,177, and 2,713, respectively.

Suitable isolation filters and other required equipment shall be installed to prevent interaction between the permittee's operation and that of station WTID. Prior to such installation, the licensee of station WTID shall have determined the operating power of WTID by the indirect method. Upon completion of the installation and adjustment thereof, the antenna resistance of station WTID shall be remeasured and this data, accompanied by a redescription of the modified WTID antenna system, shall be submitted with FCC Form 302 requesting authority to determine the operating power of station WTID by the direct method.

Before issuance of a license, the permittee shall, in addition to the requirements of § 73.45(e)(1) of the Commission's rules, make field observations or measurements to clearly demonstrate that the operation of the two stations with the same antenna does not result in spurious radiation to the extent that interference results to each other as well as to other radio services.

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

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

Adopted: December 15, 1971.

Released: December 21, 1971.

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

[FR Doc.71-18892 Filed 12-27-71;8:49 am]

[Docket No. 18935; FCC 71-1242]

WESTERN UNION TELEGRAPH CO.

Order Regarding Suspension of Tariff

In the matter of Western Union Telegraph Co., Tariff FCC No. 254 Autodin service, Docket No. 18935.

1. The Commission has before it a petition filed on behalf of the Department of Defense (DOD) on October 29, 1971, for suspension and investigation of, and for an accounting order for, The Western Union Telegraph Co.'s Tariff FCC No. 254, 100th Revised Page 1, 13th Revised Page 238, 11th Revised Page 240, 12th Revised Page 241, and 10th Revised Page 242, filed by Western Union on August 13, 1971, by Transmittal No. 6642, to become effective on September 16, 1971, with certain provisions to become effective on October 16, 1971. The effective dates of the proposed tariff revisions were postponed by Western Union until November 13, 1971, pursuant to the order of the Commission which was in furtherance of the President's Wage-Price Freeze. While certain of the tariff material did become effective on November 13, 1971, Western Union deferred the general effective date from November 13 to December 13, 1971, by Transmittal No. 6672.

2. The tariff revisions of Western Union listed above which are objected to by DOD would result in increased charges for Autodin service, of which DOD is the sole user, of approximately $1.8 million annually.

3. DOD alleges that the increased charges reflected in the tariff revisions in question are unreasonable and unjust and therefore unlawful. DOD contends that an undue burden is placed on the customer since the tariff changes result in increases in rates without any change in service or other justification. It is further argued that Western Union has failed to provide certain cost detail of certain equipment and services to justify an increase in rates; that the mathematical factor for plant supervision expense has unlawfully risen from 34.06 percent to 68.22 percent, which when applied to the base of installation labor unreasonably and therefore unlawfully inflates such base yielding an unreasonable rate increase; that further unlawful increases result when the mathematical factor for the fixed annual charges and for the supporting plant elements of the rate base are applied to the allegedly inflated base in computing recurring Autodin charges; that Western Union has consistently overcharged the Department of Defense for maintenance and that the present tariff revisions increase these charges even more; and finally, that these tariff revisions are unreasonable when considering that the EMOD-1 modernization program for Autodin was originally set up as being entirely cost effective.

4. In its responsive pleading, Western Union asserts that DOD has failed to demonstrate how the revised rates are unreasonable and unlawful. Western Union states that, based on facts gained from actual operating experience, the increases in rates for the EMOD-1 (Evolutionary Modernization of the Autodin service) program would reflect more closely the costs pertaining to the EMOD-1 equipment. In specific contradiction to DOD's allegations, Western Union contends that they have properly identified the detail cost elements of the equipment in question; that the total cost figure for such equipment (as well as the breakdown of such sum) was explained to DOD and is fully supportable by commitments to subcontractors and applicable taxes; that the increase from a 34.06 percent to a 68.22 percent factor for plant supervision expense is an appropriate expense and reflects that initial pricing estimates may need change to accord with facts as developed through actual operating experience; that DOD did not present the full picture regarding such factor increase in that DOD failed to mention decreases in other factors; that the amount of maintenance required for the equipment is a matter of engineering judgment derived from experience and that the increase in the annual maintenance charge reflects such judgment resulting from actual experience; and that DOD's arguments as to the unreasonableness of the proposed charges are based on selective reference to a few constituent components of the charges and do not show unreasonableness of the overall charges for the items of equipment. Western Union requests that the DOD petition be denied or that, if a suspension is ordered, it be for 1 day only, subject to an appropriate accounting order.

5. The Commission has reviewed the contentions herein, the proposed tariff revisions and the currently effective tariff schedules applicable to Autodin service, of which DOD is the sole user, and is of the opinion that there are provisions in the revised tariff schedules that present questions as to whether the provisions in such tariff schedules are or will be lawful within the meaning of section 201(b) of the Communications Act of 1934, as amended.

6. On the basis of the cost support data and information that we have at our disposal at this time, we are unable to determine whether or not the proposed tariff schedules are just and reasonable and otherwise lawful. Pending hearing and decision thereon we feel that the proposed tariff revisions referred to above should be permitted to become effective on December 14, 1971, after a 1-day suspension and the institution of an accounting order which will protect the rights of both Western Union and DOD. This, in our opinion, will best serve the public interest.

7. It is also our view that the principles and factors to be resolved concerning these tariff revisions are related to other Western Union tariff revisions pertaining to Autodin service now under investigation by us in this docket. In fact, the tariff pages in question here are automatically subject to this investigation (Docket No. 18935) as they represent reissues and amendments of tariff pages included in the original order of investigation in this proceeding. Reissues and amendments of such pages were specifically included in this investigation.

8. Accordingly, in view of the foregoing considerations: *It is ordered*, That, 100th Revised Page 1, 13th Revised Page 238, 11th Revised Page 240, 12th Revised Page 241, and 10th Revised Page 242 of The Western Union Telegraph Co. Tariff FCC No. 254, and any amendments thereto and reissues thereof, already included in the present proceeding and subject to the issues in this proceeding, are hereby suspended until December 14, 1971, and that Western Union shall, in

[1] Commissioner Johnson absent.

the case of all increased charges and until further order of the Commission, keep accurate account of all amounts received by reason of such increase.

Adopted: December 10, 1971.

Released: December 13, 1971.

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

[FR Doc.71-18848 Filed 12-27-71;8:46 am]

FEDERAL MARITIME COMMISSION

[No. 71-87]

ASSOCIATED LATIN AMERICAN FREIGHT CONFERENCES AND ASSOCIATION OF WEST COAST STEAMSHIP COMPANIES

Tariff Rules Regarding Wharfage and Handling Charges; Enlargement of Time for Filing Replies

DECEMBER 21, 1971.

Counsel for the Port of New York Authority has requested one-week enlargement of time to December 30, 1971, to file reply affidavits and memoranda in this proceeding. Request is made also on behalf of the States of New York and New Jersey and the city of New York. Counsel advises that Hearing Counsel favor the request. Counsel for respondents opposes the extension in part seeking to limit it to December 28, 1971.

A one-week extension of time would not be unreasonable under the circumstances and will not unduly delay the final disposition of this proceeding. Accordingly, time within which reply affidavits and memoranda of law may be filed by interveners in opposition to respondents and Hearing Counsel is enlarged to and including December 30, 1971.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-18922 Filed 12-27-71;8:51 am]

FOSS LAUNCH & TUG CO., AND FOSS ALASKA LINE, INC.

Application for Exemption

Notice is hereby given that the following application for exemption has been filed with the Commission for approval pursuant to section 35 of the Shipping Act, 1916, as amended (80 Stat. 1358, 46 U.S.C. 833a).

Interested parties may inspect and obtain a copy of this application at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Washington, DC Room 1015; or may inspect a copy of the application at the Field Offices, New York, N.Y.; New Orleans, La.; and San Francisco, Calif. Comments with reference to the application including a request for hearing if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573 within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement shall also be forwarded to the party filing the application (as indicated hereinafter), and the comments should indicate that this has been done.

Notice of application filed by:

Edward G. Lowry, III, Bogle, Gates, Dobrin, Wakefield & Long, 14th Floor, Norton Building, Seattle, Wash. 98104.

Application designated Exemption No. 12 is hereby made pursuant to section 35 of the Shipping Act, 1916, for exemption from the Intercoastal Shipping Act, 1933, and the Shipping Act, 1916, and regulations applicable thereunder for the carriage of general cargo between Seattle, Wash., and the Arctic Coast of Alaska between Beechey Point and Tigvariak Island, via the Gulf of Alaska, the Bering Sea, and the Arctic Ocean, for a 3-year period expiring December 31, 1974.

The grounds for the application for exemption are the same as those asserted in the prior applications of Foss Launch & Tug Co. (Foss), and Foss Alaska Line, Inc. (Foss Alaska); Puget Sound Tug & Barge Co.; and Alaska Barge & Transport, Inc., in exemptions Nos. 6, 7, and 8, respectively, which were approved by the Commission (46 CFR 531.26(c) 36 F.R. 7967-7968 April 28, 1971), effective during 1971.

The proposed service is designed for the movement of general cargo including bulk liquids to and from the oilfields discovered in 1968 near Prudhoe Bay, Alaska. The major oil companies engaged in operations at the site and their suppliers require water transportation for their food, clothing, shelter, communications gear, drilling equipment, pipeline material, supplies and equipment. No port or port facilities exist on this coast and due to the difficulty of construction it is doubtful that ports will be developed in the near future.

The timing of operations is determined by the ice condition in Prudhoe Bay. Vessels must arrive off Point Barrow in time for the earliest movement of pack ice offshore. Vessels must move to the destination, discharge and return south of Point Barrow before the ice returns, which is normally within 4 to 6 six weeks. Owing to its specialized character, the movement does not lend itself to rate regulation.

However, contrary to expectations, neither Foss nor Foss Alaska has had any significant ability to exercise the prior exemptions. The demand for common carrier transportation between Seattle and Prudhoe Bay was minimal because of the delay in construction of a petroleum pipe line across Alaska, necessary for the development of the oil fields in the Prudhoe Bay region. It is anticipated, however, that within the next 3 years these problems will be resolved and that there will be a major demand for transportation of miscellaneous cargoes, including liquid in bulk, between Seattle and Prudhoe Bay. Accordingly, Foss and Foss Alaska petition that 46 CFR 531.26(c) be further amended to apply until January 1, 1975.

This exemption from the requirements of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, will become effective upon approval of the Commission pursuant to section 35 of the Shipping Act, 1916.

By order of the Federal Maritime Commission.

Dated: December 21, 1971.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-18923 Filed 12-27-71;8:51 am]

PRICE COMMISSION

SMALL BUSINESS FIRMS WITH NEW LOSS OR LOW PROFIT MARGIN

Grant of Exception

The Price Commission has been requested to authorize relief from certain requirements of its regulations for small business firms, which, during their most recent fiscal year, had gross sales of less than $1 million and experienced during the base period a net loss or a profit margin of less than 3 percent.

Pending the development of a comprehensive regulatory approach to this problem, which has many facets and differs in various segments of the economy, the Commission hereby grants a temporary exception to each person subject to the Commission's regulations who has had during that person's most recent fiscal year ended prior to August 15, 1971, gross sales revenues of less than $1 million and has experienced during the base period a net loss or a profit margin of less than 3 percent. Such a person may use a base period profit margin of 3 percent in computing permissible levels of price increases under the Commission's regulations.

The Price Commission reserves the right to change, revise, or revoke the authority granted herein at any time.

Issued in Washington, D.C., on December 22, 1971.

C. JACKSON GRAYSON, Jr.,
Chairman of the Price Commission.

[FR Doc.71-19014 Filed 12-23-71;5:10 pm]

U.S. PRODUCERS OF MURIATE OF POTASH USED IN FERTILIZER

Exception to Seasonal Pricing Patterns Requirements

Section 300.81 of the Price Commission's regulations relates to price fluctuations for seasonal patterns. One of the requirements is that a person may change his prices to reflect seasonal fluctuations only if the distinct fluctation is an established practice that has taken place in each of the 3 years before the date of the contemplated change. The potash industry has employed seasonal pricing during 13 of the past 14

[1] Commissioner Johnson concurring in the result; Commissioner Reid absent.

years, the only significant variation having occurred in the spring of 1969 when an extraordinary heavy influx of Canadian potash resulted in depressing normal seasonal increases. Several producers have requested an exception that would permit producers to make the price adjustments contemplated by § 300.81, after excluding the 1969 price levels, and to establish a price ceiling during the seasonal fluctuation period at a level no higher than that prevailing in February 1971.

In consideration of the long history of fluctuations in this area, with only one significant variation, and then only because of the extraordinary circumstances, the Commission hereby grants an exception from the requirements of § 300.18 (so far as it requires that distinct fluctuations must have taken place in each of the 3 years before the date of the contemplated change) for the applicant producers as to base price, so that the price levels which prevailed during the spring of 1969 are excluded from consideration in arriving at the base for establishing the controlling price levels for 1972 with respect to muriate of potash; with all other requirements of the Price Commission regulations, including the other requirements of § 300.81, to remain otherwise in full effect as regards all producers. The producers are not authorized to increase their respective profit margins prevailing during the base period.

The Price Commission reserves the right to change, revise, or revoke the authority granted herein at any time.

Issued in Washington, D.C., on December 22, 1971.

C. JACKSON GRAYSON, Jr.,
Chairman of the Price Commission.

[FR Doc.71-19015 Filed 12-23-71;5:10 pm]

FEDERAL POWER COMMISSION

[Docket No. G-2712, etc.]

CITIES SERVICE OIL CO. ET AL.

Notice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

DECEMBER 17, 1971.

