AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

federal register

WEDNESDAY, OCTOBER 4, 1972

WASHINGTON, D.C.

Volume 37 ■ Number 193

Pages 20761–20923

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Area Code 202 Phone 962–8626

Published daily, Tuesday through Saturday (no publication on Sundays, Mondays, or on the day after an official Federal holiday), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., Ch. 15), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7207]

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

Charitable Contributions Deduction

On April 2, 1971, there was published in the FEDERAL REGISTER (36 F.R. 6082) a notice of proposed rule making with respect to amendment of the Income Tax Regulations (26 CFR Part 1) to conform such regulations to section 201(a), relating to charitable contributions, and section 201(f), relating to bargain sales to a charitable organization, of the Tax Reform Act of 1969 (83 Stat. 549, 564). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. Section 1.170A–1, as set forth in paragraph 6 of the notice of proposed rule making, is changed by revising paragraph (a)(1), by revising paragraph (f), by revising the heading of paragraph (h), by revising subparagraphs (1), (6), and (9) of paragraph (h), and by adding new subparagraphs (10) and (11) to paragraph (h) to read as set forth below.

PAR. 2. Section 1.170A–3, as set forth in paragraph 6 of the notice of proposed rule making, is changed by revising paragraph (c) of example (2) in paragraph (d) to read as set forth below.

PAR. 3. Section 1.170A–4, as set forth in paragraph 6 of the notice of proposed rule making, is changed by revising that part of paragraph (a) that follows subparagraph (3) thereof, by revising paragraphs (b) (1) and (3), (c) (2)(i) and (3), and (e), and by revising example (1), and examples (5) through (10), in paragraph (d) to read as set forth below.

PAR. 4. Section 1.170A–5, as set forth in paragraph 6 of the notice of proposed rule making, is changed by revising examples (1), (2), (5), and (7) in paragraph (b), to read as set forth below.

PAR. 5. Section 1.170A–6, as set forth in paragraph 6 of the notice of proposed rule making, is revised to read as set forth below.

PAR. 6. Section 1.170A–7, as set forth in paragraph 6 of the notice of proposed rule making, is changed by revising paragraphs (a) (1) and (2), (b), and (c) to read as set forth below.

PAR. 7. Section 1.170A–8, as set forth in paragraph 6 of the notice of proposed rule making, is changed by revising paragraphs (a), (b), and (d)(3), by revising examples (5) and (8) in paragraph (f), by revising paragraph (c) in example (4) in paragraph (f), by revising paragraph (d) in example (12) in paragraph (f), and by adding new examples (13), (14), and (15) in paragraph (f) to read as set forth below.

PAR. 8. Section 1.170A–10, as set forth in paragraph 6 of the notice of proposed rule making, is changed by revising paragraph (a), that part of paragraph (b)(1) that precedes the examples therein, paragraph (b)(2)(i)(*b*), and that part of paragraph (c)(2) that follows subdivision (i) thereof, to read as set forth below.

PAR. 9. Section 1.170A–11, as set forth in paragraph 6 of the notice of proposed rule making, is changed by revising that part of paragraph (c)(1) that follows subdivision (i) thereof and precedes the example therein, to read as set forth below.

PAR. 10. Section 1.1011–2, as set forth in paragraph 17 of the notice of proposed rule making, is changed by revising paragraphs (a) and (b), examples (1), and (3) through (7), in paragraph (c), and paragraph (c) of example (8) in paragraph (c), to read as set forth below.

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

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

Approved: September 26, 1972.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) to section 201(a), relating to charitable contributions, and section 201(f), relating to bargain sales to a charitable organization, of the Tax Reform Act of 1969 (Public Law 91–172, 83 Stat. 549, 564), such regulations are amended as follows:

PARAGRAPH 1. Section 1.61–3 is amended by revising paragraph (a) to read as follows:

§ 1.61–3 Gross income derived from business.

(a) *In general.* In a manufacturing, merchandizing, or mining business, "gross income" means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources. Gross income is determined without subtraction of depletion allowances based on a percentage of income, and without subtraction of selling expenses, losses, or other items not ordinarily used in computing cost of goods sold. The cost of goods sold should be determined in accordance with the method of accounting consistently used by the taxpayer. For special rules for determining cost of goods sold in the case of property contributed to a charitable organization, see paragraph (c)(4) of § 1.170A–1.

* * * * *

PAR. 2. Section 1.170 is amended by revising the heading of such section, subsection (e) of section 170, and the historical note to read as follows:

§ 1.170 Statutory provisions; charitable, etc., contributions and gifts (before amendment by Tax Reform Act of 1969).

* * * * *

(e) *Special rule for charitable contributions of certain property.* The amount of any charitable contribution taken into account under this section shall be reduced by the amount which would have been treated as gain to which section 617(d)(1), 1245(a), or 1250(a) applies if the property contributed had been sold at its fair market value (determined at the time of such contribution).

* * * * *

[Sec. 170 as amended by sec. 1, Act of Aug. 7, 1956 (Public Law 1022, 84th Cong., 70 Stat. 1117); secs. 10, 11, and 12, Technical Amendments Act 1958 (72 Stat. 1609–10); sec. 7(a), Act of Sept. 14, 1960 (Public Law 86–779, 74 Stat. 1002); sec. 13(d), Rev. Act 1962 (76 Stat. 1034); sec. 2, Act of Oct. 23, 1962 (Public Law 87–858, 76 Stat. 1134); secs. 209 and 231(b), Rev. Act 1964 (78 Stat. 43, 100); sec. 1(b)(1), Act of Sept. 12, 1966 (Public Law 89–570, 80 Stat. 762); as in effect before amendment by secs. 101(j)(2), 201(a)(1) and (2)(A), and 201(h), Tax Reform Act 1969 (83 Stat. 526, 549, 558, 565)]

PAR. 3. Immediately after § 1.170 the following new section is inserted:

§ 1.170–0 Effective dates.

Except as otherwise provided in this section, the provisions of § 1.170 and §§ 1.170–1 through 1.170–3 are applicable to contributions paid in taxable years beginning before January 1, 1970, and all references therein to sections of the Code are to sections of the Internal Revenue Code of 1954 prior to the amendments made by section 201(a) of the Tax Reform Act of 1969 (83 Stat. 549). Except as otherwise provided therein, §§ 1.170A through 1.170A–11 are applicable to contributions paid in taxable years beginning after December 31, 1969. In a case where a provision in §§ 1.170A through 1.170A–11 is applicable to a contribution paid in a taxable year beginning before January 1, 1970, such provision shall apply to the contribution and §§ 1.170–1 through 1.170–3 shall not apply to the contribution.

PAR. 4. The headings of § 1.170–1 and § 1.170–2 are revised to read as follows:

§ 1.170–1 Charitable, etc., contributions and gifts; allowance of deduction (before amendment by Tax Reform Act of 1969).

* * * * *

§ 1.170–2 Charitable deductions by individuals; limitations (before amendment by Tax Reform Act of 1969).

* * * * *

PAR. 5. Section 1.170–3 is amended by revising the heading thereof and paragraph (a) to read as follows:

§ 1.170–3 Contributions or gifts by corporations (before amendment by Tax Reform Act of 1969).

(a) *In general.* The deduction by a corporation in any taxable year for charitable contributions, as defined in section 170(c), is limited to 5 percent of its taxable income for the year computed without regard to:

(1) The deduction for charitable contributions,

(2) The special deductions for corporations allowed under part VIII (except section 248), subchapter B, chapter 1 of the Code,

(3) Any net operating loss carryback to the taxable year under section 172,

(4) The special deduction for Western Hemisphere trade corporations under section 922, and

(5) Any capital loss carryback to the taxable year under section 1212(a)(1).

A contribution by a corporation to a trust, chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals is deductible only if the contribution is to be used in the United States or its possessions for those purposes. See section 170(c)(2). For the purposes of section 170, amounts excluded from the gross income of a corporation under section 114 (relating to sports programs conducted for the American National Red Cross) are not to be considered contributions or gifts. For reduction or disallowance of certain charitable, etc., deductions, see paragraphs (c)(2), (e), and (f) of § 1.170–1.

* * * * *

PAR. 6. There are inserted immediately after § 1.170–3 the following new sections:

§ 1.170A Statutory provisions; charitable, etc., contributions and gifts (after amendment by Tax Reform Act of 1969).

SEC. 170. *Charitable, etc., contributions and gifts*—(a) *Allowance of deduction*—(1) *General rule.* There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary or his delegate.

(2) *Corporations on accrual basis.* In the case of a corporation reporting its taxable income on the accrual basis, if—

(A) The board of directors authorizes a charitable contribution during any taxable year, and

(B) Payment of such contribution is made after the close of such taxable year and on or before the 15th day of the third month following the close of such taxable year,

then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Secretary or his delegate shall by regulations prescribe.

(3) *Future interests in tangible personal property.* For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b). For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

(b) *Percentage limitations*—(1) *Individuals.* In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) *General rule.* Any charitable contribution to—

(i) A church or a convention or association of churches,

(ii) An educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

(iii) An organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

(iv) An organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions,

(v) A governmental unit referred to in subsection (c)(1),

(vi) An organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function contituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public,

(vii) A private foundation described in subparagraph (E), or

(viii) An organization described in section 509(a)(2) or (3),

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

(B) *Other contributions.* Any charitable contribution other than a charitable contribution to which subparagraph (A) applies shall be allowed to the extent that the aggregate of such contributions does not exceed the lesser of—

(i) 20 percent of the taxpayer's contribution base for the taxable year, or

(ii) The excess of 50 percent of the taxpayer's contribution base for the taxable year over the amount of charitable contributions allowable under subparagraph (A) (determined without regard to subparagraph (D)).

(C) *Unlimited deduction for certain individuals.* Subject to the provisions of subsections (f)(6) and (g), the limitations in subparagraphs (A), (B), and (D), and the provisions of subsection (e)(1)(B), shall not apply, in the case of an individual for a taxable year beginning before January 1, 1975, if in such taxable year and in 8 of the 10 preceding taxable years, the amount of the charitable contributions, plus the amount of income tax (determined without regard to chapter 2, relating to tax on self-employment income) paid during such year in respect of such year or preceding taxable years, exceeds the transitional deduction percentage (determined under subsection (f)(6) of the taxpayer's taxable income for such year, computed without regard to—

(i) This section,

(ii) Section 151 (allowance of deductions for personal exemption), and

(iii) Any net operating loss carryback to the taxable year under section 172.

In lieu of the amount of income tax paid during any such year, there may be substituted for that year the amount of income tax paid in respect of such year, provided that any amount so included in the year in respect of which payment was made shall not be included in any other year. In the case of a separate return for the taxable year by a married individual who previously filed a joint return with a former deceased spouse for any of the 10 preceding taxable years, the amount of charitable contributions and taxes paid for any such preceding taxable year, for which a joint return was filed with the former deceased spouse, shall be determined in the same manner as if the taxpayer had not remarried after the death of such former spouse.

(D) *Special limitation with respect to contributions of certain capital gain property*—

(i) In the case of charitable contributions of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this paragraph applies shall be taken into account after all other charitable contributions.

(ii) If charitable contributions described in subparagraph (A) of capital gain property to which clause (i) applies exceeds 30 percent of the taxpayer's contribution base for any taxable year, such excess shall be treated, in a manner consistent with the rules of subsection (d)(1), as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(iii) At the election of the taxpayer (made at such time and in such manner as the Secretary or his delegate prescribes by regulations), subsection (e)(1) shall apply to all contributions of capital gain property (to which subsection (e)(1)(B) does not otherwise apply) made by the taxpayer during the taxable year. If such an election is made, clauses (i) and (ii) shall not apply to contributions of capital gain property made during the taxable year, and, in applying subsection (d)(1) for such taxable year with respect to contributions of capital gain property made in any prior contribution year for which an election was not made under this clause, such contributions shall be reduced as if subsection (e)(1) had applied to such contributions in the year in which made.

(iv) For purposes of this subparagraph, the term "capital gain property" means, with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain. For purposes of the preceding sentence, any property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

(E) *Certain private foundations.* The private foundations referred to in subparagrph (A)(vii) and subsection (e)(1)(B) are—

(i) A private operating foundation (as defined in section 4942(j)(3)),

(ii) Any other private foundation (as defined in section 509(a)) which, not later than the 15th day of the third month after the close of the foundation's taxable year in which contributions are received, makes qualifying distributions (as defined in section 4942(g), without regard to paragraph (3) thereof), which are treated, after the application of section 4942(g)(3), as distributions out of corpus (in accordance with section 4942(h)) in an amount equal to 100 percent of such contributions, and with respect to which the taxpayer obtains adequate records or other sufficient evidence from the foundation showing that the foundation made such qualifying distributions, and

(iii) A private foundation all of the contributions to which are pooled in a common fund and which would be described in section 509(a)(3) but for the right of any substantial contributor (hereafter in this clause called "donor") or his spouse to designate annually the recipients, from among organizations described in paragraph (1) of section 509(a), of the income attributable to the donor's contribution to the fund and to direct (by deed or by will) the payment, to an organization described in such paragraph (1), of the corpus in the common fund attributable to the donor's contribution; but this clause shall apply only if all of the income of the common fund is required to be (and is) distributed to one or more organizations described in such paragraph (1) not later than the 15th day of the third month after the close of the taxable year in which the income is realized by the fund and only if all of the corpus attributable to any donor's contribution to the fund is required to be (and is) distributed to one or more of such organizations not later than 1 year after his death or after the death of his surviving spouse if she has the right to designate the recipients of such corpus.

(F) *Contribution base defined.* For purposes of this section, the term "contribution base" means adjusted gross income (computed without regard to any net operating loss carryback to the taxable year under section 172).

(2) *Corporations.* In the case of a corporation, the total deductions under subsection (a) for any taxable year shall not exceed 5 percent of the taxpayer's taxable income computed without regard to—

(A) This section,

(B) Part VIII (except section 248),

(C) Any net operating loss carryback to the taxable year under section 172,

(D) Section 922 (special deduction for Western Hemisphere trade corporations), and

(E) Any capital loss carryback to the taxable year under section 1212(a)(1).

(c) *Charitable contribution defined.* For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of—

(1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

(2) A corporation, trust, or community chest, fund, or foundation—

(A) Created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(B) Organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals;

(C) No part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) No substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B).

(3) A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization—

(A) Organized in the United States or any of its possessions, and

(B) No part of the net earnings of which inures to the benefit of any private shareholder or individual.

(4) In the case of a contribution or gift by an individual, a domestic fraternal society, order, or association, operating under the lodge system, but only if such contribution or gift is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(5) A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if such company or corporation is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual.

For purposes of this section, the term "charitable contributions" also means an amount treated under subsection (h) as paid for the use of an organization described in paragraph (2), (3), or (4).

(d) *Carryovers of excess contributions*—(1) *Individuals*—(A) *In general.* In the case of an individual, if the amount of charitable contributions described in subsection (b)(1)(A) payment of which is made within a taxable year (hereinafter in this paragraph referred to as the "contribution year") exceeds 50 percent (30 percent, in the case of a contribution year beginning before January 1, 1970) of the taxpayer's contribution base for such year, such excess shall be treated as a charitable contribution described in subsection (b)(1)(A) paid in each of the 5 succeeding taxable years in order of time, but, with respect to any such succeeding taxable year, only to the extent of the lesser of the two following amounts:

(i) The amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of the charitable contributions described in subsection (b)(1)(A) payment of which is made by the taxpayer within such succeeding taxable year (determined without regard to this subparagraph) and the charitable contributions described in subsection (b)(1)(A) payment of which was made in taxable years before the contribution year which are treated under this subparagraph as having been paid in such succeeding taxable year; or

(ii) In the case of the first succeeding taxable year, the amount of such excess, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess not treated under this subparagraph as a charitable contribution described in subsection (b)(1)(A) paid in any taxable year intervening between the contribution year and such succeeding taxable year.

(B) *Special rule for net operating loss carryovers.* In applying subparagraph (A), the excess determined under subparagraph (A) for the contribution year shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases the net operating loss deduction for a taxable year succeeding the contribution year.

(2) *Corporations*—(A) *In general.* Any contribution made by a corporation in a taxable year (hereinafter in this paragraph referred to as the "contribution year") in excess of the amount deductible for such year under subsection (b)(2) shall be deductible for each of the 5 succeeding taxable years in order of time, but only to the extent of the lesser of the two following amounts: (i) The excess of the maximum amount deductible for such succeeding taxable year under subsection (b)(2) over the sum of the contributions made in such year plus the aggregate of the excess contributions which were made in taxable years before the contribution year and which are deductible under this subparagraph for such succeeding taxable year; or (ii) in the case of the first succeeding taxable year, the amount of such excess contribution, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess contribtuion not deductible under this subparagraph for any taxable year intervening between the contribution year and such succeeding taxable year.

(B) *Special rule for net operating loss carryovers.* For purposes of subparagraph (A), the excess of—

(i) The contributions made by a corporation in a taxable year to which this section applies, over

(ii) The amount deductible in such year under the limitation in subsection (b)(2), shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increasing a net operating loss carryover under section 172 to a succeeding taxable year.

(e) *Certain contributions of ordinary income and capital gain property*—(1) *General rule.* The amount of any charitable contribution of property otherwise taken into account under this section shall be reduced by the sum of—

(A) The amount of gain which would not have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution), and

(B) In the case of a charitable contribution—

(i) Of tangible personal property, if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)), or

(ii) To or for the use of a private foundation (as defined in section 509(a)), other than a private foundation described in subsection (b)(1)(E),

50 percent (62½ percent, in the case of a corporation) of the amount of gain which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

For purposes of applying this paragraph (other than in the case of gain to which section 617(d)(1), 1245(a), 1250(a), 1251(c), or 1252(a) applies), property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

(2) *Allocation of basis.* For purposes of paragraph (1), in the case of a charitable contribution of less than the taxpayer's entire interest in the property contributed, the taxpayer's adjusted basis in such property shall be allocated between the interest contributed and any interest not contributed in accordance with regulations prescribed by the Secretary or his delegate.

(f) *Disallowance of deduction in certain cases and special rules*—(1) *In general.* No deduction shall be allowed under this section for a contribution to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) *Contributions of property placed in trust*—

(A) *Remainder interest.* In the case of property transferred in trust no deduction shall be allowed under this section for the value of a contribution of a remainder interest unless the trust is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664), or a pooled income fund (described in section 642(c)(5)).

(B) *Income interests, etc.* No deduction shall be allowed under this section for the value of any interest in property (other than a remainder interest) transferred in trust unless the interest is in the form of a guaranteed annuity or the trust instrument specifies that the interest is a fixed percentage distributed yearly of the fair market value of the trust property (to be determined yearly) and the grantor is treated as the owner of such interest for purposes of applying section 671. If the donor ceases to be treated as the owner of such an interest for purposes of applying section 671, at the time the donor ceases to be so treated, the donor shall for purposes of this chapter be considered as having received an amount of income equal to the amount of any deduction he received under this section for the contribution reduced by the discounted value of all amounts of income earned by the trust and taxable to him before the time at which he ceases to be treated as the owner of the interest. Such amounts of income shall be discounted to the date of the contribution. The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

(C) *Denial of deduction in case of payments by certain trusts.* In any case in which a deduction is allowed under this section for the value of an interest in property described in subparagraph (B), transferred in trust, no deduction shall be allowed under this section to the grantor or any other person for the amount of any contribution made by the trust with respect to such interest.

(D) *Exception.* This paragraph shall not apply in a case in which the value of all interests in property transferred in trust are deductible under subsection (a).

(3) *Denial of deduction in case of certain contributions of partial interests in property*—(A) *In general.* In the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under this section only to the extent that the value of the interest contributed would be allowable as a deduction under this section if such interest had been transferred in trust. For purposes of this subparagraph, a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property.

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

(i) A remainder interest in a personal residence or farm, or

(ii) An undivided portion of the taxpayer's entire interest in property.

(4) *Valuation of remainder interest in real property.* For purposes of this section, in determining the value of a remainder interest in real property, depreciation (computed on the straight line method) and depletion of such property shall be taken into account, and such value shall be discounted at a rate of 6 percent per annum, except that the Secretary or his delegate may prescribe a different rate.

(5) *Reduction for certain interest.* If, in connection with any charitable contribution, a liability is assumed by the recipient or by any other person, or if a charitable contribution is of property which is subject to a liability, then, to the extent necessary to avoid the duplication of amounts, the amount taken into account for purposes of this section as the amount of the charitable contribution—

(A) Shall be reduced for interest (i) which has been paid (or is to be paid) by the taxpayer, (ii) which is attributable to the liability, and (iii) which is attributable to any period after the making of the contribution, and

(B) In the case of a bond, shall be further reduced for interest (i) which has been paid (or is to be paid) by the taxpayer on indebtedness incurred or continued to purchase or carry such bond, and (ii) which is attributable to any period before the making of the contribution.

The reduction pursuant to subparagraph (B) shall not exceed the interest (including interest equivalent) on the bond which is attributable to any period before the making of the contribution and which is not (under the taxpayer's method of accounting) includible in the gross income of the taxpayer for any taxable year. For purposes of this paragraph, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness.

(6) *Partial reduction of unlimited deduction*—(A) *In general.* If the limitations in subsections (b)(1)(A) and (B) do not apply because of the application of subsection (b)(1)(C), the amount otherwise allowable as a deduction under subsection (a) shall be reduced by the amount by which the taxpayer's taxable income computed without regard to this subparagraph is less than the transitional income percentage (determined under subparagraph (C)) of the taxpayer's adjusted gross income. However, in no case shall a taxpayer's deduction under this section be reduced below the amount allowable as a deduction under this section without the applicability of subsection (b)(1)(C).

(B) *Transitional deduction percentage.* For purposes of applying subsection (b)(1)(C), the term "transitional deduction percentage" means—

(i) In the case of a taxable year beginning before 1970, 90 percent, and

(ii) In the case of a taxable year beginning in—

	Percent
1970	80
1971	74
1972	68
1973	62
1974	56

(C) *Transitional income percentage.* For purposes of applying subparagraph (A), the term "transitional income percentage" means, in the case of a taxable year beginning in—

	Percent
1970	20
1971	26
1972	32
1973	38
1974	44

(g) *Application of unlimited charitable contribution deduction*—(1) *Allowance of deduction for taxable years beginning after December 31, 1963.* If the taxable year begins after December 31, 1963—

(A) Subsection (b)(1)(C) shall apply only if the taxpayer so elects (at such time and in such manner as the Secretary or his delegate by regulations prescribes); and

(B) For purposes of subsection (b)(1)(C), the amount of the charitable contributions for the taxable year (and for all prior taxable years beginning after December 31, 1963) shall be determined without the application of subsection (d)(1) and solely by reference to charitable contributions described in paragraph (2).

If the taxpayer elects to have subsection (b)(1)(C) apply for the taxable year, then for such taxable year subsection (a) shall apply only with respect to charitable contributions described in paragraph (2), and no amount of charitable contributions made in the taxable year or any prior taxable year may be treated under subsection (d)(1) as having been made in the taxable year or in any succeeding taxable year.

(2) *Qualified contributions.* The charitable contributions referred to in paragraph (1) are—

(A) Any charitable contribution described in subsection (b)(1)(A);

(B) [Deleted.]

(C) Any charitable contribution, not described in subsection (b)(1)(A), to an organization described in subsection (c)(2) which meets the requirements of paragraph (3) with respect to such charitable contributions; and

(D) Any charitable contribution payment of which is made on or before the date of the enactment of the Revenue Act of 1964 [February 26, 1964].

(3) *Organizations expending at least 50 percent of donor's contributions.* An organization shall be an organization referred to in paragraph (2)(C), with respect to any charitable contribution, only if—

(A) Not later than the close of the third year after the organization's taxable year

in which the contribution is received (or before such later time as the Secretary or his delegate may allow upon good cause shown by such organization), such organization expends an amount equal to at least 50 percent of such contribution for—

(i) The active conduct of the activities constituting the purpose or function for which it is organized and operated,

(ii) Assets which are directly devoted to such active conduct,

(iii) Contributions to organizations which are described in subsection (b)(1)(A) or in paragraph (2)(B) [sic] of this subsection, or

(iv) Any combination of the foregoing; and

(B) For the period beginning with the taxable year in which such contribution is received and ending with the taxable year in which subparagraph (A) is satisfied with respect to such contribution, such organization expends all of its net income (determined without regard to capital gains and losses) for the purposes described in clauses (i), (ii), (iii), and (iv) of subparagraph (A).

If the taxpayer so elects (at such time and in such manner as the Secretary or his delegate by regulations prescribes) with respect to contributions made by him to any organization, then, in applying subparagraph (B) with respect to contributions made by him to such organization during his taxable year for which such election is made and during all his subsequent taxable years, amounts expended by the organization after the close of any of its taxable years and on or before the 15th day of the third month following the close of such taxable year shall be treated as expended during such taxable year.

(4) *Disqualified transactions.* An organization shall be an organization referred to in subparagraph (B) [sic] or (C) of paragraph (2) only if at no time during the period consisting of the organization's taxable year in which the contribution is received its 3 preceding taxable years, and its 3 succeeding taxable years, such organization—

(A) Lends any part of its income or corpus to,

(B) Pays compensation (other than reasonable compensation for personal services rendered) to,

(C) Makes any of its services available on a preferential basis to,

(D) Purchases more than a minimal amount of securities or other property from, or

(E) Sells more than a minimal amount of securities or other property to,

the donor of such contribution, any member of his family (as defined in section 267(c)(4)), any employee of the donor, any officer or employee of a corporation in which he owns (directly or indirectly) 50 percent or more in value of the outstanding stock, or any partner or employee of a partnership in which he owns (directly or indirectly) 50 percent or more of the capital interest or profits interest. This paragraph shall not apply to transactions occurring on or before the date of the enactment of the Revenue Act of 1964 [February 26, 1964].

(h) *Amounts paid to maintain certain students as members of taxpayer's household*—(1) *In general.* Subject to the limitations provided by paragraph (2), amounts paid by the taxpayer to maintain an individual (other than a dependent, as defined in section 152, or a relative of the taxpayer) as a member of his household during the period that such individual is—

(A) A member of the taxpayer's household under a written agreement between the taxpayer and an organization described in paragraph (2), (3), or (4) of subsection (c) to implement a program of the organization to provide educational opportunities for pupils or students in private homes, and

(B) A full-time pupil or student in the 12th or any lower grade at an educational institution (as defined in section 151(e)(4)) located in the United States,

shall be treated as amounts paid for the use of the organization.

(2) *Limitations*—(A) *Amount.* Paragraph (1) shall apply to amounts paid within the taxable year only to the extent that such amounts do not exceed $50 multiplied by the number of full calendar months during the taxable year which fall within the period described in paragraph (1). For purposes of the preceding sentence, if 15 or more days of a calendar month fall within such period such month shall be considered as a full calendar month.

(B) *Compensation or reimbursement.* Paragraph (1) shall not apply to any amount paid by the taxpayer within the taxable year if the taxpayer receives any money or other property as compensation or reimbursement for maintaining the individual in his household during the period described in paragraph (1).

(3) *Relative defined.* For purposes of paragraph (1), the term "relative of the taxpayer" means an individual who, with respect to the taxpayer, bears any of the relationships described in paragraphs (1) through (8) of section 152 (a).

(4) *No other amount allowed as deduction.* No deduction shall be allowed under subsection (a) for any amount paid by a taxpayer to maintain an individual as a member of his household under a program described in paragraph (1)(A) except as provided in this subsection.

(i) *Disallowance of deduction in certain cases.* For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a) of the Internal Security Act of 1950 (64 Stat. 996; 50 U.S.C. 790).

(j) *Other cross references.* (1) For charitable contributions of estates and trusts, see section 642(c).

(2) For nondeductibility of contributions by common trust funds, see section 584.

(3) For charitable contributions of partners, see section 702.

(4) For charitable contributions of nonresident aliens, see section 873.

(5) For treatment of gifts for benefit of or use in connection with the Naval Academy as gifts to or for the use of the United States, see section 3 of the Act of March 31, 1944 (58 Stat. 135; 34 U.S.C. 1115b).

(6) For treatment of gifts for benefit of the library of the Post Office Department as gifts to or for the use of the United States, see section 2 of the Act of August 8, 1946 (60 Stat. 924; 5 U.S.C. 393).

(7) For treatment of gifts accepted by the Secretary of State under the Foreign Service Act of 1946 as gifts to or for the use of the United States, see section 1021(e) of that Act (60 Stat. 1032; 22 U.S.C. 809(e)).

(8) For treatment of gifts of money accepted by the Attorney General for credit to the "Commissary Funds Federal Prisons" as gifts to or for the use of the United States, see section 2 of the Act of May 15, 1952 (66 Stat. 73, as amended by the Act of July 9, 1952, 66 Stat. 479, 31 U.S.C. 725s–4).

[Sec. 170 as amended by sec. 1, Act of Aug. 7, 1956 (Public Law 1022, 84th Cong., 70 Stat. 1117); secs. 10, 11, and 12, Technical Amendments Act 1958 (72 Stat. 1609–10); sec. 7(a), Act of Sept. 14, 1960 (Public Law 86–779, 74 Stat. 1002); sec. 13(d), Rev. Act 1962 (76 Stat. 1043); sec. 2, Act of Oct. 23, 1962 (Public Law 87–858, 76 Stat. 1134); secs. 209 and 231 (b), Rev. Act 1964 (78 Stat. 43, 100); sec. 1(b)(1), Act of Sept. 12, 1966 (Public Law 89–570, 80 Stat. 762); secs. 101(j)(2), 201(a)(1) and (2)(A), and 201(h), Tax Reform Act 1969 (83 Stat. 526, 549, 558, 565)]

§ 1.170A–1 Charitable, etc., contributions and gifts; allowance of deduction.

(a) *In general*—(1) *Allowance of deduction.* Any charitable contribution, as defined in section 170(c), actually paid during the taxable year is allowable as a deduction in computing taxable income, irrespective of the method of accounting employed or of the date on which the contribution is pledged. However, charitable contributions by corporations may under certain circumstances be deductible even though not paid during the taxable year, as provided in section 170(a)(2) and § 1.170A–11. The deduction is subject to the limitations of section 170(b) and § 1.170A–8 or § 1.170A–11. Subject to the provisions of section 170(d) and §§ 1.170A–10 and 1.170A–11, certain excess charitable contributions made by individuals and corporations shall be treated as paid in certain succeeding taxable years. For rules relating to the determination of, and the deduction for, amounts paid to maintain certain students as members of the taxpayer's household and treated under section 170(h) as paid for the use of an organization described in section 170(c)(2), (3), or (4), see § 1.170A–2. For the reduction of any charitable contributions for interest on certain indebtedness, see section 170(f)(5) and § 1.170A–3. For a special rule relating to the computation of the amount of the deduction with respect to a charitable contribution of certain ordinary income or capital gain property, see section 170(e) and § 1.170A–4. For rules for postponing the time for deduction of a charitable contribution of a future interest in tangible personal property, see section 170(a)(3) and § 1.170A–5. For rules with respect to transfers in trust and of partial interests in property, see section 170(e), section 170(f)(2) and (3), §§ 1.170A–4, 1.170A–6, and 1.170A–7. For definition of the term "section 170(b)(1)(A) organization", see § 1.170A–9. For valuation of a remainder interest in real property, see section 170(f)(4) and the regulations thereunder. The deduction for charitable contributions is subject to verification by the district director.