Take notice that each of the applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 10, 1972, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

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 all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where 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 applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-2712 C 12-6-71	Cities Service Oil Co., Post Office Box 300, Tulsa, OK 74102.	Southern Natural Gas Co., Logansport Field, De Soto Parish, La.	[2] 15.5	15.025
G-7009 C 11-30-71	do	Columbia Gas Transmission Corp., Big Sandy Field, Pike County, Ky.	[3] 30.0	15.325
G-13129 D 12-6-71	Gulf Oil Corp., Post Office Box 1589, Tulsa, OK 74102 (partial abandonment).	Cities Service Gas Co., Southeast Gibbon Field, Grant County, Okla.	Depleted	.....
C164-6 11-15-71 [4]	Humble Oil & Refining Co., Post Office Box 2180, Houston, TX 77001.	Columbia Gas Transmission Corp., Garden City and other fields, St. Mary and other parishes, Louisiana.	26.0	15.025
C171-77 C 12-6-71	Suburban Propane Gas Corp., 2210 Mercantile Bank Bldg., Dallas, TX 75201.	United Gas Pipe Line Co., Roanoke Field Area, Jefferson Davis Parish, La.	[5] 26.0 [6] 26.0	15.025
C171-872 C 11-29-71	Sun Oil Co., Post Office Box 2880, Dallas, TX 75221.	Michigan-Wisconsin Pipe Line Co., Lovedale Field, Woodward County, Okla.	[6] 22.10	14.65
C172-241 B 10-21-71	Murphy Oil Co. of Oklahoma Inc., Post Office Box 446, Dallas, TX 75221.	Lone Star Gas Co., Doyle Pool, Stephens County, Okla.	(7)	.....
C172-242 B 10-21-71	Nafco Oil & Gas Inc., Post Office Box 446, Dallas, TX 75221.	Tennessee Gas Transmission Co., Cleveland Townsite, Liberty County, Tex.	Depleted	.....
C172-243 B 10-21-71	do	Lone Star Gas Co., Carthage Field, Panola County, Tex.	Uneconomical	.....
C172-244 B 10-21-71	do	Arkansas Louisiana Gas Co., Carthage Field, Panola County, Tex.	(7)	.....
C172-245 B 10-21-71	do	Lone Star Gas Co., Carthage Field, Panola County, Tex.	Uneconomical	.....
C172-246 B 10-21-71	do	do	Uneconomical	.....
C172-247 B 10-21-71	do	Northern Natural Gas Co., Hugoton Field, Stevens County, Kans.	(7)	.....
C172-248 B 10-21-71	do	Colorado Interstate Gas Co., a division of Colorado Interstate Corp., Hugoton Field, Kearny County, Kans.	(10)	.....
C172-249 B 10-21-71	do	do	(10)	.....
C172-323 11-22-71 [11]	Petroleum, Inc. (Operator) et al., 300 West Douglas, Wichita, KS 67202.	Michigan Wisconsin Pipe Line Co., Northwest Quinlan Field, Dewey County, Okla.	[12] 18.78	14.65
C172-324 B 11-26-71	Hassle Hunt Trust (Operator) et al., 1401 Elm St., Dallas, TX 75202.	Texas Eastern Transmission Corp., Southwest Speaks Field, Lavaca County, Tex.	Depleted	.....
C172-325 A 11-30-71	Texas Oil & Gas Corp., Fidelity Union Tower Bldg., Dallas, TX 75201.	Trunkline Gas Co., Pearson Field, Wharton County, Tex.	[13] 24.0	14.65
C172-326 A 12-1-71	Humble Oil & Refining Co., Post Office Box 2180, Houston, TX 77001.	United Gas Pipe Line Co., East Lake Verret Field, Assumption Parish, La.	[14] 26.0	15.025
C172-327 B 12-1-71	J. M. Huber Corp., 1200 National Bank of Commerce Bldg., San Antonio, TX 78205.	Panhandle Eastern Pipe Line Co., sec. 11, T. 34 S., R. 31 W., Seward County, Kans.	Depleted	
C172-328 [15] B 7-29-71	Magness Petroleum Co., 844 First National Bldg., Oklahoma City, OK 73102.	Panhandle Eastern Pipe Line Co., Sheets No. 1 Well, Sec. 26°22'N., 23° W., Tangier Field, Ellis County, Okla.	Uneconomical	
C172-332 [16] (C163-80) F 10-15-71	Clayton Lee (successor to J. M. Huber Corp.), 313 Hightower Bldg., Oklahoma City, OK 73102.	Michigan Wisconsin Pipe Line Co., Laverne Field, Harper County, Okla.	[17] 19.45	14.65

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

See footnotes on next page.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[1] Plus 1 cent per Mcf tax reimbursement as to Houston and Deeper Zones. Subject to upward and downward B.t.u. adjustment.
[2] Includes 3.5 cents per Mcf for substantial gathering and compression.
[3] Application previously noticed Nov. 30, 1971 in G-3099 et al. The footnote is changed from "Amendment to certificate filed to increase daily contract quantity" to "Amendment to certificate to provide for a rate of 26 cents per Mcf for gas delivered in excess of the daily contract quantity."
[4] Gas presently being sold under Supplement No. 5 to Gas Rate Schedule No. 6: Includes 2.08 cents per Mcf upward B.t.u. adjustment.
[5] On all other gas to be sold under the new Nov. 4, 1971 contract (including that presently being sold under Supplement No. 1 to Supplement No. 8 to Gas Rate Schedule No. 6; and under Gas Rate Schedule No. 14). Includes 0.82 cent per Mcf upward B.t.u. adjustment.
[6] Includes 1.80 cents per Mcf upward B.t.u. adjustment.
[7] Gas is being sold under a percentage type contract covered under Signal Oil Co. FPC Gas Rate Schedule No. 31. Rate schedule and certificate filings for this sale were never necessary. Applicant's interest is and has been covered under Cities Service Co. FPC Gas Rate Schedule No. 21.
[8] Gas presently being sold by Nathan Appleman, doing business as N. Appleman Co., Docket No. CS71-59.
[9] Gas is being sold under another contract by Cenard Oil & Gas Co. to Colorado Interstate Gas Co., a division of Colorado Interstate Corp.
[10] Applicant proposes to continue the sale of its own gas heretofore authorized in Docket No. CI64-725.
[11] Includes 0.26 cent per Mcf tax reimbursement. Subject to upward and downward B.t.u. adjustment.
[12] Subject to upward and downward B.t.u. adjustment.
[13] Applicant is willing to accept a permanent certificate at an initial rate of 28 cents per Mcf; however, the contract price is 27 cents per Mcf which includes 0.86 cent per Mcf upward B.t.u. adjustment.
[14] Application previously noticed Aug. 24, 1971 in G-3284, et al., as an application to delete acreage under Docket No. CI69-362. The application should be noticed as an abandonment under Docket No. CI72-326.
[15] Application previously noticed Oct. 28, 1971 in G-12757 et al., as a succession under Docket No. CI63-80. The application should be noticed as a partial succession under Docket No. CI72-332.
[16] Includes 0.69 cent per Mcf upward B.t.u. adjustment.

[FR Doc.71-18726 Filed 12-27-71;8:45 am]

[Docket No. G-3067, etc.]

HUMBLE OIL & REFINING CO. ET AL.

Notice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

DECEMBER 16, 1971.

Take notice that each of the applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 14, 1972, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

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 all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where 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 applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-3067 12-9-71 [1]	Humble Oil & Refining Co., Post Office Box 2180, Houston, TX 77001.	Tennessee Gas Pipeline Co., a division of Tenneco Inc., Heyser Field, Calhoun and Victoria Counties, Tex.	15.0537	14.65
G-3072 12-8-71 [2]	do	Tennessee Gas Pipeline Co., a division of Tenneco Inc., District No. 4 Area, Texas.	15.0537	14.65
G-8736 C 12-8-71	Northern Natural Gas Producing Co. (Operator) et al., Post Office Box 1774, Houston, TX 77001.	Northern Natural Gas Co., Hugoton Field, Stevens County, and others, Kansas.	[3] 12.513125	14.65
CI69-607 D 12-6-71	Champlin Petroleum Co., Post Office Box 9365, Fort Worth, TX 76107.	Northern Natural Gas Co., Viet Field, Dewey and Woodward Counties, Okla.	(4)	.....
CI72-329 B 11-22-71	Penco Gas, Inc., 3829 Willow Ave., Pittsburgh, Pa. 15234.	Equitable Gas Co., M. Barr Well No. 7, Wetzel County, W. Va.	(5)	.....
CI72-330 B 11-29-71	Pennzoil Producing Co. (Operator) et al., 900 Southwest Tower, Houston, Tex. 77002.	United Gas Pipe Line Co., Mount Selman Field, Cherokee County, Tex.	Depleted	.....
CI72-331 A 12-1-71	Pennzoil United, Inc., 900 Southwest Tower, Houston, Tex. 77002.	Transwestern Pipeline Company N½ of sec. 13, T.18 S. R. 25 E., Eddy County, N. Mex.	[6] 27.0	14.65
CI72-333 B 12-3-71	Cabeen Exploration Corp. et al., 945 Petroleum Club Bldg., Denver, Colo. 80202.	Kansas Nebraska Natural Gas Co., Inc., West Amber Field, Logan County, Colo.	(7)	.....
CI72-334 B 12-3-71	do	do	(7)	.....
CI72-335 B 12-3-71	do	do	(7)	.....
CI72-336 (G-20177) F 12-1-71	Kirby Petroleum Co (successor to Shell Oil Co (Operator), et al), Post Office Box 1745, Houston, TX 77001.	Tennessee Gas Pipeline Co., a division of Tenneco Inc., Chestnerville Field, Colorado County, Tex.	[8] 16.28069	14.65
CI72-337 B 12-3-71	Lock 3 Oil, Coal & Dock Co., 615 Porter Bldg., Pittsburgh, Pa. 15219.	Cumberland & Allegheny Gas Co., Union District, Barbour County, W. Va.	(9)	.....
CI72-338 A 12-6-71	Midwest Oil Corp., 1700 Broadway, Denver, CO 80202.	Cities Service Gas Co., Lovell No. 1, Grady County, Okla.	[10] 25.0	14.65
CI72-339 B 12-3-71	Sun Oil Co., Post Office Box 2880, Dallas, TX 75221.	United Gas Pipe Line Co., Red Fish Bay Field, Nueces County, Tex.	Depleted	.....
CI72-340 A 12-6-71	Champlin Petroleum Co., Post Office Box 9365, Fort Worth, TX 76107.	Northern Natural Gas Co., Viet Field, Dewey and Woodward Counties, Okla.	[11] 26.624	14.65
CI72-341 A 12-6-71	Monsanto Co., 1300 Post Oak Tower, Houston, Tex. 77027.	Cities Service Gas Co., Mathers Ranch Area, Hemphill County, Tex.	[12] 20.5	14.65

[1] Amendment of contract to acknowledge the existence of certain reserves excess to the requirements of such contract and to designate the portion of lands, leases and reservoirs containing gas reserves in the Heyser Field covered thereby which are subject to said contract; and to amend the contract in other respects, including extension of the contract term until July 1, 1988.
[2] Amendment of contract to acknowledge the existence of certain reserves excess to the requirements of such contract and to designate the portion of lands, leases, and reservoirs containing gas reserves in the several fields covered thereby which are subject to said contract; and to amend the contract in other respects, including extension of the contract term until July 1, 1988.
[3] Subject to upward and downward B.t.u. adjustment.
[4] Deletes nonproductive acreage.
[5] Low production.
[6] Rate in effect subject to refund in Dockets Nos. RI68-313 and RI71-663.

[FR Doc.71-18561 Filed 12-27-71;8:45 am]

[Docket No. E-7647]

PUBLIC SERVICE CO. OF INDIANA, INC., ET AL.

Notice of Rate Schedule Filing

DECEMBER 17, 1971.

Take notice that on June 14, 1971, Public Service Co. of Indiana, Inc. (PSCI) filed an interconnection agreement dated March 9, 1971. The interconnection agreement is filed as an initial rate schedule and the parties to the agreement are PSCI, Southern Indiana Gas and Electric Co. (SIGECO), Indiana Statewide Rural Electric Cooperative, Inc. (Statewide) and Rural Electrification Administration (REA).

The proposed agreement establishes interconnections among the parties and provides, among other things, for the supply of power to Statewide and for PSCI and SIGECO to purchase power and energy and utilize excess transmission capacity of Statewide.

The agreement provides that substations that are used to serve customers of more than one party, in which case the substation will be owned by the party whose customer imposes the largest load on the substation, the other parties will be entitled to use such substation upon payment of a facility charge of 15 cents per kilowatt.

The agreement also sets forth the services to be rendered under the agreement and compensation therefore as follows:

SERVICE SCHEDULE A—EMERGENCY SERVICE

Provides for the supply of emergency energy by one party to another to be settled by the return of equivalent energy or by payment of suppliers out of pocket costs plus 10 percent.

SERVICE SCHEDULE B—ENERGY TRANSFER

Recognizes that energy transfers resulting from transactions under the agreement may flow over the respective transmission facilities of the parties. Such inadvertent energy flow will be returned in kind.

SERVICE SCHEDULE C—INTERCHANGE POWER

Provides for the supply by one party to another of economy energy, to be settled on a split savings basis, and surplus energy, to be settled by the return of equivalent energy or paid for at suppliers out of pocket cost plus 10 percent.

SERVICE SCHEDULE D—SHORT TERM POWER

Provides for the supply of power and energy for periods of not less than 1 week by one party to another. The rate for short term power is 30 cents per kilowatt reserved per week, provided that if the amount of power is reduced by the supplier the rate shall be reduced by 6 cents per kilowatt for each day such reduction is in effect. Associated energy will be billed at suppliers out of pocket cost plus 10 percent.

SERVICE SCHEDULE E—COORDINATION OF SCHEDULED MAINTENANCE

Provides that each party may receive up to 20 million kilowatt hours per year up to a maximum rate of take of 50,000 kilowatts during periods that generating facilities are out of service for scheduled maintenance. Each party is to be limited to eight such periods per year and the period shall not be longer than 7 days. Each year the parties will attempt to schedule transactions so as to minimize any difference in receipts and deliveries of maintenance energy by a party. Resulting differences between two parties may by agreement may be carried forward to the next year or paid for at 110 percent of out of pocket cost.

SERVICE SCHEDULE F—WHEELING

Provides for the wheeling of energy among the parties at a rate of 1 mill per kilowatt hour delivered.

SERVICE SCHEDULE G—FIRM POWER

Provides for the reservation and supply of firm power between Statewide and PSCI. The monthly rate for such power is $1.25 per kv.a.-plus an energy charge of 5 mills per kilowatt hour for the first 300 hours use of the demand and 4 mills per kilowatt hour for all over 300 hours use, subject to a fuel adjustment based on a heat rate of 12,000 B.t.u. per kilowatt hour and a base fuel cost of 20 cents per million B.t.u.

SERVICE SCHEDULE G-1—FIRM POWER

Provides for the reservation and supply of firm power between Statewide and SIEGCO. The demand charge for such power is $1.25 per kilowatt for the first 100 kilowatt and $1 per kilowatt for all over 100 kilowatt. The energy charge varies from 7 mills per kilowatt hour for the first 200 hours used of demand to 4 mills per kilowatt hour for all over 300 hours use, subject to a fuel adjustment based on a heat rate of 15,000 B.t.u.'s per kilowatt hour and a base cost of fuel of 17 cents per million B.t.u.

SERVICE SCHEDULE H—SURPLUS TRANSMISSION CAPACITY

Provides for the utilization of surplus transmission capacity of one party by another at a rate of 1 mill per kilowatt hour adjusted for line losses.

The term of the agreement is for an initial period of 25 years to continue thereafter until canceled by any party upon 5-years written notice.

PSCI has requested waiver of the Commission's notice requirement to permit an effective date of June 7, 1971, the date that an interchange of short-term power was to commence between Statewide and SIEGCO under service schedule D.

Any person desiring to be heard or to make any protest with any reference to said application should on or before January 14, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-18822 Filed 12-27-71;8:45 am]

[Docket No. CP72-160]

UNITED GAS PIPE LINE CO.

Notice of Application

DECEMBER 23, 1971.

Take notice that on December 16, 1971, United Gas Pipe Line Co. (applicant), 1500 Southwest Tower, Houston, TX 77002, filed in Docket No. CP72-160 an application for a certificate of public convenience and necessity authorizing applicant to transport natural gas for Humble Oil & Refining Co. (Humble), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has entered into an agreement with Humble to purchase an average daily quantity of 30,000 Mcf of natural gas. Humble has reserved the right to retain for its own use up to 5,000 Mcf per day to be transported by applicant. Humble has filed in Docket No. CI72-259 an application for a limited term certificate of public convenience and necessity pursuant to § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70) to sell and deliver gas to Applicant.

Applicant proposes to transport, through existing facilities, Humble's gas which may be reserved for its own use. The gas would be received from Humble at its Garden City Gasoline Plant, St. Mary Parish, La., and delivered to Humble in the Weeks Island Field, Iberia Parish, La.; the Baxterville Field, Lamar County, Miss.; and the Bryan Field, Jasper County, Miss.

Applicant states that the purpose of such service is to make available to Humble an alternate source of gas supply and enable applicant to continue to serve this customer with the least possible adverse effect on such customer's operations.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before January 7, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10 and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

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 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 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-18956 Filed 12-27-71;8:52 am]

FEDERAL RESERVE SYSTEM

FIRST UNION NATIONAL BANCORP, INC.

Order Approving Acquisition of Reid-McGee & Company

First Union National Bancorp, Inc., Charlotte, N.C., a bank holding company within the meaning of the Bank Holding Company Act of 1956, as amended, has applied for the Board's approval under section 4(c)(8) of the Act and § 225.4(b)(2) of the Board's Regulation Y to acquire all of the voting shares of Reid-McGee & Company ("Reid-McGee"), Jackson, Miss. Notice of the application affording opportunity for interested persons to submit comments and views was duly published. The time for filing comments and views has expired and all received have been considered, including those presented orally and in writing in connection with a Board hearing on November 8, 1971, pertaining to mortgage banking in general, and this application in particular.

The operation by a bank holding company of a mortgage company is an activity that the Board has previously determined to be closely related to the business of banking (12 CFR 225.4(a)(1)). A bank holding company may acquire a company engaged in this activity so long as the activities of the institution proposed to be acquired are not conducted in a manner inconsistent with the limitations the Board has established pursuant to section 4(c)(8) of the Act.

Applicant owns the First Union National Bank of North Carolina, whose deposits of $1.0 billion represent 13.6 percent of the total commercial bank deposits in North Carolina. In addition to subsidiaries engaged in factoring, insurance, and real estate development,[1] Applicant also owns Cameron-Brown Co. ("Cameron-Brown"), Raleigh, N.C., the ninth largest mortgage banking firm in the United States.[2] Most of Cameron-Brown's mortgage activity is confined to the Atlantic coastal States from Maryland to Georgia.

Reid-McGee is the largest of five mortgage banking firms in Mississippi, and ranks 99th among mortgage banking firms in the country.[3] Reid-McGee is active in the origination of permanent mortgages on one-four family residential properties, construction loans, and permanent mortgages on income producing properties throughout Mississippi and the northern half of Louisiana. None of Cameron-Brown's mortgage activity extends into local markets where Reid-McGee does business, nor does Reid-McGee engage in any mortgage activity within local markets served by Cameron-Brown.

Although no direct local market competition exists between Applicant and Reid-McGee, consummation of the proposed acquisition may have slightly adverse effects on potential competition, since applicant has both the resources and expertise to enter de novo those areas served by Reid-McGee. However, because of the many potential entrants into the Louisiana-Mississippi mortgage market, the elimination of applicant is not a substantially adverse consideration. The procompetitive benefits offered by a de novo entry, compared to an entry by acquisition, would be minor in this case of expansion into a geographical market outside the market area of Cameron-Brown.

Both northern Louisiana and Mississippi are capital deficit areas. The affiliation of Reid-McGee with applicant will provide an increased quantity of mortgage funds for those areas. Moreover, applicant's record of operation demonstrates its ability to promote housing construction for purchasers having low and moderate incomes. Such housing in the Louisiana-Mississippi region, considered as underdeveloped by U.S. standards, would be a substantial benefit. On balance, the Board concludes that these public benefits outweigh any possible adverse effect on competition.

Based upon the foregoing and other considerations reflected in the record, the Board has determined that the balance of the public interest factors the Board is required to consider under section 4(c)(8) is favorable. Accordingly, the application is hereby approved. This determination is subject to the Board's authority to require reports by, and make examinations of, holding companies and their subsidiaries and to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

By order of the Board of Governors,[4]

December 17, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-18878 Filed 12-27-71;8:47 am]

[1] Real estate development is not an activity that the Board has determined to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. Since it appears, however, that Applicant was engaged in that activity through Cameron-Brown prior to June 30, 1968, it may continue to engage therein in accordance with the provisions of section 4(a)(2) of the Act. However, in approving Applicant's acquisition of Reid-McGee, the Board understands and relies upon the facts that Reid-McGee has not engaged in real estate development activities, and that Applicant's real estate development activities are presently limited to geographic areas served by Cameron-Brown; accordingly, the Board's approval herein is premised on the expectation that Applicant's future real estate development activities will be similarly limited.

[2] Ranking is based on a $932.4 million mortgage servicing portfolio as of June 30, 1971.

[3] Based on a $206.6 million mortgage servicing portfolio as of June 30, 1971.

[4] Voting for this action: Chairman Burns and Governors Mitchell, Daane, and Maisel. Voting against this action: Governors Robertson and Brimmer.

Dissenting Statement of Governors Robertson and Brimmer filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Richmond.

NORTHWEST BANCORP.

Order for Hearing

On August 3, 1971, there was published in the FEDERAL REGISTER (36 F.R. 14285) a notice of receipt by the Board of Governors of an application filed pursuant to section 3(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)) by Northwest Bancorporation, Minneapolis, Minn., for prior approval by the Board of action whereby Applicant would acquire 90 percent or more of the voting shares of Farmers and Merchants State Bank of Stillwater, Stillwater, Minn. The notice advised that the application was available for study at the office of the Board of Governors and the Federal Reserve Bank of Minneapolis, and designated a period within which comments and views on the proposed acquisition could be filed with the Board.

In view of the numerous comments on the proposal received, it appeared to the Board that it was in the public interest that there be conducted a public oral presentation at which views and comments with respect to this application might be presented. Accordingly, on November 18, 1971, there was published in the FEDERAL REGISTER (36 F.R. 22027) notice of a public oral presentation to be held in Minneapolis. Subsequently, the Commerce Commission of the State of Minnesota unanimously recommended that the Board deny the application and requested a formal hearing.

The Board has concluded that such a request is in the public interest and, pursuant to § 262.3(f) of the Board's Rules of Procedure (12 CFR 262.3(f)) a public hearing will be held with respect to this application and the factors specified in section 3 of the Holding Company Act, commencing at 10 a.m., on February 28, 1972, at the Federal Reserve Bank of Minneapolis, 73 South Fifth Avenue,

Minneapolis, Minn., before Mr. Dent Daldy, who has been designated hearing examiner.

Any person desiring to give testimony, present evidence, or otherwise participate in these procedings should file with the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, on or before January 14, 1972, a written request containing a statement of the nature of the petitioner's interest in the proceedings, the extent of the participation desired, a summary of the matters concerning which petitioner wishes to give testimony or submit evidence, and the names and identity of witnesses who propose to appear. Requests will be presented to the hearing examiner for his determination, and persons submitting them will be notified of his decision.

By order of the Board of Governors, December 20, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-18879 Filed 12-27-71;8:47 am]

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

CERTAIN COTTON TEXTILES PRODUCED OR MANUFACTURED IN EL SALVADOR

Entry or Withdrawal From Warehouse for Consumption

DECEMBER 22, 1971.

On October 29, 1971, the U.S. Government requested the Government of El Salvador to enter into consultations concerning exports to the United States of cotton textiles in category 9 produced or manufactured in El Salvador. Public notice of this request was published in the FEDERAL REGISTER on November 19, 1971 (36 F.R. 22129). In that request the U.S. Government indicated the specific level at which it considered that exports in this category from El Salvador should be restrained for the 12-month period beginning October 29, 1971 and extending through October 28, 1972. Since no solution has been mutually agreed upon, the U.S. Government in furtherance of the objectives of, and under the terms of, the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, including article 3, paragraph 3 and article 6(c) which relates to nonparticipants, is establishing a restraint at the level indicated in that request for the 12-month period beginning October 29, 1971 and extending through October 28, 1972. This restraint does not apply to cotton textiles in category 9, produced or manufactured in El Salvador exported to the United States prior to the beginning of the designated 12-month period.

There is published below a letter of December 14, 1971, from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs, directing that the amount of cotton textiles in category 9, produced or manufactured in El Salvador, which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning October 29, 1971, be limited to the designated level.

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

SECRETARY OF COMMERCE

PRESIDENT'S CABINET TEXTILE ADVISORY COMMITTEE

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

DECEMBER 14, 1971.

DEAR MR. COMMISSIONER: Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, including article 6(c) thereof relating to nonparticipants, and in accordance with the procedures outlined in Executive Order 11052 of September 28, 1962, as amended by Executive Order 11214 of April 7, 1965, you are directed to prohibit, effective as soon as possible, and for the 12-month period beginning October 29, 1971, and extending through October 28, 1972, entry into the United States for consumption and withdrawal from warehouse for consumption, of cotton textiles in category 9, produced or manufactured in El Salvador, in excess of a level of restraint of 901,986 square yards.[1]

In carrying out this directive, entries of cotton textiles in category 9, produced or manufactured in El Salvador and which have been exported to the United States from El Salvador prior to October 29, 1971, shall not be subject to this directive.

Cotton textiles in category 9, produced or manufactured in El Salvador, which have been released from the custody of the Bureau of Customs under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of category 9, in terms of T.S.U.S.A. numbers, was published in the FEDERAL REGISTER on October 9, 1971 (36 F.R. 19722).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of El Salvador and with respect to imports of cotton textiles from El Salvador have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

MAURICE H. STANS,
Secretary of Commerce, Chairman, President's Cabinet Textile Advisory Committee.

[FR Doc.71-18887 Filed 12-27-71;8:48 am]

[1] This level has not been adjusted to reflect any entries made on or after October 29, 1971.

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN PORTUGAL

Entry or Withdrawal from Warehouse for Consumption

DECEMBER 21, 1971.

On November 17, 1970, the U.S. Government, in furtherance of the objectives of, and under the terms of, the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, concluded a new comprehensive bilateral cotton textile agreement with the Government of Portugal concerning exports of cotton textiles and cotton textile products from Portugal to the United States over a 4-year period beginning on January 1, 1971, and extending through December 31, 1974. Among the provisions of the agreement are those establishing specific limits on Categories 1/2/3/4, 5/6, 9, 22, 24/25, 26, 41/42/43, 46, 50, 51, 52, 53 and parts of 62, 55, 60, and parts of 62 for the second agreement year beginning January 1, 1972.

Accordingly, there is published below a letter of December 21, 1971 from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs, directing that the amounts of cotton textiles and cotton textile products in the above categories produced or manufactured in Portugal which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning January 1, 1972, and extending through December 31, 1972, be limited to the designated levels. The letter published below and the actions pursuant thereto are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

SECRETARY OF COMMERCE

PRESIDENT'S CABINET TEXTILE ADVISORY COMMITTEE

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226

DECEMBER 21, 1971.

DEAR MR. COMMISSIONER: Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the bilateral cotton textile agreement of November 17, 1970, between the Governments of the United States and Portugal, and in accordance with Executive Order 11052 of September 28, 1962, as amended by Executive Order 11214 of April 7, 1965, you are directed to prohibit, effective January 1, 1972, and for the 12-month period extending through December 31, 1972, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 1/2/3/4, 5/6, 9, 22, 24/25, 26, 41/42/43, 46, 50, 51, 52, 53 and parts of 62, 55, 60, and parts of 62 produced or manufactured in Portugal, in excess of the following levels of restraint:

Category	12-month levels of restraint
1/2/3/4	16,880,212 pounds.
5/6	11,387,714 square yards (of which not more than 6,377,761 square yards may be in Category 6).
9	13,370,569 square yards.
22	2,005,586 square yards.
24/25	7,353,814 square yards (of which not more than 2,674,114 square yards may be in Category 25)
26	3,208,937 square yards.
41/42/43	120,335 dozen.
48	53,483 dozen.
50	30,753 dozen.
51	30,753 dozen.
52	45,460 dozen.
53 and parts of 62 (T.S.U.S.A. Nos. 382.0012, 382.0014, 382.0635 and 382.0640)	45,460 dozen.
55	36,750 dozen.
60	26,250 dozen.
Parts of 62 (T.S.U.S.A. Nos. 380.0024, 380.0645, 382.0024 and 382.0665)	74,340 pounds.

In carrying out this directive, entries of cotton textiles and cotton textile products in the above categories, produced or manufactured in Portugal, which have been exported to the United States from Portugal prior to January 1, 1972, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period January 1, 1971, through December 31, 1971. In the event that the above levels of restraint have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

In carrying out this directive, entries of two- or three-piece ladies suits produced or manufactured in Portugal from woven or knit cotton fabrics should not be charged against any of the levels of restraint designated herein, including the level of restraint for blouses in Category 52.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of November 17, 1970, between the Governments of the United States and Portugal which provide, in part, that within the aggregate limit and group limits, the limitations on specific categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements. Any appropriate adjustments pursuant to the provisions of the bilateral agreement referred to above, will be made to you by letter from the Chairman of the Interagency Textile Administrative Committee.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on October 9, 1971 (36 F.R. 19722).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Portugal and with respect to imports of cotton textiles and cotton textile products from Portugal have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely yours,

MAURICE H. STANS,
Secretary of Commerce, Chairman, President's Cabinet Textile Advisory Committee.

[FR Doc.71-18888 Filed 12-27-71;8:48 am]

SECURITIES AND EXCHANGE COMMISSION

[70-5125]

NEW ENGLAND ELECTRIC SYSTEM ET AL.

Notice of Proposed Issue and Sale of Notes by Subsidiary Companies to Banks, Commercial Paper Dealers, and/or to Holding Companies and Retirement of Outstanding Notes

DECEMBER 13, 1971.