(2) *Information required in support of deductions*—(i) *In general.* In connection with claims for deductions for charitable contributions, taxpayers shall state in their income tax returns the name of each organization to which a contribution was made and the amount and date of the actual payment of each contribution. If a contribution is made in property other than money, the taxpayer shall state the kind of property contributed, for example, used clothing, paintings, or securities, the method utilized in determining the fair market value of the property at the time the contribution was made, and whether or not the amount of the contribution was

reduced under section 170(e). If a taxpayer makes more than one cash contribution to an organization during the taxable year, then in lieu of listing each cash contribution and the date of payment the taxpayer may state the total cash payments made to such organization during the taxable year. A taxpayer who elects under paragraph (d)(2) of § 1.170A–8 to apply section 170(e)(1) to his contributions and carryovers of 30-percent capital gain property must file a statement with his return indicating that he has made the election and showing the contributions in the current year and carryovers from preceding years to which it applies. For the definition of the term "30-percent capital gain property", see paragraph (d)(3) of § 1.170A–8.

(ii) *Contribution by individual of property other than money.* If an individual taxpayer makes a charitable contribution of an item of property other than money and claims a deduction in excess of $200 in respect of his contribution of such item, he shall attach to his income tax return the following information with respect to such item:

(*a*) The name and address of the organization to which the contribution was made.

(*b*) The date of the actual contribution.

(*c*) A description of the property in sufficient detail to identify the particular property contributed, including in the case of tangible property the physical condition of the property at the time of contribution, and, in the case of securities, the name of the issuer, the type of security, and whether or not such security is regularly traded on a stock exchange or in an over-the-counter market.

(*d*) The manner of acquisition, as, for example, by purchase, gift, bequest, inheritance, or exchange, and the approximate date of acquisition of the property by the taxpayer or, if the property was created, produced, or manufactured by or for the taxpayer, the approximate date the property was substantially completed.

(*e*) The fair market value of the property at the time the contribution was made, the method utilized in determining the fair market value, and, if the valuation was determined by appraisal, a copy of the signed report of the appraiser.

(*f*) The cost or other basis, adjusted as provided by section 1016, of property, other than securities, held by the taxpayer for a period of less than 5 years immediately preceding the date on which the contribution was made and, when the information is available, of property, other than securities, held for a period of 5 years or more preceding the date on which the contribution was made.

(*g*) In the case of property to which section 170(e) applies, the cost or other basis, adjusted as provided by section 1016, the reduction by reason of section 170(e)(1) in the amount of the charitable contribution otherwise taken into account, and the manner in which such reduction was determined.

(*h*) The terms of any agreement or understanding entered into by or on behalf of the taxpayer which relates to the use, sale, or disposition of the property contributed, as, for example, the terms of any agreement or understanding which—

(*1*) Restricts temporarily or permanently the donee's right to dispose of the donated property,

(*2*) Reserves to, or confers upon, anyone other than the donee organization or other than an organization participating with such organization in cooperative fund raising, any right to the income from such property, to the possession of the property, including the right to vote securities, to acquire such property by purchase or otherwise, or to designate the person to have such income, possession, or right to acquire, or

(*3*) Earmarks contributed property for a particular charitable use, such as the use of donated furniture in the reading room of the donee organization's library.

(*i*) The total amount claimed as a deduction for the taxable year due to the contribution of the property and, if less than the entire interest in the property is contributed during the taxable year, the amount claimed as a deduction in any prior year or years for contributions of other interests in such property, the name and address of each organization to which any such contribution was made, the place where any such property which is tangible property is located or kept, and the name of any person, other than the organization to which the property giving rise to the deduction was contributed, having actual possession of the property.

(iii) *Statement from donee organization.* Any deduction for a charitable contribution must be substantiated, when required by the district director, by a statement from the organization to which the contribution was made indicating whether the organization is a domestic organization, the name and address of the contributor, the amount of the contribution, the date of actual receipt of the contribution, and such other information as the district director may deem necessary. If the contribution includes an item of property, other than money or securities which are regularly traded on a stock exchange or in an over-the-counter market, which the donee deems to have a fair market value in excess of $200 at the time of receipt, such statement shall also indicate for each such item its location if it is retained by the organization, the amount received by the organization on any sale of the property and the date of sale or, in case of any other disposition of the property, the method of disposition. In the case of any contribution of tangible personal property, the statement shall indicate the use of the property by the organization and whether or not it is used for a purpose or function constituting the basis for the donee organization's exemption from income tax under section 501 or, in the case of a governmental unit, whether or not it is used for exclusively public purposes.

(b) *Time of making contribution.* Ordinarily, a contribution is made at the time delivery is effected. The unconditional delivery or mailing of a check which subsequently clears in due course will constitute an effective contribution on the date of delivery or mailing. If a taxpayer unconditionally delivers or mails a properly endorsed stock certificate to a charitable donee or the donee's agent, the gift is completed on the date of delivery or, if such certificate is received in the ordinary course of the mails, on the date of mailing. If the donor delivers the stock certificate to his bank or broker as the donor's agent, or to the issuing corporation or its agent, for transfer into the name of the donee, the gift is completed on the date the stock is transferred on the books of the corporation. For rules relating to the date of payment of a contribution consisting of a future interest in tangible personal property, see section 170(a)(3) and § 1.170A–5.

(c) *Value of a contribution in property.* (1) If a charitable contribution is made in property other than money, the amount of the contribution is the fair market value of the property at the time of the contribution reduced as provided in section 170(e)(1) and paragraph (a) of § 1.170A–4.

(2) The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. If the contribution is made in property of a type which the taxpayer sells in the course of his business, the fair market value is the price which the taxpayer would have received if he had sold the contributed property in the usual market in which he customarily sells, at the time and place of the contribution and, in the case of a contribution of goods in quantity, in the quantity contributed. The usual market of a manufacturer or other producer consists of the wholesalers or other distributors to or through whom he customarily sells, but if he sells only at retail the usual market consists of his retail customers.

(3) If a donor makes a charitable contribution of property, such as stock in trade, at a time when he could not reasonably have been expected to realize its usual selling price, the value of the gift is not the usual selling price but is the amount for which the quantity of property contributed would have been sold by the donor at the time of the contribution.

(4) Any costs and expenses pertaining to the contributed property which were incurred in taxable years preceding the year of contribution and are properly reflected in the opening inventory for the year of contribution must be removed from inventory and are not a part of the cost of goods sold for purposes of determining gross income for the year of contribution. Any costs and expenses pertaining to the contributed property

which are incurred in the year of contribution and would, under the method of accounting used, be properly reflected in the cost of goods sold for such year are to be treated as part of the cost of goods sold for such year. If costs and expenses incurred in producing or acquiring the contributed property are, under the method of accounting used, properly deducted under section 162 or other section of the Code, such costs and expenses will be allowed as deductions for the taxable year in which they are paid or incurred, whether or not such year is the year of the contribution. Any such costs and expenses which are treated as part of the cost of goods sold for the year of contribution, and any such costs and expenses which are properly deducted under section 162 or other section of the Code, are not to be treated under any section of the Code as resulting in any basis for the contributed property. Thus, for example, the contributed property has no basis for purposes of determining under section 170(e)(1)(A) and paragraph (a) of § 1.170A–4 the amount of gain which would have been recognized if such property had been sold by the donor at its fair market value at the time of its contribution. The amount of any charitable contribution for the taxable year is not to be reduced by the amount of any costs or expenses pertaining to the contributed property which was properly deducted under section 162 or other section of the Code for any taxable year preceding the year of the contribution. This subparagraph applies only to property which was held by the taxpayer for sale in the course of a trade or business. The application of this subparagraph may be illustrated by the following examples:

Example (1). In 1970, A, an individual using the calendar year as the taxable year and the accrual method of accounting, contributed to a church property from inventory having a fair market value of $600. The closing inventory at the end of 1969 properly included $400 of costs attributable to the acquisition of such property, and in 1969 A properly deducted under section 162 $50 of administrative and other expenses attributable to such property. Under section 170(e)(1)(A) and paragraph (a) of § 1.170A–4, the amount of the charitable contribution allowed for 1970 is $400 ($600 − [$600 − $400]). Pursuant to this subparagraph, the cost of goods sold to be used in determining gross income for 1970 may not include the $400 which was included in opening inventory for that year.

Example (2). The facts are the same as in example (1) except that the contributed property was acquired in 1970 at a cost of $400. The $400 cost of the property is included in determining the cost of goods sold for 1970, and $50 is allowed as a deduction for that year under section 162. A is not allowed any deduction under section 170 for the contributed property, since under section 170(e)(1)(A) and paragraph (a) of § 1.170A–4 the amount of the charitable contribution is reduced to zero ($600 − [$600 − $0]).

Example (3). In 1970, B, an individual using the calendar year as the taxable year and the accrual method of accounting, contributed to a church property from inventory having a fair market value of $600. Under § 1.471–3(c), the closing inventory at the end of 1969 properly included $450 costs attributable to the production of such property, including $50 of administrative and other indirect expenses which, under his method of accounting, was properly added to inventory rather than deducted as a business expense. Under section 170(e)(1)(A) and paragraph (a) of § 1.170A–4, the amount of the charitable contribution allowed for 1970 is $450 ($600 − [$600 − $450]). Pursuant to this subparagraph, the cost of goods sold to be used in determining gross income for 1970 may not include the $450 which was included in opening inventory for that year.

Example (4). The facts are the same as in example (3) except that the contributed property was produced in 1970 at a cost of $450, including $50 of administrative and other indirect expenses. The $450 cost of the property is included in determining the cost of goods sold for 1970. B is not allowed any deduction under section 170 for the contributed property, since under section 170(e)(1)(A) and paragraph (a) of § 1.170A–4 the amount of the charitable contribution is reduced to zero ($600 − [$600 − $0]).

Example (5). In 1970, C, a farmer using the cash method of accounting and the calendar year as the taxable year, contributed to a church a quantity of grain which he had raised having a fair market value of $600. In 1969, C paid expenses of $450 in raising the property which he properly deducted for such year under section 162. Under section 170(e)(1)(A) and paragraph (a) of § 1.170A–4, the amount of the charitable contribution in 1970 is reduced to zero ($600 − [$600 − $0]). Accordingly, C is not allowed any deduction under section 170 for the contributed property.

Example (6). The facts are the same as in example (5) except that the $450 expenses incurred in raising the contributed property were paid in 1970. The result is the same as in example (5), except the amount of $450 is deductible under section 162 for 1970.

(5) Transfers of property to an organization described in section 170(c) which bear a direct relationship to the taxpayer's trade or business and which are made with a reasonable expectation of financial return commensurate with the amount of the transfer may constitute allowable deductions as trade or business expenses rather than as charitable contributions. See section 162 and the regulations thereunder.

(d) *Purchase of an annuity.* (1) In the case of an annuity or portion thereof purchased from an organization described in section 170(c), there shall be allowed as a deduction the excess of the amount paid over the value at the time of purchase of the annuity or portion purchased.

(2) The value of the annuity or portion is the value of the annuity determined in accordance with paragraph (e)(1)(iii)(b)(2) of § 1.101–2.

(3) For determining gain on any such transaction constituting a bargain sale, see section 1011(b) and § 1.1011–2.

(e) *Transfers subject to a condition or power.* If as of the date of a gift a transfer for charitable purposes is dependent upon the performance of some act or the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that the charitable transfer will not become effective is so remote as to be negligible. If an interest in property passes to, or is vested in, charity on the date of the gift and the interest would be defeated by the subsequent performance of some act or the happening of some event, the possibility of occurrence of which appears on the date of the gift to be so remote as to be negligible, the deduction is allowable. For example, A transfers land to a city government for as long as the land is used by the city for a public park. If on the date of the gift the city does plan to use the land for a park and the possibility that the city will not use the land for a public park is so remote as to be negligible, A is entitled to a deduction under section 170 for his charitable contribution.

(f) *Special rules applicable to certain contributions.* (1) See section 14 of the Wild and Scenic Rivers Act (Public Law 90–542, 82 Stat. 918) for provisions relating to the claim and allowance of the value of certain easements as a charitable contribution under section 170.

(2) For treatment of gifts accepted by the Secretary of State or the Secretary of Commerce, for the purpose of organizing and holding an international conference to negotiate a Patent Corporation Treaty, as gifts to or for the use of the United States, see section 3 of joint resolution of December 24, 1969 (Public Law 91–160, 83 Stat. 443).

(3) For treatment of gifts accepted by the Secretary of the Department of Housing and Urban Development, for the purpose of aiding or facilitating the work of the Department, as gifts to or for the use of the United States, see section 7(k) of the Department of Housing and Urban Development Act (42 U.S.C. 3535), as added by section 905 of Public Law 91–609 (84 Stat. 1809).

(g) *Contributions of services.* No deduction is allowable under section 170 for a contribution of services. However, unreimbursed expenditures made incident to the rendition of services to an organization contributions to which are deductible may constitute a deductible contribution. For example, the cost of a uniform without general utility which is required to be worn in performing donated services is deductible. Similarly, out-of-pocket transportation expenses necessarily incurred in performing donated services are deductible. Reasonable expenditures for meals and lodging necessarily incurred while away from home in the course of performing donated services also are deductible. For the purposes of this paragraph, the phrase "while away from home" has the same meaning as that phrase is used for purposes of section 162 and the regulations thereunder.

(h) *Exceptions and other rules.* (1) The provisions of section 170 do not apply to contributions by an estate; nor do they apply to a trust unless the trust is a private foundation which, pursuant to section 642(c)(6) and § 1.642(c)–4, is allowed a deduction under section 170 subject to the provisions applicable to individuals.

(2) No deduction shall be allowed under section 170 for a charitable contribution to or for the use of an organization or trust described in section 508(d) or 4948(c)(4), subject to the conditions

specified in such sections and the regulations thereunder.

(3) For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a) of the Internal Security Act of 1950, as amended (50 U.S.C. 790).

(4) For denial of deductions for charitable contributions as trade or business expenses and rules with respect to treatment of payments to organizations other than those described in section 170(c), see section 162 and the regulations thereunder.

(5) No deduction shall be allowed under section 170 for amounts paid to an organization—

(i) A substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, or

(ii) Which participates in, or intervenes in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

For purposes of determining whether an organization is attempting to influence legislation or is engaging in political activities, see section 501(c)(3) and the regulations thereunder.

(6) No deduction shall be allowed under section 170 for expenditures for lobbying purposes, the promotion or defeat of legislation, etc. See also the regulations under sections 162 and 4945.

(7) No deduction for charitable contributions is allowed in computing the taxable income of a common trust fund or of a partnership. See sections 584(d)(3) and 703(a)(2)(D). However, a partner's distributive share of charitable contributions actually paid by a partnership during its taxable year may be allowed as a deduction in the partner's separate return for his taxable year with or within which the taxable year of the partnership ends, to the extent that the aggregate of his share of the partnership contributions and his own contributions does not exceed the limitations in section 170(b).

(8) For charitable contributions paid by a citizen of the United States entitled to the benefits of section 931, see section 931(d) and the regulations thereunder.

(9) For charitable contributions paid by a nonresident alien individual or a foreign corporation, see § 1.170A–4(b)(5) and sections 873, 876, 877, and 882(c), and the regulations thereunder.

(10) For charitable contributions paid by a citizen of the United States or a domestic corporation entitled to the benefits of section 931 (relating to income from sources within possessions of the United States), see section 931(d) and the regulations thereunder.

(11) For carryover of excess charitable contributions in certain corporate acquisitions, see section 381(c)(19) and the regulations thereunder.

(i) *Effective date.* This section applies only to contributions paid in taxable years beginning after December 31, 1969.

§ 1.170A–2 Amounts paid to maintain certain students as members of the taxpayer's household.

(a) *In general.* (1) The term "charitable contributions" includes amounts paid by the taxpayer during the taxable year to maintain certain students as members of his household which, under the provisions of section 170(h) and this section, are treated as amounts paid for the use of an organization described in section 170(c)(2), (3), or (4), and such amounts, to the extent they do not exceed the limitations under section 170(h)(2) and paragraph (b) of this section, are contributions deductible under section 170. In order for such amounts to be so treated, the student must be an individual who is neither a dependent (as defined in section 152) of the taxpayer nor related to the taxpayer in a manner described in any of the paragraphs (1) through (8) of section 152(a), and such individual must be a member of the taxpayer's household pursuant to a written agreement between the taxpayer and an organization described in section 170(c)(2), (3), or (4) to implement a program of the organization to provide educational opportunities for pupils or students placed in private homes by such organization. Furthermore, such amounts must be paid to maintain such individual during the period in the taxable year he is a member of the taxpayer's household and is a full-time pupil or student in the 12th or any lower grade at an educational institution, as defined in section 151(e)(4) and § 1.151–3, located in the United States. Amounts paid outside of such period, but within the taxable year, for expenses necessary for the maintenance of the student during the period will qualify for the charitable contributions deduction if the other limitation requirements of the section are met.

(2) For purposes of subparagraph (1) of this paragraph, amounts treated as charitable contributions include only those amounts actually paid by the taxpayer during the taxable year which are directly attributable to the maintenance of the student while he is a member of the taxpayer's household and is attending an educational institution on a full-time basis. This would include amounts paid to insure the well-being of the individual and to carry out the purpose for which the individual was placed in the taxpayer's home. For example, a deduction under section 170 would be allowed for amounts paid for books, tuition, food, clothing, transportation, medical and dental care, and recreation for the individual. Amounts treated as charitable contributions under this section do not include amounts which the taxpayer would have expended had the student not been in the household. They would not include, for example, amounts paid in connection with the taxpayer's home for taxes, insurance, interest on a mortgage, repairs, etc. Moreover, such amounts do not include any depreciation sustained by the taxpayer in maintaining such student or students in his household, nor do they include the value of any services rendered on behalf of such student or students by the taxpayer or any member of the taxpayer's household.

(3) For purposes of section 170(h) and this section, an individual will be considered to be a full-time pupil or student at an educational institution only if he is enrolled for a course of study prescribed for a full-time student at such institution and is attending classes on a full-time basis. Nevertheless, such individual may be absent from school due to special circumstances and still be considered to be in full-time attendance. Periods during the regular school term when the school is closed for holidays, such as Christmas and Easter, and for periods between semesters are treated as periods during which the pupil or student is in full-time attendance at the school. Also, absences during the regular school term due to illness of such individual shall not prevent him from being considered as a full-time pupil or student. Similarly, absences from the taxpayer's household due to special circumstances will not disqualify the student as a member of the household. Summer vacations between regular school terms are not considered periods of school attendance.

(4) When claiming a deduction for amounts described in section 170(h) and this section, the taxpayer must submit with his return a copy of his agreement with the organization sponsoring the individual placed in the taxpayer's household, together with a summary of the various items for which amounts were paid to maintain such individual, and a statement as to the date the individual became a member of the household and the period of his full-time attendance at school and the name and location of such school. Substantiation of amounts claimed must be supported by adequate records of the amounts actually paid. Due to the nature of certain items, such as food, a record of amount spent for all members of the household, with an equal portion thereof allocated to each member, will be acceptable.

(b) *Limitations.* Section 170(h) and this section shall apply to amounts paid during the taxable year only to the extent that the amounts paid in maintaining each pupil or student do not exceed $50 multiplied by the number of full calendar months in the taxable year that the pupil or student is maintained in accordance with the provisions of this section. For purposes of such limitation if 15 or more days of a calendar month fall within the period to which the maintenance of such pupil or student relates, such month is considered as a full calendar month. To the extent that such amounts qualify as charitable contributions under section 170(c), the aggregate of such amounts plus other contributions made during the taxable year for the use of an organization described in section 170(c) is deductible under section 170 subject to the limitation provided in section 170(b)(1)(B) and paragraph (c) of § 1.170A–8.

(c) *Compensation or reimbursement.* Amounts paid during the taxable year

to maintain a pupil or student as a member of the taxpayer's household as provided in paragraph (a) of this section, shall not be taken into account under section 170(h) and this section, if the taxpayer receives any money or other property as compensation or reimbursement for any portion of such amounts. The taxpayer will not be denied the benefits of section 170(h) if he prepays an extraordinary or nonrecurring expense, such as a hospital bill or vacation trip, at the request of the individual's parents or the sponsoring organization and is reimbursed for such prepayment. The value of services performed by the pupil or student in attending to ordinary chores of the household will generally not be considered to constitute compensation or reimbursement. However, if the pupil or student is taken into the taxpayer's household to replace a former employee of the taxpayer or gratuitously to perform substantial services for the taxpayer, the facts and circumstances may warrant a conclusion that the taxpayer received reimbursement for maintaining the pupil or student.

(d) *No other amount allowed as deduction.* Except to the extent that amounts described in section 170(h) and this section are treated as charitable contributions under section 170(c) and, therefore, deductible under section 170(a), no deduction is allowed for any amount paid to maintain an individual, as a member of the taxpayer's household, in accordance with the provisions of section 170(h) and this section.

(e) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). The X organization is an organization described in section 170(c)(2) and is engaged in a program under which a number of European children are placed in the homes of U.S. residents in order to further the children's high school education. In accordance with paragraph (a) of this section, the taxpayer, A, who reports his income on the calendar year basis, agreed with X to take two of the children, and they were placed in the taxpayer's home on January 2, 1970, where they remained until January 21, 1971, during which time they were fully maintained by the taxpayer. The children enrolled at the local high school for the full course of study prescribed for 10th grade students and attended the school on a full-time basis for the spring semester starting January 18, 1970, and ending June 3, 1970, and for the fall semester starting September 1, 1970, and ending January 13, 1971. The total cost of food paid by A in 1970 for himself, his wife, and the two children amounted to $1,920, or $40 per month for each member of the household. Since the children were actually full-time students for only 8½ months during 1970, the amount paid for food for each child during that period amounted to $340. Other amounts amounts paid during the 8½-month period for each child for laundry, lights, water, recreation, and school supplies amounted to $160. Thus, the amounts treated under section 170(h) and this section as paid for the use of X would, with respect to each child, total $500 ($340+$160), or a total for both children of $1,000, subject to the limitations of paragraph (b) of this section. Since, for purposes of such limitations, the children were full-time students for only 8 full calendar months during 1970 (less than 15 days in January 1970), the taxpayer may treat only $800 as a charitable contribution made in 1970, that is, $50 multiplied by the 8 full calendar months, or $400 paid for the maintenance of each child. Neither the excess payments nor amounts paid to maintain the children during the period before school opened and for the period in summer between regular school terms is taken into account by reason of section 170(h). Also, because the children were full-time students for less than 15 days in January 1971 (although maintained in the taxpayer's household for 21 days), amounts paid to maintain the children during 1971 would not qualify as a charitable contribution.

Example (2). A religious organization described in section 170(c)(2) has a program for providing educational opportunities for children it places in private homes. In order to implement the program, the taxpayer, H, who resides with his wife, son, and daughter of high school age in a town in the United States, signs an agreement with the organization to maintain a girl sponsored by the organization as a member of his household while the child attends the local high school for the regular 1970–71 school year. The child is a full-time student at the school during the school year starting September 6, 1970, and ending June 6, 1971, and is a member of the taxpayer's household during that period. Although the taxpayer pays $200 during the school period falling in 1970, and $240 during the school period falling in 1971, to maintain the child, he cannot claim either amount as a charitable contribution because the child's parents, from time to time during the school year, send butter, eggs, meat, and vegetables to H to help defray the expenses of maintaining the child. This is considered property received as reimbursement under paragraph (c) of this section. Had her parents not contributed the food, the fact that the child, in addition to the normal chores she shared with the taxpayer's daughter, such as cleaning their own rooms and helping with the shopping and cooking, was responsible for the family laundry and for the heavy cleaning of the entire house while the taxpayer's daughter had no comparable responsibilities would also preclude a claim for a charitable contributions deduction. These substantial gratuitous services are considered property received as reimbursement under paragraph (c) of this section.

Example (3). A taxpayer resides with his wife in a city in the eastern United States. He agrees, in writing, with a fraternal society described in section 170(c)(4) to accept a child selected by the society for maintenance by him as a member of his household during 1971 in order that the child may attend the local grammar school as a part of the society's program to provide elementary education for certain children selected by it. The taxpayer maintains the child, who has as his principal place of abode the home of the taxpayer, and is a member of the taxpayer's household, during the entire year 1971. The child is a full-time student at the local grammar school for 9 full calendar months during the year. Under the agreement, the society pays the taxpayer $30 per month to help maintain the child. Since the $30 per month is considered as compensation or reimbursement to the taxpayer for some portion of the maintenance paid on behalf of the child, no amounts paid with respect to such maintenance can be treated as amounts paid in accordance with section 170(h). In the absence of the $30 per month payments, if the child qualifies as a dependent of the taxpayer under section 152(a)(9), that fact would also prevent the maintenance payments from being treated as charitable contributions paid for the use of the fraternal society.

(f) *Effective date.* This section applies only to contributions paid in taxable years beginning after December 31, 1969.

§ 1.170A–3 Reduction of charitable contribution for interest on certain indebtedness.

(a) *In general.* Section 170(f)(5) requires that the amount of a charitable contribution be reduced for certain interest to the extent necessary to avoid the deduction of the same amount both as an interest deduction under section 163 and as a deduction for charitable contributions under section 170. The reduction is to be determined in accordance with paragraphs (b) and (c) of this section.

(b) *Interest attributable to postcontribution period.* In determining the amount to be taken into account as a charitable contribution for purposes of section 170, the amount determined without regard to section 170(f)(5) or this section shall be reduced by the amount of interest which has been paid, or is to be paid, by the taxpayer, which is attributable to any liability connected with the contribution, and which is attributable to any period of time after the making of the contribution. The deduction otherwise allowable for charitable contributions under section 170 is required to be reduced pursuant to section 170(f)(5) and this section only if, in connection with a charitable contribution, a liability is assumed by the recipient of the contribution or by any other person or if the charitable contribution is of property which is subject to a liability. Thus, if a charitable contribution is made in property and the transfer is conditioned upon the assumption of a liability by the donee or by some other person, the contribution must be reduced by the amount of any interest which has been paid, or will be paid, by the taxpayer, which is attributable to the liability, and which is attributable to any period after the making of the contribution. The adjustment referred to in this paragraph must also be made where the contributed property is subject to a liability and the value of the property reflects the payment by the donor of interest with respect to a period of time after the making of the contribution.

(c) *Interest attributable to precontribution period.* If, in connection with the charitable contribution of a bond, a liability is assumed by the recipient or by any other person, or if the bond is subject to a liability, then, in determining the amount to be taken into account as a charitable contribution under section 170, the amount determined without regard to section 170(f)(5) and this section shall, without regard to whether any reduction may be required by paragraph (b) of this section, also be reduced for interest which has been paid, or is to be paid, by the taxpayer on indebtedness incurred or continued to purchase or carry such bond, and which is attributable to any period before

the making of the contribution. However, the reduction referred to in this paragraph shall be made only to the extent that such reduction does not exceed the interest (including bond discount and other interest equivalent) receivable on the bond, and attributable to any period before the making of the contribution which is not, by reason of the taxpayer's method of accounting, includible in the taxpayer's gross income for any taxable year. For purposes of section 170(f)(5) and this section the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness.

(d) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). On January 1, 1970, A, a cash basis taxpayer using the calendar year as the taxable year, contributed to a charitable organization real estate having a fair market value and adjusted basis of $10,000. In connection with the contribution the charitable organization assumed an indebtedness of $8,000 which A had incurred. On December 31, 1969, A prepaid one year's interest on that indebtedness for 1970, amounting to $960, and took an interest deduction of $960 for such amount. The amount of the gift, determined without regard to this section, is $2,960 ($10,000 less $8,000, the outstanding indebtedness, plus $960, the amount of prepaid interest). In determining the amount of the deduction for the charitable contribution, the value of the gift ($2,960) must be reduced by $960 to eliminate from the computation of such deduction that portion thereof for which A has been allowed an interest deduction.

Example (2). (a) On January 1, 1970, B, an individual using the cash receipts and disbursements method of accounting, purchased for $9,950 a 5½ percent $10,000, 20-year M Corporation bond, the interest on which was payable semiannually on June 30 and December 31. The M Corporation had issued the bond on January 1, 1960, at a discount of $720 from the principal amount. On December 1, 1970, B donated the bond to a charitable organization, and, in connection with the contribution, the charitable organization assumed an indebtedness of $7,000 which B had incurred to purchase and carry the bond.

(b) During the calendar year 1970 B paid accrued interest of $330 on the indebtedness for the period from January 1, 1970, to December 1, 1970, and has taken an interest deduction of $330 for such amount. No portion of the bond discount of $36 a year ($720 divided by 20 years) has been included in B's income, and of the $550 of annual interest receivable on the bond, he included in income only the June 30, 1970, payment of $275.

(c) The market value of the bond on December 1, 1970, was $9,902. Such value includes $229 of interest receivable which had accrued from July 1 to December 1, 1970.

(d) The amount of the charitable contribution determined without regard to this section is $2,902 ($9,902, the value of the property on the date of gift, less $7,000, the amount of the liability assumed by the charitable organization). In determining the amount of the allowable deduction for charitable contributions, the value of the gift ($2,902) must be reduced to eliminate from the deduction that portion thereof for which B has been allowed an interest deduction. Although the amount of such interest deduction was $330, the reduction required by this section is limited to $262, since the reduction is not in excess of the amount of interest income on the bond ($229 of accrued interest plus $33, the amount of bond discount attributable to the 11-month period B held the bond).

(e) *Effective date.* This section applies only to contributions paid in taxable years beginning after December 31, 1969.

§ 1.170A–4 Reduction in amount of charitable contributions of certain appreciated property

(a) *Amount of reduction.* Section 170(e)(1) requires that the amount of the charitable contribution which would be taken into account under section 170(a) without regard to section 170(e) shall be reduced before applying the percentage limitations under section 170(b)—

(1) In the case of a contribution by an individual or by a corporation of ordinary income property, as defined in paragraph (b)(1) of this section, by the amount of gain (hereinafter in this section referred to as ordinary income) which would have been recognized as gain which is not long-term capital gain if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization,

(2) In the case of a contribution by an individual of section 170(e) capital gain property, as defined in paragraph (b)(2) of this section, by 50 percent of the amount of gain (hereinafter in this section referred to as long-term capital gain) which would have been recognized as long-term capital gain if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization, and

(3) In the case of a contribution by a corporation of section 170(e) capital gain property, as defined in paragraph (b)(2) of this section, by 62½ percent of the amount of gain (hereinafter in this section referred to as long-term capital gain) which would have been recognized as long-term capital gain if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization.

Section 170(e)(1) and this paragraph do not apply to reduce the amount of the charitable contribution where, by reason of the transfer of the contributed property, ordinary income or capital gain is recognized by the donor in the same taxable year in which the contribution is made. Thus, where income or gain is recognized under section 453(d) upon the transfer of an installment obligation to a charitable organization, or under section 454(b) upon the transfer of an obligation issued at a discount to such an organization, or upon the assignment of income to such an organization, section 170(e)(1) and this paragraph do not apply if recognition of the income or gain occurs in the same taxable year in which the contribution is made. Section 170(e)(1) and this paragraph apply to a charitable contribution of an interest in ordinary income property or section 170(e) capital gain property which is described in paragraph (b) of § 1.170A–6, or paragraph (b) of § 1.170A–7. For purposes of applying section 170(e)(1) and this paragraph it is immaterial whether the charitable contribution is made "to" the charitable organization or whether it is made "for the use of" the charitable organization. See § 1.170A–8(a)(2).

(b) *Definitions and other rules.* For purposes of this section—

(1) *Ordinary income property.* The term "ordinary income property" means property any portion of the gain on which would not have been long term capital gain if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization. Such term includes, for example, property held by the donor primarily for sale to customers in the ordinary course of his trade or business, a work of art created by the donor, a manuscript prepared by the donor, letters and memorandums prepared by or for the donor, a capital asset held by the donor for not more than 6 months, and stock described in section 306(a), 341(a), or 1248(a) to the extent that, after applying such section, gain on its disposition would not have been long term capital gain. The term does not include an income interest in respect of which a deduction is allowed under section 170(f)(2)(B) and paragraph (c) of § 1.170A–6.

(2) *Section 170(e) capital gain property.* The term "section 170(e) capital gain property" means property any portion of the gain on which would have been treated as long-term capital gain if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization and which—

(i) Is contributed to or for the use of a private foundation, as defined in section 509(a) and the regulations thereunder, other than a private foundation described in section 170(b)(1)(E),

(ii) Constitutes tangible personal property contributed to or for the use of a charitable organization, other than a private foundation to which subdivision (i) of this subparagraph applies, which is put to an unrelated use by the charitable organization within the meaning of subparagraph (3) of this paragraph, or

(iii) Constitutes property not described in subdivision (i) or (ii) of this subparagraph which is 30-percent capital gain property to which an election under paragraph (d)(2) of § 1.170A–8 applies.

For purposes of this subparagraph a fixture which is intended to be severed from real property shall be treated as tangible personal property.

(3) *Unrelated use*—(i) *In general.* The term "unrelated use" means a use which is unrelated to the purpose or function constituting the basis of the charitable organization's exemption under section 501 or, in the case of a contribution of property to a governmental unit, the use of such property by such unit for other than exclusively public purposes. For example, if a painting contributed to an educational institution is used by that organization for educational purposes by being placed in its library for display

and study by art students, the use is not an unrelated use; but if the painting is sold and the proceeds used by the organization for educational purposes, the use of the property is an unrelated use. If furnishings contributed to a charitable organization are used by it in its offices and buildings in the course of carrying out its functions, the use of the property is not an unrelated use. If a set or collection of items of tangible personal property is contributed to a charitable organization or governmental unit, the use of the set or collection is not an unrelated use if the donee sells or otherwise disposes of only an insubstantial portion of the set or collection. The use by a trust of tangible personal property contributed to it for the benefit of a charitable organization is an unrelated use if the use by the trust is one which would have been unrelated if made by the charitable organization.

(ii) *Proof of use.* For purposes of applying subparagraph (2)(ii) of this paragraph, a taxpayer who makes a charitable contribution of tangible personal property to or for the use of a charitable organization or governmental unit may treat such property as not being put to an unrelated use by the donee if—

(*a*) He establishes that the property is not in fact put to an unrelated use by the donee, or

(*b*) At the time of the contribution or at the time the contribution is treated as made, it is reasonable to anticipate that the property will not be put to an unrelated use by the donee. In the case of a contribution of tangible personal property to or for the use of a museum, if the object donated is of a general type normally retained by such museum or other museums for museum purposes, it will be reasonable for the donor to anticipate, unless he has actual knowledge to the contrary, that the object will not be put to an unrelated use by the donee, whether or not the object is later sold or exchanged by the donee.

(4) *Property used in trade or business.* For purposes of applying subparagraphs (1) and (2) of this paragraph, property which is used in the trade or business, as defined in section 1231(b), shall be treated as a capital asset, except that any gain in respect of such property which would have been recognized if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization shall be treated as ordinary income to the extent that such gain would have constituted ordinary income by reason of the application of section 617(d)(1), 1245(a), 1250(a), 1251(c), or 1252(a).

(5) *Nonresident alien individuals and foreign corporations.* The reduction in the case of a nonresident alien individual or a foreign corporation shall be determined by taking into account the gain which would have been recognized and subject to tax under chapter 1 of the Code if the property had been sold or disposed of within the United States by the donor at its fair market value at the time of its contribution to the charitable organization. However, the amount of such gain which would have been subject to tax under section 871(a) or 881 (relating to gain not effectively connected with the conduct of a trade or business within the United States) if there had been a sale or other disposition within the United States shall be treated as long-term capital gain. Thus, a charitable contribution by a nonresident alien individual or a foreign corporation of property the sale or other disposition of which within the United States would have resulted in gain subject to tax under section 871(a) or 881 will be reduced only as provided in section 170(e)(1)(B) and paragraph (a)(2) or (3) of this section, but only if the property contributed is described in subdivision (i), (ii), or (iii) of subparagraph (2) of this paragraph. A charitable contribution by a nonresident alien individual or a foreign corporation of property the sale or other disposition of which within the United States would have resulted in gain subject to tax under section 871(a) or 881 will in no case be reduced under section 170(e)(1)(A) and paragraph (a)(1) of this section.

(c) *Allocation of basis and gain*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph—

(i) If a taxpayer makes a charitable contribution of less than his entire interest in appreciated property, whether or not the transfer is made in trust, as, for example, in the case of a transfer of appreciated property to a pooled income fund described in section 642(c)(5) and § 1.642(c)–5, and is allowed a deduction under section 170 for a portion of the fair market value of such property, then for purposes of applying the reduction rules of section 170(e)(1) and this section to the contributed portion of the property the taxpayer's adjusted basis in such property at the time of the contribution shall be allocated under section 170(e)(2) between the contributed portion of the property and the noncontributed portion.

(ii) The adjusted basis of the contributed portion of the property shall be that portion of the adjusted basis of the entire property which bears the same ratio to the total adjusted basis as the fair market value of the contributed portion of the property bears to the fair market value of the entire property.

(iii) The ordinary income and the long-term capital gain which shall be taken into account in applying section 170(e)(1) and paragraph (a) of this section to the contributed portion of the property shall be the amount of gain which would have been recognized as ordinary income and long-term capital gain if such contributed portion had been sold by the donor at its fair market value at the time of its contribution to the charitable organization.

(2) *Bargain sale.* (i) If there is a bargain sale of property to the charitable organization and if section 1011(b) and § 1.1011–2 apply, then for purposes of applying the reduction rules of section 170(e)(1) and this section to the contributed portion of the property there shall be allocated under section 1011(b) to the contributed portion of the property the portion of the adjusted basis which is not allocated under section 1011(b) to the noncontributed portion of the property for purposes of determining gain from the bargain sale. The portion of the adjusted basis which is so allocated to the contributed portion of the property shall be that portion of the adjusted basis of the entire property which bears the same ratio to the total adjusted basis as the fair market value of the contributed portion of the property bears to the fair market value of the entire property. For purposes of applying section 170(e)(1) and paragraph (a) of this section to the contributed portion of the property in such a case, there shall be allocated to the contributed portion the amount of gain which is not recognized on the bargain sale but which would have been recognized as ordinary income or long-term capital gain if such contributed portion had been sold by the donor at its fair market value at the time of its contribution to the charitable organization.

(ii) If there is a bargain sale of property to the charitable organization and if section 1011(b) and § 1.1011–2 do not apply, the taxpayer's adjusted basis of the entire property shall be allocated to the noncontributed portion of the property in accordance with paragraph (e) of § 1.1001–1 for purposes of determining gain from the sale. In such case, no portion of the adjusted basis shall be allocated to the contributed portion of the property.

(iii) The term "bargain sale", as used in this subparagraph, means a transfer of property which is in part a sale or exchange of the property and in part a charitable contribution, as defined in section 170(c), of the property.

(3) *Ratio of ordinary income and capital gain.* For purposes of applying subparagraphs (1)(iii) and (2)(i) of this paragraph, the amount of ordinary income (or long-term capital gain) which would have been recognized if the contributed portion of the property had been sold by the donor at its fair market value at the time of its contribution shall be that amount which bears the same ratio to the ordinary income (or long-term capital gain) which would have been recognized if the entire property had been sold by the donor at its fair market value at the time of its contribution as (i) the fair market value of the contributed portion at such time bears to (ii) the fair market value of the entire property at such time. In the case of a bargain sale, the fair market value of the contributed portion for purposes of subdivision (i) is the amount determined by subtracting from the fair market value of the entire property the amount realized on the sale.

(4) *Donee's basis of property acquired.* The adjusted basis of the contributed portion of the property, as determined under subparagraph (1) or (2) of this paragraph, shall be used by the donee in applying to the contributed portion such

provisions as section 514(a)(1), relating to adjusted basis of debt-financed property; section 1015(a), relating to basis of property acquired by gift; section 4940(c)(4), relating to capital gains and losses in determination of net investment income; and section 4942(f)(2)(B), relating to net short-term capital gain in determination of tax on failure to distribute income. The fair market value of the contributed portion of the property at the time of the contribution shall not be used by the donee as the basis of such contributed portion.

(d) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). (a) On July 1, 1970, C, an individual, makes the following charitable contributions, all of which are made to a church except in the case of the stock (as indicated):

Property	Fair market value	Adjusted basis	Recognized gain if sold
Ordinary income property	$50,000	$35,000	$15,000
Property which, if sold, would produce long-term capital gain:			
(1) Stock held more than 6 months contributed to—			
(i) A church	25,000	21,000	4,000
(ii) A private foundation not described in section 170(b)(1)(E)	15,000	10,000	5,000
(2) Tangible personal property held more than 6 months (put to unrelated use by church)	12,000	6,000	6,000
Total	102,000	72,0000	30,000

(b) After making the reductions required by paragraph (a) of this section, the amount of charitable contributions allowed (before application of section 170(b) limitations) is as follows:

Property	Fair market value	Reduction	Contribution allowed
Ordinary income property	$50,000	$15,000	$35,000
Property which, if sold, would produce long-term capital gain:			
(1) Stock contributed to—			
(i) The church	25,000	----------	25,000
(ii) The private foundation	15,000	2,500	12,500
(2) Tangible personal property	12,000	3,000	9,000
Total	102,000	20,500	81,500

(c) If C were a corporation, rather than an individual, the amount of charitable contributions allowed (before application of section 170(b) limitation) would be as follows:

Property	Fair market value	Reduction	Contribution allowed
Ordinary income property	$50,000	$15,000	$35,000
Property which, if sold, would produce long-term capital gain:			
(1) Stock contributed to—			
(i) The church	25,000	----------	25,000
(ii) The private foundation	15,000	3,125	11,875
(2) Tangible personal property	12,000	3,750	8,250
Total	102,000	21,875	80,125

Example (2). On March 1, 1970, D, an individual, contributes to a church intangible property to which section 1245 applies which has a fair market value of $60,000 and an adjusted basis of $10,000. At the time of the contribution D has used the property in his business for more than 6 months. If the property had been sold by D at its fair market value at the time of its contribution, it is assumed that under section 1245 $20,000 of the gain of $50,000 would have been treated as ordinary income and $30,000 would have been long-term capital gain. Under paragraph (a)(1) of this section, D's contribution of $60,000 is reduced by $20,000.

Example (3). The facts are the same as in example (2) except that the property is contributed to a private foundation not described in section 170(b)(1)(E). Under paragraph (a)(1) and (2) of this section, D's contribution is reduced by $35,000 (100 percent of the ordinary income of $20,000 and 50 percent of the long-term capital gain of $30,000).

Example (4). (a) In 1971, E, an individual calendar-year taxpayer, contributes to a church stock held for more than 6 months which has a fair market value of $90,000 and an adjusted basis of $10,000. In 1972, E also contributes to a church stock held for more than 6 months which has a fair market value of $20,000 and an adjusted basis of $10,000. E's contribution base for 1971 is $200,000; and for 1972, is $150,000. E makes no other charitable contributions for these 2 taxable years.

(b) For 1971 the amount of the contribution which may be taken into account under section 170(a) is limited by section 170(b)(1)(D)(i) to $60,000 ($200,000×30%), and A is allowed a deduction for $60,000. Under section 170(b)(1)(D)(ii), E has a $30,000 carryover to 1972 of 30-percent capital gain property, as defined in paragraph (d)(3) of § 1.170A-8. For 1972 the amount of the charitable contributions deduction is $45,000 (total contributions of $50,000 [$30,000+$20,000] but not to exceed 30% of $150,000).

(c) Assuming, however, that in 1972 E elects under section 170(b)(1)(D)(iii) and paragraph (d)(2) of § 1.170A-8 to have section 170(e)(1)(B) apply to his contributions and carryovers of 30-percent capital gain property, he must apply section 170(d)(1) as if section 170(e)(1)(B) had applied to the contribution for 1971. If section 170(e)(1)(B) had applied in 1971 to his contributions of 30-percent capital gain property, E's contribution would have been reduced from $90,000 to $50,000, the reduction of $40,000 being 50 percent of the gain of $80,000 ($90,000−$1,000) which would have been recognized as long-term capital gain if the property had been sold by E at its fair market value at the time of its contribution to the church. Accordingly, by taking the election into account, E has no carryover of 30-percent capital gain property to 1972 since the charitable contributions deduction of $60,000 allowed for 1971 in respect of that property exceeds the reduced contribution of $50,000 for 1971 which may be taken into account by reason of the election. The charitable contributions deduction of $60,000 allowed for 1971 is not reduced by reason of the election.

(d) Since by reason of the election E is allowed under paragraph (a)(2) of this section a charitable contributions deduction for 1972 of $15,000 ($20,000−[($20,000−$10,000)×50%]) and since the $30,000 carryover from 1971 is eliminated, it would not be to E's advantage to make the election under section 170(b)(1)(D)(iii) in 1972.

Example (5). In 1970, F, an individual calendar-year taxpayer, sells to a church for $4,000 ordinary income property with a fair market value of $10,000 and an adjusted basis of $4,000. F's contribution base for 1970 is $20,000, and F makes no other charitable contributions in 1970. Thus, F makes a charitable contribution to the church of $6,000 ($10,000−$4,000 amount realized), which under paragraph (a)(1) of this section is reduced to zero ($6,000 [$10,000−$4,000 adjusted basis]). Since without regard to section 1011(b) no deduction is allowable under section 170 by reason of the bargain sale, section 1011(b) does not apply for purposes of allocating a portion of the adjusted basis to the noncontributed portion of the property and paragraph (c)(2)(i) of this section does not apply for purposes of allocating a portion of the adjusted basis to the contributed portion of the property. Accordingly, under paragraph (c)(2)(ii) of this section no gain is recognized to F on the bargain sale, and under section 1012 the basis of the property to the church is $4,000.

Example (6). In 1970, G, an individual calendar-year taxpayer, sells to a church for $6,000 ordinary income property with a fair market value of $10,000 and an adjusted basis of $4,000. G's contribution base for 1970 is $20,000, and G makes no other charitable contributions in 1970. Thus, G makes a charitable contribution to the church of $4,000 ($10,000−$6,000 amount realized), which under paragraph (a)(1) of this section is reduced to zero ($4,000 [$10,000−$4,000 adjusted basis]). Since without regard to section 1011(b) no deduction is allowable under section 170 by reason of the bargain sale, section 1011(b) does not apply for purposes of allocating a portion of the basis to the noncontributed portion of the property and paragraph (c)(2)(i) of this section does not apply for purposes of allocating a portion of the adjusted basis to the contributed portion of the property. Accordingly, under paragraph (c)(2)(ii) of this section F recognizes on the bargain sale a gain of $2,000 ($6,000−$4,000 adjusted basis), and under section 1012 the basis of the property to the church is $6,000.

Example (7). In 1970, H, an individual calendar-year taxpayer, sells to a church for $2,000 stock held for not more than 6 months which has an adjusted basis of $4,000 and a fair market value of $10,000. H's contribution base for 1970 is $20,000, and H makes no other charitable contributions in 1970. Thus, H

makes a charitable contribution to the church of $8,000 ($10,000—$2,000 amount realized). Without regard to section 1011(b), H is allowed a deduction under section 170 of $2,000 ($8,000 [$10,000—$4,000 adjusted basis]), and, as a consequence, section 1011 (b) must be applied to the bargain sale. Under paragraphs (a)(1) and (c)(2)(i) of this section, H's contribution of $8,000 is reduced by the amount of $4,800 of ordinary income ($8,000 [$4,000 adjusted basis×$8,000 value of gift/$10,000 value of entire property]). The reduced contribution of $3,200 consists of the portion ($4,000×$8,000/$10,000) of the adjusted basis not allocated to the noncontributed portion of the property. Under sections 1012 and 1015(a) the basis of the property to the church is $5,200 ($2,000+$3,200).

Example (8). In 1970, F, an individual calendar-year taxpayer, sells for $4,000 to a private foundation not described in section 170(b)(1)(E) property to which section 1245 applies which has a fair market value of $10,000 and an adjusted basis of $4,000. F's contribution base for 1970 is $20,000, and F makes no other charitable contributions in 1970. At the time of the bargin sale, F has used the property in his business for more than 6 months. Thus, F makes a charitable contribution of $6,000 ($10,000—$4,000 amount realized), which is 60 percent of the value of the property. The amount realized on the bargain sale is 40 percent ($4,000/$10,000) of the value of the property. If the property had been sold by F at its fair market value at the time of its contribution, it is assumed that under section 1245 $4,000 of the gain of $6,000 ($10,000—$4,000 adjusted basis) would have been treated as ordinary income and $2,000 would have been long term capital gain. Without regard to section 1011(b), F is allowed a deduction under section 170 of $1,000 ($6,000 [$4,000 ordinary income+50 percent of $2,000 long term capital gain]), and, as a consequence, section 1011(b) must be applied to the bargain sale. Accordingly, in applying section 1011(b) to the bargain sale, adjusted basis in the amount of $1,600 ($4,000 adjusted basis×40 percent) is allocated under § 1.1011–2(b) to the noncontributed portion of the property, and F's recognized gain of $2,400 ($4,000 amount realized less $1,600 adjusted basis) consists of $1,600 ($4,000×40 percent) of ordinary income and $800 ($2,000×40 percent) of long term capital gain. Under paragraphs (a) and (c)(2)(i) of this section, F's contribution of $6,000 is reduced by the sum of $2,400 ($4,000×60 percent) of ordinary income and $600 ([$2,000×60 percent]×50 percent) of long term capital gain. The reduced contribution of $3,000 consists of $2,400 ($4,000×60 percent) of adjusted basis and $600 ([$2,000×60 percent]×50 percent) of long term capital gain not used as a reduction under paragraph (a)(2) of this section. Under sections 1012 and 1015(a) the basis of the property to the private foundation is $6,400 ($4,000+$2,400).

Example (9). On January 1, 1970, A, an individual, transfers to a charitable remainder annuity trust described in section 664(d)(1) stock which he has held for more than 6 months and which has a fair market value of $250,000 and an adjusted basis of $50,000, an irrevocable remainder interest in the property being contributed to a private foundation not described in section 170(b)(1)(E). The trusts provides that an annuity of $12,500 a year is payable to A at the end of each year for 20 years. By reference to Table B of § 20.2031–10(f) of this chapter (Estate Tax Regulations) the figure in column (2) opposite 20 years is 11.4699. Therefore, under § 1.664–2 the fair market value of the gift of the remainder interest to charity is $106,626.25 ($250,000 [$12,500×11.4699]). Under paragraph (c)(1)(ii) of this section, the adjusted basis allocated to the contributed portion of the property is $21,325.25 ($50,000×$106,626.25/$250,000). Under paragraphs (a)(2) and (c)(1) of this section, A's contribution is reduced by $42,650.50 (50 percent×[$106,626.25—$21,325.25]) to $63,975.75 ($106,626.25—$42,650.50). If, however, the irrevocable remainder interest in the property had been contributed to a section 170(b)(1)(A) organization, A's contribution of $106,626.25 would not be reduced under paragraph (a) of this section.

Example (10). (a) On July 1, 1970, B, a calendar-year individual taxpayer, sells to a church for $75,000 intangible property to which section 1245 applies which has a fair market value of $250,000 and an adjusted basis of $75,000. Thus, B makes a charitable contribution to the church of $175,000 ($250,000—$75,000 amount realized), which is 70 percent ($175,000/$250,000) of the value of the property. The amount realized on the bargain sale is 30 percent ($75,000/$250,000) of the value of the property. At the time of the bargain sale, B has used the property in his business for more than 6 months. B's contribution base for 1970 is $500,000, and B makes no other charitable contributions in 1970. If the property had been sold by B at its fair market value at the time of its contribution, it is assumed that under section 1245 $105,000 of the gain of $175,000 ($250,000—$75,000 adjusted basis) would have been treated as ordinary income and $70,000 would have been long term capital gain. Without regard to section 1011(b), B is allowed a deduction under section 170 of $70,000 ($175,000—$105,000 ordinary income), and, as a consequence, section 1011(b) must be applied to the bargain sale. Accordingly, in applying section 1011(b) to the bargain sale, adjusted basis in th eamount of $22,500 ($75,000 adjusted basis × 30 percent) is allocated under § 1.1011–2(b) to the noncontributed portion of the property, and B's recognized gain of $52,500 ($75,000 amount realized less $22,500 adjusted basis) consists of $31,500 ($105,000×30 percent) of ordinary income and $21,000 ($70,000×30 percent) of long term capital gain.

(b) Under paragraphs (a)(1) and (c)(2)(i) of this section B's contribution of $175,000 is reduced by $73,500 ($105,000×70 percent) of ordinary income. The reduced contribution of $101,500 consists of $52,500 [$75,000×70 percent] of adjusted basis allocated to the contributed portion of the property and $49,000 [$70,000×70 percent] of long term capital gain allocated to the contributed portion. Under sections 1012 and 1015(a) the basis of the property to the church is $127,500 ($75,000+$52,500).

(e) *Effective date.* This section applies only to contributions paid after December 31, 1969, except that, in the case of a charitable contribution of a letter, memorandum, or property similar to a letter or memorandum, it applies to contributions paid after July 25, 1969.

§ 1.170A–5 Future interests in tangible personal property.

(a) *In general.* (1) A contribution consisting of a transfer of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of the property—

(i) Have expired, or

(ii) Are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b) and the regulations thereunder, relating to losses, expenses, and interest with respect to transactions between related taxpayers.

(2) Section 170(a)(3) and this section have no application in respect of a transfer of an undivided present interest in property. For example, a contribution of an undivided one-quarter interest in a painting with respect to which the donee is entitled to possession during 3 months of each year shall be treated as made upon the receipt by the donee of a formally executed and acknowledged deed of gift. However, the period of initial possession by the donee may not be deferred in time for more than 1 year.

(3) Section 170(a)(3) and this section have no application in respect of a transfer of a future interest in intangible personal property or in real property. However, a fixture which is intended to be severed from real property shall be treated as tangible personal property. For example, a contribution of a future interest in a chandelier which is attached to a building is considered a contribution which consists of a future interest in tangible personal property if the transferor intends that it be detached from the building at or prior to the time when the chartiable organization's right to possession or enjoyment of the chandelier is to commence.

(4) For purposes of section 170(a)(3) and this section, the term "future interest" has generally the same meaning as it has when used in section 2503 and § 25.2503–3 of this chapter (Gift Tax Regulations); it includes reversions, remainders, and other interests or estates, whether vested or contingent, and whether or not supported by a particular interest or estate, which are limited to commence in use, possession, or enjoyment at some future date or time. The term "future interest" includes situations in which a donor purports to give tangible personal property to a charitable organization, but has an understanding, arrangement, agreement, etc., whether written or oral, with the charitable organization which has the effect of reserving to, or retaining in, such donor a right to the use, possession, or enjoyment of the property.

(5) In the case of a charitable contribution of a future interest to which section 170(a)(3) and this section apply, the other provisions of section 170 and the regulations thereunder are inapplicable to the contribution until such time as the contribution is treated as made under section 170(a)(3).

(b) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). On December 31, 1970, A, an individual who reports his income on the calendar year basis, conveys by deed of gift to a museum title to a painting, but reserves to himself the right to the use, possession, and enjoyment of the painting during his lifetime. It is assumed that there was no intention to avoid the application of section 170(f)(3)(A) by the conveyance. At the time of the gift the value of the painting is $90,000. Since the contribution consists of

a future interest in tangible personal property in which the donor has retained an intervening interest, no contribution is considered to have been made in 1970.

Example (2). Assume the same facts as in example (1) except that on December 31, 1971, A relinquishes all of his right to the use, possession, and enjoyment of the painting and delivers the painting to the museum. Assuming that the value of the painting has increased to $95,000, A is treated as having made a charitable contribution of $95,000 in 1971 for which a deduction is allowable without regard to section 170(f)(3)(A).

Example (3). Assume the same facts as in example (1) except A dies without relinquishing his right to the use, possession, and enjoyment of the painting. Since A did not relinquish his right to the use, possession, and enjoyment of the property during his life, A is treated as not having made a charitable contribution of the painting for income tax purposes.

Example (4). Assume the same facts as in example (1) except A, on December 31, 1971, transfers his interest in the painting to his son, B, who reports his income on the calendar year basis. Since the relationship between A and B is one described in section 267(b), no contribution of the remainder interest in the painting is considered to have been made in 1971.

Example (5). Assume the same facts as in example (4). Also assume that on December 31, 1972, B conveys to the museum the interest measured by A's life. B has made a charitable contribution of the present interest in the painting conveyed to the museum. In addition, since all intervening interests in, and rights to the actual possession or enjoyment of the property, have expired, a charitable contribution of the remainder interest is treated as having been made by A in 1972 for which a deduction is allowable without regard to section 170(f)(3)(A). Such remainder interest is valued according to Table A(1) in § 20.2031–10(f) of this chapter (estate tax regulations), determined by subtracting the value of B's interest measured by A's life expectancy in 1972, and B receives a deduction in 1972 for the life interest measured by A's life expectancy and valued according to Table A(1) in such section.

Example (6). On December 31, 1970, C, an individual who reports his income on the calendar year basis, transfers a valuable painting to a pooled income fund described in section 642(c)(5), which is maintained by a university. C retains for himself for life an income interest in the painting, the remainder interest in the painting being contributed to the university. Since the contribution consists of a future interest in tangible personal property in which the donor has retained an intervening interest, no charitable contribution is considered to have been made in 1970.

Example (7). On January 15, 1972, D, an individual who reports his income on the calendar year basis, transfers a capital asset held for more than 6 months consisting of a valuable painting to a pooled income fund described in section 642(c)(5), which is maintained by a university, and creates an income interest in such painting for E for life. E is an individual not standing in a relationship to D described in section 267(b). The remainder interest in the property is contributed by D to the university. The trustee of the pooled income fund puts the painting to an unrelated use within the meaning of paragraph (b)(3) of § 1.170A–4. Accordingly, D is allowed a deduction under section 170 in 1972 for the present value of the remainder interest in the painting, after reducing such amount under section 170(e)(1)(B)(i) and paragraph (a)(2) of § 1.170A–4. This reduction in the amount of the contribution is required since under paragraph (b)(3) of that section the use by the pooled income fund of the painting is a use which would have been an unrelated use if it had been made by the university.

(c) *Effective date.* This section applies only to contributions paid in taxable years beginning after December 31, 1969.

§ 1.170A–6 Charitable contributions in trust.

(a) *In general.* (1) No deduction is allowed under section 170 for the fair market value of a charitable contribution of any interest in property which is less than the donor's entire interest in the property and which is transferred in trust unless the transfer meets the requirements of paragraph (b) or (c) of this section. If the donor's entire interest in the property is transferred in trust and is contributed to a charitable organization described in section 170(c), a deduction is allowed under section 170. Thus, if on July 1, 1972, property is transferred in trust with the requirement that the income of the trust be paid for a term of 20 years to a church and thereafter the remainder be paid to an educational organization described in section 170(b)(1)(A), a deduction is allowed for the value of such property. See section 170(f)(2) and (3)(B), and paragraph (b)(1) of § 1.170A–7.

(2) A deduction is allowed without regard to this section for a contribution of a partial interest in property if such interest is the taxpayer's entire interest in the property, such as an income interest or a remainder interest. If, however, the property in which such partial interest exists was divided in order to create such interest and thus avoid section 170(f)(2), the deduction will not be allowed. Thus, for example, assume that a taxpayer desires to contribute to a charitable organization the reversionary interest in certain stocks and bonds which he owns. If the taxpayer transfers such property in trust with the requirement that the income of the trust be paid to his son for life and that the reversionary interest be paid to himself and immediately after creating the trust contributes the reversionary interest to a charitable organization, no deduction will be allowed under section 170 for the contribution of the taxpayer's entire interest consisting of the reversionary interest in the trust.

(b) *Charitable contribution of a remainder interest in trust*—(1) *In general.* No deduction is allowed under section 170 for the fair market value of a charitable contribution of a remainder interest in property which is less than the donor's entire interest in the property and which the donor transfers in trust unless the trust is—

(i) A pooled income fund described in section 642(c)(5) and § 1.642(c)–5,

(ii) A charitable remainder annuity trust described in section 664(d)(1) and § 1.664–2, or

(iii) A charitable remainder unitrust described in section 664(d)(2) and § 1.664–3.

(2) *Value of a remainder interest.* The fair market value of a remainder interest in a pooled income fund shall be computed under § 1.642(c)–6. The fair market value of a remainder interest in a charitable remainder annuity trust shall be computed under § 1.664–2. The fair market value of a remainder interest in a charitable remainder unitrust shall be computed under § 1.664–4. However, in some cases a reduction in the amount of a charitable contribution of the remainder interest may be required. See section 170(e) and § 1.170A–4.