Notice is hereby given that an application-declaration has been filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") by New England Electric System ("NEES"), 20 Turnpike Road, Westboro, MA 01581, a registered holding company, and certain of its subsidiary companies ("the borrowing companies"), namely, Central Massachusetts Gas Co. ("Central"), Granite State Electric Co. ("Granite"), Lawrence Gas Co. ("Lawrence"), Lynn Gas Co. ("Lynn"), Massachusetts Electric Co. ("Mass Electric"), Massachusetts Gas System ("Mass Gas"), Mystic Valley Gas Co. ("Mystic Valley"), The Narragansett Electric Co. ("Narragansett"), New England Power Co. ("NEPCO"), North Shore Gas Co. ("North Shore"), Northampton Gas Light Co. ("Northampton"), Norwood Gas Co. ("Norwood"), and Wachusett Gas Co. ("Wachusett"). NEES and the borrowing companies have designated sections 6(a), 7, 9(a), 10, and 12 of the Act and Rules 42(a), 43, 45, and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

The borrowing companies proposed to issue, from time to time through December 31, 1972, unsecured short-term promissory notes to banks, to dealers in commercial paper, and/or to NEES or Mass Gas. The aggregate amount of loans to the borrowing companies by NEES and Mass Gas to be outstanding at any one time will not exceed $35 million and $15 million, respectively. Borrowings by Mass Electric and NEPCO from banks and NEES in the proposed maximum amounts of $28 million and $85 million, respectively, will be reduced by the principal amount of any commercial paper at the time outstanding. The proceeds of the proposed borrowings are to be used by each borrowing company to pay its then outstanding notes payable to banks, dealers in commercial paper, and/or to NEES or Mass Gas at or prior to maturity thereof, and to provide new money for capital expenditures or reimburse its treasury therefor.

The proposed notes to banks and/or NEES or Mass Gas will bear interest at not in excess of the prime rate in effect at the time of issue. Said notes will mature in less than 1 year from the date of issue and in any event not later than March 31, 1973, and will be prepayable at any time, in whole or in part, without premium. The borrowing companies represent that they maintain sufficient operating balances to meet the lending banks' compensating balance requirements. If such balances were maintained solely to fulfill prevailing compensating balance requirements of 15 to 20 percent, the effective interest cost to the borrowing companies would be 6½ to 6⅞ percent per annum, based on the current prime rate of 5½ percent.

The following table shows for each borrowing company the estimated maximum amount of notes to be outstanding with banks and/or with NEES or Mass Gas at any one time:

ESTIMATED MAXIMUM SHORT-TERM NOTES TO BE OUTSTANDING AT ANY ONE TIME (000 OMITTED)

Borrowing company	To banks or NEES	To banks or Mass Gas
Central		$2,985
Granite	$7,500	
Lawrence		7,600
Lynn		7,600
Mass Electric	33,000(A)	
Mass Gas	15,000	
Mystic Valley		19,775
Narragansett	15,500	
NEPCO	85,000(A)	
North Shore		8,375
Northampton		2,200
Norwood		2,700
Wachusett		3,400
	156,000	54,635

(A) Or commercial paper in the cases of Mass Electric and NEPCO. The applicants will file, by amendment, a list of the proposed creditor banks and the respective borrowings.

It is proposed that certain of the borrowing companies may prepay their notes to NEES or Mass Gas, in whole or in part, with borrowings from banks or from the sale of commercial paper, or that their borrowings from banks may be prepaid, in whole or in part, with borrowings from NEES, Mass Gas, or from the sale of commercial paper. In the event of borrowings from banks at a higher interest rate or the sale of commercial paper at a higher effective interest cost, to prepay notes to NEES or Mass Gas, NEES or Mass Gas will credit the borrowers for any excess interest from the date of issuance of the new notes or commercial paper to the normal maturity date of the notes to NEES or Mass Gas being prepaid. Conversely, in the event of borrowing from NEES or Mass Gas to prepay notes to banks, the interest rate of notes issued to NEES or Mass Gas will be the lower of (1) the interest rate on the notes being prepaid or (2) the prime interest rate then in effect, but with respect to (1) only to

the maturity date of the notes so prepaid, and thereafter at the prime interest rate in effect at the time the new notes are issued.

Each of the borrowing companies proposes that if any permanent financing is done prior to the maturity of the indebtedness to be issued hereunder, it will apply the proceeds therefrom, in excess of amounts used in connection with refunding other outstanding securities at the principal amount or par value thereof, in reduction of, or in total payment of, note indebtedness then outstanding; and that, except in the case of Mass Electric, Narragansett, NEPCO, and Granite the maximum amount of note indebtedness proposed to be outstanding hereunder will be reduced by the amount of such proceeds, other than proceeds used for refunding purposes of such permanent financing. NEES has entered into agreements to sell all of the outstanding capital stock of Central, Northampton, Norwood, and Wachusett. In addition NEES plans to divest itself of all its interests in Lawrence, Lynn, Mystic, North Shore, and Mass Gas. Upon completion of these divestments the borrowing authority requested hereunder will terminate for each subsidiary company so divested.

In addition, Mass Electric and NEPCO propose to issue and sell commercial paper to Lehman Commercial Paper, Inc. ("Lehman") and/or A. G. Becker & Co., Inc. ("Becker"), dealers in commercial paper. The commercial paper will be issued during the period through December 31, 1972, will have varying maturities of not more than 270 days after the date of issue (and in any event will mature on or prior to Mar. 31, 1973), will be sold in varying denominations of not less than $50,000 and not more than $1 million, and will not by their terms be prepayable prior to maturity. Such notes will be issued and sold by Mass Electric and NEPCO directly to Lehman and/or Becker at a discount which will not exceed the discount rate prevailing at the date of issuance for commercial paper of comparable quality and like maturity. The effective interest cost will not exceed the effective interest cost prevailing at the date of issue for borrowings from The First National Bank of Boston ("First National"), except that, in order to obtain maximum flexibility, commercial paper may be issued with a maturity of not more than 90 days from the date of issue with an effective cost in excess of such effective interest cost from First National.

Lehman and Becker, as principals, will reoffer the commercial paper at a discount rate not more than one-eighth of 1 percent per annum less than the prevailing discount rate to the issuer. The notes will be reoffered by Lehman and Becker to not more than 100 of their respective customers whose names appear on nonpublic lists prepared in advance by Lehman and Becker. No additions will be made to such lists of customers which are composed of institutional investors. It is expected that such commercial paper will be held to maturity by the purchasers from the dealers, but, if any such purchaser wishes to resell prior to maturity, Lehman or Becker, as the case may be, pursuant to an oral repurchase agreement will repurchase the paper for resale to others on said lists of customers.

Mass Electric and NEPCO request exception of the sale of their commercial paper notes from the competitive bidding requirement of Rule 50 pursuant to section (a)(5) thereof. It is also requested that the certificates of notification under Rule 24 regarding all of the proposed transactions be filed quarterly.

It is stated that there are no fees or commissions to be paid in connection with the proposed transactions and that incidental services in connection with the proposed transactions will be performed, at cost, by New England Power Service Co., an affiliated service company; such cost is estimated not to exceed $200 for each applicant-declarant, an aggregate of $2,800.

NEPCO and Granite have sought authorization from the Public Utilities Commission of New Hampshire with respect to the notes proposed to be issued by NEPCO and Granite. It is stated that no further action by any regulatory commission, other than this Commission, is necessary with respect to the proposed transactions.

Notice is further given that any interested person may, not later than December 29, 1971, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon New England Electric System at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulation promulgated under the act, or the Commission may grant exemption from its rules under the act as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.71-18448 Filed 12-27-71;8:47 am]

DEPARTMENT OF LABOR

Office of the Secretary

DETERMINATION OF NATIONAL "ON" INDICATOR

Federal-State Extended Unemployment Compensation; Announcement of Beginning of Extended Benefit Period

1. The following notice of determination and announcement are made pursuant to the provisions of section 203(b)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 (Public Law 91-373, Title II) and 20 CFR 615.16(a).

2. The data appearing in the appended table summarize the pertinent information required for determination of a national "on" indicator in accordance with the requirements of the Act and regulations, based on regular reports, made to the Department of Labor by all State agencies in accordance with such regulations.

3. Based on the data appearing in the appended table, I find that the rate of insured unemployment (seasonally adjusted) for all States was 4.8 per centum for the month of September 1971; 4.8 per centum for the month of October 1971; and 4.6 per centum for the month of November 1971.

4. Since with respect to each of the three most recent calendar months ending before the week of December 12-18, 1971, the rate of insured unemployment (seasonally adjusted) for all States equaled or exceeded 4.5 per centum as specified in section 203(d) of the Act, it is my determination that there is a national "on" indicator for the week of December 12-18, 1971, within the meaning of the Federal-State Extended Unemployment Compensation Act of 1970.

5. In accordance with the provisions of section 203(a)(1) of the Act an extended benefit period in the case of any State shall begin with the third week after a week for which there is a national "on" indicator.

6. Accordingly, I announce that the week of January 2-8, 1972, being the third week after a week for which there is a national "on" indicator, is the beginning week of an extended benefit period for all States (the States of the United States of America, the District of Columbia and the Commonwealth of Puerto Rico) and that Federal-State extended unemployment compensation shall be payable for weeks of unemployment during such period that are claimed by eligible individuals.

Signed at Washington, D.C., this 21st day of December 1971.

J. D. HODGSON,
Secretary of Labor.

COMPUTATION OF NATIONAL "ON" INDICATOR PURSUANT TO PUBLIC LAW 91-373

Year and month	Average monthly covered employment [a]		Average weekly insured unemployment under regular program [b]			Unadjusted average weekly insured unemployment for Federal and State extended and additional programs [d] volume	National indicator insured unemployment	
	12 months ending	Volume	Unadjusted volume	Seasonal factors [c]	Seasonally adjusted volume [(Col. 4÷5) (100)]		Volume (Col. 6÷7)	Rate (Col. 8÷3)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1971	*1970*							
January	June	53,236,100	2,708,613	139.7	2,003,302	191,867	2,195,169	4.12
February	do	53,236,100	2,750,665	136.2	2,019,578	266,665	2,286,243	4.29
March	do	53,236,100	2,577,025	124.3	2,073,230	320,067	2,393,297	4.49
April	September	53,170,200	2,282,848	107.2	2,129,522	286,578	2,416,100	4.54
May	do	53,170,200	2,000,737	88.1	2,270,984	268,577	2,539,561	4.77
June	do	53,170,200	1,892,676	81.0	2,336,637	266,018	2,602,655	4.89
July	December	52,818,500	1,992,940	93.6	2,129,209	250,575	2,379,784	4.50
August	do	52,818,500	1,912,248	86.5	2,210,691	240,019	2,450,710	4.63
September	do	52,818,500	1,739,103	74.9	2,321,900	240,871	2,562,771	4.85
	1971							
October	March	52,655,400	1,716,322	73.8	2,325,640	229,946	2,555,586	4.85
November	do	52,655,400	1,878,495	84.9	2,212,507	235,029	2,447,626	4.64

[a] Average monthly covered employment from State agency ES-202 reports, plus Puerto Rico sugar workers who are reported separately.
[b] Average weekly insured unemployment under regular State programs from weekly State agency ES-210 reports.
[c] Seasonal factors from Bureau of Labor Statistics, U.S. Department of Labor.
[d] Average weekly insured unemployment under Federal-State extended benefit program and under State-financed additional benefit programs.

NOTE: None of the figures on this table include UCFE or UCX.

[FR Doc.71-18869 Filed 12-27-71;8:49 am]

Wage and Hour Division

CERTIFICATES AUTHORIZING THE EMPLOYMENT OF FULL-TIME STUDENTS WORKING OUTSIDE OF SCHOOL HOURS AT SPECIAL MINIMUM WAGES IN RETAIL OR SERVICE ESTABLISHMENTS OR IN AGRICULTURE

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), the regulation on employment of full-time students (29 CFR Part 519), and Administrative Order No. 621 (36 F.R. 12819), the establishments listed in this notice have been issued special certificates authorizing the employment of full-time students working outside of school hours at hourly rates lower than the minimum wage rates otherwise applicable under section 6 of the act. While effective and expiration dates are shown for those certificates issued for less than a year, only the expiration dates are shown for certificates issued for a year. The minimum certificate rates are not less than 85 percent of the applicable statutory minimum.

The following certificates provide for tion of the total hours worked by full- an allowance not to exceed the propor- time students at rates below $1 an hour to the total number of hours worked by all employees in the establishment during the base period in occupations of the same general classes in which the establishment employed full-time students at wages below $1 an hour in the base year.

Dairy Dell, restaurants, 9-19-72; No. 95, Bedford, Pa.; 2307 Menoher Boulevard, Johnstown, Pa.

Edward's, Inc., variety-department stores, 9-9-71 to 9-7-72: 517 King Street, Charleston, SC; St. Andrews Shopping Center, Charleston, S.C.; 2018 Reynolds Avenue, Charleston Heights, SC; 324-326 Laurel Street, Conway, SC; 819 Kings Highway Extension, Myrtle Beach, SC.

Glosser Brothers, Inc., variety-department Store; Franklin and Locust Streets, Johnstown, Pa.; 9-15-72.

Good Samaritan Hospital, hospital; East Norwegian and Tremont Streets, Pottsville, Pa.; 9-3-72.

W. T. Grant Co., variety-department stores: No. 770, Altoona, Pa., 9-2-72; No. 3187, Lansdale, Pa., 9-17-72; No. 905, Norristown, Pa., 8-31-72; No. 399, Philadelphia, Pa., 9-2-72; No. 555, Phoenixville, Pa., 9-9-72; No. 240, Williamsport, Pa., 9-7-72.

R. Guinan & Co., variety-department store; 117 South Oak Street, Mount Carmel, PA 9-2-72.

Home Town Super Market, foodstore; 6850 Bank Expressway, Marrero, LA; 9-13-71 to 8-13-72.

S. S. Kresge Co., variety-department stores, 9-2-72, except as otherwise indicated: No. 358, Wilmington, Del.; No. 20, Baltimore, Md.; No. 341, Forestville, Md. (9-10-72); No. 691, Rockville, Md. (9-7-72); No. 639, Baden, Pa.; No. 309, Camp Hill, Pa.; No. 76, Erie, Pa.; No. 460, Harrisburg, Pa. (9-9-72); No. 64, Lancaster, Pa.; No. 378, Oil City, Pa. (9-15-72); No. 379, Philadelphia, Pa. (9-16-72); Nos. 53 and 675, Pittsburgh, Pa.; No. 182, Pittsburgh, Pa. (9-8-72); No. 282, Pittston, Pa. (9-12-72); No. 18, Reading, Pa. (9-9-72); No. 92, Scranton, Pa. (9-17-72); No. 492, Springfield, Pa.; No. 67, Williamsport, Pa.