(c) *Charitable contribution of an income interest in trust*—(1) *In general.* No deduction is allowed under section 170 for the fair market value of a charitable contribution of an income interest in property which is less than the donor's entire interest in the property and which the donor transfers in trust unless the income interest is either an annuity trust interest or a unitrust interest, as defined in subparagraph (2) of this paragraph, and the grantor is treated as the owner of such interest for purposes of applying section 671, relating to grantors and others treated as substantial owners. See section 4947(a)(2) for the application to such income interests in trust of the provisions relating to private foundations and section 508(e) for rules relating to provisions required in the governing instruments.

(2) [Reserved]

(3) *Valuation of income interest.* (i) The deduction allowed by section 170(f)(2)(B) for a charitable contribution of an annuity trust interest is limited to the fair market value of such interest on the date of contribution, as computed under § 20.2031–10 of this chapter (estate tax regulations).

(ii) The deduction allowed under section 170(f)(2)(B) for a charitable contribution of a unitrust interest is limited to the fair market value of the unitrust interest on the date of contribution. The fair market value of the unitrust interest shall be determined by subtracting (*a*) the present value of all interests in the transferred property that follow the unitrust interest from (*b*) the fair market value of the transferred property. For such purposes the present value of all interests that follow the unitrust interest shall be determined under § 1.664–4 by treating such interests as a remainder interest in a charitable remainder unitrust.

(iii) If by reason of all the conditions and circumstances surrounding a transfer of an income interest in property in trust it appears that the charity may not receive the beneficial enjoyment of the interest, a deduction will be allowed under subparagraph (1) of this paragraph only for the minimum amount it is evident the charity will receive. For example, assume that the taxpayer contributes in trust to a church a 9-year irrevocable income interest in $20,000 cash, the residue to revert to himself. The trust instrument provides that the church is to be paid an annuity-trust interest (as defined in subparagraph (2)(i) of this paragraph) of $4,000, payable annually at the end of each year for 9

years. Since the fair market value of an annuity of $4,000 a year for a period of 9 years, as determined under subdivision (i) of this subparagraph and Table B in § 20.2031–10(f) of this chapter (Estate Tax Regulations), is $27,206.80 ($4,000 ×6.8017), it appears that the church will not receive the beneficial enjoyment of the income interest. Accordingly, even though the donor is treated as the owner of this trust under section 673, he is allowed a deduction under subparagraph (1) of this paragraph only for $20,000, which is the minimum amount it is evident the church will receive.

(iv) See paragraph (b)(1) of § 1.170A–4 for rule that the term "ordinary income property" for purposes of section 170(e) does not include an income interest in respect of which a deduction is allowed under section 170(f)(2)(B) and this paragraph.

(4) *Recapture upon termination of treatment as owner.* If for any reason the donor of an income interest in property ceases at any time before the termination of such interest to be treated as the owner of such interest for purposes of applying section 671, as for example, where he dies before the termination of such interest, he shall for purposes of this chapter be considered as having received, on the date he ceases to be so treated, an amount of income equal to (i) the amount of any deduction he was allowed under section 170 for the contribution of such interest reduced by (ii) the discounted value of all amounts which were required to be, and actually were, paid with respect to such interest under the terms of trust to the charitable organization before the time at which he ceases to be treated as the owner of the interest. The discounted value of the amounts described in subdivision (ii) of this subparagraph shall be computed by treating each such amount as a contribution of a remainder interest after a term of years and valuing such amount as of the date of contribution of the income interest by the donor, such value to be determined under § 20.2031–10 of this chapter consistently with the manner in which the fair market value of the income interest by the donor, such value to subparagraph (3)(i) of this paragraph. The application of this subparagraph will not be construed to disallow a deduction to the trust for amounts paid by the trust to the charitable organization after the time at which the donor ceased to be treated as the owner of the trust.

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

Example (1). On January 1, 1970, A contributes to a church in trust a 9-year irrevocable income interest in property. Both A and the trust report income on a calendar year basis. The fair market value of the property placed in trust is $10,000. The trust instrument provides that the church will receive an annuity of $500, payable annually at the end of each year for 9 years. The income interest is an annuity-trust interest as defined in subparagraph (2)(i) of this paragraph; upon termination of such interest the residue of the trust is to revert to A. By reference to Table B in § 20.2031–10(f) of this chapter, it is found that the figure in column (2) opposite 9 years is 6.8017. The present value of the annuity is therefore $3,400.85 ($500×6.8017). The present value of the income interest and A's charitable contribution for 1970 is $3,400.85.

Example (2). (a) On January 1, 1970, B contributes to a church in trust a 9-year irrevocable income interest in property. Both B and the trust report income on a calendar year basis. The fair market value of the property placed in trust is $10,000. The trust instrument provides that the trust will pay to the church at the end of each year for 9 years, 5 percent of the fair market value of all property in the trust at the beginning of the year. The income interest is a unitrust interest as defined in subparagraph (2)(ii) of this paragraph; upon termination of such interest the residue of the trust is to revert to B.

(b) By reference to Table F in § 1.664–4(b)(5), the adjusted payout rate is 4.717 percent (5 percent × 0.943396). The present value of the reversion is $6,473.75, computed by reference to Table D in § 1.664–4(b)(5), as follows:

Factor at 4.6 percent for 9 years	0.654539
Factor at 4.8 percent for 9 years	.642292
Difference	.012247

Interpolation adjustment:

$$\frac{4.717\% - 4.6\%}{0.2\%} = \frac{\quad}{0.012247}$$

$$\times = 0.007164$$

Factor at 4.6 percent for 9 years	.654539
Less: Interpolation adjustment	.007164
Interpolated factor	.647375
Present value of reversion ($10,000 ×0.647375)	$6,473.75

(c) The present value of the income interest and B's charitable contribution for 1970 is $3,526.25 ($10,000—$6,473.75).

Example (3). (a) On January 1, 1970, C contributes to a church in trust a 9-year irrevocable income interest in property. Both C and the trust report income on a calendar year basis. The fair market value of the property placed in trust is $10,000. The trust instrument provides that the church will receive an annuity of $500, payable annually at the end of each year for 9 years. The income interest is an annuity trust interest as defined in subparagraph (2)(i) of this paragraph; upon termination of such interest the residue of the trust is to revert to C. C's charitable contribution for 1970 is $3,400.85, determined as provided in example (1). The trust earns income of $600 in 1970, $400 in 1971, and $500 in 1972, all of which is taxable to C under section 671. The church is paid $500 at the end of 1970, 1971, and 1972, respectively. On December 31, 1972, C dies and ceases to be treated as the owner of the income interest under section 673.

(b) Pursuant to subparagraph (4) of this paragraph, the discounted value as of January 1, 1970, of the amounts paid to the church by the trust is $1,336.51, determined by reference to column (4) of Table B in § 20.2031–10(f) of this chapter, as follows:

Annuity		Years from Jan. 1, 1970, to payment date	Discount factor	Discounted value as of Jan. 1, 1970
Payment date	Amount paid			
Dec. 31, 1970	$500	1	0.943396	$471.70
Dec. 31, 1971	500	2	.889996	445.00
Dec. 31, 1972	500	3	.839619	419.81
Total discounted value				1,336.51

(c) Pursuant to subparagraph (4) of this paragraph, there must be included in C's gross income for 1972 the amount of $2,064.34 ($3,400.85 less $1,336.51).

(d) For deduction by the trust for amounts paid to the church after December 31, 1972, see section 642(c)(1) and the regulations thereunder.

(d) *Denial of deduction for certain contributions by a trust.* (1) If by reason of section 170(f)(2)(B) and paragraph (c) of this section a charitable contributions deduction is allowed under section 170 for the fair market value of an income interest transferred in trust, neither the grantor of the income interest, the trust, nor any other person shall be allowed a deduction under section 170 or any other section for the amount of any charitable contribution made by the trust with respect to, or in fulfillment of, such income interest.

(2) Section 170(f)(2)(C) and subparagraph (1) of this paragraph shall not be construed, however, to—

(i) Disallow a deduction to the trust, pursuant to section 642(c)(1) and the regulations thereunder, for amounts paid by the trust after the grantor ceases to be treated as the owner of the income interest for purposes of applying section 671 and which are not taken into account in determining the amount of recapture under paragraph (c)(4) of this section, or

(ii) Disallow a deduction to the grantor under section 671 and § 1.671–2(c) for a charitable contribution made by the trust in excess of the contribution required to be made by the trust under the terms of the trust instrument with respect to, or in fulfillment of, the income interest.

(3) Although a deduction for the fair market value of an income interest in property which is less than the donor's entire interest in the property and which the donor transfers in trust is disallowed under section 170 because such interest is not an annuity trust interest, or a unitrust interest, as defined in paragraph (c)(2) of this section, the donor may be entitled to a deduction under section 671 and § 1.671–2(c) for any charitable contributions made by the trust if he is treated as the owner of such interest for purposes of applying section 671.

(e) *Effective date.* This section applies only to transfers in trust made after July 31, 1969.

§ 1.170A–7 Contributions not in trust of partial interests in property.

(a) *In general.* (1) In the case of a charitable contribution, not made by a transfer in trust, of any interest in property which consists of less than the donor's entire interest in such property, no deduction is allowed under section 170 for the value of such interest unless the interest is an interest described in paragraph (b) of this section. See section 170(f)(3)(A). For purposes of this section, a contribution of the right to use property which the donor owns, for example, a rent-free lease, shall be treated as a contribution of less than the taxpayer's entire interest in such property.

(2) (i) A deduction is allowed without regard to this section for a contribution of a partial interest in property if such interest is the taxpayer's entire interest in the property, such as an income interest or a remainder interest. Thus, if securities are given to A for life, with the remainder over to B, and B makes a charitable contribution of his remainder interest to an organization described in section 170(c), a deduction is allowed under section 170 for the present value of B's remainder interest in the securities. If, however, the property in which such partial interest exists was divided in order to create such interest and thus avoid section 170(f)(3)(A), the deduction will not be allowed. Thus, for example, assume that a taxpayer desires to contribute to a charitable organization an income interest in property held by him, which is not of a type described in paragraph (b)(2) of this section. If the taxpayer transfers the remainder interest in such property to his son and immediately thereafter contributes the income interest to a charitable organization, no deduction shall be allowed under section 170 for the contribution of the taxpayer's entire interest consisting of the retained income interest. In further illustration, assume that a taxpayer desires to contribute to a charitable organization the reversionary interest in certain stocks and bonds held by him, which is not of a type described in paragraph (b)(2) of this section. If the taxpayer grants a life estate in such property to his son and immediately thereafter contributes the reversionary interest to a charitable organization, no deduction will be allowed under section 170 for the contribution of the taxpayer's entire interest consisting of the reversionary interest.

(ii) A deduction is allowed without regard to this section for a contribution of a partial interest in property if such contribution constitutes part of a charitable contribution not in trust in which all interests of the taxpayer in the property are given to a charitable organization described in section 170(c). Thus, if on March 1, 1971, an income interest in property is given not in trust to a church and the remainder interest in the property is given not in trust to an educational organization described in section 170(b)(1)(A), a deduction is allowed for the value of such property.

(3) A deduction shall not be disallowed under section 170(f)(3)(A) and this section merely because the interest which passes to, or is vested in, the charity may be defeated by the performance of some act or the happening of some event, if on the date of the gift it appears that the possibility that such act or event will occur is so remote as to be negligible. See paragraph (e) of § 1.170A–1.

(b) *Contributions of certain partial interests in property for which a deduction is allowed.* A deduction is allowed under section 170 for a contribution not in trust of a partial interest which is less than the donor's entire interest in property and which qualifies under one of the following subparagraphs:

(1) *Undivided portion of donor's entire interest.* (i) A deduction is allowed under section 170 for the value of a charitable contribution not in trust of an undivided portion of a donor's entire interest in property. An undivided portion of a donor's entire interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the donor in such property and must extend over the entire term of the donor's interest in such property and in other property into which such property is converted. For example, assuming that in 1967 B has been given a life estate in an office building for the life of A and that B has no other interest in the office building, B will be allowed a deduction under section 170 for his contribution in 1972 to charity of a one-half interest in such life estate in a transfer which is not made in trust. Such contribution by B will be considered a contribution of an undivided portion of the donor's entire interest in property. In further illustration, assuming that in 1968 C has been given the remainder interest in a trust created under the will of his father and C has no other interest in the trust, C will be allowed a deduction under section 170 for his contribution in 1972 to charity of a 20-percent interest in such remainder interest in a transfer which is not made in trust. Such contribution by C will be considered a contribution of an undivided portion of the donor's entire interest in property. If a taxpayer owns 100 acres of land and makes a contribution of 50 acres to a charitable organization, the charitable contribution is allowed as a deduction under section 170. A deduction is allowed under section 170 for a contribution of property to a charitable organization whereby such organization is given the right, as a tenant in common with the donor, to possession, dominion, and control of the property for a portion of each year appropriate to its interest in such property. However, for purposes of this subparagraph a charitable contribution in perpetuity of an interest in property not intrust where the donor transfers some specific rights and retains other substantial rights will not be considered a contribution of an individual portion of the donor's entire interest in property to which section 170(f)(3)(A) does not apply. Thus, for example, a deduction is not allowable for the value of an immediate and perpetual gift not in trust of an interest in original historic motion picture films to a charitable organization where the donor retains the exclusive right to make reproductions of such films and to exploit such reproductions commercially.

(ii) For purposes of this subparagraph a charitable contribution of an open space easement in gross in perpetuity shall be considered a contribution of an undivided portion of the donor's entire interest in property to which section 170(f)(3)(A) does not apply. For this purpose an easement in gross is a mere personal interest in, or right to use, the land of another; it is not supported by a dominant estate but is attached to, and vested in, the person to whom it is granted. Thus, for example, a deduction is allowed under section 170 for the value of a restrictive easement gratuitously conveyed to the United States in perpetuity whereby the donor agrees to certain restrictions on the use of his property, such as, restrictions on the type and height of buildings that may be erected, the removal of trees, the erection of utility lines, the dumping of trash, and the use of signs.

(2) *Partial interests in property which would be deductible in trust.* A deduction is allowed under section 170 for the value of a charitable contribution not in trust of a partial interest in property which is less than the donor's entire interest in the property and which would be deductible under section 170(f)(2) and § 1.170A–6 if such interest had been transferred in trust.

(3) *Contribution of a remainder interest in a personal residence.* A deduction is allowed under section 170 for the value of a charitable contribution not in trust of an irrevocable remainder interest in a personal residence which is not the donor's entire interest in such property. Thus, for example, if a taxpayer contributes not in trust to an organization described in section 170(c) a remainder interest in a personal residence and retains an estate in such property for life or for a term of years, a deduction is allowed under section 170 for the value of such remainder interest not transferred in trust. For purposes of section 170(f)(3)(B)(i) and this subparagraph, the term "personal residence" means any property used by the taxpayer as his personal residence even though it is not used as his principal residence. For example, the taxpayer's vacation home may be a personal residence for purposes of this subparagraph. The term "personal residence" also includes stock owned by a taxpayer as a tenant-stockholder in a cooperative housing corporation (as those terms are defined in section 216(b)(1) and (2)) if the dwelling which the taxpayer is entitled to occupy as such stockholder is used by him as his personal residence.

(4) *Contribution of a remainder interest in a farm.* A deduction is allowed under section 170 for the value of a charitable contribution not in trust of an irrevocable remainder interest in a farm

which is not the donor's entire interest in such property. Thus, for example, if a taxpayer contributes not in trust to an organization described in section 170 (c) a remainder interest in a farm and retains an estate in such farm for life or for a term of years, a deduction is allowed under section 170 for the value of such remainder interest not transferred in trust. For purposes of section 170(f) (3)(B)(i) and this subparagraph, the term "farm" means any land used by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock. The term "livestock" includes cattle, hogs, horses, mules, donkeys, sheep, goats, captive fur-bearing animals, chickens, turkeys, pigeons, and other poultry. A farm includes the improvements thereon.

(c) *Valuation of a partial interest in property.* The amount of the deduction under section 170 in the case of a charitable contribution of a partial interest in property to which paragraph (b) of this section applies is the fair market value of the partial interest at the time of the contribution. See § 1.170A–1(c). The fair market value of such partial interest must be determined in accordance with § 20.2031–10 of this chapter (Estate Tax Regulations), except that, in the case of a charitable contribution of a remainder interest in real property which is not transferred in trust, the fair market value of such interest must be determined in accordance with section 170(f) (4) and § 1.170A–12. In the case of a charitable contribution of a remainder interest in the form of a remainder interest in a pooled income fund, a charitable remainder annuity trust, or a charitable remainder unitrust, the fair market value of the remainder unitrust, the fair market value of the remainder interest must be determined as provided in paragraph (b)(2) of § 1.170A–6. However, in some cases a reduction in the amount of a charitable contribution of the remainder interest may be required. See section 170(e) and paragraph (a) of § 1.170A–4.

(d) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). A, an individual owning a 10-story office building, donates the rent-free use of the top floor of the building for the year 1971 to a charitable organization. Since A's contribution consists of a partial interest to which section 170(f)(3)(A) applies, he is not entitled to a charitable contributions deduction for the contribution of such partial interest.

Example (2). In 1971, B contributes to a charitable organization an undivided one-half interest in 100 acres of land, whereby as tenants in common they share in the economic benefits from the property. The present value of the contributed property is $50,000. Since B's contribution consists of an undivided portion of his entire interest in the property to which section 170(f)(3)(B) applies, he is allowed a deduction in 1971 for his charitable contribution of $50,000.

Example (3). In 1971, D loans $10,000 in cash to a charitable organization and does not require the organization to pay any interest for the use of the money. Since D's contribution consists of a partial interest to which section 170(f)(3)(A) applies, he is not entitled to a charitable contributions deduction for the contribution of such partial interest.

(e) *Effective date.* This section applies only to contributions made after July 31, 1969.

§ 1.170A–8 Limitations on charitable deductions by individuals.

(a) *Percentage limitations*—(1) *In general.* An individual's charitable contributions deduction is subject to 20-, 30-, and 50-percent limitations unless the individual qualifies for the unlimited charitable contributions deduction under section 170(b)(1)(C). For a discussion of these limitations and examples of their application, see paragraphs (b) through (f) of this section. If a husband and wife make a joint return, the deduction for contributions is the aggregate of the contributions made by the spouses, and the limitations in section 170(b) and this section are based on the aggregate contribution base of the spouses. A charitable contribution by an individual to or for the use of an organization described in section 170(c) may be deductible even though all, or some portion, of the funds of the organization may be used in foreign countries for charitable or educational purposes.

(2) *"To" or "for the use of" defined.* For purposes of section 170, a contribution of an income interest in property, whether or not such contributed interest is transferred in trust, for which a deduction is allowed under section 170(f)(2)(B) or (3)(A) shall be considered as made "for the use of" rather than "to" the charitable organization. A contribution of a remainder interest in property, whether or not such contributed interest is transferred in trust, for which a deduction is allowed under section 170(f)(2)(A) or (3)(A), shall be considered as made "to" the charitable organization except that, if such interest is transferred in trust and, pursuant to the terms of the trust instrument, the interest contributed is, upon termination of the predecessor estate, to be held in trust for the benefit of such organization, the contribution shall be considered as made "for the use of" such organization. Thus, for example, assume that A transfers property to a charitable remainder annuity trust described in section 664(d)(1) which is required to pay to B for life an annuity equal to 5 percent of the initial fair market value of the property transferred in trust. The trust instrument provides that after B's death the remainder interest in the trust is to be transferred to M Church or, in the event M Church is not an organization described in section 170(c) when the amount is to be irrevocably transferred to such church, to an organization which is described in section 170(c) at that time. The contribution by A of the remainder interest shall be considered as made "to" M Church. However, if in the trust instrument A had directed that after B's death the remainder interest is to be held in trust for the benefit of M Church, the contribution shall be considered as made "for the use of" M Church. This subparagraph does not apply to the contribution of a partial interest in property, or of an undivided portion of such partial interest, if such partial interest is the donor's entire interest in the property and such entire interest was not created to avoid section 170(f)(2) or (3)(A). See paragraph (a)(2) of § 1.170A–6 and paragraphs (a)(2)(i) and (b)(1) of § 1.170A–7.

(b) *50-percent limitation.* An individual may deduct charitable contributions made during a taxable year to any one or more section 170(b)(1)(A) organizations, as defined in § 1.170A–9, to the extent that such contributions in the aggregate do not exceed 50 percent of his contribution base, as defined in section 170(b)(1)(F) and paragraph (e) of this section, for the taxable year. However, see paragraph (d) of this section for a limitation on the amount of charitable contributions of 30-percent capital gain property. To qualify for the 50-percent limitation the contributions must be made "to," and not merely "for the use of," one of the specified organizations. A contribution to an organization referred to in section 170(c)(2), other than a section 170(b)(1)(A) organization, will not qualify for the 50-percent limitation even though such organization makes the contribution available to an organization which is a section 170(b)(1)(A) organization. For provisions relating to the carryover of contributions in excess of 50-percent of an individual's contribution base see section 170(d)(1) and paragraph (b) of § 1.170A–10.

(c) *20-percent limitation.* (1) An individual may deduct charitable contributions made during a taxable year—

(i) To any one or more charitable organizations described in section 170(c) other than section 170(b)(1)(A) organizations, as defined in § 1.170A–9, and,

(ii) For the use of any charitable organization described in section 170(c),

to the extent that such contributions in the aggregate do not exceed the lesser of the limitations under subparagraph (2) of this paragraph.

(2) For purposes of subparagraph (1) of this paragraph the limitations are—

(i) 20 percent of the individual's contribution base, as defined in paragraph (e) of this section, for the taxable year, or

(ii) The excess of 50 percent of the individual's contribution base, as so defined, for the taxable year over the total amount of the charitable contributions allowed under section 170(b)(1)(A) and paragraph (b) of this section, determined by first reducing the amount of such contributions under section 170(e)(1) and paragraph (a) of § 1.170A–4 but without applying the 30-percent limitation under section 170(b)(1)(D)(i) and paragraph (d)(1) of this section.

However, see paragraph (d) of this section for a limitation on the amount of charitable contributions of 30-percent capital gain property. If an election under section 170(b)(1)(D)(iii) and paragraph (d)(2) of this section applies

to any contributions of 30-percent capital gain property made during the taxable year or carried over to the taxable year, the amount allowed for the taxable year under paragraph (b) of this section with respect to such contributions for purposes of applying subdivision (ii) of this subparagraph shall be the reduced amount of such contributions determined by applying paragraph (d)(2) of this section.

(d) *30-percent limitation*—(1) *In general.* An individual may deduct charitable contributions of 30-percent capital gain property, as defined in subparagraph (3) of this paragraph, made during a taxable year to or for the use of any charitable organization described in section 170(c) to the extent that such contributions in the aggregate do not exceed 30-percent of his contribution base, as defined in paragraph (e) of this section, subject, however, to the 50- and 20-percent limitations prescribed by paragraphs (b) and (c) of this section. For purposes of applying the 50-percent and 20-percent limitations described in paragraphs (b) and (c) of this section, charitable contributions of 30-percent capital gain property paid during the taxable year, and limited as provided by this subparagraph, shall be taken into account after all other charitable contributions paid during the taxable year. For provisions relating to the carryover of certain contributions of 30-percent capital gain property in excess of 30-percent of an individual's contribution base, see section 170 (b) (1) (D) (ii) and paragraph (c) of § 1.170A–10.

(2) *Election by an individual to have section 170(e)(1)(B) apply to contributions*—(i) *In general.* (*a*) An individual may elect under section 170(b)(1)(D)(iii) for any taxable year to have the reduction rule of section 170(e)(1)(B) and paragraph (a) of § 1.170A–4 apply to all his charitable contributions of 30-percent capital gain property made during such taxable year or carried over to such taxable year from a taxable year beginning after December 31, 1969. If such election is made such contributions shall be treated as contributions of section 170(e) capital gain property in accordance with paragraph (b)(2)(iii) of § 1.170A–4. The election may be made with respect to contributions of 30-percent capital gain property carried over to the taxable year even though the individual has not made any contribution of 30-percent capital gain property in such year. If such an election is made, section 170(b)(1)(D) (i) and (ii) and subparagraph (1) of this paragraph shall not apply to such contributions made during such year. However, such contributions must be reduced as required under section 170(e)(1)(B) and paragraph (a) of § 1.170A–4.

(*b*) If there are carryovers to such taxable year of charitable contributions of 30-percent capital gain property made in preceding taxable years beginning after December 31, 1969, the amount of such contributions in each such preceding year shall be reduced as if section 170(e)(1)(B) had applied to them in the preceding year and shall be carried over to the taxable year and succeeding taxable years under section 170(d)(1) and paragraph (b) of § 1.170A–10 as contributions of property other than 30-percent capital gain property. For purposes of applying the immediately preceding sentence, the percentage limitations under section 170(b) for the preceding taxable year and for any taxable years intervening between such year and the year of the election shall not be redetermined and the amount of any deduction allowed for such years under section 170 in respect of the charitable contributions of 30-percent capital gain property in the preceding taxable year shall not be redetermined. However, the amount of the deduction so allowed under section 170 in the preceding taxable year must be subtracted from the reduced amount of the charitable contributions made in such year in order to determine the excess amount which is carried over from such year under section 170(d)(1). If the amount of the deduction so allowed in the preceding taxable year equals or exceeds the reduced amount of the charitable contributions, there shall be no carryover from such year to the year of the election.

(*c*) An election under this subparagraph may be made for each taxable year in which charitable contributions of 30-percent capital gain property are made or to which they are carried over under section 170(b)(1)(D)(ii). If there are also carryovers under section 170(d)(1) to the year of the election by reason of an election made under this subparagraph for a previous taxable year, such carryovers under section 170(d)(1) shall not be redetermined by reason of the subsequent election.

(ii) *Husband and wife making joint return.* If a husband and wife make a joint return of income for a contribution year and one of the spouses elects under this subparagraph in a later year when he files a separate return, or if a spouse dies after a contribution year for which a joint return is made, any excess contribution of 30-percent capital gain property which is carried over to the election year from the contribution year shall be allocated between the husband and wife as provided in paragraph (d)(4)(i) and (iii) of § 1.170A–10. If a husband and wife file separate returns in a contribution year, any election under this subparagraph in a later year when a joint return is filed shall be applicable to any excess contributions of 30-percent capital gain property of either taxpayer carried over from the contribution year to the election year. The immediately preceding sentence shall also apply where two single individuals are subsequently married and file a joint return. A remarried individual who filed a joint return with his former spouse for a contribution year and thereafter files a joint return with his present spouse shall treat the carryover to the election year as provided in paragraph (d)(4)(ii) of § 1.170A–10.

(iii) *Manner of making election.* The election under subdivision (i) of this subparagraph shall be made by attaching to the income tax return for the election year a statement indicating that the election under section 170(b)(1)(D)(iii) and this subparagraph is being made. If there is a carryover to the taxable year of any charitable contributions of 30-percent capital gain property from a previous taxable year or years, the statement shall show a recomputation, in accordance with this subparagraph and § 1.170A–4, of such carryover, setting forth sufficient information with respect to the previous taxable year or any intervening year to show the basis of the recomputation. The statement shall indicate the district director, or the director of the internal revenue service center, with whom the return for the previous taxable year or years was filed, the name or names in which such return or returns were filed, and whether each such return was a joint or separate return.

(3) *30-percent capital gain property defined.* If there is a charitable contribution of a capital asset which, if it were sold by the donor at its fair market value at the time of its contribution, would result in the recognition of gain all, or any portion, of which would be long-term capital gain and if the amount of such contribution is not required to be reduced under section 170(e)(1)(B) and § 1.170A–4(a)(2), such capital asset shall be treated as "30-percent capital gain property" for purposes of section 170 and the regulations thereunder. For such purposes any property which is property used in the trade or business, as defined in section 1231(b), shall be treated as a capital asset. However, see paragraph (b)(4) of § 1.170A–4. For the treatment of such property as section 170(e) capital gain property, see paragraph (b)(2)(iii) of § 1.170A–4.

(e) *Contribution base defined.* For purposes of section 170 the term "contribution base" means adjusted gross income under section 62, computed without regard to any net operating loss carryback to the taxable year under section 172. See section 170(b)(1)(F).

(f) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). B, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of $100,000. During 1970 he makes charitable contributions of $70,000 in cash, of which $40,000 is given to section 170(b)(1)(A) organizations and $30,000 is given to other organizations described in section 170 (c). Accordingly, B is allowed a charitable contributions deduction of $50,000 (50% of $100,000), which consists of the $40,000 contributed to section 170 (b)(1)(A) organizations and $10,000 of the $30,000 contributed to the other organizations. Under paragraph (c) of this section, only $10,000 of the $30,000 contributed to the other organizations is allowed as a deduction since such contribution of $30,000 is allowed to the extent of the lesser of $20,000 (20% of $100,000) or $10,000 ([50% of $100,000]—$40,000 (contributions allowed under section

170(b)(1)(A) and paragraph (b) of this section)). Under section 170 (b)(1)(D)(ii) and (d)(1) and § 1.170A–10, B is not allowed a carryover to 1971 or to any other taxable year for any of the $20,000 ($30,000—$10,000) not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

Example (2). C, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of $100,000. During 1970 he makes charitable contributions of $40,000 in 30-percent capital gain property to section 170(b)(1)(A) organizations and of $30,000 in cash to other organizations described in section 170(c). The 20-percent limitation in section 170(b)(1)(B) and paragraph (c) of this section is applied before the 30-percent limitation in section 170(b)(1)(D) and paragraph (d) of this section; accordingly section 170(b)(1)(B)(ii) limits the deduction for the $30,000 cash contribution to $10,000 ([50% of $100,000]—$40,000). The amount of the contribution of 30-percent capital gain property is limited by section 170(b)(1)(D)(i) and paragraph (d) of this section to $30,000 (30% of $100,000). Accordingly, C's charitable contributions deduction for 1970 is limited to $40,000 ($10,000+$30,000). Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A–10, C is allowed a carryover to 1971 of $10,000 ($40,000—$30,000) in respect of his contributions of 30-percent capital gain property. C is not allowed a carryover to 1971 or to any other taxable year for any of the $20,000 cash ($30,000—$10,000) not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

Example (3). (a) D, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of $100,000. During 1970 he makes charitable contributions of $70,000 in cash, of which $40,000 is given to section 170(b)(1)(A) organizations and $30,000 is given to other organizations described in section 170(c). During 1971 D makes charitable contributions to a section 170(b)(1)(A) organization of $12,000, consisting of cash of $1,000 and $11,000 in 30-percent capital gain property. His contribution base for 1971 is $10,000.