J. B. Lee Stores, Inc., variety-department store; 1218-1224 North Third Street, Harrisburg PA; 8-23-72.

McCrory-McLellan-Green Stores, variety-department stores, 9-2-72, except as otherwise indicated: Nos. 234 and 314, Baltimore, Md.; No. 1111, Baltimore, Md. (9-6-72); No. 1202, Baltimore, Md. (9-15-72); No. 21, Cumberland, Md.; No. 68, Easton, Md. (9-8-71 to 9-2-72); No. 46, Frederick, Md. (9-6-72); No. 31, Hagerstown, Md.; No. 9, Altoona, Pa.; No. 151, Barnesboro, Pa. (9-8-72); No. 155, Canonsburg, Pa.; No. 45, Chambersburg, Pa. (9-14-72); No. 28, Chester, Pa.; No. 220, Connellsville, Pa.; No. 87, DuBois, Pa.; No. 316, Edwardsville, Pa. (9-6-72); No. 325, Fairless Hills, Pa. (9-14-72); No. 39, Hanover, Pa. (9-6-72); No. 323, Hazleton, Pa. (9-6-72); No. 51, Indiana, Pa.; No. 80, Lancaster, Pa.; No. 42, Lebanon, Pa.; No. 1046, Lebanon, Pa. (9-6-72); No. 273, Lewistown, Pa.; No. 1029, McKeesport, Pa. (9-6-72); Nos. 201 and 1012, Philadelphia, Pa. (9-6-72); No. 1052, Philadelphia, Pa. (9-4-72); No. 104, Phillipsburg, Pa.; No. 53, Pittsburgh, Pa. (9-4-72); No. 1037, Pottsville, Pa. (9-6-72); No. 14, York, Pa.

G. C. Murphy Co., variety-department stores, 9-2-72, except as otherwise indicated: No. 149, Annapolis, Md.; Nos. 134, 238, and 267, Baltimore, Md. (9-11-72); Nos. 138, 147, 148, 151, 152, 153, and 224, Baltimore, Md.; No. 179, Cumberland, Md.; No. 268, Glen Burnie, Md. (9-11-72); No. 242, Hillcrest Heights, Md.; No. 273, Hyattsville, Md.; No. 236, Indianhead, Md.; Nos. 248 and 266, Rockville, Md.; No. 199, Silver Spring, Md.; No. 95, Westminster, Md.; No. 117, Aliquippa, Pa.; No. 27, Ambridge, Pa.; No. 78, Bangor, Pa.; No. 188, Barnesboro, Pa.; No. 68, Beaver, Pa.; No. 32, Beaver Falls, Pa.; No. 130, Bedford, Pa.; No. 144, Bellefonte, Pa.; No. 115, Bellevue, Pa.; No. 271, Bethlehem, Pa. (9-11-72); No. 178, Brookville, Pa.; No. 30, Brownsville, Pa.; No. 160, Burgettstown, Pa.; No. 92, Butler, Pa.; No. 55, California, Pa.; No. 54, Carnegie, Pa.; No. 11, Charleroi, Pa.; No. 88, Clairton, Pa.; No. 66, Clarion, Pa.; No. 158, Clearfield, Pa.; No. 201, Connellsville, Pa.; No. 169, Corry, Pa.; No. 46, Elizabeth, Pa.; Nos. 175 and 225, Erie, Pa.; No. 124, Everett, Pa.; No. 58, Farrell, Pa.; No. 44, Ford City, Pa.; No. 184, Franklin, Pa.; No. 129, Gettysburg, Pa.; No. 3, Greensburg, Pa.; No. 43, Greenville, Pa.; No. 13, Grove City, Pa.; No. 28, Hanover, Pa.; No. 165, Harrisburg, Pa.; No. 228, Havertown, Pa.; No. 211, Hollidaysburg, Pa.; No. 143, Huntingdon, Pa.; No. 126, Indiana, Pa.; No. 23, Irwin, Pa.; No. 45, Jeannette, Pa.; No. 9, Kittanning, Pa.; No. 6, Latrobe, Pa.; No. 79, Lehighton, Pa.; No. 232, Lemoyne, Pa.; No. 59, Lewistown, Pa.; No. 116, Ligonier, Pa.; No. 202, McDonald, Pa.; No. 1, McKeesport, Pa.; No. 16, Meadville, Pa.; No. 70, Mechanicsburg, Pa.; No. 108, Mercer, Pa. (9-12-72); No. 186, Meyersdale, Pa.; No. 84, Midland, Pa.; No. 31, Monessen, Pa.; No. 146, Mount Union, Pa.; No. 233, Natrona Heights, Pa.; No. 193, Nazareth, Pa.; No. 48, New Bethlehem, Pa.; No. 106, New Castle, Pa.; No. 4, New Kensington, Pa.; No. 157, North East, Pa.; Nos. 229 and 246, Philadelphia, Pa.; Nos. 12, 57, 83, 163, 170, 221, 237, and 258, Pittsburgh, Pa.; No. 183, Punxsutawney, Pa.; No. 127, Red Lion, Pa.; No. 247, Ridgway, Pa.; No. 7, Rochester, Pa.; No. 85, St. Marys, Pa.; No. 128, Sharon, Pa.; No. 118, Shippensburg, Pa.; No. 145, State College, Pa.; No. 64, Tarentum, Pa.; No. 73, Titusville, Pa.; No. 164, Uniontown, Pa.; No. 159, Vandergrift, Pa.; No. 60, Warren, Pa.; No. 155, Washington, Pa.; No. 177, Waynesburg, Pa.; No. 47, West Newton,

Pa.; No. 39, Wilkinsburg, Pa.; No. 227, Willow Grove, Pa.; No. 205, York, Pa.

J. J. Newberry Co., variety-department stores, 9-2-72, except as otherwise indicated: No. 154, Elkton, Md.; 67-75 West Washington Street, Hagerstown, MD; No. 204, Berwick, Pa.; No. 9, Chambersburg, Pa.; 304 Market Street, Lewisburg, PA; No. 106, Lock Haven, Pa.; No. 129, Milton Pa.; No. 5, Shamokin, Pa. (9-10-72); No. 1, Stroudsburg, Pa. (9-13-72); No. 90, Sunbury, Pa.

Port Allegany Community Hospital, hospital; 45 Pine Street, Port Allegany, PA; 9-8-72.

Scott Stores Co., variety-department store; No. 9292, Chicago, Ill.; 8-26-72.

Seithner Brothers, Inc., variety-department store; 302 Federal Street, Saginaw, MI; 9-12-72.

The following certificates were issued to establishments relying on the base-year employment experience of other establishments, either because they came into existence after the beginning of the applicable base year or because they did not have available base-year records. The certificates permit the employment of full-time students at rates of not less than 85 percent of the applicable statutory minimum in the classes of occupations listed, and provide for the indicated monthly limitations on the percentage of full-time student hours of employment at rates below the applicable statutory minimum to total hours of employment of all employees.

Crest Cut Rate, Inc., foodstore; 4500 Broadhead Road, Aliquippa, AL; stock clerk, maintenance; 12 percent; 8-31-72.

W. T. Grant Co., variety-department stores, for the occupations of salesclerk, stock clerk, office clerk, cashier, 7 to 15 percent, 9-2-72, except as otherwise indicated: No. 189, Baltimore, Md. (9-17-72); No. 1082, Baltimore, Md.; No. 1143, Folcroft, Pa. (8 to 35 percent); No. 1077, Newtown Square, Pa. (10 to 25 percent); No. 1071, Southampton, Pa. (salesclerk, stock clerk, 0 to 9 percent, 9-14-72).

Kleimans Rexall Drugs, Inc., drugstore; 201 Ballard Avenue, Baltimore, MD; salesclerk, 9 to 12 percent; 9-13-72.

S. S. Kresge Co., variety-department stores, for the occupation of salesclerk, 3 to 10 percent, 9-2-72, except as otherwise indicated: No. 4127, Little Rock, Ark. (2 to 15 percent, 8-18-72); No. 4045, Butler, Pa. (bagger, salesclerk, checkout, 6 to 10 percent, 9-5-72); No. 189, Middletown, Pa. (10 percent); 6316 Woodland Avenue, Philadelphia, PA; No. 129, Philadelphia, Pa.; No. 545, Philadelphia, Pa. (10 percent); No. 4089, La Crosse, Wis. (salesclerk, stock clerk, maintenance, office clerk, checker-cashier); No. 4325, Madison, Wis. (salesclerk, stock clerk, office clerk, maintenance, checker-cashier, customer service, counter filling, 11 to 29 percent, 9-19-72); No. 4374, Wausau, Wis. (salesclerk, stock clerk, office clerk, checker-cashier, 10 to 28 percent, 7-20-72).

Larson's Big Star, foodstore; No. 114, Water Valley, Miss.; stock clerk, bagger; 8 percent; 9-17-72.

McCrory-McLellan-Green Stores, variety-department stores, for the occupations of salesclerk, office clerk, stock clerk, except as otherwise indicated: No. 359, Dalton, Ga., 7 to 24 percent, 9-18-72; No. 557, Thomson, Ga., 7 to 28 percent, 9-19-72; No. 346, LaVale, Md., 1 to 6 percent, 9-6-72 (salesclerk, office clerk, stock clerk, porter); No. 354, Salisbury, Md., 1 to 10 percent, 9-13-72 (salesclerk); No. 90, Bristol, Pa., 14 to 30 percent, 9-19-72; No. 1066, Lancaster, Pa., 5 to 18 percent, 9-11-72 (salesclerk, office clerk); No. 326, North York, Pa., 7 to 22 percent, 9-10-72 (salesclerk); No. 254, York, Pa., 22 to 27 percent, 8-21-72 (salesclerk, office clerk, stock clerk, porter).

G. C. Murphy Co., variety-department stores, for the occupations of salesclerk, office clerk, stock clerk, janitorial, 16 to 31 percent, 9-2-72, except as otherwise indicated: Nos. 91 and 285, Baltimore, Md.; No. 301, Glen Burnie, Md. (14 to 23 percent); No. 309, Oxon Hill, Md. (9 to 25 percent, 9-11-72); No. 302, Carlisle, Pa. (17 to 25 percent); No. 280, McKeesport, Pa. (3 to 23 percent); No. 293, Pittsburgh, Pa. (9 to 25 percent).

T. G. & Y. Stores Co., variety-department store; No. 1403, Wichita, Kans.; salesclerk, stock clerk, office clerk; 19 to 30 percent; 8-31-72.

Each certificate has been issued upon the representations of the employer which, among other things, were that employment of full-time students at special minimum rates is necessary to prevent curtailment of opportunities for employment, and the hiring of full-time students at special minimum rates will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under a certificate. The certificate may be annulled or withdrawn, as indicated therein, in the manner provided in Part 528 of Title 29 of the Code of Federal Regulations. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within 30 days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 519.9.

Signed at Washington, D.C., this 15th day of December 1971.

ROBERT G. GRONEWALD,
Authorized Representative of the Administrator.

[FR Doc.71-18872 Filed 12-27-71;8:47 am]

CERTIFICATES AUTHORIZING THE EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM WAGES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.) and Administrative Order No. 621 (36 F.R. 12819) the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the act. For each certificate, the effective and expiration dates, number or proportion of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations; such conditions in certificates not issued under the supplemental industry regulations are as listed.

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

The following normal labor turnover certificates authorize 10 percent of the total number of factory production workers except as otherwise indicated.

Aalfs Manufacturing Co., Sheldon, Iowa; 10-1-71 to 9-30-72; 10 learners (men's corduroy jeans).

Alexandria Industrial Garment Manufacturing Co., Alexandria, Tenn.; 10-8-71 to 10-7-72 (men's shirts).

Apco Manufacturing Co., Brodhead, Wis.; 10-11-71 to 10-10-72 (infants', children's, youth's and men's polo shirts).

Auburntown Industries, Auburntown, Tenn.; 10-31-71 to 10-30-72 (men's and boys' shirts).

Bob Evans Uniform Co., Burkesville, Ky.; 10-23-71 to 10-22-72 (nurses' and waitresses' uniforms).

Boonville Manufacturing Corp., Boonville, Ind.; 11-1-71 to 10-31-72 (men's pajamas and shirts).

Brooks Seas Manufacturing Co., Wilkes-Barre, Pa.; 10-11-71 to 10-10-72; 5 learners (girl's blouses, skirts, slacks and shorts).

Brundidge Shirt Corp., Brundidge, Ala.; 9-26-71 to 9-25-72 (men's shirts).

Carolina Lingerie Co., Mocksville, N.C.; 10-6-71 to 10-5-72 (men's shirts).

Carthage Shirt Corp., Carthage, Tenn.; 11-3-71 to 11-2-72 (men's shirts and ladies' blouses).

Cluett, Peabody & Co., Carbon Hill, Ala.; 10-15-71 to 10-14-72 (men's shirts).

Creedmoor Sportswear Co., Creedmoor, N.C.; 10-15-71 to 10-14-72 (men's and boys' shirts).

Dunbrooke Sportswear Co., El Dorado Springs, Mo.; 10-1-71 to 9-30-72 (men's shirts).

Eatonton Manufacturing Co., Inc., Eatonton, Ga.; 10-29-71 to 10-28-72 (men's trousers).

Elder Manufacturing Co., Webb City, Mo.; 10-31-71 to 10-30-72 (boys' and juveniles' shirts).

Freeland Shirt Co., Inc., Freeland, Pa.; 11-4-71 to 11-3-72 (men's, women's and children's outerwear jackets).

Gross Galesburg Co., Chariton, Iowa; 9-23-71 to 9-22-72 (men's coveralls and jackets).

Gwen Fashions, Inc., McAlisterville, Pa.; 9-23-71 to 9-22-72; 5 learners (ladies' dresses).

Irene Sportswear Co., Inc., Nicholson, Pa.; 10-18-71 to 10-17-72; 10 learners (ladies' blouses).

Kenrose Manufacturing Co., Inc. Roanoke, Va.; 10-19-71 to 10-18-72 (women's dresses).

Kenrose Pilot Plant, Saltville, Va.; 9-23-71 to 9-22-72 (women's dresses).

Kent Sportswear, Curwensville, Pa.; 10-5-71 to 10-4-72 (men's outerwear jackets).

Levi Strauss & Co., Knoxville, Tenn.; 10-20-71 to 10-19-72 (men's and boys' pants).

Levi Strauss & Co., Maryville, Tenn.; 11-4-71 to 11-3-72 (men's and boys' pants).

Lexington Sportswear Co., Lexington, S.C.; 10-17-71 to 10-16-72 (men's and boys' jackets).

Marie Foundations, McLean, Tex.; 9-30-71 to 9-29-72 (women's brassieres and girdles).

Marie Foundations, Pampa, Tex.; 10-14-71 to 10-13-72 (women's brassieres and girdles).

Mitchell Manufacturing, Inc., Corinth, Miss.; 10-20-71 to 10-19-72 (men's shirts).

Murcel Manufacturing Corp., Glennville, Ga.; 10-12-71 to 10-11-72; 10 learners (maids' and nurses' uniforms).

Niemor Contractors, Newark, N.J.; 9-29-71 to 9-28-72 (men's and boys' jackets).