(b) For 1970, D is allowed a charitable contributions deduction of $50,000 (50% of $100,000), which consists of the $40,000 contributed to section 170(b)(1)(A) organizations and $10,000 of the $30,000 contributed to the other organizations. Under paragraph (c) of this section, only $10,000 of the $30,000 contributed to the other organizations is allowed as a deduction since such contribution of $30,000 is allowed to the extent of the lesser of $20,000 (20% of $100,000) or $10,000 ([50% of $100,000]—$40,000 (contributions allowed under section 170(b)(1)(A) and paragraph (b) of this section)). D is not allowed a carryover to 1971 or to any other taxable year for any of the $20,000 ($30,000—$10,000) not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

(c) For 1971, D is allowed a charitable contributions deduction of $4,000, consisting of $1,000 cash and $3,000 of the 30-percent capital gain property (30% of $10,000). Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A–10, D is allowed a carryover to 1972 of $8,000 ($11,000—$3,000) in respect of his contribution of 30-percent capital gain property in 1971.

Example (4). (a) E, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of $100,000. During 1970 he makes charitable contributions of $70,000 in cash, of which $40,000 is given to section 170(b)(1)(A) organizations and $30,000 is given to other organizations described in section 170(c). During 1971 E makes charitable contributions to a section 170(b)(1)(A) organization of $14,000 consisting of cash of $3,000 and $11,000 in 30-percent capital gain property. His contribution base for 1971 is $10,000.

(b) For 1970, E is allowed a charitable contributions deduction of $50,000 (50% of $100,000), which consists of the $40,000 contributed to section 170(b)(1)(A) organizations and $10,000 of the $30,000 contributed to the other organizations. Under paragraph (c) of this section, only $10,000 of the $30,000 contributed to the other organizations is allowed as a deduction since such contribution of $30,000 is allowed to the extent of the lesser of $20,000 (20% of $100,000) or ($10,000 ([50% of $100,000]—$40,000 (contributions allowed under section 170(b)(1)(A) and paragraph (b) of this section)). E is not allowed a carryover to 1971 or to any other taxable year for any of the $20,000 ($30,000—$10,000) not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

(c) For 1971, E is allowed a charitable contributions deduction of $5,000 (50% of $10,000), consisting of $3,000 cash and $2,000 of the $3,000 (30% of $10,000) 30-percent capital gain property which is taken into account. This result is reached because, as provided in section 170(b)(1)(D)(i) and paragraph (d)(1) of this section, cash contributions are taken into account before charitable contributions of 30-percent capital gain property. Under section 170(b)(1)(D)(ii) and (d)(1) and paragraphs (b) and (c) of § 1.170A–10, E is allowed a carryover of $9,000 ([$11,000—$3,000] plus [$6,000—$5,000]) to 1972 in respect of this contribution of 30-percent capital gain property in 1971.

Example (5). In 1970, C, a calendar-year individual taxpayer, contributes to section 170(b)(1)(A) organizations the amount of $8,000, consisting of $3,000 in cash and $5,000 in 30-percent capital gain property. In 1970, C also makes charitable contributions of $8,500 in 30 percent capital gain property to other organizations described in section 170(c). C's contribution base for 1970 is $20,000. The 20-percent limitation in section 170(b)(1)(B) and paragraph (c) of this section is applied before the 30-percent limitation in section 170(b)(1)(D)(i) and paragraph (d) of this section; accordingly, section 170(b)(1)(B)(ii) limits the deduction for the $8,500 of contributions to the other organizations described in section 170 (c) to $2,000 ([50% of $20,000]—[$3,000+$5,000]). However, the total amount of contributions of 30-percent capital gain property which is allowed as a deduction for 1970 is limited by section 170(b)(1)(D)(i) and paragraph (d) of this section to $6,000 (30% of $20,000), consisting of the $5,000 contribution to the section 170(b)(1)(A) organizations and $1,000 of the contributions to the other organizations described in section 170 (c). Accordingly, C is allowed a charitable contributions deduction for 1970 of $9,000, which consists of $3,000 cash and $6,000 of the $13,500 of 30-percent capital gain property. C is not allowed to carry over to 1971 or any other year the remaining $7,500 because his contributions of 30-percent capital gain property for 1970 to section 170(b)(1)(A) organizations amount only to $5,000 and do not exceed $6,000 (30% of $20,000). Thus, the requirement of section 170(b)(1)(D)(ii) is not satisfied.

Example (6). During 1971, D, a calendar-year individual taxpayer, makes a charitable contribution to a church of $8,000, consisting of $5,000 in cash and $3,000 in 30-percent capital gain property. For such year, D's contribution base is $10,000. Accordingly, D is allowed a charitable contributions deduction for 1971 of $5,000 (50% of $10,000) of cash. Under section 170(d)(1) and paragraph (b) of § 1.170A–10, D is allowed a carryover to 1972 of his $3,000 contribution of 30-percent capital gain property, even though such amount does not exceed 30 percent of his contribution base for 1971.

Example (7). In 1970, E, a calendar-year individual taxpayer, makes a charitable contribution to a section 170(b)(1)(A) organization in the amount of $10,000, consisting of $8,000 in 30-percent capital gain property and of $2,000 (after reduction under section 170(e)) in other property. E's contribution base of 1970 is $20,000. Accordingly, E is allowed a charitable contributions deduction for 1970 of $8,000, consisting of the $2,000 of property the amount of which was reduced under section 170(e) and $6,000 (30% of $20,000) of the 30-percent capital gain property. Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A–10, E is allowed to carry over to 1971 $2,000 ($8,000—$6,000) of his contribution of 30-percent capital gain property.

Example (8). (a) In 1972, F, calendar-year individual taxpayer, makes a charitable contribution to a church of $4,000, consisting of $1,000 in cash and $3,000 in 30-percent capital gain property. In addition, F makes a charitable contribution in 1972 of $2,000 in cash to an organization described in section 170(c)(4). F also has a carryover from 1971 under section 170(d)(1) of $5,000 (none of which consists of contributions of 30-percent capital gain property) and a carryover from 1971 under section 170(b)(1)(D)(ii) of $6,000 of contributions of 30-percent capital gain property. F's contribution base for 1972 is $11,000.

Accordingly, F is allowed a charitable contributions deduction for 1972 of $5,500 (50% of $11,000), which consists of $1,000 cash contributed in 1972 to the church, $3,000 of 30-percent capital gain property contributed in 1972 to the church, and $1,500 (carryover of $5,000 but not to exceed [$5,500—($1,000+$3,000)]) of the carryover from 1971 under section 170(d)(1).

(b) No deduction is allowed for 1972 for the contribution in that year of $2,000 cash to the section 170(c)(4) organization since section 170(b)(1)(B)(ii) and paragraph (c) of this section limit the deduction for such contribution to $0([50% of $11,000]—[$1,000+$1,500+$3,000]). Moreover, F is not allowed a carryover to 1973 or to any other year for any of such $2,000 cash contributed to the section 170(c)(4) organization.

(c) Under section 170(d)(1) and paragraph (b) of § 1.170A–10, F is allowed a carryover to 1973 from 1971 of $3,500 ($5,000—$1,500) of contributions of other than 30-percent capital gain property. Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A–10, F is allowed a carryover to 1973 from 1971 of $6,000 ($6,000—$0 of such carryover treated as paid in 1972) of contributions of 30-percent capital gain property. The portion of such $6,000 carryover from 1971 which is treated as paid in 1972 is $0 ([50% of $11,000]—$4,000 contributions to the church in 1972 plus $1,500 of section 170(d)(1) carryover treated as paid in 1972]).

Example (9). (a) In 1970, A, a calendar-year individual taxpayer, makes a charitable contribution to a church of 30-percent capital gain property having a fair market value of $60,000 and an adjusted basis of $10,000. A's contribution base for 1970 is $50,000, and he makes no other charitable contributions in that year. A does not elect for 1970 under paragraph (d)(2) of this section to have section 170(e)(1)(B) apply to such contribution. Accordingly, under section 170(b)(1)(D)(i) and paragraph (d) of this section, A is allowed a charitable contributions deduction for 1970 of $15,000 (30% of $50,000). Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A–10, A is allowed a

carryover to 1971 of $45,000 ($60,000—$15,000) for his contribution of 30-percent capital gain property.

(b) In 1971, A makes a charitable contribution to a church of 30-percent capital gain property having a fair market value of $11,000 and an adjusted basis of $10,000. A's contribution base for 1971 is $60,000, and he makes no other charitable contributions in that year. A elects for 1971 under paragraph (d)(2) of this section to have section 170(e)(1)(B) and § 1.170A-4 apply to his contribution of $11,000 in that year and to his carryover of $45,000 from 1970. Accordingly, he is required to recompute his carryover from 1970 as if section 170(e)(1)(B) had applied to his contribution of 30-percent capital gain property in that year.

(c) If section 170(e)(1)(B) had applied in 1970 to his contribution of 30-percent capital gain property, A's contribution would have been reduced from $60,000 to $35,000, the reduction of $25,000 being 50 percent of the gain of $50,000 ($60,000—$10,000) which would have been recognized as long-term capital gain if the property had been sold by A at its fair market value at the time of the contribution in 1970. Accordingly, by taking the election under paragraph (d)(2) of this section into account, A has a recomputed carryover to 1971 of $20,000 ($35,000—$15,000) of his contribution of 30-percent capital gain property in 1970. However, A's charitable contributions deduction of $15,000 allowed for 1970 is not recomputed by reason of the election.

(d) Pursuant to the election for 1971, the contribution of 30-percent capital gain property for 1971 is reduced from $11,000 to $10,500, the reduction of $500 being 50 percent of the gain of $1,000 ($11,000—$10,000) which would have been recognized as long-term capital gain if the property had been sold by A at its fair market value at the time of its contribution in 1971.

(e) Accordingly, A is allowed a charitable contributions deduction for 1971 of $30,000 (total contributions of $30,500 [$20,000+$10,500] but not to exceed 50% of $60,000).

(f) Under section 170(d)(1) and paragraph (b) of § 1.170A-10, A is allowed a carryover of $500 ($30,500—$30,000) to 1972 and the 3 succeeding taxable years. The $500 carryover, which by reason of the election is no longer treated as a contribution of 30-percent capital gain property, is treated as carried over under paragraph (b) of § 1.170A-10 from 1970 since in 1971 current year contributions are deducted before contributions which are carried over from preceding taxable years.

Example (10). The facts are the same as in example (9) except that A also makes a charitable contribution in 1971 of $2,000 cash to a private foundation not described in section 170(b)(1)(E) and that A's contribution base for that year is $62,000, instead of $60,000. Accordingly, A is allowed a charitable contributions deduction for 1971 of $31,000, determined in the following manner. Under section 170(b)(1)(A) and paragraph (b) of this section, A is allowed a charitable contributions deduction for 1971 of $30,500, consisting of $10,500 of property contributed to the church in 1971 and of $20,000 (carryover of $20,000 but not to exceed [($62,000×50%)—$10,500]) of contributions of property carried over to 1971 under section 170(d)(1) and paragraph (b) of § 1.170A-10. Under section 170(b)(1)(B) and paragraph (c) of this section, A is allowed a charitable contributions deduction for 1971 of $500 ([50% of $62,000]—[$10,500+$20,000]) of cash contributed to the private foundation in that year. A is not allowed a carryover to 1972 or to any other taxable year for any of the $1,500 ($2,000—$500) cash not deductible in 1971 under section 170(b)(1)(B) and paragraph (c) of this section.

Example (11). The facts are the same as in example (9) except that A's contribution base for 1970 is $120,000. Thus, before making the election under paragraph (d)(2) of this section for 1971, A is allowed a charitable contributions deduction for 1970 of $36,000 (30% of $120,000) and is allowed a carryover to 1971 of $24,000 ($60,000—$36,000). By making the election for 1971, A is required to recompute the carryover from 1970, which is reduced from $24,000 to zero, since the charitable contributions deduction of $36,000 allowed for 1970 exceeds the reduced $35,000 contribution for 1970 which may be taken into account by reason of the election for 1971. Accordingly, A is allowed a deduction for 1971 of $10,500 and is allowed no carryover to 1972, since the reduced contribution for 1971 ($10,500) does not exceed the limitation of $30,000 (50% of $60,000) for 1971 which applies under section 170(d)(1) and paragraph (b) of § 1.170A-10. A's charitable contributions deduction of $36,000 allowed for 1970 is not recomputed by reason of the election. Thus, it is not to A's advantage to make the election under paragraph (d)(2) of this section.

Example (12). (a) B, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of $100,000. During 1970 he makes charitable contributions of $70,000, consisting of $50,000 in 30-percent capital gain property contributed to a church and $20,000 in cash contributed to a private foundation not described in section 170(b)(1)(E). For 1971, B's contribution base is $40,000, and in that year he makes a charitable contribution of $5,000 in cash to such private foundation. During the years involved B makes no other charitable contributions.

(b) The amount of the contribution of 30-percent capital gain property which may be taken into account for 1970 is limited by section 170(b)(1)(D)(i) and paragraph (d) of this section to $30,000 (30% of $100,000). Accordingly, under section 170(b)(1)(A) and paragraph (b) of this section B is allowed a deduction for 1970 of $30,000 of 30-percent capital gain property (contribution of $30,000 but not to exceed $50,000 [50% of $100,000]). No deduction is allowed for 1970 for the contribution in that year of $20,000 of cash to the private foundation since section 170(b)(1)(B)(ii) and paragraph (c) of this section limit the deduction for such contribution to $0 ([50% of $100,000]—$50,000, the amount of the contribution of 30-percent capital gain property).

(c) Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A-10, B is allowed a carryover to 1971 of $20,000 ($50,000—[30% of $100,000]) of his contribution in 1970 of 30-percent capital gain property. B is not allowed a carryover to 1971 or to any other taxable year for any of the $20,000 cash contribution in 1970 which is not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

(d) The amount of the contribution of 30-percent capital gain property which may be taken into account for 1971 is limited by section 170(b)(1)(D)(i) and paragraph (d) of this section to $12,000 (30% of $40,000).

Accordingly, under section 170(b)(1)(A) and paragraph (b) of this section B is allowed a deduction for 1971 of $12,000 of 30-percent capital gain property (contribution of $12,000 but not to exceed $20,000 [50% of $40,000]). No deduction is allowed for 1971 for the contribution in that year of $5,000 of cash to the private foundation, since section 170(b)(1)(B)(ii) and paragraph (c) of this section limit the deduction for such contribution to $0 ([50% of $40,000]—$20,000 carryover of 30-percent capital gain property from 1970).

(e) Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A-10, B is allowed a carryover to 1972 of $8,000 ($20,000—[30% of $40,000]) of his contribution in 1970 of 30-percent capital gain property. B is not allowed a carryover to 1972 or to any other taxable year for any of the $5,000 cash contribution for 1971 which is not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

Example (13). D, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of $100,000. On March 1, 1970, he contributes to a church intangible property to which section 1245 applies which has a fair market value of $60,000 and an adjusted basis of $10,000. At the time of the contribution D has used the property in his business for more than 6 months. If the property had been sold by D at its fair market value at the time of its contribution, it is assumed that under section 1245 $20,000 of the gain of $50,000 would have been treated as ordinary income and $30,000 would have been long-term capital gain. Since the property contributed is ordinary income property within the meaning of paragraph (b)(1) of § 1.170A-4, D's contribution of $60,000 is reduced under paragraph (a)(1) of such section to $40,000 ($60,000—$20,000 ordinary income). However, since the property contributed is also 30-percent capital gain property within the meaning of paragraph (d)(3) of this section, D's deduction for 1970 is limited by section 170(b)(1)(D)(i) and paragraph (d) of this section to $30,000 (30% of $100,000). Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A-10, D is allowed to carry over to 1971 $10,000 ($40,000—$30,000) of his contribution of 30-percent capital gain property.

Example (14). C, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of $50,000. During 1970 he makes charitable contributions to a church of $57,000, consisting of $2,000 cash and of 30-percent capital gain property with a fair market value of $55,000 and an adjusted basis of $15,000. In addition, C contributes $3,000 cash in 1970 to a private foundation not described in section 170(b)(1)(E). For 1970, C elects under paragraph (d)(2) of this section to have section 170(e)(1)(B) and § 1.170A-4(a) apply to his contribution of property to the church. Accordingly, for 1970 C's contribution of property to the church is reduced from $55,000 to $35,000, the reduction of $20,000 being 50 percent of the gain of $40,000 ($55,000—$15,000) which would have been recognized as long-term capital gain if the property had been sold by C at its fair market value at the time of its contribution to the church. Under section 170(b)(1)(A) and paragraph (b) of this section, C is allowed a charitable contributions deduction for 1970 of $25,000 ([$2,000+$35,000] but not to exceed [$50,000×50%]). Under section 170(d)(1) and paragraph (b) of § 1.170A-10, C is allowed a carryover from 1970 to 1971 of $12,000 ($37,000—$25,000). No deduction is allowed for 1970 for the contribution in that year of $3,000 cash to the private foundation since section 170(b)(1)(B) and paragraph (c) of this section limit the deduction for such contribution to the smaller of $10,000 ($50,000×20%) or $0 ([$50,000×50%]—$25,000). C is not allowed a carryover from 1970 for any of the $3,000 cash contribution in that year which is not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

Example (15). (a) D, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of $100,000. During 1970 he makes a charitable contribution to a church of 30-percent capital gain property with a fair market value of $40,000 and an adjusted basis of $21,000. In

addition, he contributes $23,000 cash in 1970 to a private foundation not described in section 170(b)(1)(E). For 1970, D elects under paragraph (d)(2) of this section to have section 170(e)(1)(B) and § 1.170A-4(a) apply to his contribution of property to the church. Accordingly, for 1970 D's contribution of property to the church is reduced from $40,000 to $30,500, the reduction of $9,500 being 50 percent of the gain of $19,000 ($40,000 − $21,000) which would have been recognized as long-term capital gain if the property had been sold by D at its fair market value at the time of its contribution to the church. Under section 170(b)(1)(A) and paragraph (b) of this section, D is allowed a charitable contributions deduction for 1970 of $30,500 for the property contributed to the church. In addition, under section 170(b)(1)(B) and paragraph (c) of this section D is allowed a deduction of $19,500 for the cash contributed to the private foundation, since such contribution of $23,000 is allowed to the extent of the lesser of $20,000 (20% of $100,000) or $19,500 ([$100,000 × 50%] − $30,500). D is not allowed a carryover to 1971 or to any other taxable year for any of the $3,500 ($23,000 − $19,500) of cash not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

(b) If D had not made the election under paragraph (d)(2) of this section for 1970, his deduction for 1970 under section 170(a) for the $40,000 contribution of property to the church would have been limited by section 170(b)(1)(D)(i) and paragraph (d) of this section to $30,000 (30% of $100,000), and under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A-10 he would have been allowed a carryover to 1971 of $10,000 ($40,000 − $30,000) for his contribution of such property. In addition, he would have been allowed under section 170(b)(1)(B)(ii) and paragraph (c) of this section for 1970 a charitable contributions deduction of $10,000 ([$100,000 × 50%] − $40,000) for the cash contributed to the private foundation. In such case, D would not have been allowed a carryover to 1971 or to any other taxable year for any of the $13,000 ($23,000 − $10,000) of cash not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

(g) *Effective date.* This section applies only to contributions paid in taxable years beginning after December 31, 1969.

§ 1.170A-9 Definition of section 170(b)(1)(A) organization. [Reserved]

§ 1.170A-10 Charitable contributions carryovers of individuals.

(a) *In general.* (1) Section 170(d)(1), relating to carryover of charitable contributions in excess of 50 percent of contribution base, and section 170(b)(1)(D)(ii), relating to carryover of charitable contributions in excess of 30 percent of contribution base, provide for excess charitable contributions carryovers by individuals of charitable contributions to section 170(b)(1)(A) organizations described in § 1.170A-9. These carryovers shall be determined as provided in paragraphs (b) and (c) of this section. No excess charitable contributions carryover shall be allowed with respect to contributions "for the use of," rather than "to," section 170(b)(1)(A) organizations or with respect to contributions "to" or "for the use of" organizations which are not section 170(b)(1)(A) organizations. See § 1.170A-8(a)(2) for definitions of "to" or "for the use of" a charitable organization.

(2) The carryover provisions apply with respect to contributions made during a taxable year in excess of the applicable percentage limitation even though the taxpayer elects under section 144 to take the standard deduction in that year instead of itemizing the deduction allowable in computing taxable income for that year.

(3) For provisions requiring a reduction of the excess charitable contribution computed under paragraph (b)(1) or (c)(1) of this section when there is a net operating loss carryover to the taxable year, see paragraph (d)(1) of this section.

(4) The provisinos of section 170(b)(1)(D)(ii) and (d)(1) and this section do not apply to contributions by an estate; nor do they apply to a trust unless the trust is a private foundation which, pursuant to § 1.642(c)-4, is allowed a deduction under section 170 subject to the provisions applicable to individuals.

(b) *50-percent charitable contributions carryover of individuals*—(1) *Computation of excess of charitable contributions made in a contribution year.* Under section 170(d)(1), subject to certain conditions and limitations, the excess of—

(i) The amount of the charitable contributions made by an individual in a taxable year (hereinafter in this paragraph referred to as the "contribution year") to section 170(b)(1)(A) organizations described in § 1.170A-9, over

(ii) 50 percent of his contribution base, as defined in section 170(b)(1)(F), for such contribution year,

shall be treated as a charitable contribution paid by him to a section 170(b)(1)(A) organization in each of the 5 taxable years immediately succeeding the contribution year in order of time. However, such excess to the extent it consists of contributions of 30-percent capital gain property, as defined in § 1.170A-8(d)(3), shall be subject to the rules of section 170(b)(1)(D)(ii) and paragraph (c) of this section in the years to which it is carried over. A charitable contribution made in a taxable year beginning before January 1, 1970, to a section 170(b)(1)(A) organization and carried over to a taxable year beginning after December 31, 1969, under section 170(b)(5) (before its amendment by the Tax Reform Act of 1969) shall be treated in such taxable year beginning after December 31, 1969, as a charitable contribution of cash subject to the limitations of this paragraph, whether or not such carryover consists of contributions of 30-percent capital gain property or of ordinary income property described in § 1.170A-4(b)(1). For purposes of applying this paragraph and paragraph (c) of this section, such a carryover from a taxable year beginning before January 1, 1970, which is so treated as paid to a section 170(b)(1)(A) organization in a taxable year beginning after December 31, 1969, shall be treated as paid to such an organization under section 170(d)(1) and this section. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). Assume that H and W (husband and wife) have a contribution base for 1970 of $50,000 and for 1971 of $40,000 and file a joint return for each year. Assume further that in 1970 they make a charitable contribution in cash of $26,500 to a church and $1,000 to X (not a section 170(b)(1)(A) organization) and in 1971 they make a charitable contribution in cash of $19,000 to a church and $600 to X. They may claim a charitable contributions deduction of $25,000 in 1970, and the excess of $26,500 (contribution to the church) over $25,000 (50 percent of contribution base), or $1,500, constitutes a charitable contributions carryover which shall be treated as a charitable contribution paid by them to a section 170(b)(1)(A) organization in each of the 5 succeeding taxable years in order of time. No carryover is allowed with respect to the $1,000 contribution made to X in 1970. Since 50 percent of their contribution base for 1971 ($20,000) exceeds the charitable contributions of $19,000 made by them in 1971 to section 170(b)(1)(A) organizations (computed without regard to section 170(b)(1)(D)(ii) and (d)(1) and this section), the portion of the 1970 carryover equal to such excess of $1,000 ($20,000 minus $19,000) is treated, pursuant to the provisions of subparagraph (2) of this paragraph, as paid to a section 170(b)(1)(A) organization in 1971; the remaining $500 constitutes an unused charitable contributions carryover. No deduction for 1971, and no carryover, are allowed with respect to the $600 contribution made to X in 1971.

Example (2). Assume the same facts as in example (1) except that H and W have a contribution base for 1971 of $42,000. Since 50 percent of their contribution base for 1971 ($21,000) exceeds by $2,000 the charitable contribution of $19,000 made by them in 1971 to the section 170(b)(1)(A) organization (computed without regard to section 170(b)(1)(D)(ii) and (d)(1) and this section), the full amount of the 1970 carryover of $1,500 is treated, pursuant to the provisions of subparagraph (2) of this paragraph, as paid to a section 170(b)(1)(A) organization in 1971. They may also claim a charitable contribution of $500 ($21,000 − $20,500[$19,000 + $1,500]) with respect to the gift to X in 1971. No carryover is allowed with respect to the $100 ($600 − $500) of the contribution to X which is not deductible in 1971.

(2) *Determination of amount treated as paid in taxable years succeeding contribution year.* In applying the provisions of subparagraph (1) of this paragraph, the amount of the excess computed in accordance with the provisions of such subparagraph and paragraph (d)(1) of this section which is to be treated as paid in any one of the 5 taxable years immediately succeeding the contribution year to a section 170(b)(1)(A) organization shall not exceed the lesser of the amounts computed under subdivisions (i) to (iii), inclusive, of this subparagraph:

(i) The amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of—

(*a*) The charitable contributions actually made (computed without regard to the provisions of section 170(b)(1)(D)(ii) and (d)(1) and this section) by the taxpayer in such succeeding

taxable year to section 170(b)(1)(A) organizations, and

(b) The charitable contributions, other than contributions of 30-percent capital gain property, made to section 170(b)(1)(A) organizations in taxable years preceding the contribution year which, pursuant to the provisions of section 170(d)(1) and this section, are treated as having been paid to a section 170(b)(1)(A) organization in such succeeding year.

(ii) In the case of the first taxable year succeeding the contribution year, the amount of the excess charitable contribution in the contribution year, computed under subparagraph (1) of this paragraph and paragraph (d)(1) of this section.

(iii) In the case of the second, third, fourth, and fifth taxable years succeeding the contribution year, the portion of the excess charitable contribution in the contribution year, computed under subparagraph (1) of this paragraph and paragraph (d)(1) of this section, which has not been treated as paid to a section 170(b)(1)(A) organization in a year intervening between the contribution year and such succeeding taxable year.

For purposes of applying subdivision (i)(a) of this subparagraph, the amount of charitable contributions of 30-percent capital gain property actually made in a taxable year succeeding the contribution year shall be determined by first applying the 30-percent limitation of section 170(b)(1)(D)(i) and paragraph (d) of § 1.170A-8. If a taxpayer, in any one of the 4 taxable years succeeding a contribution year, elects under section 144 to take the standard deduction instead of itemizing the deductions allowable in computing taxable income, there shall be treated as paid (but not allowable as a deduction) in such standard deduction year the lesser of the amounts determined under subdivisions (i) to (iii), inclusive, of this subparagraph. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). Assume that B has a contribution base for 1970 of $20,000 and for 1971 of $30,000. Assume further that in 1970 B contributed $12,000 in cash to a church and in 1971 he contributed $13,500 in cash to the church. B may claim a charitable contributions deduction of $10,000 in 1970, and the excess of $12,000 (contribution to the church) over $10,000 (50 percent of B's contribution base), or $2,000, constitutes a charitable contributions carryover which shall be treated as a charitable contribution paid by B to a section 170(b)(1)(A) organization in the 5 taxable years succeeding 1970 in order of time. B may claim a charitable contributions deduction of $15,000 in 1971. Such $15,000 consists of the $13,500 contribution to the church in 1971 and $1,500 carried over from 1970 and treated as a charitable contribution paid to a section 170(b)(1)(A) organization in 1971. The $1,500 contribution treated as paid in 1971 is computed as follows:

1970 excess contributions	$2,000
50 percent of B's contribution base for 1971	15,000
Less:	
Contributions actually made in 1971 to section 170(b)(1)(A) organizations ($13,500)	
Contributions made to section $170(b)(1)(A) organizations in taxable years prior to 1970 treated as having been paid in 1971 (0)	13,500
Balance	1,500
Amount of 1970 excess treated as paid in 1971—the lesser of $2,000 (1970 excess contributions) or $1,500 (excess of 50 percent of contribution base for 1971 ($15,000) over the sum of the section 170(b)(1)(A) contributions actually made in 1971 ($13,500) and the section 170(b)(1)(A) contributions made in years prior to 1970 treated as having been paid in 1971 ($0))	1,500

If the excess contributions made by B in 1970 had been $1,000 instead of $2,000, then, for purposes of this example, the amount of the 1970 excess treated as paid in 1971 would be $1,000 rather than $1,500.

Example (2). Assume the same facts as in example (1), and, in addition, that B has a contribution base for 1972 of $10,000 and for 1973 of $20,000. Assume further with respect to 1972 that B elects under section 144 to take the standard deduction in computing taxable income and that his actual contributions to section 170(b)(1)(A) organizations in that year are $300 in cash. Assume further with respect to 1973 that B itemizes his deductions, which include a $5,000 cash contribution to a church. B's deductions for 1972 are not increased by reason of the $500 available as a charitable contributions carryover from 1970 (excess contributions made in 1970 ($2,000) less the amount of such excess treated as paid in 1971 ($1,500)), since B elected to take the standard deduction in 1972. However, for purposes of determining the amount of the excess charitable contributions made in 1970 which is available as a carryover to 1973, B is required to treat such $500 as a charitable contribution paid in 1972—the lesser of $500 or $4,700 (50 percent of contribution base ($5,000) over contributions actually made in 1972 to section 170(b)(1)(A) organizations ($300)). Therefore, even though the $5,000 contribution made by B in 1973 to a church does not amount to 50 percent of B's contribution base for 1973 (50 percent of $20,000), B may claim a charitable contributions deduction of only the $5,000 actually paid in 1973 since the entire excess charitable contribution made in 1970 ($2,000) has been treated as paid in 1971 ($1,500) and 1972 ($500).