Oshkosh B'Gosh, Inc., Celina, Tenn.; 10-8-71 to 10-7-72 (men's pants and shirts).

Pella Manufacturing Corp., Pella, Iowa; 10-14-71 to 10-13-72; 10 learners (work clothes).

Publix Shirt Corp., Myerstown, Pa.; 10-25-71 to 10-24-72 (men's and boys' dress shirts).

Rappahannock Sportswear Co., Inc., Fredericksburg, Va.; 10-9-71 to 10-8-72 (men's slacks).

Rector Sportswear Corp., Rector, Ark; 10-28-71 to 10-27-72 (men's pants).

Red Hill Apparel Co., Red Hill, Pa.; 10-15-71 to 10-14-72 (children's dresses).

Riverside Industries, Inc., Moultrie, Ga.; 10-4-71 to 10-3-72 (men's work pants and shirts).

Riverside Manufacturing Co., Moultrie, Ga.; 10-4-71 to 10-3-72 (men's work clothes).

J. H. Rutter Rex Manufacturing Co., Inc., New Orleans, La.; 10-11-71 to 10-10-72 (men's and boys' work shirts and pants).

Sampson Sewing Co., Clinton, N.C.; 10-18-71 to 10-17-72 (children's coats, jackets, jumpsuits, and pants).

The Solomon Co., Collinsville, Ala.; 9-30-71 to 9-29-72; 10 learners (men's pants).

Stapleton Garment Co., Inc., Stapleton, Ga.; 9-23-71 to 9-22-72 (men's -- -- ----

Steele Apparel Co., Inc., Steele, Mo.; 11-5-71 to 11-4-72 (ladies' dresses).

Sullcraft Manufacturing Co., Inc., Dushore, Pa.; 10-4-71 to 10-3-72; 9 learners (men's and boys' pajamas).

Tick Tock Frocks, Inc., Fall River, Mass.; 10-4-71 to 10-3-72; 8 learners (ladies' dresses).

Toll Gate Garment Co., Inc., Hamilton, Ala.; 10-1-71 to 9-30-72 (men's shirts).

Tom & Huck Togs, Inc., Amory, Miss.; 10-15-71 to 10-14-72 (men's, boys' and ladies' slacks).

Tracy City Manufacturing Co., Tracy City, Tenn.; 10-17-71 to 10-16-72 (men's and boys' shirts).

The Van Wert Manufacturing Co., Van Wert, Ohio; 9-25-71 to 9-24-72; 10 learners (men's and women's utility jackets).

Warner's, London, Ky.; 10-25-71 to 10-24-72 (women's girdles and brassieres).

Wentworth Manufacturing Co., Florence, S.C.; 11-1-71 to 10-31-72 (women's dresses).

Wilcox Garment Co., Inc., Rochelle, Ga.; 9-26-71 to 9-25-72 (men's and boys' shirts).

The following plant expansion certificates were issued authorizing the number of learners indicated.

Central Apparel Corp., Danville, Va.; 10-21-71 to 4-20-72; 50 learners (children's pants).

Creedmoor Sportswear Co., Creedmoor, N.C.; 11-1-71 to 4-30-72; 10 learners (men's and boys' sport shirts).

Lisa's, Inc., Grifton, N.C.; 10-26-71 to 10-25-72; 28 learners (children's jackets).

Prescott Manufacturing Corp., Prescott, Ark.; 10-13-71 to 4-12-72; 20 learners (men's and boys' pajamas).

Cigar Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended and 29 CFR 522.80 to 522.85, as amended).

Universal Cigar Corp., Clearwater, Fla.; 9-24-71 to 9-23-72; 10 percent of the total number of factory production workers for normal labor turnover purposes (cigars).

Glove Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended and 29 CFR 522.60 to 522.65, as amended).

Burnham-Edina Manufacturing Co., Edina, Mo.; 10-4-71 to 10-3-72; 5 learners for normal labor turnover purposes (leather palm work gloves).

The Glove Corp., Heber Springs, Ark.; 10-8-71 to 10-7-72; 10 learners for normal labor turnover purposes (work gloves).

Monte Glove Co., Inc., Maben, Miss.; 10-20-71 to 10-19-72; 10 learners for normal labor turnover purposes (cotton work gloves).

St. Johnsbury Glovers, St. Johnsbury, Vt.; 10-4-71 to 10-3-72; 10 learners for normal labor turnover purposes (knitted and leather gloves).

St. Johnsbury Glovers, St. Johnsbury, Vt.; 10-4-71 to 4-3-72; 5 learners for plant expansion purposes (knitted and leather gloves).

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

Amos Hosiery Mills, Inc., High Point, N.C.; 10-12-71 to 10-11-72; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's, boys', and misses' hosiery and anklets).

Excel Hosiery Mills, Inc., Union, S.C.; 9-27-71 to 9-26-72; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's seamless hosiery).

V. I. Prewett & Son, Inc., Fort Payne, Ala.; 10-24-71 to 10-23-72; 5 percent of the total number of factory production workers for normal labor turnover purposes (infants' and children's hosiery).

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

Benham Corp., Scottsboro, Ala.; 10-8-71 to 10-7-72; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's and boys' underwear).

Benham Corp., Scottsboro, Ala.; 10-8-71 to 4-7-72; 18 learners for plant expansion purposes (men's and boys' underwear).

Boonville Manufacturing Corp., Boonville, Ind.; 11-1-71 to 10-31-72; 5 learners for normal labor turnover purposes in the manufacture of men's woven underwear (men's underwear).

Cullman Lingerie Corp., Cullman, Ala.; 10-31-71 to 10-30-72; 5 percent of the total number of factory production workers for normal labor turnover purposes (ladies' lingerie, sleepwear, and loungewear).

Dothan Manufacturing Co., Dothan, Ala.; 9-30-71 to 9-29-72; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's underwear and pajamas).

Haleyville Textile Mills, Inc., Haleyville, Ala.; 10-31-71 to 10-30-72; 5 percent of the total number of factory production workers for normal labor turnover purposes (ladies' lingerie, sleepwear, and loungewear).

Isaacson-Carrico Manufacturing Co., El Campo, Tex.; 9-21-71 to 9-20-72; 5 learners for normal labor turnover purposes (girls' underwear and sleepwear).

Junior Form Lingerie Corp., Boswell, Pa.; 9-23-71 to 9-23-72; 5 percent of the total number of factory production workers for normal labor turnover purposes (ladies' nightwear).

Russell Mills, Inc., Alexander City, Ala.; 10-1-71 to 9-30-72; 5 percent of the total number of factory production workers for normal labor turnover purposes (underwear, athletic wear, and sweatshirts).

The following learner certificates were issued in Puerto Rico to the companies hereinafter named. The effective and expiration dates, learner rates, occupations, learning periods and the number of learners authorized to be employed, are indicated.

Bayuk Caribe, Inc., Ciales, P.R.; 10-4-71 to 10-3-72; 10 learners for normal labor turnover purposes in the occupations of cigar making and packing, each for a learning period of 320 hours at the rates of $1.32 an hour for the first 160 hours and $1.42 an hour for the remaining 160 hours (cigars).

Surtex Division Stretch Wear Manufacturing Co., Inc., Coamo, P.R.; 10-11-71 to 10-10-72; 15 learners for normal labor turnover purposes in the occupation of sewing machine operating, for a learning period of 480 hours at the rates of $1.22 an hour for the first 240 hours and $1.35 an hour for the remaining 240 hours (ladies' nylon dress gloves).

Each learner certificate has been issued upon the representations of the employer which, among other things, were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within 15 days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in 29 CFR, Part 528.

Signed at Washington, D.C., this 16th day of December 1971.

ROBERT G. GRONEWALD,
Authorized Representative of the Administrator.

[FR Doc.71-18886 Filed 12-27-71;8:48 am]

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TUESDAY, DECEMBER 28, 1971
WASHINGTON, D.C.
Volume 36 ■ Number 249

PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social and Rehabilitation Service

■

DEVELOPMENTAL DISABILITIES PROGRAM

Notice of Proposed Rule Making

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social and Rehabilitation Service

[45 CFR Part 416]

DEVELOPMENTAL DISABILITIES PROGRAM

Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Administrator, Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare.

The proposed regulations set forth policies for implementing the provisions of the Developmental Disabilities Services and Facilities Construction amendments of 1970 (Public Law 91-517, October 30, 1970), which amended and broadened the scope of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963. They carry forward, with appropriate updating, the current provisions of 45 CFR Part 416 and add to Part 416 new provisions for the planning, services, and administration responsibilities under Public Law 91-517. Major subparts concern allotments to States, requirements for administration of the State plan, including designation of one or more State agencies, membership and functions of the State Planning and Advisory Council which is responsible for submitting modifications of the State plan, and the construction program. The regulations also redesignate the existing provisions of Subpart C of Part 416, covering initial staffing of community mental retardation facilities, as new Subpart G.

The Department of Health, Education, and Welfare Appropriation Act for fiscal year 1971 permitted the 1971 allotment to States for the Developmental Disabilities Program to be available for expenditure during the 1972 fiscal year. This includes expenditures for planning, services, and administration as well as construction.

Federal financial assistance extended under this part will be subject to the regulations in 45 CFR Part 80 issued by the Secretary of Health, Education, and Welfare, and approved by the President, to effectuate the provisions of section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d).

Prior to the adoption of the proposed regulations, consideration will be given to any comments, suggestions, or objections thereto which are submitted in writing to the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, 330 Independence Avenue SW., Washington, DC 20201, within a period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Comments received will be available for public inspection in Room 5121 of the Department's offices at 301 C Street SW., Washington, DC on Monday through Friday of each week from 8:30 to 5 (area code 202-963-7361).

Dated: October 27, 1971.

JOHN D. TWINAME,
Administrator, Social and Rehabilitation Service.

Approved: December 18, 1971.

ELLIOT L. RICHARDSON,
Secretary.

1. Part 416 is amended by redesignating Subpart C as Subpart G, by revoking Subparts A and B, and by adding new Subparts A-F to read as follows:

PART 416—DEVELOPMENTAL DISABILITIES PROGRAM AND GRANTS FOR INITIAL STAFFING OF COMMUNITY MENTAL RETARDATION FACILITIES

SUBPART A—GENERAL

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416.1 Purpose of Act.
416.2 Terms.

SUBPART B—ALLOTMENTS, FEDERAL SHARE, PAYMENTS AND FEDERAL FINANCIAL PARTICIPATION

416.10 Allotments to States.
416.11 Reallotment of funds.
416.12 Period of availability of funds designated for construction.
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416.14 Expenditures by political subdivisions and nonprofit private agencies for purpose of determining the Federal share for any State.
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SUBPART C—THE STATE PLAN: ADMINISTRATION

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416.39 Special financial and technical assistance to areas of urban or rural poverty.
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Subpart D—The State Plan: The State Council Program Planning and Evaluation

416.50 State Council.
416.51 Functions of the State Council.
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416.53 Planning activities.
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416.60 Relationships with other programs.
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416.62 Provision of services.
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Subpart F—The State Plan: Construction

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416.77 General standards for construction and equipment.
416.78 Notice of change of status of facility.
416.79 Good cause for other use of facility.

AUTHORITY: The provisions of Subparts A-F issued under sec. 139, 84 Stat. 1323, 42 U.S.C. 2677b; sec. 144, 81 Stat. 529, 42 U.S.C. 2678c.

Subpart A—General

§ 416.1 Purpose of Act.

Part C of the Developmental Disabilities Services and Facilities Construction Act is designed to:

(a) Enlarge the target group of the original Public Law 88-164 by including the mentally retarded, cerebral palsied, epileptics, and other individuals with neurological conditions closely related to mental retardation or requiring similar services.

(b) Provide support for planning, services, and administration as well as construction of facilities for the developmentally disabled.

(c) Assist the States in developing and implementing comprehensive and continuing plans for meeting the current and future needs for services and facilities for persons with developmental disabilities.

(d) Promote a wide range of diversified services in terms of the lifetime human needs of the developmentally disabled with emphasis on the direction of services to be provided rather than people to be served.

(e) Develop new or innovative programs to fill gaps in existing services through flexible funding options.

(f) Develop community based services and expansion of programs with emphasis on those individuals with substantial handicaps.

(g) Bring together major State agencies in the planning for the developmentally disabled and establish a State Planning and Advisory Council to set the pace in areas of planning and evaluation through its responsibilities and membership, while designated State agencies administer or supervise the administration of the program.

(h) Encourage the States to concentrate on planning and programing for the more severely handicapped among the developmentally disabled and give emphasis to coordination with other federally assisted programs serving the developmentally disabled. Maximum

flexibility is permitted each State to determine its priorities, services and projects to be funded.

§ 416.2 Terms.

Unless otherwise indicated in the regulations in this part, the terms below are defined as follows:

(a) "Act" means the Developmental Disabilities Services and Facilities Construction Act;

(b) "Administrator" means the Administrator of the Social and Rehabilitation Service;

(c) "Construction" means (1) the construction of new buildings, acquisition, expansion, remodeling, and alteration of existing buildings, (2) initial equipment for such buildings including medical transportation facilities, and (3) architect's fees in connection with an approved project. Construction does not include the cost of offsite improvements or the cost of the acquisition of land;

(d) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, or another neurological condition of an individual found by the Secretary to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, which disability originates before such individual attains age 18, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to such individual;

(e) "Equipment" means those items which are necessary for the functioning of the facility, but does not include items of current operating expense such as food, fuel, drugs, paper, printed forms, and soap;

(f) "Facility for persons with developmental disabilities" means a facility, or a specified portion of a facility, designed primarily for the delivery of one or more services to persons with one or more developmental disabilities;

(g) "Family" means any relative by blood, marriage, or adoption of a developmentally disabled individual or parent surrogate with whom the developmentally disabled individual has a close interpersonal relationship;

(h) "Nonprofit facility for persons with developmental disabilities" means such facility which is owned and operated by one or more public or other nonprofit agencies, corporations, or organizations;

(i) "Nonprofit agency, corporation, or organization" is one no part of the net earnings of which inures or may lawfully inure to the benefit of any private stockholder or individual;

(j) "Population" as applied to any State means the population of that State as determined by the most recent official estimates by the U.S. Department of Commerce made available to the Secretary;

(k) "Public agency" includes an Indian Tribal Council;

(l) "Regional Commissioner" means Regional Commissioner of the Social and Rehabilitation Service;

(m) "Secretary" means the Secretary of Health, Education, and Welfare.