Example (3). Assume the following factual situation for C who itemizes his deductions in computing taxable income for each of the years set forth in the example:

	1970	197	1972	1973	1974
Contribution base	$10,000	$7,000	$15,000	$10,000	$9,000
Contributions of cash to section 170(b)(1)(A) organizations (no other contributions)	6,000	4,400	8,000	3,000	1,500
Allowable charitable contributions deductions computed without regard to carryover of contributions	5,000	3,500	7,500	3,000	1,500
Excess contributions for taxable year to be treated as paid in 5 succeeding taxable years	1,000	900	500	0	0

Since C's contributions in 1973 and 1974 to section 170(b)(1)(A) organizations are less than 50 percent of his contribution base for such years, the excess contributions for 1970, 1971, and 1972 are treated as having been paid to section 170(b)(1)(A) organizations in 1973 and 1974 as follows:

1973

Contribution year	Total excess	Less: Amount treated as paid in year prior to 1973	Available charitable contributions carryovers
1970	$1,000	0	$1,000
1971	900	0	900
1972	500	0	500
Total			2,400

50 percent of B's contribution base for 1973	$5,000
Less: Charitable contributions made in 1973 to section 170(b)(1)(A) organizations	3,000
	2,000
Amount of excess contributions treated as paid in 1973—lesser of $2,400 (available carryovers to 1973) or $2,000 (excess of 50 percent of contribution base ($5,000) over contributions actually made in 1973 to section 170(b)(1)(A) organizations ($3,000))	2,000

1974

Contribution year	Total excess	Less: Amount treated as paid in year prior to 1974	Available charitable contributions carryovers
1970	$1,000	$1,000	0
1971	900	900	0
1972	500	100	$400
1973	0	0	0
Total			400

50 percent of B's contribution base for 1974	$4,500
Less: Charitable contributions made in 1974 to section 170(b)(1)(A) organizations	1,500
	3,000
Amount of excess contributions treated as paid in 1974—the lesser of $400 (available carryovers to 1974) or $3,000 (excess of 50 percent of contribution base ($4,500) over contributions actually made in 1974 to section 170(b)(1)(A) organizations ($1,500))	400

(c) *30-percent charitable contributions carryover of individuals*—(1) *Computation of excess of charitable contributions made in a contribution year.* Under section 170(b)(1)(D)(ii), subject to certain conditions and limitations, the excess of—

(i) The amount of the charitable contributions of 30-percent capital gain property, as defined in § 1.170A–8(d)(3), made by an individual in a taxable year (hereinafter in this paragraph referred to as the "contribution year") to section 170(b)(1)(A) organizations described in § 1.170A–9, over

(ii) 30 percent of his contribution base for such contribution year,

shall, subject to section 170(b)(1)(A) and paragraph (b) of § 1.170A–8, be treated as a charitable contribution of 30-percent capital gain property paid by him to a section 170(b)(1)(A) organization in each of the 5 taxable years immediately succeeding the contribution year in order of time. In addition, any charitable contribution of 30-percent capital gain property which is carried over to such years under section 170(d)(1) and paragraph (b) of this section shall also be treated as though it were a carryover of 30-percent capital gain property under section 170(b)(1)(D)(ii) and this paragraph. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). Assume that H and W (husband and wife) have a contribution base for 1970 of $50,000 and for 1971 of $40,000 and file a joint return for each year. Assume further that in 1970 they contribute $20,000 cash and $13,000 of 30-percent capital gain property to a church, and that in 1971 they contribute $5,000 cash and $10,000 of 30-percent capital gain property to a church. They may claim a charitable contributions deduction of $25,000 in 1970 and the excess of $33,000 (contributed to the church) over $25,000 (50 percent of contribution base), or $8,000, constitutes a charitable contributions carryover which shall be treated as a charitable contribution of 30-percent capital gain property paid by them to a section 170(b)(1)(A) organization in each of the 5 succeeding taxable years in order of time. Since 30 percent of their contribution base for 1971 ($12,000) exceeds the charitable contributions of 30-percent capital gain property ($10,000) made by them in 1971 to section 170(b)(1)(A) organizations (computed without regard to section 170(b)(1)(D)(ii) and (d)(1) and this section), the portion of the 1970 carryover equal to such excess of $2,000 ($12,000−$10,000) is treated, pursuant to the provisions of subparagraph (2) of this paragraph, as paid to a section 170(b)(1)(A) organization in 1971; the remaining $6,000 constitutes an unused charitable contributions carryover in respect of 30-percent capital gain property from 1970.

Example (2). Assume the same facts as in example (1) except the $33,000 of charitable contributions in 1970 are all 30-percent capital gain property. Since their charitable contributions in 1970 exceed 30 percent of their contribution base ($15,000) by $18,000 ($33,000−$15,000), they may claim a charitable contributions deduction of $15,000 in 1970, and the excess of $33,000 over $15,000, or $18,000, constitutes a charitable contributions carryover which shall be treated as a charitable contribution of 30-percent capital gain property paid by them to a section 170(b)(1)(A) organization in each of the 5 succeeding taxable years in order of time. Since they are allowed to treat only $2,000 of their 1970 contribution as paid in 1971, they have a remaining unused charitable contributions carryover of $16,000 in respect of 30-percent capital gain property from 1970.

(2) *Determination of amount treated as paid in taxable years succeeding contribution year.* In applying the provisions of subparagraph (1) of this paragraph, the amount of the excess computed in accordance with the provisions of such subparagraph and paragraph (d)(1) of this section which is to be treated as paid in any one of the 5 taxable years immediately succeeding the contribution year to a section 170(b)(1)(A) organization shall not exceed the least of the amounts computed under subdivisions (i) to (iv), inclusive of this subparagraph:

(i) The amount by which 30 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of—

(*a*) The charitable contributions of 30-percent capital gain property actually made (computed without regard to the provisions of section 170(b)(1)(D)(ii) and (d)(1) and this section) by the taxpayer in such succeeding taxable year to section 170(b)(1)(A) organizations, and

(*b*) The charitable contributions of 30-percent capital gain property made to section 170(b)(1)(A) organizations in taxable years preceding the contribution year, which, pursuant to the provisions of section 170(b)(1)(D)(ii) and (d)(1) and this section, are treated as having been paid to a section 170(b)(1)(A) organization in such succeeding year.

(ii) The amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of—

(*a*) The charitable contributions actually made (computed without regard to the provisions of section 170(b)(1)(D)(ii) and (d)(1) of this section) by the taxpayer in such succeeding taxable year to section 170(b)(1)(A) organizations,

(*b*) The charitable contributions of 30-percent capital gain property made to section 170(b)(1)(A) organizations in taxable years preceding the contribution year which, pursuant to the provisions of section 170(b)(1)(D)(ii) and (d)(1) and this section, are treated as having been paid to a section 170(b)(1)(A) organization in such succeeding year, and

(*c*) The charitable contributions, other than contributions of 30-percent capital gain property, made to section 170(b)(1)(A) organizations which, pursuant to the provisions of section 170(d)(1) and paragraph (b) of this section, are treated as having been paid to a section 170(b)(1)(A) organization in such succeeding year.

(iii) In the case of the first taxable year succeeding the contribution year, the amount of the excess charitable contribution of 30-percent capital gain property in the contribution year, computed under subparagraph (1) of this paragraph and paragraph (d)(1) of this section.

(iv) In the case of the second, third, fourth, and fifth succeeding taxable years succeeding the contribution year, the portion of the excess charitable contribution of 30-percent capital gain property in the contribution year (computed under subparagraph (1) of this paragraph and paragraph (d)(1) of this section) which has not been treated as paid to a section 170(b)(1)(A) organization in a year intervening between the contribution year and such succeeding taxable year.

For purposes of applying subdivisions (i) and (ii) of this subparagraph, the amount of charitable contributions of 30-percent capital gain property actually made in a taxable year succeeding the contribution year shall be determined by first applying the 30-percent limitation of section 170(b)(1)(D)(i) and paragraph (d) of § 1.170A–8. If a taxpayer, in any one of the four taxable years succeeding a contribution year, elects under section 144 to take the standard deduction instead of itemizing the deductions allowable in computing taxable income, there shall be treated as paid (but not allowable as a deduction) in the standard deduction year the least of the amounts determined under subdivisions (i) to (iv), inclusive, of this subparagraph. The provisions of this subparagraph may be illustrated by the following example:

Example. Assume the following factual situation for C who itemizes his deductions in computing taxable income for each of the years set forth in the example:

	1970	1971	1972	1973	1974
Contribution base	$10,000	$15,000	$20,000	$15,000	$33,000
Contributions of cash to section 170(b)(1)(A) organizations	2,000	8,500	0	14,000	700
Contributions of 30-percent capital gain property to section 170(b)(1)(A) organizations	5,000	0	7,800	0	6,400
Allowable charitable contributions deductions (computed without regard to carryover of contributions) subject to limitations of:					
50 percent	2,000	7,500	0	7,500	700
30 percent	3,000	0	6,000	0	6,400
Total	5,000	7,500	6,000	7,500	7,100
Excess of contributions for taxable year to be treated as paid in 5 succeeding taxable years:					
Carryover of contributions of property other than 30-percent capital gain property	0	1,000	0	6,500	
Carryover of contributions of 30-percent capital gain property	2,000	0	1,800	0	0

C's excess contributions for 1970, 1971, 1972, and 1973 which are treated as having been paid to section 170(b)(1)(A) organizations in 1972, 1973, and 1974 are indicated below. The portion of the excess charitable contribution for 1972 of 30-percent capital gain property which is not treated as paid in 1974 ($1,800–$900) is available as a carryover to 1975

1971

Contribution year	Total excess		Less: Amount treated as paid in years prior to 1972	Available charitable contributions carryovers	
	50%	30%		50%	30%
1970	0	$2,000	0	0	$2,000
50 percent of C's contribution base for 1971				$7,500	
30 percent of C's contribution base for 1971					4,500
Less: Charitable contributions actually made in 1971 to section 170(b)(1)(A) organizations ($8,500, but not to exceed 50% of contribution base)				7,500	0
Excess				0	4,500
The amount of excess contributions for 1970 of 30-percent capital gain property which is treated as paid in 1971 is the least of—					
(i) Available carryover from 1970 to 1971 of contributions of 30-percent capital gain property				2,000	
(ii) Excess of 50 percent of contribution base for 1971 ($7,500) over sum of contributions actually made in 1971 to section 170(b)(1)(A) organizations ($7,500)				0	
(iii) Excess of 30 percent of contribution base for 1971 ($4,500) over contributions of 30 percent capital gain property actually made in 1971 to section 170(b)(1)(A) organizations ($0)				4,500	
Amount treated as paid					0

1972

Contribution year	Total excess		Less: Amount treated as paid in years prior to 1972	Available charitable contributions carryovers	
	50%	30%		50%	30%
1970	0	$2,000	0	0	$2,000
1971	$1,000	0	0	$1,000	0
				1,000	2,000
50 percent of C's contribution base for 1972				10,000	
30 percent of C's contribution base for 1972					6,000
Less: Charitable contributions actually made in 1972 to section 170(b)(1)(A) organizations ($7,800, but not to exceed 30% of contribution base)				0	6,000
Excess				10,000	0
(1) The amount of excess contributions for 1971 of property other than 30-percent capital gain property which is treated as paid in 1972 is the lesser of—					
(i) Available carryover from 1971 to 1972 of contributions of property other than 30-percent capital gain property				1,000	
(ii) Excess of 50 percent of contribution base for 1972 ($10,000) over contributions actually made in 1972 to section 170(b)(1)(A) organizations ($6,000)				4,000	
Amount treated as paid					1,000
(2) The amount of excess contributions for 1970 of 30-percent capital gain property which is treated as paid in 1972 is the least of—					
(i) Available carryover from 1970 to 1972 of contributions of 30-percent capital gain property				2,000	
(ii) Excess of 50 percent of contribution base for 1972 ($10,000) over sum of contributions actually made in 1972 to section 170(b)(1)(A) organizations ($6,000) and excess contributions for 1971 treated under item (1) above as paid in 1972 ($1,000)				3,000	
(iii) Excess of 30 percent of contribution base for 1972 ($6,000) over contributions of 30-percent capital gain property actually made in 1972 to section 170(b)(1)(A) organizations ($6,000)				0	
Amount treated as paid					0

1973

Contribution year	Total excess		Less: Amount treated as paid in years prior to 1973	Available charitable contributions carryovers	
	50%	30%		50%	30%
1970	0	$2,000	0	0	$2,000
1971	$1,000	0	$1,000	0	0
1972	0	1,800	0	0	1,800
				0	3,800
50 percent of C's contribution base for 1973				$7,500	
30 percent of C's contribution base for 1973					4,500
Less: Charitable contributions actually made in 1973 to section 170(b)(1)(A) organizations ($14,000, but not to exceed 50% of contribution base)				7,500	0
Excess				0	4,500
(1) The amount of excess contributions for 1970 of 30-percent capital gain property which is treated as paid in 1973 is the least of—					
(i) Available carryover from 1970 to 1973 of contributions of 30-percent capital gain property				2,000	
(ii) Excess of 50 percent of contribution base for 1973 ($7,500) over contributions actually made in 1973 to section 170(b)(1)(A) organizations ($7,500)				0	
(iii) Excess of 30 percent of contribution base for 1973 ($4,500) over contributions of 30-percent capital gain property actually made in 1973 to section 170(b)(1)(A) organizations ($0)				4,500	
Amount treated as paid					0
(2) The amount of excess contributions for 1972 of 30-percent capital gain property which is treated as paid in 1973 is the least of—					
(i) Available carryover from 1972 to 1973 of contributions of 30-percent capital gain property				1,800	
(ii) Excess of 50 percent of contribution base for 1973 ($7,500) over contributions actually made in 1973 to section 170(b)(1)(A) organizations ($7,500)				0	
(iii) Excess of 30 percent of contribution base for 1973 ($4,500) over sum of contributions of 30-percent capital gain property actually made in 1973 to section 170(b)(1)(A) organizations ($0) and excess contributions for 1970 treated under item (1) above as paid in 1973 ($0)				4,500	
Amount treated as paid					0

1974

Contribution year	Total excess		Less: Amount treated as paid in years prior to 1974	Available charitable contributions carryovers	
	50%	30%		50%	30%
1970	0	$2,000	0	0	$2,000
1971	$1,000	0	$1,000	0	
1972	0	1,800	0	0	1,800
1973	6,500	0	0	$6,500	0
				6,500	3,800
50 percent of C's contribution base for 1974				16,500	
30 percent of C's contribution base for 1974					9,900
Less: Charitable contributions actually made in 1974 to section 170(b)(1)(A) organizations				700	6,400
Excess				15,800	3,500
(1) The amount of excess contributions for 1973 of property other than 30-percent capital gain property which is treated as paid in 1974 is the lesser of—					
(i) Available carryover from 1973 to 1974 of contributions of property other than 30-percent capital gain property				6,500	
(ii) Excess of 50 percent of contribution base for 1974 ($16,500) over contributions actually made in 1974 to section 170(b)(1)(A) organizations ($7,100)				9,400	
Amount treated as paid					6,500

Contribution year	Total excess		Less: Amount treated as paid in years prior to 1974	Available charitable contributions carryovers	
	50%	30%		50%	30%
(2) The amount of excess contributions for 1970 of 30-percent capital gain property which is treated as paid in 1974 is the least of—					
(i) Available carryover from 1970 to 1974 of contributions of 30-percent capital gain property				$2,000	
(ii) Excess of 50 percent of contribution base for 1974 ($16,500) over sum of contributions actually made in 1974 to section 170(b)(1)(A) organizations ($7,100) and excess contributions for 1973 of property other than 30-percent capital gain property treated under item (1) above as paid in 1974 ($6,500)				2,900	
(iii) Excess of 30 percent of contribution base for 1974 ($9,900) over contributions of 30-percent capital gain property actually made in 1974 to section 170(b)(1)(A) organizations ($6,400)				3,500	
Amount treated as paid					$2,000
(3) The amount of excess contributions for 1972 of 30-percent capital gain property whic is treated as paid in 1974 is the least of—					
(i) Available carryover from 1972 to 1974 of contributions of 30-percent capital gain property				1,800	
(ii) Excess of 50 percent of contribution base for 1974 ($16,500) over sum of contributions actually made in 1974 to section 170(b)(1)(A) organizations $7,100) and excess contributions for 1973 and 1970 treated under items (1) and (2) above as paid in 1974 ($8,500)				900	
(iii) Excess of 30 percent of contribution base for 1974 ($9,900) over sum of contributions of 30-percent capital gain property actually made in 1974 to section 170(b)(1)(A) organizations ($6,400) and excess contributions for 1970 of 30-percent capital gain property treated under item (2) above as paid in 1974 ($2,000)				1,500	
Amount treated as paid					900

(d) *Adjustments*—(1) *Effect of net operating loss carryovers on carryover of excess contributions.* An individual having a net operating loss carryover from a prior taxable year which is available as a deduction in a contribution year must apply the special rule of section 170(d)(1)(B) and this subparagraph in computing the excess described in paragraph (b)(1) or (c)(1) of this section for such contribution year. In determining the amount of excess charitable contributions that shall be treated as paid in each of the 5 taxable years succeeding the contribution year, the excess charitable contributions described in paragraph (b)(1) or (c)(1) of this section must be reduced by the amount by which such excess reduces taxable income (for purposes of determining the portion of a net operating loss which shall be carried to taxable years succeeding the contribution year under the second sentence of section 172(b)(2)) and increases the net operating loss which is carried to a succeeding taxable year. In reducing taxable income under the second sentence of section 172(b)(2), an individual who has made charitable contributions in the contribution year to both section 170(b)(1)(A) organizations, as defined in § 1.170A-9, and to organizations which are not section 170(b)(1)(A) organizations must first deduct contributions made to the section 170(b)(1)(A) organizations from his adjusted gross income computed without regard to his net operating loss deduction before any of the contributions made to organizations which are not section 170(b)(1)(A) organizations may be deducted from such adjusted gross income. Thus, if the excess of the contributions made in the contribution year to section 170(b)(1)(A) organizations over the amount deductible in such contribution year is utilized to reduce taxable income (under the provisions of section 172(b)(2)) for such year, thereby serving to increase the amount of the net operating loss carryover to a succeeding year or years, no part of the excess charitable contributions made in such contribution year shall be treated as paid in any of the 5 immediately succeeding taxable years. If only a portion of the excess charitable contributions is so used, the excess charitable contributions shall be reduced only to that extent. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). B, an individual, reports his income on the calendar year basis and for the year 1970 has adjusted gross income (computed without regard to any net operating loss deduction) of $50,000. During 1970 he made charitable contributions of cash in the amount of $30,000 all of which were to section 170(b)(1)(A) organizations. B has a net operating loss carryover from 1969 of $50,000. In the absence of the net operating loss deduction B would have been allowed a deduction for charitable contributions of $25,000. After the application of the net operating loss deduction, B is allowed no deduction for charitable contributions, and there is (before applying the special rule of section 170(d)(1)(B) and this subparagraph) a tentative excess charitable contribution of $30,000. For purposes of determining the net operating loss which remains to be carried over to 1971, B computes his taxable income for 1970 under section 172(b)(2) by deducting the $25,000 charitable contribution. After the $50,000 net operating loss carryover is applied against the $25,000 of taxable income for 1970 (computed in accordance with section 172(b)(2), assuming no deductions other than the charitable contributions deduction are applicable in making such computation), there remains a $25,000 net operating loss carryover to 1971. Since the application of the net operating loss carryover of $50,000 from 1969 reduces the 1970 adjusted gross income (for purposes of determining 1970 tax liability) to zero, no part of the $25,000 of charitable contributions in that year is deductible under section 170(b)(1). However, in determining the amount of the excess charitable contributions which shall be treated as paid in taxable years 1971, 1972, 1973, 1974, and 1975, the $30,000 must be reduced to $5,000 by the portion of the excess charitable contributions ($25,000) which was used to reduce taxable income for 1970 (as computed for purposes of the second sentence of section 172(b)(2)) and which thereby served to increase the net operating loss carryover to 1971 from zero to $25,000.

Example (2). Assume the same facts as in example (1), except that B's total charitable contributions of $30,000 in cash made during 1970 consisted of $25,000 to section 170(b)(1)(A) organizations and $5,000 to organizations other than section 170(b)(1)(A) oragnizations. Under these facts there is a tentative excess charitable contribution of $25,000, rather than $30,000 as in example (1). For purposes of determining the net operating loss which remains to be carried over to 1971, B computes his taxable income for 1970 under section 172(b)(2) by deducting the $25,000 of charitable contributions made to section 170(b)(1)(A) organizations. Since the excess charitable contribution of $25,000 determined in accordance with paragraph (b)(1) of this section was used to reduce taxable income for 1970 (as computed for purposes of the second sentence of section 172(b)(2)) and thereby served to increase the net operating loss carryover to 1971 from zero to $25,000, no part of such excess charitable contributions made in the contribution year shall be treated as paid in any of the five immediately succeeding taxable years. No carryover is allowed with respect to the $5,000 of charitable contributions made in 1970 to organizations other than section 170(b)(1)(A) organizations.

Example (3). Assume the same facts as in example (1), except that B's total contributions of $30,000 made during 1970 were of 30-percent capital gain property. Under these facts there is a tentative excess charitable contribution of $30,000. For purposes of determining the net operating loss which remains to be carried over to 1971, B computes his taxable income for 1970 under section 172(b)(2)(B) by deducting the $15,000 (30% of $50,000) contribution of 30-percent capital gain property which would have been deductible in 1970 absent the net operating loss deduction. Since $15,000 of the excess charitable contribution of $30,000 determined in accordance with paragraph (c)(1) of this section was used to reduce taxable income for 1970 (as computed for purposes of the second sentence of section 172(b)(2)) and thereby served to increase the net operating loss carryover to 1971 from zero to $15,000, only $15,000 ($30,000—$15,000) of such excess shall be treated as paid in taxable years 1971, 1972, 1973, 1974, and 1975.

(2) *Effect of net operating loss carryback to contribution year.* The amount of the excess contribution for a contribution year computed as provided in paragraph (b)(1) or (c)(1) of this section and subparagraph (1) of this paragraph shall not be increased because a net operating loss carryback is available as a deduction in the contribution year. Thus, for example, assuming that in 1970 there is an excess contribution of $50,000 (determined as provided in paragraph (b)(1) of this section) which is to be carried to the 5 succeeding taxable years and that in 1973 the taxpayer has a net operating loss which may be carried back to 1970, the excess contribution of $50,000 for 1970 is not increased by reason of the fact that the adjusted gross income for 1970 (on which such excess contribution was based) is subsequently decreased by the carryback of the net operating loss from 1973. In addition, in determining under the provisions of section 172(b)(2) the amount of the net operating loss for any year subsequent to the contribution year which is a carryback or carryover to taxable years succeeding the contribu-

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tion year, the amount of contributions made to section 170(b)(1)(A) organizations shall be limited to the amount of such contributions which did not exceed 50 percent or, in the case of 30-percent capital gain property, 30 percent of the donor's contribution base, computed without regard to any of the modifications referred to in section 172(d), for the contribution year. Thus, for example, assume that the taxpayer has a net operating loss in 1973 which is carried back to 1970 and in turn to 1971 and that he has made charitable contributions in 1970 to section 170(b)(1)(A) organizations. In determining the maximum amount of such charitable contributions which may be deducted in 1970 for purposes of determining the taxable income for 1970 which is deducted under section 172(b)(2) from the 1973 loss in order to ascertain the amount of such loss which is carried back to 1971, the 50-percent limitation of section 170(b)(1)(A) is based upon the adjusted gross income for 1970 computed without taking into account the net operating loss carryback from 1973 and without making any of the modifications specified in section 172(d).

(3) *Effect of net operating loss carryback to taxable years succeeding the contribution year.* The amount of the charitable contribution from a preceding taxable year which is treated as paid, as provided in paragraph (b)(2) or (c)(2) of this section, in a current taxable year (hereinafter referred to in this subparagraph as the "deduction year") shall not be reduced because a net operating loss carryback is available as a deduction in the deduction year. In addition, in determining under the provisions of section 172(b)(2) the amount of the net operating loss for any taxable year subsequent to the deduction year which is a carryback or carryover to taxable years succeeding the deduction year, the amount of contributions made to section 170(b)(1)(A) organizations in the deduction year shall be limited to the amount of such contributions, which were actually made in such year and those which were treated as paid in such year, which did not exceed 50 percent or, in the case of 30-percent capital gain property, 30 percent of the donor's contribution base, computed without regard to any of the modifications referred to in section 172(d), for the deduction year.

(4) *Husband and wife filing joint returns*—(i) *Change from joint return to separate returns.* If a husband and wife—

(*a*) Make a joint return for a contribution year and compute an excess charitable contribution for such year in accordance with the provisions of paragraph (b)(1) or (c)(1) of this section and subparagraph (1) of this paragraph, and

(*b*) Make separate returns for one or more of the 5 taxable years immediately succeeding such contribution year,

any excess charitable contribution for the contribution year which is unused at the beginning of the first such taxable year for which separate returns are filed shall be allocated between the husband and wife. For purposes of the allocation, a computation shall be made of the amount of any excess charitable contribution which each spouse would have computed in accordance with paragraph (b)(1) or (c)(1) of this section and subparagraph (1) of this paragraph if separate returns (rather than a joint return) had been filed for the contribution year. The portion of the total unused excess charitable contribution for the contribution year allocated to each spouse shall be an amount which bears the same ratio to such unused excess charitable contribution as such spouse's excess contribution, based on the separate return computation, bears to the total excess contributions of both spouses, based on the separate return computation. To the extent that a portion of the amount allocated to either spouse in accordance with the foregoing provisions of this subdivision is not treated in accordance with the provisions of paragraph (b)(2) or (c)(2) of this section as a charitable contribution paid to a section 170(b)(1)(A) organization in the taxable year in which a separate return or separate returns are filed, each spouse shall for purposes of paragraph (b)(2) or (c)(2) of this section treat his respective unused portion as the available charitable contributions carryover to the next succeeding taxable year in which the joint excess charitable contribution may be treated as paid in accordance with paragraph (b)(1) or (c)(1) of this section. If such husband and wife make a joint return in one of the 5 taxable years immediately succeeding the contribution year with respect to which a joint excess charitable contribution is computed and following such first taxable year for which such husband and wife filed a separate return, the amounts allocated to each spouse in accordance with this subdivision for such first year reduced by the portion of such amounts treated as paid to a section 170(b)(1)(A) organization in such first year and in any taxable year intervening between such first year and the succeeding taxable year in which the joint return is filed shall be aggregated for purposes of determining the amount of the available charitable contributions carryover to such succeeding taxable year. The provisions of this subdivision may be illustrated by the following example:

Example. (a) H and W file joint returns for 1970, 1971, and 1972, and in 1973 they file separate returns. In each such year H and W itemize their deductions in computing taxable income. Assume the following factual situation with respect to H and W for 1970:

1970

	H	W	Joint return
Contribution base	$50,000	$40,000	$90,000
Contributions of cash to section 170(b)(1)(A) organizations (no other contributions)	37,000	28,000	65,000
Allowable charitable contributions deductions	25,000	20,000	45,000
Excess contributions for taxable year to be treated as paid in 5 succeeding taxable years	12,000	8,000	20,000

(b) The joint excess charitable contribution of $20,000 is to be treated as having been paid to a section 170(b)(1)(A) organization in the 5 succeeding taxable years. Assume that in 1971 the portion of such excess treated as paid by H and W is $3,000, and that in 1972 the portion of such excess treated as paid is $7,000. Thus, the unused portion of the excess charitable contribution made in the contribution year is $10,000 ($20,000 less $3,000 [amount treated as paid in 1971] and $7,000 [amount treated as paid in 1972]). Since H and W file separate returns in 1973, $6,000 of such $10,000 is allocable to H, and $4,000 is allocable to W. Such allocation is computed as follows:

$$\frac{\$12{,}000 \text{ (excess charitable contributions made by H (based on separate return computation) in 1970)}}{\$20{,}000 \text{ (total excess charitable contributions made by H and W (based on separate return computation) in 1970)}} \times \$10{,}000 = \$6{,}000$$

$$\frac{\$8{,}000 \text{ (excess charitable contributions made by W (based on separate return computation) in 1970)}}{\$20{,}000 \text{ (total excess charitable contributions made by H and W (based on separate return computation) in 1970)}} \times \$10{,}000 = \$4{,}000$$

(c) In 1973 H has a contribution base of $70,000, and he contributes $14,000 in cash to a section 170(b)(1)(A) organizaton. In 1973 W has a contribution base of $50,000, and she contributes $10,000 in cash to a section 170(b)(1)(A) organization. Accordingly, H may claim a charitable contributions deduction of $20,000 in 1973, and W may claim a charitable contributions deduction of $14,000 in 1973. H's $20,000 deduction consists of the $14,000 contribution made to the section 170(b)(1)(A) organization in 1973 and the $6,000 carried over from 1970 and treated as a charitable contribution paid by him to a section 170(b)(1)(A) organization in 1973. W's $14,000 deduction consists

of the $10,000 contribution made to a section 170(b)(1)(A) organization in 1973 and the $4,000 carried over from 1970 and treated as a charitable contribution paid by her to a section 170(b)(1)(A) organization in 1973.

(d) The $6,000 contribution treated as paid in 1973 by H, and the $4,000 contribution treated as paid in 1973, by W, are computed as follows:

	H	W
Available charitable contribution carryover (see computations in (b))	$6,000	$4,000
50 percent of contribution base	35,000	25,000
Contributions of cash made in 1973 to section 170(b)(1)(A) organizations (no other contributions)	14,000	10,000
	21,000	15,000
Amount of excess contributions treated as paid in 1973:		
The lesser of $6,000 (available carryover of H to 1973) or $21,000 (excess of 50 percent of contribution base ($35,000) over contributions actually made in 1973 to section 170(b)(1)(A) organizations ($14,000))	$6,000	
The lesser of $4,000 (available carryover of W to 1973) or $15,000 (excess of 50 percent of contribution base ($25,000) over contributions actually made in 1973 to section 170(b)(1)(A) organizations ($10,000))		$4,000

(e) It is assumed that H and W made no contributions of 30-percent capital gain property during these years. If they had made such contributions, there would have been similar adjustments based on 30 percent of the contribution base.

(ii) *Change from separate returns to joint return.* If in the case of a husband and wife—

(*a*) Either or both of the spouses make a separate return for a contribution year and compute an excess charitable contribution for such year in accordance with the provisions of paragraph (b)(1) or (c)(1) of this section and subparagraph (1) of this paragraph, and

(*b*) Such husband and wife make a joint return for one or more of the taxable years succeeding such contribution year,

the excess charitable contribution of the husband and wife for the contribution year which is unused at the beginning of the first taxable year for which a joint return is filed shall be aggregated for purposes of determining the portion of such unused charitable contribution which shall be treated in accordance with paragraph (b)(2) or (c)(2) of this section as a charitable contribution paid to a section 170(b)(1)(A) organization. The provisions of this subdivision also apply in the case of two single individuals who are subsequently married and file a joint return. A remarried taxpayer who filed a joint return with a former spouse in a contribution year with respect to which an excess charitable contribution was computed and who in any one of the 5 taxable years succeeding such contribution year files a joint return with his or her present spouse shall treat the unused portion of such excess charitable contribution allocated to him or her in accordance with subdivision (i) of this subparagraph in the same manner as the unused portion of an excess charitable contribution computed in a contribution year in which he filed a separate return, for purposes of determining the amount which in accordance with paragraph (b)(2) or (c)(2) of this section shall be treated as paid to an organization specified in section 170(b)(1)(A) in such succeeding year.

(iii) *Unused excess charitable contribution of deceased spouse.* In case of the death of one spouse, any unused portion of an excess charitable contribution which is allocable in accordance with subdivision (i) of this subparagraph to such spouse shall not be treated as paid in the taxable year in which such death occurs or in any subsequent taxable year except on a separate return made for the deceased spouse by a fiduciary for the taxable year which ends with the date of death or on a joint return for the taxable year in which such death occurs. The application of this subdivision may be illustrated by the following example:

Example. Assume the same facts as in the example in subdivision (i) of this subparagraph except that H dies in 1972 and W files a separate return for 1973. W made a joint return for herself and H for 1972. In that example, the unused excess charitable contribution as of January 1, 1973, was $10,000, $6,000 of which was allocable to H and $4,000 to W. No portion of the $6,000 allocable to H may be treated as paid by W or any other person in 1973 or any subsequent year.

(e) *Information required in support of a deduction of an amount carried over and treated as paid.* If, in a taxable year, a deduction is claimed in respect of an excess charitable contribution which, in accordance with the provisions of paragraph (b)(2) or (c)(2) of this section, is treated (in whole or in part) as paid in such taxable year, the taxpayer shall attach to his return a statement showing:

(1) The contribution year (or years) in which the excess charitable contributions were made,

(2) The excess charitable contributions made in each contribution year, and the amount of such excess charitable contributions consisting of 30-percent capital gain property,

(3) The portion of such excess, or of each such excess, treated as paid in accordance with paragraph (b)(2) or (c)(2) of this section in any taxable year intervening between the contribution year and the taxable year for which the return is made, and the portion of such excess which consists of 30-percent capital gain property,

(4) Whether or not an election under section 170(b)(1)(D)(iii) has been made which affects any of such excess contributions of 30-percent capital gain property, and

(5) Such other information as the return or the instructions relating thereto may require.

(f) *Effective date.* This section applies only to contributions paid in taxable years beginning after December 31, 1969. For purposes of applying section 170(d)(1) with respect to contributions paid in a taxable year beginning before January 1, 1970, subsection (b)(1)(D), subsection (e), and paragraphs (1), (2), (3), and (4) of subsection (f) of section 170 shall not apply. See section 201(g)(1)(D) of the Tax Reform Act of 1969 (83 Stat. 564).

§ 1.170A–11 Limitation on, and carryover of, contributions by corporations.

(a) *In general.* The deduction by a corporation in any taxable year for charitable contributions, as defined in section 170(c), is limited to 5 percent of its taxable income for the year, computed without regard to—

(1) The deduction under section 170 for charitable contributions,

(2) The special deductions for corporations allowed under part VIII (except section 248), subchapter B, chapter 1 of the Code,

(3) Any net operating loss carryback to the taxable year under section 172,

(4) The special deduction for Western Hemisphere trade corporations under section 922, and

(5) Any capital loss carryback to the taxable year under section 1212(a)(1).

A charitable contribution by a corporation to a trust, chest, fund, or foundation described in section 170(c)(2) is deductible under section 170 only if the contribution is to be used in the United States or its possessions exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals. For the purposes of section 170, amounts excluded from the gross income of a corporation under section 114, relating to sports programs conducted for the American National Red Cross, are not to be considered contributions or gifts.

(b) *Election by corporations on an accrual method.* (1) A corporation reporting its taxable income on an accrual method may elect to have a charitable contribution treated as paid during the taxable year, if payment is actually made on or before the 15th day of the third month following the close of such year and if, during such year, its board of directors authorizes the charitable contribution. If by reason of such an election a charitable contribution (other than a contribution of a letter, memorandum, or property similar to a letter or memorandum) paid in a taxable year beginning after December 31, 1969, is treated as paid during a taxable year beginning before January 1, 1970, the provisions of § 1.170A–4 shall not be applied to reduce the amount of such contribution. However, see section 170(e) before its amendment by the Tax Reform Act of 1969.

(2) The election must be made at the time the return for the taxable year is filed, by reporting the contribution on the return. There shall be attached to the return when filed a written declaration that the resolution authorizing the contribution was adopted by the board of directors during the taxable year, and the declaration shall be verified by a statement signed by an officer authorized to sign the return that it is made under the penalties of perjury. There shall also be attached to the return when filed a copy of the resolution of the board of directors authorizing the contribution.

(c) *Charitable contributions carryover of corporations*—(1) *In general.* Subject to the reduction provided in subparagraph (2) of this paragraph, any charitable contributions made by a corporation in a taxable year (hereinafter in this paragraph referred to as the "contribution year") in excess of the amount deductible in such contribution year under the 5-percent limitation of section 170(b)(2) are deductible in each of the five succeeding taxable years in order of time, but only to the extent of the lesser of the following amounts:

(i) The excess of the maximum amount deductible for such succeeding taxable year under the 5-percent limitation of section 170(b)(2) over the sum of the charitable contributions made in that year plus the aggregate of the excess contributions which were made in taxable years before the contribution year and which are deductible under this paragraph in such succeeding taxable year; or

(ii) In the case of the first taxable year succeeding the contribution year, the amount of the excess charitable contributions, and in the case of the second, third, fourth, and fifth taxable years succeeding the contribution year, the portion of the excess charitable contributions not deductible under this subparagraph for any taxable year intervening between the contribution year and such succeeding taxable year.

This paragraph applies to excess charitable contributions by a corporation, whether or not such contributions are made to, or for the use of, the donee organization and whether or not such organization is a section 170(b)(1)(A) organization, as defined in § 1.170A–9. For purposes of applying this paragraph, a charitable contribution made in a taxable year beginning before January 1, 1970, which is carried over to taxable year beginning after December 31, 1969, under section 170(b)(2) (before its amendment by the Tax Reform Act of 1969) and is deductible in such taxable year beginning after December 31, 1969, shall be treated as deductible under section 170(d)(1) and this paragraph. The application of this subparagraph may be illustrated by the following example:

Example. A corporation which reports its income on the calendar year basis makes a charitable contribution of $20,000 in 1970. Its taxable income (determined without regard to any deduction for charitable contributions) for 1970 is $100,000. Accordingly, the charitable contributions deduction for that year is limited to $5,000 (5 percent of $100,000). The excess charitable contribution not deductible in 1970 ($15,000) is a carryover to 1971. The corporation has taxable income (determined without regard to any deduction for charitable contributions) of $150,000 in 1971 and makes a charitable contribution of $5,000 in that year. For 1971 the corporation may deduct as a charitable contribution the amount of $7,500 (5 percent of $150,000). This amount consists of the $5,000 contribution made in 1971 and of the $2,500 carried over from 1970. The remaining $12,500 carried over from 1970 and not allowable as a deduction for 1971 because of the 5-percent limitation may be carried over to 1972. The corporation has taxable income (determined without regard to any deduction for charitable contributions) of $200,000 in 1972 and makes a charitable contribution of $5,000 in that year. For 1972 the corporation may deduct the amount of $10,000 (5 percent of $200,000). This amount consists of the $5,000 contributed in 1972, and $5,000 of the $12,500 carried over from 1970 to 1972. The remaining $7,500 of the carryover from 1970 is available for purposes of computing the charitable contributions carryover from 1970 to 1973, 1974, and 1975.

(2) *Effect of net operating loss carryovers on carryover of excess contributions.* A corporation having a net operating loss carryover from any taxable year must apply the special rule of section 170(d)(2)(B) and this subparagraph before computing under subparagraph (1) of this paragraph the excess charitable contributions carryover from any taxable year. In determining the amount of excess charitable contributions that may be deducted in accordance with subparagraph (1) of this paragraph in taxable years succeeding the contribution year, the excess of the charitable contributions made by a corporation in the contributions year over the amount deductible in such year must be reduced by the amount by which such excess reduces taxable income for purposes of determining the net operating loss carryover under the second sentence of section 172(b)(2) and increases a net operating loss carryover to a succeeding taxable year. Thus, if the excess of the contributions made in a taxable year over the amount deductible in the taxable year is utilized to reduce taxable income (under the provisions of section 172(b)(2)) for such year, thereby serving to increase the amount of the net operating loss carryover to a succeeding taxable year or years, no charitable contributions carryover will be allowed. If only a portion of the excess charitable contributions is so used, the charitable contributions carryover will be reduced only to that extent. The application of this subparagraph may be illustrated by the following example:

Example. A corporation, which reports its income on the calendar year basis, makes a charitable contribution of $10,000 during 1971. Its taxable income for 1971 is $80,000 (computed without regard to any net operating loss deduction and computed in accordance with section 170(b)(2) without regard to any deduction for charitable contributions). The corporation has a net operating loss carryover from 1970 of $80,000. In the absence of the net operating loss deduction the corporation would have been allowed a deduction for charitable contributions of $4,000 (5 percent of $80,000). After the application of the net operating loss deduction the corporation is allowed no deduction for charitable contributions, and there is a tentative charitable contribution carryover from 1971 of $10,000. For purposes of determining the net operating loss carryover to 1972 the corporation computes its taxable income for 1971 under section 172(b)(2) by deducting the $4,000 charitable contribution. Thus, after the $80,000 net operating loss carryover is applied against the $76,000 of taxable income for 1971 (computed in accordance with section 172(b)(2)), there remains a $4,000 net operating loss carryover to 1972. Since the application of the net operating loss carryover of $80,000 from 1970 reduces the taxable income for 1971 to zero, no part of the $10,000 of charitable contributions in that year is deductible under section 170(b)(2). However, in determining the amount of the allowable charitable contributions carryover from 1971 to 1972, 1973, 1974, 1975, and 1976, the $10,000 must be reduced by the portion thereof ($4,000) which was used to reduce taxable income for 1971 (as computed for purposes of the second sentence of section 172(b)(2)) and which thereby served to increase the net operating loss carryover from 1970 to 1972 from zero to $4,000.

(3) *Effect of net operating loss carryback to contribution year.* The amount of the excess contribution for a contribution year computed as provided in subparagraph (1) of this paragraph shall not be increased because a net operating loss carryback is available as a deduction in the contribution year. In addition, in determining under the provisions of section 172(b)(2) the amount of the net operating loss for any year subsequent to the contribution year which is a carryback or carryover to taxable years succeeding the contribution year, the amount of any charitable contributions shall be limited to the amount of such contributions which did not exceed 5 percent of the donor's taxable income, computed as provided in paragraph (a) of this section and without regard to any of the modifications referred to in section 172(d), for the contribution year. For illustrations see paragraph (d)(2) of § 1.170A–10.

(4) *Effect of net operating loss carryback to taxable year succeeding the contribution year.* The amount of the charitable contribution from a preceding taxable year which is deductible (as provided in this paragraph) in a current taxable year (hereinafter referred to in this subparagraph as the "deduction year") shall not be reduced because a net operating loss carryback is available as a deduction in the deduction year. In addition, in determining under the provisions of section 172(b)(2) the amount of the net operating loss for any taxable year subsequent to the deduction year which is a carryback or a carryover to taxable years succeeding the deduction year, the amount of contributions made in the deduction year shall be limited to the amount of such contributions, which were actually made in such year and those which were deductible in such year under section 170(d)(2), which did not exceed 5 percent of the donor's taxable income, computed as provided in paragraph (a) of this section and without

regard to any of the modifications referred to in section 172(d), for the deduction year.

(5) *Year contribution is made.* For purposes of this paragraph, contributions made by a corporation in a contribution year include contributions which, in accordance with the provisions of section 170(a)(2) and paragraph (b) of this section, are considered as paid during such contribution year.

(d) *Effective date.* This section applies only to contributions paid in taxable years beginning after December 31, 1969. For purposes of applying section 170(d)(2) with respect to contributions paid, or treated under section 170(a)(2) as paid, in a taxable year beginning before January 1, 1970, subsection (e), and paragraphs (1), (2), (3), and (4) of subsection (f) of section 170 shall not apply. See section 201(g)(1)(D) of the Tax Reform Act of 1969 (83 Stat. 564).

PAR. 7. Section 1.262–1 is amended by revising paragraph (b)(5) to read as follows:

§ 1.262–1 Personal, living, and family expenses.

* * * * *

(b) *Examples of personal, living, and family expenses.* * * *

(5) Expenses incurred in traveling away from home (which include transportation expenses, meals, and lodging) and any other transportation expenses are not deductible unless they qualify as expenses deductible under section 162, § 1.162–2, and paragraph (d) of § 1.162–5 (relating to trade or business expenses), section 170 and paragraph (a)(2) of § 1.170–2 or paragraph (g) of § 1.170A–1 (relating to charitable contributions), section 212 and § 1.212–1 (relating to expenses for production of income), section 213(e) and paragraph (e) of § 1.213–1 (relating to medical expenses) or section 217(a) and paragraph (a) of § 1.217–1 (relating to moving expenses). The taxpayer's costs of commuting to his place of business or employment are personal expenses and do not qualify as deductible expenses. The costs of the taxpayer's lodging not incurred in traveling away from home are personal expenses and are not deductible unless they qualify as deductible expenses under section 217. Except as permitted under section 162, 212, or 217, the costs of the taxpayer's meals not incurred in traveling away from home are personal expenses.

* * * * *

PAR. 8. Section 1.381(c)(19)–1 is amended by revising that part of subsection (a) which follows subparagraph (2) thereof, subparagraphs (3)(i) and (4) of paragraph (c), and paragraph (d)(1) to read as follows:

§ 1.381(c)(19)–1 Charitable contributions carryovers in certain acquisitions.

(a) *Carryover requirement.* * * *

To determine the amount of excess contributions made by a distributor or transferor corporation and to integrate them with contributions made by the acquiring corporation for the purpose of determining the charitable contributions deductible by the acquiring corporation for its taxable years beginning immediately after the date of distribution or transfer, it is necessary to apply the provisions of section 170(b)(2) and § 1.170–3 (or, if applicable, section 170(b)(2) and (d)(2) and § 1.170A–11) in accordance with the conditions and limitations of section 381(c)(19) and this section. For taxable years beginning before January 1, 1970, see § 1.170 for provisions of section 170(b)(2) as referred to in this section. For taxable years beginning after December 31, 1969, see § 1.170A for provisions of section 170(b)(2) or (d)(2) as referred to in this section. For special rules for applying section 170(d)(2) with respect to contributions paid, or treated as paid, in taxable years beginning before January 1, 1970, see paragraph (d) of § 1.170A–11.

* * * * *

(c) *Taxable years to which carryovers apply and amount deductible.* * * *

(3) *Taxable years beginning after December 31, 1962.* (i) If the taxable year of the distributor or transferor corporation ending on the date of distribution or transfer begins after December 31, 1962, the excess charitable contributions made by a distributor or transferor corporation in its taxable year ending on the date of distribution or transfer and in each of its four immediately preceding taxable years (excluding any taxable year beginning before January 1, 1962), to the extent not deductible by it because of the limitations of section 170(b)(2) in its taxable year ending on the date of distribution or transfer or its prior taxable years, shall be deductible by the acquiring corporation to the extent prescribed by section 170(b)(2) (or, if applicable, section 170(d)(2)) and subdivision (ii) of this subparagraph, in its taxable years which begin after the date of distribution or transfer. However, any portion of the excess charitable contributions made by a distributor or transferor corporation in a particular taxable year, to which this subparagraph is applicable, which is not deductible under this section within the 5 taxable years immediately following the taxable year in which the contribution was paid by the distributor or transferor corporation shall not be deductible by the acquiring corporation in any other taxable year.

* * * * *

(4) *General rules.* No excess charitable contributions made by a distributor or transferor corporation shall be deductible by the acquiring corporation in its taxable year which includes the date of distribution or transfer. In addition, an excess charitable contribution made by a distributor or transferor corporation in a taxable year prior to the taxable year of the transfer is only deductible by the distributor or transferor corporation, subject to the limitations of section 170(b)(2) (or, if applicable, section 170(d)(2)), in its subsequent taxable years which begin on or before the date of distribution or transfer, and by the acquiring corporation in its taxable year or years beginning after the date of distribution or transfer.

(d) *Rules governing amounts deductible by acquiring corporations.* (1) In applying the provisions of section 170(b)(2) (or, if applicable, section 170(d)(2)) for the purpose of determining the amount of excess charitable contributions which are deductible by the acquiring corporation in its taxable years beginning after the date of distribution or transfer, all taxable years of the distributor or transferor and acquiring corporations which, with respect to a particular taxable year beginning after the date of distribution or transfer, constitute the same numbered preceding taxable year shall together be considered as 1 taxable year even though the taxable years involved may not end on the same date. Thus, for example, all taxable years of the distributor or transferor and acquiring corporations which, with respect to the first taxable year of the acquiring corporation beginning after the date of distribution or transfer, constitutes the second preceding taxable year shall together be considered as 1 taxable year even though the taxable years involved may not end on the same date. Any excess charitable contributions carried over from preceding taxable years which are considered as 1 taxable year shall be taken into account by the acquiring corporation as one amount, without regard to the extent to which the contributions were made by a distributor or transferor corporation or the acquiring corporation.

* * * * *

PAR. 9. Section 1.545 is amended by revising subsections (a) and (b)(2) and (9) of section 545, by adding a new subsection (d) to section 545, and by revising the historical note, as follows:

§ 1.545 Statutory provisions; undistributed personal holding company income.

SEC. 545. *Undistributed personal holding company income*—(a) *Definition.* For purposes of this part, the term "undistributed personal holding company income" means the taxable income of a personal holding company adjusted in the manner provided in subsections (b), (c), and (d), minus the dividends paid deduction as defined in section 561. In the case of a personal holding company which is a foreign corporation, not more than 10 percent in value of the outstanding stock of which is owned (within the meaning of section 958(a)) during the last half of the taxable year by U.S. persons, the term "undistributed personal holding company income" means the amount determined by multiplying the undistributed personal holding company income (determined without regard to this sentence) by the percentage in value of its outstanding stock which is the greatest percentage in value of its outstanding stock so owned by U.S. persons on any one day during such period.

* * * * *

(b) *Adjustments to taxable income.* * * *

(2) *Charitable contributions.* The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A), (B), and (D) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term "contribution base" when

used in section 170(b)(1) means the taxable income computed with the adjustments (other than the 5-percent limitation) provided in section 170 (b)(2) and (d)(1) and without deduction of the amount disallowed under paragraph (8) of this subsection.

* * * * *

(9) *Amount of a lien in favor of the United States.* There shall be allowed as a deduction the amount, not to exceed the taxable income of the taxpayer, of any lien in favor of the United States (notice of which has been filed as provided in section 6323(f)) to which the taxpayer is subject at the close of the taxable year. The sum of the amounts deducted under this paragraph with respect to any lien shall, for the purposes of this section, be added to the taxable income of the taxpayer for the taxable year in which such lien is satisfied or released. Where an amount is added to the taxable income of a corporation by reason of the preceding sentence of this paragraph, the shareholders of the corporation may, pursuant to regulations prescribed by the Secretary or his delegate, elect to compute the income tax with respect to such dividends as are attributable to such amount as though they were received ratably over the period the lien was in effect.

* * * * *

(d) *Certain foreign corporations.* In the case of a foreign corporation all of the outstanding stock of which during the last half of the taxable year is owned by nonresident alien individuals (whether directly or indirectly through foreign estates, foreign trusts, foreign partnerships, or other foreign corporations), the taxable income for purposes of subsection (a) shall be the income which constitutes personal holding company income under section 543(a)(7), reduced by the deductions attributable to such income, and adjusted, with respect to such income, in the manner provided in subsection (b).

[Sec. 545 as amended by sec. 32, Technical Amendments Act 1958 (72 Stat. 1631); sec. 3(d), Act of Feb. 2, 1962 (Public Law 87-403, 76 Stat. 7); sec. 9(d)(2), Rev. Act 1962 (76 Stat. 1001); secs. 207(b)(5), 209(c)(2), and 225(i)(1) and (2), Rev. Act 1964 (78 Stat. 42, 46, 90); sec. 101(b)(2), Federal Tax Lien Act 1966 (80 Stat. 1132); sec. 104(h)(3), Foreign Investors Tax Act 1966 (80 Stat. 1560); sec. 201(a)(2)(B), Tax Reform Act 1969 (83 Stat. 558)]

PAR. 10. Section 1.545-2 is amended by revising paragraph (b) to read as follows:

§ 1.545-2 Adjustments to taxable income.

* * * * *

(b) *Charitable contributions* — (1) *Taxable years beginning before January 1, 1970* (i) Section 545(b)(2) provides that, in computing the deduction for charitable contributions for purposes of determining undistributed personal holding company income of a corporation for taxable years beginning before January 1, 1970, the limitations in section 170(b)(1)(A) and (B), relating to charitable contributions by individuals, shall apply and section 170(b)(2) and (5), relating to charitable contributions by corporations and carryover of certain excess charitable contributions made by individuals, respectively, shall not apply.

(ii) Although the limitations of section 170(b)(1)(A) and (B) are 10 and 20 percent, respectively, of the individual's adjusted gross income, the limitations are applied for purposes of section 545(b)(2) by using 10 and 20 percent, respectively, of the corporation's taxable income as adjusted for purposes of section 170(b)(2), that is, the same amount of taxable income to which the 5-percent limitation applied. Thus, the term "adjusted gross income" when used in section 170(b)(1) means the corporation's taxable income computed with the adjustments, other than the 5-percent limitation, provided in the first sentence of section 170(b)(2). However, a further adjustment for this purpose is that the taxable income shall also be computed without the deduction of the amount disallowed under section 545(b)(8), relating to expenses and depreciation applicable to property of the taxpayer. The carryover of charitable contributions made in a prior year, otherwise allowable as a deduction in computing taxable income to the extent provided in section 170(b)(2) and, with respect to contributions paid in taxable years beginning after December 31, 1963, in section 170(b)(5), shall not be allowed as a deduction in computing undistributed personal holding company income for any taxable year.

(iii) See § 1.170-2 with respect to the charitable contributions to which the 10-percent limitation is applicable and the charitable contributions to which the 20-percent limitation is applicable.

(2) *Taxable years beginning after December 31, 1969.* (i) Section 545(b)(2) provides that, in computing the deduction allowable for charitable contributions for purposes of determining undistributed personal holding company income of a corporation for taxable years beginning after December 31, 1969, the limitations in section 170(b)(1)(A), (B), and (D)(i) (relating to charitable contributions by individuals) shall apply, and section 170(b)(1)(D)(ii) (relating to excess charitable contributions by individuals of certain capital gain property, section 170(b)(2) (relating to the 5-percent limitation on charitable contributions by corporations), and section 170(d) (relating to carryovers of excess contributions of individuals and corporations) shall not apply.

(ii) Although the limitations of section 170(b)(1)(A), (B), and (D)(i) are 50, 20, and 30 percent, respectively, of an individual's contribution base, these limitations are applied for purposes of section 545(b)(2) by using 50, 20, and 30 percent, respectively, of the corporation's taxable income as adjusted for purposes of section 170(b)(2), that is, the same amount of taxable income to which the 5-percent limitation applies. Thus, the term "contribution base" when used in section 170(b)(1) means the corporation's taxable income computed with the adjustments, other than the 5-percent limitation, provided in section 170(b)(2). However, a further adjustment for this purpose is that the taxable income shall also be computed without the deduction of the amount disallowed under section 545(b)(8), relating to expenses and depreciation applicable to property of the taxpayer. The carryover of charitable contributions made in a prior year, otherwise allowable as a deduction in computing taxable income to the extent provided in section 170(b)(1)(D)(ii) and (d), shall not be allowed as a deduction in computing undistributed personal holding company income for any taxable year.

(iii) See § 1.170A-8 for the rules with respect to the charitable contributions to which the 50-, 20-, and 30-percent limitations apply.

* * * * *

PAR. 11. Section 1.556 is amended by revising paragraph (b)(2) of section 556 and the historical note to read as follows:

§ 1.556 Statutory provisions; undistributed foreign personal holding company income.

SEC. 556. *Undistributed foreign personal holding company income.*

* * * * *

(b) *Adjustments to taxable income.* * * *

(2) *Charitable contributions.* The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A), (B), and (D) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term "contribution base" when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the 5-percent limitation) provided in section 170(b)(2) and (d)(1) and without the deduction of the amounts disallowed under paragraphs (5) and (6) of this subsection or the inclusion in gross income of the amounts includible therein as dividends by reason of the application of the provisions of section 555(b) (relating to the inclusion in gross income of a foreign personal holding company of its distributive share of the undistributed foreign personal holding company income of another company in which it is a shareholder).

* * * * *

[Sec. 556 as amended by sec. 33, Technical Amendments Act 1958 (72 Stat. 1632); secs. 207(b)(6) and 209(c)(2), Rev. Act 1964 (78 Stat. 42, 46); sec. 201(a)(2)(B), Tax Reform Act 1969 (83 Stat. 558)]

PAR. 12. Section 1.556-2 is amended by revising paragraph (b) to read as follows:

§ 1.556-2 Adjustments to taxable income.

* * * * *

(b) *Charitable contributions*—(1) *Taxable years beginning before January 1, 1970.* (i) Section 556(b)(2) provides that, in computing the deduction for charitable contributions for purposes of determining the undistributed foreign personal holding company income of a corporation for taxable years beginning before January 1, 1970, the limitations in section 170(b)(1)(A) and (B), relating to charitable contributions by individuals, shall apply and section 170(b)(2) and (5), relating to charitable contributions by corporations and carryover of certain excess charitable contributions made by individuals, respectively, shall not apply.

(ii) Although the limitations of section 170(b)(1)(A) and (B) are 10 and 20 percent, respectively, of the individual's adjusted gross income, the limitations are applied for purposes of section

556(b)(2) by using 10 and 20 percent, respectively, of the corporation's taxable income as adjusted for purposes of section 170(b)(2), that is, the same amount of taxable income to which the 5-percent limitation applied. Thus, the term "adjusted gross income" when used in section 170(b)(1) means the corporation's taxable income computed with the adjustments, other than the 5-percent limitation, provided in the first sentence of section 170(b)(2). However, a further adjustment for this purpose is that the taxable income shall also be computed without the deduction of the amount disallowed under section 556(b)(5), relating to expenses and depreciation applicable to property of the taxpayer, and section 556(b)(6), relating to taxes and contributions to pension trusts, and without the inclusion of the amounts includible as dividends under section 555(b), relating to the inclusion in gross income of a foreign personal holding company of its distributive share of the undistributed foreign personal holding company income of another company in which it is a shareholder. The carryover of charitable contributions made in a prior year, otherwise allowable as a deduction in computing taxable income to the extent provided in section 170(b)(2) and, with respect to contributions paid in taxable years beginning after December 31, 1963, in section 170(b)(5), shall not be allowed as a deduction in computing undistributed foreign personal holding company income for any taxable year.

(iii) See § 1.170–2 with respect to the charitable contributions to which the 10-percent limitation is applicable and the charitable contributions to which the 20-percent limitation is applicable.

(2) *Taxable years beginning after December 31, 1969.* (i) Section 556(b)(2) provides that, in computing the deduction allowable for charitable contributions for purposes of determining the undistributed foreign personal holding company income of a corporation for taxable years beginning after December 31, 1969, the limitations in section 170(b)(1)(A), (B), and (D)(i) (relating to charitable contributions by individuals) shall apply, and section 170(b)(1)(D)(ii) (relating to excess charitable contributions by individuals of certain capital gain property), section 170(b)(2) (relating to the 5-percent limitation on charitable contributions by corporations), and section 170(d) (relating to carryovers of excess contributions of individuals and corporations) shall not apply.

(ii) Although the limitations of section 170(b)(1)(A), (B), and (D)(i) are 50, 20, and 30 percent, respectively, of an individual's contribution base, these limitations are applied for purposes of section 556(b)(2) by using 50, 20, and 30 percent, respectively, of the corporation's taxable income as adjusted for purposes of section 170(b)(2), that is, the same amount of taxable income to which the 5-percent limitation applies. Thus, the term "contribution base" when used in section 170(b)(1) means the corporation's taxable income computed with the adjustments, other than the 5-percent limitation, provided in section 170(b)(2). However, a further adjustment for this purpose is that the taxable income shall also be computed without the deduction of the amount disallowed under section 556(b)(5), relating to expenses and depreciation applicable to property of the taxpayer, and section 556(b)(6), relating to taxes and contributions to pension trusts, and without the inclusion of the amounts includible as dividends under section 555(b), relating to the inclusion in gross income of a foreign personal holding company of its distributive share of the undistributed foreign personal holding company income of another company in which it is a shareholder. The carryover of charitable contributions made in a prior year, otherwise allowable as a deduction in computing taxable income to the extent provided in section 170(b)(1)(D)(ii) and (d), shall not be allowed as a deduction in computing undistributed foreign personal holding company income for any taxable year.

(iii) See § 1.170A–8 for the rules with respect to the charitable contributions to which the 50-, 20-, and 30-percent limitations apply.

* * * * *

PAR. 13. Section 1.809 is amended by revising subsections (d)(11), (e)(3) and (5), and (g)(3) of section 809 and the historical note to read as follows:

§ 1.809 Statutory provisions; life insurance companies; in general.

SEC. 809. *In general.* * * *

(d) *Deductions.* * * *

(11) *Certain mutualization distributions.* The amount of distributions to shareholders made in 1958, 1959, 1960, 1961, and 1962 in acquisition of stock pursuant to a plan of mutualization adopted before January 1, 1958.

* * * * *

(e) *Modifications.* * * *

(3) *Charitable, etc., contributions and gifts.* In applying section 170—

(A) The limit on the total deductions under such section provided by section 170(b)(2) shall be 5 percent of the gain from operations computed without regard to—

(i) The deduction provided by section 170,

(ii) The deductions provided by paragraphs (3), (5), (6), and (8) of subsection (d), and

(iii) Any operations loss carryback to the taxable year under section 812; and

(B) Under regulations prescribed by the Secretary or his delegate, a rule similar to the rule contained in section 170(d)(2)(B) shall be applied.

* * * * *

(5) *Net operating loss deduction.* Except as provided by section 844, the deduction for net operating losses provided in section 172 shall not be allowed.

* * * * *

(g) *Limitations on deduction for certain mutualization distributions.* * * *

(3) *Application of section 815.* That portion of any distribution with respect to which a deduction is allowed under subsection (d)(11) shall not be treated as a distribution to shareholders for purposes of section 815; except that in the case of any distribution made in 1959, 1960, 1961, or 1962, such portion shall be treated as a distribution with respect to which a reduction is required under section 815(e)(2)(B).

[Sec. 809 as added by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 121); amended by sec. 2, Act of June 27, 1961 (Public Law 87–59, 75 Stat. 120, 121); sec. 3, Act of October 10, 1962 (Public Law 87–790, 76 Stat. 808); sec. 3, Act of October 23, 1962 (Public Law 87–858, 76 Stat. 1134); secs. 214(b)(4) and 228(a), Rev. Act 1964 (78 Stat. 55, 98); secs. 201(a)(2)(C) and 907(c)(2)(B), Tax Reform Act 1969 (83 Stat. 558, 717)]

PAR. 14. Section 1.809–6 is amended by revising that part of paragraph (c)(2) which precedes subdivision (i) thereof to read as follows:

§ 1.809–6 Modifications.