(n) "Services for persons with developmental disabilities" means specialized services or special adaptations of generic services directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability. Such services include: Diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual with such disability and of his family, protective and other social and sociolegal services, information, and referral services, follow-along services, and transportation services necessary to assure delivery of services to persons with developmental disabilities;

(o) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands;

(p) "State agency or agencies" means the State agency or agencies designated to administer or supervise the administration of all or designated portions of the State plan;

(q) "State agency for construction" means the sole State agency designated to administer or supervise the administration of grants for construction of facilities for the developmentally disabled under the State plan;

(r) "State Council" means the State Planning and Advisory Council designated in the approved State plan;

(s) "State plan" means the document or documents submitted by the State to comply with the requirements for participation under the Act;

(t) "Technical assistance" means the furnishing of consultative, technical, and informational services to States, local or other public or private agencies, organizations or individuals in matters pertaining to planning, provision of services, construction of facilities, and the organization and management of facilities and programs for developmentally disabled persons.

Subpart B—Allotments, Federal Share, Payments and Federal Financial Participation

§ 416.10 Allotments to States.

The allotment to the several States shall be computed as follows:

(a) Two-thirds on the basis of total population weighted by financial need. "Financial need" as applied to any State means the relative per capita income as shown by data supplied by the U.S. Department of Commerce for the three most recent consecutive years for which satisfactory data are available.

(b) One-third on the basis of a need factor based on the scope and extent of services to be provided under the approved State plan.

(c) Except for the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands, the allotment to any State for any fiscal year shall not be less than $100,000. However, if the sum appropriated for any fiscal year after the fiscal year ending June 30, 1971, exceeds the amount authorized for the 1971 fiscal year, the minimum State allotment for that fiscal year shall be increased by the percentage by which the appropriation for such later year exceeds the authorization for the fiscal year ending June 30, 1971.

§ 416.11 Reallotment of funds.

The funds allotted to any State for a fiscal year shall remain available to the State for obligation in accordance with its approved State plan during the fiscal year for which the allotment was made, except that funds may be carried over to succeeding fiscal years to the extent permitted by the Act and the applicable Department of Health, Education, and Welfare Appropriation Acts. If the Administrator, after consultation with the State, determines that a State will not utilize all of its allotment during the period for which it is available, the balance shall be available for reallotment to other States in accordance with the provisions of section 132(d) of the Act. The Administrator shall make a determination as to the amounts of funds available for reallotment as of the end of each 6-month period during which such allotments are available for expenditures by the States and shall reallot such funds as soon as possible after such determination is made.

§ 416.12 Period of availability of funds designated for construction.

Sums allotted to a State for a fiscal year and designated by it for construction and remaining unobligated at the end of such year shall remain available to the State for such purpose for the next fiscal year in addition to the sums allotted to such State for such next fiscal year. If, however, the State plan calls for construction of a specific facility, the Federal share of which will exceed the allotment available to the State for a fiscal year for construction plus any amount from the preceding fiscal year remaining unobligated, the unobligated amount from the preceding year shall remain available for a second additional year for the purpose of paying the Federal share for construction of such facility.

§ 416.13 Federal share.

(a) Except as provided for in paragraph (b) of this section, the Federal share for a State for the cost of planning, administration, and services for fiscal years ending June 30, 1971, and June 30, 1972, shall be 75 per centum of the expenditures incurred by the State during the respective fiscal years under the State plan approved for such years. For the fiscal year ending June 30, 1973, the Federal share shall be 70 per centum of such expenditures.

(b) In the case of any project located in an area within a State determined by the Administrator to be an urban or

rural poverty area, the Federal share with respect to such project may be up to 90 per centum of the expenditures, other than for construction, incurred by the State under the State plan for the first 24 months of such project and 80 per centum for the next 12 months.

(c) For construction projects, except as provided for in paragraph (d) of this section, the Federal share shall be the amount determined by the State agency for construction except that the Federal share may not exceed 66⅔ per centum of the cost of construction of such project. The State agency, prior to the approval of the first project in the State during any fiscal year, shall notify the Administrator in writing of the maximum Federal share established and the method for determining the actual Federal share to be paid with respect to each project for that year. The Federal share and the method for determining the Federal share shall not be changed after such approval of the first project in the State during such fiscal year.

(d) In the case of any facility which provides, or will provide upon completion of construction, services for persons in an area designated by the Administrator as an urban or rural poverty area, the maximum Federal share may not exceed 90 per centum of the costs of construction of the project.

§ 416.14 Expenditures by political subdivisions and nonprofit private agencies for purpose of determining the Federal share for any State.

For the purpose of determining the Federal share for any State, expenditures made by political subdivisions and nonprofit private agencies, organizations, and groups for purposes described in the State plan shall be regarded as expenditures by such State, subject to the following conditions and limitations:

(a) Such expenditures may be included only when made by a political subdivision or private nonprofit agency, organization or group to which the State agency has made available funds from Federal or State sources for carrying out the approved State plan for the fiscal year;

(b) Records of such expenditures shall be maintained and be available for inspection and audit as specified in § 416.38.

§ 416.15 Payment.

(a) *Planning, administration, and services.* Payment of the Federal share of expenditures for planning, administration, and services from each State's allotment for a fiscal year shall be made in advance on the basis of estimates of the sums the State will expend under the State plan. Adjustments as necessary shall be made on account of previously made overpayments or underpayments. Payments will be made where practicable through a letter of credit system or, when such system is not practicable, on the basis of payment requests from the State to meet its current needs.

(b) *Construction payments.* The State agency for construction shall certify, after inspection that work has been performed upon a project, or purchases have been made, in accordance with approved plans and specifications and that payment of an installment is due. Payments will be made at periodic intervals consistent with the construction progress of the project. Final payment will not be made until after the project is completed and final inspection is made by appropriate representatives of the Administrator.

§ 416.16 Federal financial participation.

Federal financial participation in planning, administration, services and costs of construction of facilities under a State plan may include the costs which the State agency is authorized to undertake or support, or the costs of specialized training, including inservice or short-term training, except that the following costs shall not be included:

(a) Any portion of costs which is financed by non-Federal funds which are applied to match other Federal funds, or costs to which Federal funds have been applied;

(b) Research activities;

(c) The acquisition of land; and

(d) Such other costs as the Administrator may find to be inconsistent with the Act or the regulations in this part.

§ 416.17 Determining to which fiscal year an expenditure is chargeable.

In determining to which Federal fiscal year expenditures are chargeable for the purpose of the Act, State laws and regulations will be followed. In those States which appropriate funds for a biennium, the principles provided in State laws, regulations, and practices, for determining to which year of the biennium an expenditure should be charged, will be applied in determining to which Federal fiscal year in the biennium an expenditure is properly chargeable. If there are no applicable principles provided in State laws, regulations, and practices, the actual date of the obligation shall be controlling. In those States where the State fiscal year does not coincide with the Federal fiscal year, State laws and regulations for determining to which State fiscal year an expenditure is chargeable will be applied to the Federal fiscal year.

Subpart C—The State Plan: Administration

§ 416.20 Purpose.

A basic condition to the certification of Federal funds under the Act is a State plan approved by the Secretary as meeting Federal requirements. The State plan is a commitment that the program will be carried out in keeping with the provisions of the Act and all regulations, policies, and procedures established by the Secretary or the Administrator.

§ 416.21 Plan submission and approval.

The State plan may be submitted by the Governor, the State agency or the State Council to the Regional Commissioner. Amendments subsequent thereto shall be submitted by the State Council. The Regional Commissioner reviews the plan or amendments and approves them or forwards them together with comments and recommendations to the Administrator. Any State plan, or amendment meeting the requirements of the Act and of this part shall be approved.

§ 416.22 Plan disapproval.

No State plan shall be finally disapproved except after reasonable notice and opportunity for a hearing to the State.

§ 416.23 Review of plan by Governor.

The State plan shall provide that the Office of the State Governor will be given an opportunity to review the State plan, plan amendments, and related material, in accordance with the requirements of § 204.1 of Chapter II of this title.

§ 416.24 State agency or agencies for administration.

(a) *Designation of State agency or agencies.* The State plan shall designate the State agency or agencies which will administer or supervise the administration of all or designated portions of the State plan; provided that a sole State agency is designated for administering or supervising the administration of grants for construction.

(b) *Designation of more than one State agency.* (1) If the State plan designates more than one State agency to administer or supervise the administration of the State plan, it shall set forth the portion of the program for which each State agency is responsible.

(2) The State may apportion its allotment among such agencies in proportion to the responsibilities assigned to such agencies for carrying out activities approved under the State plan. Funds so apportioned may be combined with other State or Federal funds authorized to be spent for other purposes, provided that there is proportionate benefit to the purpose or purposes of this part for which the funds are combined.

(c) *Authority of the State agency or agencies.* The State plan shall contain a certification by the State attorney general that the State agency or agencies have authority for administering or supervising the administration of all or portions of the State plan; and that nothing in the State plan is inconsistent with State law.

§ 416.25 Methods of administration.

The State plan shall provide for such methods of administration as are necessary for the proper and efficient operation of the plan. Such methods shall include provision for informing the general public in the State of the kinds and locations of services and facilities which are available under the State plan.

§ 416.26 Personnel administration.

(a) The State plan shall provide that methods of personnel administration will be established and maintained in the State agency or agencies administering or supervising the administration of the State plan including local public agencies in conformity with the Standards for a Merit System of Personnel Administration, Part 70 of this title, and any standards prescribed by the U.S. Civil Service

Commission pursuant to section 208 of the Intergovernmental Personnel Act of 1970 (Public Law 91-648; 84 Stat. 1915) modifying or superseding such Standards. Under this requirement, laws, rules, regulations, and policy statements effectuating such methods of personnel administration are a part of the State plan. Statements of acceptance of these standards by all public local agencies included in the State plan must be obtained and methods must be established by the State to assure compliance. These statements and citations of applicable State laws, rules, regulations, and policies which provide assurance of conformity to the Standards in Part 70 of this title or to modifying or superseding standards issued by the Commission must be submitted with the State plan. Copies of the materials cited and of similar local materials maintained by a State official responsible for compliance by local public agencies must be furnished on request.

(b) The Secretary shall exercise no authority with respect to the selection, tenure of office or compensation of any individual employed in accordance with such methods.

§ 416.27 Confidential information.

(a) The State plan shall contain an assurance that all information as to personal facts and circumstances shall be held confidential, including lists of names and addresses and records obtained by the State agency or agencies or other private nonprofit agencies, groups, or organizations to whom funds are made available for carrying out the purposes of the Act.

(b) The use of such information and records shall be limited to purposes directly connected with administration of the Developmental Disabilities program and may not be disclosed directly or indirectly, other than in the administration thereof, unless the consent of the individual to whom the information applies, or his representative, has been obtained.

(c) The State agency or agencies shall establish and implement suitable regulations and procedures to carry out this provision and to protect adequately the rights of persons with respect to whom confidential information is held.

§ 416.28 Human rights and welfare of individuals receiving services.

The State plan shall contain an assurance that the State will establish and maintain policies and methods to provide for the protection of human rights and the welfare of individuals receiving services under this part.

§ 416.29 Funds made available to other agencies.

The State plan shall contain assurances that:

(a) Part of the funds paid to the State will be made available to other public agencies or other nonprofit private agencies, institutions, and organizations for the purposes of carrying out the Act;

(b) Such funds shall be expended in accordance with State procedures and standards and in accordance with the requirements contained in these regulations and policies established by the Administrator.

§ 416.30 State participation in cost of carrying out the State plan.

The State plan shall contain an assurance that there will be reasonable State financial participation in the cost of carrying out the State plan. In determining reasonable State participation the Administrator shall take into account the amount of State funds expended in the prior fiscal year for purposes of the State plan.

§ 416.31 Anticipated contribution towards strengthening services.

The State plan shall contain an assurance that the funds paid to the State will be used to make a significant contribution toward strengthening services for persons with developmental disabilities in the various political subdivisions of the State, in order to improve the quality, scope, and extent of services.

§ 416.32 Cooperative or joint effort between States and agencies.

If the State plan provides for participating in a joint effort between States or among public or private agencies in more than one State, portions of funds allotted to the cooperating States may be combined in accordance with the agreements between the agencies involved. Such agreements shall be in writing and as appropriate shall include:

(a) The mutual objectives and respective responsibilities of the parties to the agreement,

(b) The services each will offer and in what circumstances,

(c) The extent to which each agency will participate in the cost of the joint effort,

(d) The cooperative and collaborative relationships at the State level,

(e) The kinds of services to be provided by local agencies,

(f) Arrangements for reciprocal referrals,

(g) Arrangements for payment or reimbursement,

(h) Arrangements for exchange of reports of services provided to the developmentally disabled,

(i) Methods to coordinate plans,

(j) Plans for joint evaluation of policies that affect the cooperative work of the parties,

(k) Arrangements for periodic review of the agreements and joint planning for changes in the agreements, and

(l) Arrangements for continuous liaison and designation of staff responsible for liaison activities at State and local levels.

§ 416.33 Expenditure of grant funds.

The State plan shall set forth policies and procedures for the expenditure of funds under the plan, which are designed to assure effective continuing State planning, evaluation, and delivery of services (both public and private) for persons with developmental disabilities.

§ 416.34 Maintenance of effort.

The State plan shall contain an assurance that funds paid to the State under the State plan will be used to supplement and, to the extent practicable, to increase the level of funds that would otherwise be made available for the activities carried out under the State plan, and not to supplant such non-Federal funds. Compliance with such assurance will be deemed to have been met if the level of State funds available to and spent by the State for activities under the approved State plan (including State funds allocated to other public or nonprofit private agencies, institutions, and organizations) is at least no lower for any fiscal year than it was for the immediately preceding fiscal year, provided that the Administrator may also take into consideration the extent to which the level of such funds for any fiscal year may have included emergency or other funds for an activity of a nonrecurring nature.

§ 416.35 Fiscal administration.

The State plan shall provide for such fiscal control and fund accounting procedures as are necessary to assure proper disbursement and accounting of funds paid to the State. These procedures shall provide for the maintenance by the State agency or agencies and other grantees of such accounts and supporting documents as will serve to permit an accurate and expeditious audit of Federal and matching funds under the program.

§ 416.36 Cost allocation.

The State plan shall assure the establishing and maintaining of methods and procedures for properly charging the costs of activities under the plan to the program in accordance with Federal requirements (Department of Health, Education, and Welfare Grants Administration Manual, Chapter 5-60).

§ 416.37 Methods of evaluation.

The State plan shall describe the methods to be used to assess the effectiveness and accomplishments of the State in meeting the needs of persons with developmental disabilities. Such methods shall include a statement of the State program goals and objectives as related to the State plan, and a description of program purview and definition of the population to be served including appropriate baseline data and information. The evaluation methodology may include, but is not limited to, a specific description of the approach, procedures, and techniques to be used reflecting a scientific approach and incorporating sound management and research concepts.

§ 416.38 Reports.

(a) The State plan shall provide that the State agency or agencies will make such reports in such form and containing such information as the Adminstrator may require, and will keep such records and afford access thereto as the Administrator finds necessary to assure the correctness and verification of such reports. All reports shall be transmitted by the State Council to the Regional Commissioner. Such reports shall include (1) cumulative expenditure re-

ports to be submitted on forms prescribed by the Administrator, within 30 days after the end of the first half of any Federal fiscal year and within 60 days after the close of the Federal fiscal year, and (2) an annual progress report detailing the accomplishments of the program, including quantitative indices of the categories and number of persons served, services provided and facilities constructed under the program.

(b) All records required by the Act and the regulations shall be maintained for a minimum period of 3 years after the grant period whether or not audited by representatives of the Department of Health, Education, and Welfare. If no audit is made by the end of the third year, the records must be retained an additional 2 years or until audited, whichever occurs first. However, in all cases the appropriate records must be retained until resolution of any audit question.

(c) The State agency will afford access to the records maintained by it to the Comptroller General of the United States and the Secretary, or their authorized representatives, for purposes of audit and examination.

§ 416.39 Special financial and technical assistance to areas of urban or rural poverty.

(a) The State plan shall provide for the furnishing of special financial and technical assistance to public and nonprofit private agencies and organizations engaged in providing services and facilities for developmentally disabled persons residing in urban or rural poverty areas. The Federal share for such areas is set forth in § 416.13 (b) and (d).

(b) The State plan shall list proposed urban or rural poverty areas and contain an explanation of the method used for determining such areas. Approval of the State plan by the Secretary constitutes a determination that such an area is an urban or rural poverty area.

(c) The State agency or agencies may propose an area or community to be a poverty area by selecting any one of the following methods: (1) Areas designated by a State agency under any other federally aided program which are included in its State plan and approved by the Secretary as poverty areas; (2) areas designated by another Federal agency such as the Office of Economic Opportunity, Appalachian Regional Commission, Department of Housing and Urban Development; or (3) areas determined by the State utilizing criteria applied to all areas of the State and which include, as a minimum, Revised Office of Economic Opportunity Poverty Guidelines, published in OEO Instructions, No. 6004.1.b., dated December 1, 1970.

§ 416.40 Additional poverty area designations.

Any area which would not otherwise be determined to be a poverty area may nevertheless be designated a poverty area upon a showing to the satisfaction of the Secretary that: (a) Such area contains one or more subareas which are characterized as subareas of poverty; (b) the population of such subareas constitutes at least one-half of the population of such rural or urban area; (c) the project, facility or activity, in connection with which such determination is made, does or (when completed or put into operation) will serve the needs of the residents of such area or areas.

Subpart D—The State Plan: The State Council—Program Planning and Evaluation

§ 416.50 State Council.

(a) *Designation.* The State plan shall designate the State Planning and Advisory Council. The State Council may be either an existing council or agency within the State which meets the requirements of this part or a council or agency newly established for the purpose.

(b) *Membership.* The State plan shall provide that the State Council will include representatives of each of the principal State agencies, which shall not be less than those State agencies responsible for administering federally aided programs listed in § 416.60, representatives of local agencies, and representatives of nongovernmental organizations and groups concerned with services for persons with developmental disabilities. At least one-third of the membership must be consumer representatives whose major occupation is neither the administration of activities nor the provision of services, and may include developmentally disabled persons and parent groups.

(c) *Adequate staff.* The State plan shall provide that the State Council will have adequate staff to carry out its functions effectively. Such staff shall include a position of a planning director to be filled by a person with appropriate qualifications. This position may be full-time or part-time and must be devoted exclusively to planning activities.

§ 416.51 Functions of the State Council.

The State plan shall provide that the State Council will:

(a) Be responsible for submitting revisions of the State plan and transmitting such reports as may be required by the Administrator;

(b) From time to time, but not less often than annually, review and evaluate the State plan and submit appropriate modifications;

(c) Be responsible for planning activities on behalf of all developmentally disabled persons in the State;

(d) Be responsible for obtaining evaluation information and data from within the State.

§ 416.52 Review of State plan.

As a minimum, the State Council shall submit modifications of the State plan which (a) reflect budgetary and expenditure requirements for the next fiscal year, (b) incorporate changes in the quality, scope, and extent of services to be provided and facilities programed, and (c) update any assurances or other informational requirements included in the State plan.

§ 416.53 Planning activities.

Planning activities must relate to, but are not limited to, the following:

(a) *Statewide planning efforts.* Effective statewide planning must be carried out on an on-going basis on behalf of all developmentally disabled persons in the State, with emphasis being placed upon:

(1) The conduct of special studies including analyses and data gathering; and

(2) Identification, review and evaluation of all major programs, services, and facilities for the developmentally disabled in the State.

(b) *Planning methods.* Methods will be established which will:

(1) Coordinate and, where possible, stimulate the development of planning efforts on behalf of all developmentally disabled persons at the local levels throughout the State;

(2) Assure the effective coordination of other major activities and programs in the State for the developmentally disabled; and

(3) Provide for a service delivery system to be developed and maintained between the State agencies and other public and voluntary agencies that provide services, or whose programs are concerned with the developmentally disabled population of the State.

§ 416.54 Evaluation.

The State Council shall be responsible for obtaining evaluation information and data from within the State. The State program and project evaluation information and data shall be prepared in a format approved by the Administrator and consisting of a narrative statement and statistical data, reflecting a scientific and modern managerial point of view. It shall communicate easily and readily, in an objective manner, the accomplishments and effectiveness of programs operating in the State.

Subpart E—The State Plan: Services

§ 416.60 Relationships with other programs.

The State plan shall describe the extent, quality, and scope of services being provided or to be provided to the developmentally disabled under the following federally assisted programs: education for the handicapped, vocational rehabilitation, public assistance, medical assistance, social services, maternal, and child health, crippled children's services, comprehensive health, mental health and mental retardation plans, and other related programs, such as programs for the aging.

§ 416.61 Funds to augment and complement existing services and facilities.

The State plan shall describe how Federal funds allotted to the State will be used to complement and augment rather than duplicate or replace services and facilities for the developmentally disabled which are eligible for Federal assistance under other State programs.

§ 416.62 Provision of services.

(a) The State plan shall provide for the furnishing of services and facilities for persons with developmental disabilities associated with mental retardation. The State plan shall specify any other categories of developmental disabilities to be served.

(b) "Persons with developmental disabilities associated with mental retardation" are those:

(1) Who meet the pertinent criteria for the term "developmental disability" (section 401(1) of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963), i.e., whose disability originated before the individual attained age 18, has continued or can be expected to continue indefinitely, constitutes a substantial handicap to the individual and is due to mental retardation, cerebral palsy, or epilepsy;

(2) Whose disability is manifested by impairment in adaptive behavior as listed in the Manual of Terminology, Adaptive Behavior Classification of American Association on Mental Deficiency (1971 edition); and

(3) Who, therefore, need similar services.

§ 416.63 Quality, extent, and scope of services.

(a) *General.* The State plan shall describe the quality, extent, and scope of services to be provided to eligible persons. The extent of such services or programs must take into account the needs of individuals, different developmental disabilities, age, economic status, severity of the disability, geographic location and other relevant factors.

(b) *Quality.* The State plan shall provide that services under the plan must be provided by or supervised by personnel qualified to perform such services. Such qualifications shall be in accordance with merit system occupational standards, State and local licensing laws and specialty boards requirements for professionals.

(c) *Standards.* The State plan shall provide that services for persons with developmental disabilities which are provided under the plan must meet the standards set forth in "Services and Programs for Developmentally Disabled Persons", SRS, RSA Publication No. 180.

(d) *Scope of services.* The State plan shall indicate which services are necessary to provide adequate programs and services for persons with developmental disabilities. Adequate programs and services include the provision of services in combinations or groupings of services as well as individual and discrete services.

§ 416.64 Community service.

The State plan shall contain an assurance that Federal funds will be made available only to agencies, organizations, or institutions which provide that:

(a) The program shall be planned to serve the need of the particular community or communities in or near which program activities are being carried on, and that consideration will be given to involvement of residents of the community in the design, management, and operation of such activities;

(b) With respect to facilities for the developmentally disabled which do not provide services principally for persons residing in a particular community in or near which the facility is situated, consideration shall only be given to those projects which have as their objectives: (1) Decreasing residential populations by moving the developmentally disabled into community living situations, (2) extending institutional services to the community as needed, or (3) supporting additional services within the institution without increasing the capacity of the institution beyond its designed capacity.

§ 416.65 Services for persons unable to pay.

The State plan shall contain an assurance that a reasonable volume of services will be furnished to persons unable to pay therefor. As used in this section, "persons unable to pay therefor" includes persons who are otherwise self-supporting but are unable to pay the full cost of needed services. Such services may be paid for wholly or partly out of public funds or contributions of individuals and private and charitable organizations such as Community Chest or may be contributed at the expense of the provider of service itself. In determining what constitutes a reasonable volume of services to persons unable to pay therefor, there shall be considered the amount of services that may be available through generic agencies. These requirements may be waived if it is demonstrated to the satisfaction of the State agency or agencies, subject to subsequent approval by the Administrator, that to furnish such services is not feasible financially.

§ 416.66 Principles and priorities for services and construction of facilities.

(a) The State plan shall set forth principles that have been established by the State agency or agencies for determining the priority for services and facilities. Special consideration shall be given to those activities (1) which are located in areas of urban or rural poverty, or (2) which provide services to the more severely and profoundly handicapped persons. Approval of construction projects must be in the order of relative need, taking into account financial resources available for construction, maintenance and operation of the facility.

(b) The State plan shall provide for the approval of only those activities that hold significant promise toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of individuals with such a disability.

(c) The State plan shall provide that the State agency or agencies shall review the established priorities annually and revise the priorities where appropriate.

Subpart F—The State Plan: Construction

§ 416.70 Construction program.

The State plan shall provide for the development of a program of construction of facilities for the provision of services for persons with developmental disabilities.

§ 416.71 Development of the Construction program.

The State plan shall provide that the construction program shall be developed in a manner that is consistent with the State plan for provision of services, and in accordance with the following procedures:

(a) The State agency shall determine the need for facilities and services throughout the State. The plan for a delineated area shall take into account planning activities of local agencies and shall be developed after consultation with such local planning bodies as may be involved.

(b) The State agency shall determine, through field investigation and otherwise, the approximate locations in which facilities should be constructed.

(c) After having determined the need for facilities and services, the State agency shall develop an overall construction program. The program shall set forth all such needs in accordance with the criteria specified in § 416.72 and shall, insofar as funds are available, provide for construction in the order of relative need.

§ 416.72 Adequate facilities.

The State plan shall provide for adequate facilities so that all persons in the State, including those unable to pay for services, shall have access to such services in such numbers as will meet the needs of each area, taking into account the caseloads necessary to maintain and operate efficient facilities. Facilities shall be so planned as to serve the needs of the particular community or communities in or near which the facility is located.

§ 416.73 Designation of funds for construction.

The State plan shall specify the per centum of the State's allotment for any year which is to be devoted to construction of facilities. Such per centum shall be not more than 50 per centum of the State's allotment or such lesser per centum as the Administrator may prescribe.

§ 416.74 Fair hearing.

The State plan shall provide an opportunity for appeal to and a fair hearing before the State agency for construction to every applicant for a construction project who is dissatisfied with any action of the State agency for construction regarding its applications.

§ 416.75 Submittal of application.

(a) *Submittal of application.* Construction applications, including both a narrative description and an estimate of the cost of the project, shall be submitted to the Regional Commissioner through the State agency for construction on forms prescribed by the Administrator. An applicant must be a public or nonprofit agency.

(b) *Amendment to application.* An amendment to any approved application

shall be processed in the same manner as an original application. The priority of the project is not affected unless such amendments modify the factors on which the priority was originally granted.

(c) *Approval of application.* The Regional Commissioner shall approve such application if he finds that (1) sufficient funds to pay the Federal share of the cost of construction of such project are available from the allotment to the State, (2) the application contains assurances required by the Act and these regulations, (3) the plans and specifications are in accord with these regulations, (4) the application conforms to the State plan, and (5) the application is entitled to priority over other projects within the State. The Regional Commissioner shall notify the State agency in writing of his action.

(d) *Disapproval of application.* No application shall be disapproved until the Administrator has afforded the State agency for construction an opportunity for a hearing.

§ 416.76 Assurances from applicant.

The State plan must provide that, in addition to any other requirement imposed by law, each construction grant shall be subject to the condition that the applicant will furnish and comply with assurances set forth in the application for such grant. The Administrator may, at any time, approve exceptions to these conditions and assurances where he finds that such exceptions are not inconsistent with the Act and the purposes of the program.

§ 416.77 General standards for construction and equipment.

The State agency shall adopt general standards for construction and equipment for facilities for developmentally disabled persons assisted under this program. The standards adopted shall not be less than the general standards prescribed by the Administrator and set forth in "Minimum Standards for Design, Construction, and Equipment of Facilities for Persons with Developmental Disabilities" SRS, RSA Publication No. 179.

§ 416.78 Notice of change of status of facility.

The State agency shall promptly notify the Administrator in writing if, at any time within 20 years after the completion of construction, any facility which received funds under the Act (a) is transferred to any person, agency, or organization not qualified to file an application under the Act or not approved as a transferee by the State agency; or (b) ceases to be a public or nonprofit facility for persons with developmental disabilities as defined in the Act.

§ 416.79 Good cause for other use of facility.

If, within 20 years after completion of any construction for which a construction grant has been made, the facility shall cease to be a public or nonprofit facility for persons with developmental disabilities, the Administrator in determining whether there is good cause for releasing the applicant or other owner of the facility from the obligation to continue such facility as a public or other nonprofit facility for persons with developmental disabilities, shall take into consideration the extent to which:

(a) The facility will be devoted by the applicant or other owner to use for another public purpose which will promote the purpose of the Act; or

(b) There are reasonable assurances that for the remainder of the 20-year period other facilities not previously utilized for the care of persons with developmental disabilities will be so utilized and are substantially equivalent in nature and extent for such purposes.

2. Section 416.92 is amended by striking out "Title I," in paragraph (a), and by revising paragraph (f) to read as follows:

§ 416.92 Conditions of eligibility.

* * * * *

(f) The State agency designated to administer the services portion of the developmental disabilities program shall be requested to submit to the Administrator an evaluation of the application as to the feasibility and effectiveness of the proposal in achieving new and adequate services for the mentally retarded in the community; a statement indicating the relationship of the application to the purposes and priorities of the State plan for the developmentally disabled; and, such information as the Administrator may require in order to make a finding that Federal funds applied for will be supplemental and that non-Federal funds for mental retardation services have not declined and will not decline in the State during the project period.

§ 416.93 [Amended]

3. Section 416.93(c) is revoked.

4. Section 416.95(b) is revised to read as follows:

§ 416.95 Allocations priorities.

* * * * *

(b) In determining priority for projects the Administrator shall rank applications in order of the relative effectiveness of the proposed programs giving due weight to comprehensiveness and adequacy of the services to be provided and to the evaluation of the application by the State agency designated to administer the services portion of the developmental disabilities program.

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