* * * * *

(c) *Charitable, etc., contributions and gifts.* * * *

(2) In applying the first sentence of section 170(b)(2) as contained in § 1.170 or, in the case of taxable years beginning after December 31, 1969, section 170(d)(2)(B) as contained in § 1.170A, any excess of the charitable contributions made by a life insurance company in a taxable year over the amount deductible in such year under the limitation contained in subparagraph (1) of this paragraph, shall be reduced to the extent that such excess:

* * * * *

PAR. 15. Section 1.1001–1 is amended by revising paragraph (e)(1) to read as follows:

§ 1.1001–1 Computation of gain or loss.

* * * * *

(e) *Transfers in part a sale and in part a gift.* (1) Where a transfer of property is in part a sale and in part a gift, the transferor has a gain to the extent that the amount realized by him exceeds his adjusted basis in the property. However, no loss is sustained on such a transfer if the amount realized is less than the adjusted basis. For the determination of basis of property in the hands of the transferee, see § 1.1015–4. For the allocation of the adjusted basis of property in the case of a bargain sale to a charitable organization, see § 1.1011–2.

* * * * *

PAR. 16. Section 1.1011 is amended by revising section 1011 and by adding a historical note to read as follows:

§ 1.1011 Statutory provisions; adjusted basis for determining gain or loss.

SEC. 1011. *Adjusted basis for determining gain or loss*—(a) *General rule.* The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis (determined under section 1012 or other applicable sections of this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses)), adjusted as provided in section 1016.

(b) *Bargain sale to a charitable organization.* If a deduction is allowable under section 170 (relating to charitable contributions) by reason of a sale, then the adjusted basis for determining the gain from such sale shall be that portion of the adjusted basis which bears the same ratio to the adjusted basis

as the amount realized bears to the fair market value of the property.

[Sec. 1011 as amended by sec. 201(f), Tax Reform Act 1969 (83 Stat. 564)]

PAR. 17. Immediately after § 1.1011–1 the following new section is added.

§ 1.1011–2 Bargain sale to a charitable organization.

(a) *In general.* (1) If for the taxable year a charitable contributions deduction is allowable under section 170 by reason of a sale or exchange of property, the taxpayer's adjusted basis of such property for purposes of determining gain from such sale or exchange must be computed as provided in section 1011(b) and paragraph (b) of this section. If after applying the provisions of section 170 for the taxable year, including the percentage limitations of section 170(b), no deduction is allowable under that section by reason of the sale or exchange of the property, section 1011(b) does not apply and the adjusted basis of the property is not required to be apportioned pursuant to paragraph (b) of this section. In such case the entire adjusted basis of the property is to be taken into account in determining gain from the sale or exchange, as provided in § 1.1001–1(e). In ascertaining whether or not a charitable contributions deduction is allowable under section 170 for the taxable year for such purposes, that section is to be applied without regard to this section and the amount by which the contributed portion of the property must be reduced under section 170(e)(1) is the amount determined by taking into account the amount of gain which would have been ordinary income or long-term capital gain if the entire property had been sold by the donor at its fair market value at the time of the sale or exchange.

(2) If in the taxable year there is a sale or exchange of property which gives rise to a charitable contribution which is carried over under section 170(b)(1)(D)(ii) or section 170(d) to a subsequent taxable year or is postponed under section 170(a)(3) to a subsequent taxable year, section 1011(b) and paragraph (b) of this section must be applied for purposes of apportioning the adjusted basis of the property for the year of the sale or exchange, whether or not such contribution is allowable as a deduction under section 170 in such subsequent year.

(3) If property is transferred subject to an indebtedness, the amount of the indebtedness must be treated as an amount realized for purposes of determining whether there is a sale or exchange to which section 1011(b) and this section apply, even though the transferee does not agree to assume or pay the indebtedness.

(4)(i) Section 1011(b) and this section apply where property is sold or exchanged in return for an obligation to pay an annuity and a charitable contributions deduction is allowable under section 170 by reason of such sale or exchange.

(ii) If in such case the annuity received in exchange for the property is nonassignable, or is assignable but only to the charitable organization to which the property is sold or exchanged, and if the transferor is the only annuitant or the transferor and a designated survivor annuitant or annuitants are the only annuitants, any gain on such exchange is to be reported as provided in example (8) in paragraph (c) of this section. In determining the period over which gain may be reported as provided in such example, the life expectancy of the survivor annuitant may not be taken into account. The fact that the transferor may retain the right to revoke the survivor's annuity or relinquish his own right to the annuity will not be considered, for purposes of this subdivision, to make the annuity assignable to someone other than the charitable organization. Gain on an exchange of the type described in this subdivision pursuant to an agreement which is entered into after December 19, 1969, and before May 3, 1971, may be reported as provided in example (8) in paragraph (c) of this section, even though the annuity is assignable.

(iii) In the case of an annuity to which subdivision (ii) of this subparagraph applies, the gain unreported by the transferor with respect to annuity payments not yet due when the following events occur is not required to be included in gross income of any person where—

(*a*) The transferor dies before the entire amount of gain has been reported and there is no surviving annuitant, or

(*b*) The transferor relinquishes the annuity to the charitable organization.

If the transferor dies before the entire amount of gain on a two-life annuity has been reported, the unreported gain is required to be reported by the surviving annuitant or annuitants with respect to the annuity payments received by them.

(b) *Apportionment of adjusted basis.* For purposes of determining gain on a sale or exchange to which this paragraph applies, the adjusted basis of the property which is sold or exchanged shall be that portion of the adjusted basis of the entire property which bears the same ratio to the adjusted basis as the amount realized bears to the fair market value of the entire property. The amount of such gain which shall be treated as ordinary income (or long-term capital gain) shall be that amount which bears the same ratio to the ordinary income (or long-term capital gain) which would have been recognized if the entire property had been sold by the donor at its fair market value at the time of the sale or exchange as the amount realized on the sale or exchange bears to the fair market value of the entire property at such time. The terms "ordinary income" and "long-term capital gain", as used in this section, have the same meaning as they have in paragraph (a) of § 1.170A–4. For determining the portion of the adjusted basis, ordinary income, and long-term capital gain allocated to the contributed portion of the property for purposes of applying section 170(e)(1) and paragraph (a) of § 1.170A–4 to the contributed portion of the property, and for determining the donee's basis in such contributed portion, see paragraph (c)(2) and (4) of § 1.170A–4. For determining the holding period of such contributed portion, see section 1223(2) and the regulations thereunder.

(c) *Illustrations.* The application of this section may be illustrated by the following examples, which are supplemented by other examples in paragraph (d) of § 1.170A–4:

Example (1). In 1970, A, a calendar-year individual taxpayer, sells to a church for $4,000 stock held for more than 6 months which has an adjusted basis of $4,000 and a fair market value of $10,000. A's contribution base for 1970, as defined in section 170(b)(1)(F), is $100,000, and during that year he makes no other charitable contributions. Thus, A makes a charitable contribution to the church of $6,000 ($10,000 value − $4,000 amount realized). Without regard to this section, A is allowed a deduction under section 170 of $6,000 for his charitable contribution to the church, since there is no reduction under section 170(e)(1) with respect to the long-term capital gain. Accordingly, under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is $1,600 ($4,000 adjusted basis × $4,000 amount realized/$10,000 value of property). A has recognized long-term capital gain of $2,400 ($4,000 amount realized − $1,600 adjusted basis) on the bargain sale.

Example (2). The facts are the same as in example (1) except that A also makes a charitable contribution in 1970 of $50,000 cash to the church. By reason of section 170(b)(1)(A), the deduction allowed under section 170 for 1970 is $50,000 for the amount of cash contributed to the church; however, the $6,000 contribution of property is carried over to 1971 under section 170(d). Under paragraphs (a)(2) and (b) of this section the adjusted basis for determining gain for 1970 on the bargain sale in that year is $1,600 ($4,000 × $4,000/$10,000). A has a recognized long-term capital gain for 1970 of $2.400 ($4,000 − $1,600) on the sale.

Example (3). In 1970, C, a calendar-year individual taxpayer, makes a charitable contribution of $50,000 cash to a church. In addition, he sells for $4,000 to a private foundation not described in section 170(b)(1)(E) stock held for more than 6 months which has an adjusted basis of $4,000 and a fair market value of $10,000. Thus, C makes a charitable contribution of $6,000 of such property to the private foundation ($10,000 value − $4,000 amount realized). C's contribution base for 1970, as defined in section 170(b)(1)(F), is $100,000, and during that year he makes no other charitable contributions. By reason of section 170(b)(1)(A), the deduction allowed under section 170 for 1970 is $50,000 for the amount of cash contributed to the church. Under section 170(e)(1)(B)(ii), applied without regard to section 1011(b), the $6,000 contribution of stock is reduced to $3,000 ($6,000 − [50% × ($10,000 value of stock − $4,000 adjusted basis)]). However, by reason of section 170(b)(1)(B)(ii), applied without regard to section 1011(b), no deduction is allowed under section 170 for 1970 or any other year for the reduced contribution of $3,000 to the private foundation. Accordingly, paragraph (b) of this section does not apply for purposes of apportioning the adjusted basis of the stock sold to the private foundation, and under § 1.1001–1(e) the recognized gain on the bargain sale is $0 ($4,000 amount realized − $4,000 adjusted basis).

Example (4). In 1970, B, a calendar-year individual taxpayer, sells to a church for $2,000 stock held for not more than 6 months which has an adjusted basis of $4,000 and a fair market value of $10,000. B's contribution

base for 1970, as defined in section 170(b)(1)(F), is $20,000 and during such year B makes no other charitable contributions. Thus, he makes a charitable contribution to the church of $8,000 ($10,000 value −$2,000 amount realized). Since without regard to this section B is allowed a deduction under section 170 of $2,000 ($8,000 −[$10,000 value−$4,000 adjusted basis]) for his charitable contribution of $8,000 to the church, under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is $800 ($4,000 adjusted basis ×$2,000 amount realized/$10,000 value of stock). Accordingly, B has a recognized short-term capital gain of $1,200 ($2,000 amount realized −$800 adjusted basis) on the bargain sale. After applying section 1011(b) and paragraphs (a)(1) and (c)(2)(i) of § 1.170A–4, B is allowed a charitable contributions deduction for 1970 of $3,200 ($8,000 value of gift −[$8,000−($4,000 adjusted basis of property ×$8,000 value of gift/$10,000 value of property)]).

Example (5). The facts are the same as in Example (4) except that B sells the property to the church for $4,000. Thus, B makes a charitable contribution to the church of $6,000 ($10,000 value −$4,000 amount realized). Since without regard to this section B is allowed a deduction under section 170 for 1970 of $0 ($6,000−[$10,000 value−$4,000 adjusted basis]) under section 170, paragraph (b) of this section does not apply for purposes of apportioning the adjusted basis of the property, and under § 1.1001–1(e) the recognized gain on the bargain sale is $0 ($4,000 amount realized −$4,000 adjusted basis).

Example (6). The facts are the same as in Example (4) except that B sells the property to the church for $6,000. Thus, B makes a charitable contribution to the church of $4,000 ($10,000 value −$6,000 amount realized). Since without regard to this section B is allowed a deduction under section 170 for 1970 of $0 ($4,000 gift −[$10,000 value of property −$4,000 adjusted basis]), paragraph (b) of this section does not apply for purposes of apportioning the adjusted basis of the property, and under § 1.1001–1(e) the recognized short-term capital gain on the bargain sale is $2,000 ($6,000 amount realized −$4,000 adjusted basis).

Example (7). In 1970, C, a calendar-year individual taxpayer, sells to a church for $4,000 tangible personal property used in his business for more than 6 months which has an adjusted basis of $4,000 and a fair market value of $10,000. Thus, C makes a charitable contribution to the church of $6,000 ($10,000 value −$4,000 amount realized). C's contribution base for 1970, as defined in section 170(b)(1)(F), is $100,000 and during such year he makes no other charitable contributions. If C had sold the property at its fair market value at the time of its contribution, it is assumed that under section 1245 $4,000 of the gain of $6,000 ($10,000 value−$4,000 adjusted basis) would have been treated as ordinary income. Thus, there would have been long-term capital gain of $2,000. It is also assumed that the church does not put the property to an unrelated use, as defined in paragraph (b)(3) of § 1.-170A–4. Since without regard to this section C is allowed a deduction under section 170 of $2,000 ($6,000 gift −$4,000 ordinary income), under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is $1,600 ($4,000 adjusted basis ×$4,000 amount realized/$10,000 value of property). Accordingly, C has a recognized gain of $2,400 ($4,000 amount realized −$1,600 adjusted basis) on the bargain sale, consisting of ordinary income of $1,600 ($4,000 ordinary income ×$4,000 amount realized/$10,000 value of property) and of long-term capital gain of $800 ($2,000 long-term gain ×$4,000 amount realized/$10,000 value of property). After applying section 1011(b) and paragraphs (a) and (c)(2)(i) of § 1.170A–4, C is allowed a charitable contributions deduction for 1970 of $3,600 ($6,000 gift −[$4,000 ordinary income ×$6,000 value of gift/$10,000 value of property]).

Example (8). (a) On January 1, 1970, A, a male of age 65, transfers capital assets consisting of securities held for more than 6 months to a church in exchange for a promise by the church to pay A a nonassignable annuity of $5,000 per year for life. The annuity is payable monthly with the first payment to be made on February 1, 1970. A's contribution base for 1970, as defined in section 170(b)(1)(F), is $200,000, and during that year he makes no other charitable contributions. On the date of transfer the securities have a fair market value of $100,000 and an adjusted basis to A of $20,000.

(b) The present value of the right of a male age 65 to receive a life annuity of $5,000 per annum, payable in equal installments at the end of each monthly period, is $59,755 ($5,000×[11.469+0.482]), determined in accordance with section 101(b) of the Code, paragraph (e)(1)(iii)(b)(2) of § 1.101–2, and section 3 of Rev. Rul. 62–216, C.B. 1962–2, 30. Thus, A makes a charitable contribution to the church of $40,245 ($100,000−$59,755). Without regard to this section, A is allowed a deduction under section 170 of $40,245 for his charitable contribution to the church, since the property contributed is not section 170(e) capital gain property within the meaning of paragraph (b)(3) of § 1.170A–4 and no reduction of the contribution is made under section 170(e)(1).

(c) Under paragraph (b) of this section, the adjusted basis for determining gain on the bargain sale is $11,951 ($20,000×$59,755/$100,000). Accordingly, A has a recognized long-term capital gain of $47,804 ($59,755–$11,951) on the bargain sale. Such gain is to be reported by A ratably over the period of years measured by the expected return multiple under the contract, but only from that portion of the annual payments which is a return of his investment in the contract under section 72 of the Code. For such purposes, the investment in the contract is $59,755, that is, the present value of the annuity.

(d) The computation and application of the exclusion ratio, the gain, and the ordinary annuity income are as follows, determined by using the expected return multiple of 15.0 applicable under Table I of § 1.72–9:

A's expected return (annual payments of $5,000×15)	$75,000.00
Exclusion ratio ($59,755 investment in contract divided by expected return of $75,000)	79.7%
Annual exclusion (annual payments of $5,000×79.7%)	$3,985.00
Ordinary annuity income ($5,000−$3,985)	$1,015.00
Long-term capital gain per year ($47,804/15) with respect to the annual exclusion	$3,186.93

(e) The exclusion ratio of 79.7 percent applies throughout the life of the contract. During the first 15 years of the annuity, A is required to report ordinary income of $1,015 and long-term capital gain of $3,186.93 with respect to the annuity payments he receives. After the total long-term capital gain of $47,804 has been reported by A, he is required to report only ordinary income of $1,015.00 per annum with respect to the annuity payments he receives.

(d) *Effective date.* This section applies only to sales and exchanges made after December 19, 1969.

PAR. 18. Section 1.1012–2 is revised to read as follows:

§ 1.1012–2 Transfers in part a sale and in part a gift.

For rules relating to basis of property acquired in a transfer which is in part a gift and in part a sale, see § 1.170A–4(c), § 1.1011–2(b), and § 1.1015–4.

PAR. 19. Section 1.1015–4 is amended by revising that part of paragraph (a) which follows subparagraph (2) thereof to read as follows:

§ 1.1015–4 Transfers in part a gift and in part a sale.

(a) *General rule.* * * *

For determining loss, the unadjusted basis of the property in the hands of the transferee shall not be greater than the fair market value of the property at the time of such transfer. For determination of gain or loss of the transferor, see § 1.1001–1(e) and § 1.1011–2. For special rule where there has been a charitable contribution of less than a taxpayer's entire interest in property, see section 170(e)(2) and § 1.170A–4(c).

PAR. 20. Section 1.1245–4 is amended by revising paragraph (a)(1) to read as follows:

§ 1.1245–4 Exceptions and limitations.

(a) *Exception for gifts*—(1) *General rule.* Section 1245(b)(1) provides that no gain shall be recognized under section 1245(a)(1) upon a disposition by gift. For purposes of this paragraph, the term "gift" means, except to the extent that subparagraph (3) of this paragraph applies, a transfer of property which, in the hands of the transferee, has a basis determined under the provisions of section 1015 (a) or (d) (relating to basis of property acquired by gifts). For reduction in amount of charitable contribution in case of a gift of section 1245 property, see section 170(e) and the regulations thereunder.

* * * * *

[FR Doc.72–16703 Filed 10–3–72;8:45 am]

[T.D. 7209]

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

Appreciated Property Used To Redeem Stock

On May 20, 1971, there was published in the FEDERAL REGISTER (36 F.R. 9138) a notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) to conform such regulations to section 311(d) of the Internal Revenue Code of 1954, relating to appreciated property used to redeem stock, as added by section 905 of the Tax Reform Act of 1969 (Public Law 91–172). After consideration of all such relevant matters as were presented by interested persons regarding the rules proposed, the amendment to the regulations as proposed is hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. Section 1.311–1, as set forth in paragraph (4) of the appendix to the notice of proposed rule making, is changed by revising paragraph (a) to read as set forth below.

PAR. 2. Section 1.311–2, as set forth in paragraph (5) of the appendix to the notice of proposed rule making, is changed by revising paragraphs (a)(2), (b)(2), (c)(1), (d), and (h) to read as set forth below.

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

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

Approved: September 27, 1972.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) to the provisions of section 905 of the Tax Reform Act of 1969 (83 Stat. 713), such regulations are amended as follows:

PARAGRAPH 1. Section 1.301 is amended by revising subsections (b)(1)(B)(ii) and (d)(2)(B) of section 301 and the historical note to read as follows:

§ 1.301 Statutory provisions; distributions of property.

Sec. 301. *Distributions of property.* * * *

(b) *Amount distributed*—(1) *General rule.* * * *

(B) *Corporate distributees.* * * *

(ii) The adjusted basis (in the hands of the distributing corporation immediately before the distribution) of the other property received, increased in the amount of gain to the distributing corporation which is recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), or 1252(a).

* * * * *

(d) *Basis.* * * *

(2) *Corporate distributees.* * * *

(B) The adjusted basis (in the hands of the distributing corporation immediately before the distribution) of such property, increased in the amount of gain to the distributing corporation which is recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), or 1252(a).

* * * * *

[Sec. 301 as amended by secs. 5 (a) and (b), and 13(f)(2), Rev. Act 1962 (76 Stat. 977, 1035); sec. 231(b)(2), Rev. Act 1964 (78 Stat. 105); sec. 1(b)(1), Act of Aug. 22, 1964 (Public Law 88–484, 78 Stat. 597); sec. 1(b)(2), Act of Sept. 12, 1966 (Public Law 89–570, 80 Stat. 762); secs. 211(b)(1) and (2), and 905(b)(2), Tax Reform Act of 1969 (83 Stat. 570, 714)]

PAR. 2. Section 1.301–1 is amended by revising paragraph (d), paragraph (h)(2)(ii)(*b*), paragraph (j)(1), and paragraph (n)(2). These revised provisions read as follows:

§ 1.301–1 Rules applicable with respect to distributions of money and other property.

* * * * *

(d) *Distributions of property to corporate shareholders.* If property (other than money and other than the obligations of the distributing corporation) is distributed in kind to a shareholder which is a corporation and the fair market value of such property is greater than the adjusted basis in the hands of the distributing corporation, only the adjusted basis of such property (determined immediately before the distribution and increased for any gain recognized to the distributing corporation under section 311 (b), (c), or (d), or under section 341(f), 617(d), 1245(a), 1250(a), 1251(c), or 1252(a)) shall be taken into account under section 301(c). Thus, in such a case, the amount of such a dividend in kind under section 301(c)(1) may not exceed such adjusted basis. Similarly, in such cases where the distribution is not out of earnings and profits, the amount of the reduction in basis of the shareholder's stock and the amount of any gain resulting from such distribution are determined by reference to the adjusted basis of the property distributed. If the property distributed is money, the amount of the distribution shall be the amount of such money. If the property distributed consists of the obligations of the distributing corporation, or stock of the distributing corporation treated as property under section 305(b), or rights to acquire such stock treated as property under section 305(b), the amount of such distribution shall be an amount equal to the fair market value of such obligations, stock, or rights. For special rules as to distributions by a foreign corporation of property (other than money, the obligations of the distributing corporation, stock of the distributing corporation treated as property under section 305(b), or rights to acquire such stock treated as property under section 305(b)) after December 31, 1962, to a shareholder which is a corporation, see section 301(b)(1)(C) and paragraph (n) of this section.

* * * * *

(h) *Basis.* * * *

(2) * * *

(ii) * * *

(*b*) The adjusted basis (in the hands of the distributing corporation immediately before the distribution) of such property increased in the amount of gain to the distributing corporation which is recognized under section 311(b) (relating to distributions of LIFO inventory), section 311(c) (relating to distributions of property subject to liabilities in excess of basis), section 311(d) (relating to appreciated property used to redeem stock), section 341(f) (relating to certain sales of stock of consenting corporations), section 617(d) (relating to gain from dispositions of certain mining property), section 1245(a) or 1250(a) (relating to gain from dispositions of certain depreciable property), section 1251(c) (relating to gain from disposition of farm recapture property), or section 1252(a) (relating to gain from disposition of farm land);

* * * * *

(j) *Transfers for less than fair market value.* * * *

(1) Where the fair market value of the property equals or exceeds its adjusted basis in the hands of the distributing corporation the amount of the distribution shall be the excess of the adjusted basis (increased by the amount of gain recognized under section 311 (b), (c), or (d), or under section 341(f), 617(d), 1245(a), 1250(a), 1251(c), or 1252(a) to the distributing corporation) over the amount paid for the property;

* * * * *

(n) *Distributions of certain property by foreign corporations to corporate shareholders.* * * *

(2) If any deduction is allowable to the recipient under section 245 with respect to a distribution of property described in subparagraph (1) of this paragraph and if the fair market value of the property exceeds its adjusted basis in the hands of the distributing corporation (increased by any gain to the distributing corporation recognized under section 311 (b), (c), or (d), or under section 341(f), 617(d), 1245(a), 1250(a), 1251(c), or 1252(a)), then the amount taken into account under section 301(c) shall be determined under subparagraph (3) of this paragraph.

In order to determine such amount—

(i) First, compute the portion, if any, of the adjusted basis of the property (increased by any gain to the distributing corporation recognized under section 311 (b), (c), or (d), or under section 341(f), 617(d), 1245(a), 1250(a), 1251(c), or 1252(a)) which is out of earnings and profits of the taxable year (within the meaning of section 316(a)(2)).

(ii) Second, compute the portion, if any, of the adjusted basis of the property (increased by any gain to the distributing corporation recognized under section 311 (b), (c), or (d), or under section 341(f), 617(d), 1245(a), 1250(a), 1251(c), or 1252(a)) which is out of earnings and profits accumulated during the portion of the uninterrupted period described in section 245(a) which ends at the beginning of the taxable year.

(iii) Third, compute the portion, if any, of the adjusted basis of the property (increased by any gain to the distributing corporation recognized under section 311 (b), (c), or (d), or under section 341(f), 617(d), 1245(a), 1250(a), 1251(c), or 1252(a)) which is out of sources other than earnings and profits of the taxable year and earnings and profits accumulated during the uninterrupted period described in section 245(a).

(iv) Fourth, with respect to each of the portions computed under subdivisions (i), (ii), and (iii) of this subparagraph, determine the proportionate part of the fair market value of the property attributable to such portion. The proportionate part of the fair market value attributable to each portion shall be such fair market value multiplied by the ratio which such portion bears to the sum of all portions.

* * * * *

PAR. 3. Sec. 1.311 is amended by revising subsection (a) of, and adding a new subsection (d) to, section 311, and by inserting a historical note. These revised and added provisions read as follows:

§ 1.311 Statutory provisions; taxability of corporation on distribution.

Sec. 311. *Taxability of corporation on distribution*—(a) *General rule.* Except as provided in subsections (b), (c), and (d) of this section and section 453(d), no gain or loss shall be recognized to a corporation on the distribution with respect to its stock, of—

(1) Its stock (or rights to acquire its stock), or

(2) Property.

* * * * *

(d) *Appreciated property used to redeem stock.*

(1) *In general*—If

(A) A corporation distributes property (other than an obligation of such corporation) to a shareholder in a redemption (to which subpart A applies) of part or all of his stock in such corporation, and

(B) The fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then [a]gain [sic] shall be recognized to the distributing corporation in an amount equal to such excess as if the property distributed had been sold at the time of the distribution. Subsections (b) and (c) shall not apply to any distribution to which this subsection applies.

(2) *Exceptions and limitations.* Paragraph (1) shall not apply to—

(A) A distribution in complete redemption of all of the stock of a shareholder who, at all times within the 12-month period ending on the date of such distribution, owns at least 10 percent in value of the outstanding stock of the distributing corporation, but only if the redemption qualifies under section 302(b)(3) (determined without the application of section 302(c)(2)(A)(ii));

(B) A distribution of stock or an obligation of a corporation—

(i) Which is engaged in at least one trade or business,

(ii) Which has not received property constituting a substantial part of its assets from the distributing corporation, in a transaction to which section 351 applied or as a contribution to capital, within the 5-year period ending on the date of the distribution, and

(iii) At least 50 percent in value of the outstanding stock of which is owned by the distributing corporation at any time within the 9-year period ending 1 year before the date of the distribution;

(C) A distribution before December 1, 1974, of stock of a corporation substantially all of the assets of which the distributing corporation (or a corporation which is a member of the same affiliated group (as defined in section 1504(a)) as the distributing corporation) held on November 30, 1969, if such assets constitute a trade or business which has been actively conducted throughout the 1-year period ending on the date of the distribution;

(D) A distribution of stock or securities pursuant to the terms of a final judgment rendered by a court with respect to the distributing corporation in a court proceeding under the Sherman Act (26 Stat. 209; 15 U.S.C. 1–7) or the Clayton Act (38 Stat. 730; 15 U.S.C. 12–27), or both, to which the United States is a party, but only if the distribution of such stock or securities in redemption of the distributing corporation's stock is in furtherance of the purposes of the judgment;

(E) A distribution to the extent that section 303 (a) (relating to distributions in redemption of stock to pay death taxes) applies to such distribution;

(F) A distribution to a private foundation in redemption of stock which is described in section 537(b)(2) (A) and (B); and

(G) A distribution by a corporation to which part I of subchapter M (relating to regulated investment companies) applies, if such distribution is in redemption of its stock upon the demand of the shareholder.

[Sec. 311 as amended by sec. 905 (a) and (b)(1), Tax Reform Act 1969 (83 Stat. 713, 714)]

PAR. 4. Sec. 1.311–1 is amended by revising paragraphs (a), (b), and (d) to read as folows:

§ 1.311–1 General.

(a) Except as provided in subsections (b), (c), and (d) of section 311, section 453(d) (relating to installment obligations) and such other provisions of the Code as sections 341(f), 617(d), 1245(a), 1250(a), 1251(c), and 1252(a), no gain or loss is recognized to a corporation on the distribution, with respect to its stock, of stock, or rights to acquire its stock, or property (regardless of the fact that such property may have appreciated or depreciated in value since its acquisition by the corporation). However, the proceeds of the sale of property in form made by a shareholder receiving such property in kind from the corporation may be imputed to the corporation if, in substance the corporation made the sale. Moreover, where property is distributed by a corporation, which distribution is in effect an anticipatory assignment of income, such income may be taxable to the corporation. The term "distributions with respect to its stock" includes distributions made in redemption of stock (other than distributions in complete or partial liquidations). See, however, paragraph (e) of this section for distributions to which section 311 does not apply. For the rule respecting the taxation of a corporation making a distribution of property in partial or complex liquidation, see section 336.

(b) In any case in which a corporation distributes with respect to its stock assets which have been part of an inventory, the value of which has been computed for income tax purposes under the method provided in section 472 (relating to last-in, first-out inventories), such corporation shall—

(1) Compute the amount of its inventory under the method provided in section 472 immediately prior to the distribution and immediately after such distribution;

(2) Compute the difference between the two amounts described in subparagraph (1) of this paragraph;

(3) Compute the amount of its inventory under the method authorized by section 471 (relating to general rule for inventories) immediately prior to the distribution and immediately after such distribution;

(4) Compute the difference between the two amounts determined under subparagraph (3) of this paragraph.

If the amount computed under subparagraph (4) of this paragraph is in excess of the amount computed under subparagraph (2) of this paragraph, then such excess shall, under section 311(b), be included in the income of the corporation for the year in which such distribution occurs. In any case in which a corporation distributes assets which have been a part of an inventory whose value has been computed for income tax purposes under the method provided in section 472, such corporation shall on the date of distribution record a specific statement of the amount of its inventory under each of the applicable methods for use in the determination of the amount of income includible under section 311. Section 311(b) and this paragraph do not apply to any distribution which is governed by section 311(d)(1).

* * * * *

(d) Section 311(c) provides in general for the inclusion in the income of a corporation, on a distribution of property by such corporation to its shareholders, of an amount equal to the excess of a liability over the basis of the property distributed. Thus, section 311(c) applies where the property distributed is subject to a liability or where the shareholder assumes a liability of the corporation in connection with the distribution. For example, if property which is a capital asset having an adjusted basis to the distributing corporation of $100 and a fair market value of $1,000 (but subject to a liability of $900) is distributed to a shareholder, such distribution is taxable (as long-term or short-term gain, as the case may be) to the corporation to the extent of the excess of the liability ($900) over the adjusted basis ($100) or $800. However, if in the preceding example the fair market value of the property distributed were $800, the amount taxable to the corporation is limited to the excess of the fair market value of the property ($800) over its adjusted basis ($100) or $700. If the property subject to a liability were not a capital asset in the hands of the distributing corporation, the gain would be taxable as gain from the sale of a noncapital asset. The holding period of assets so distributed shall be determined as if such property were sold on the date of the distribution. Section 311(c) and this paragraph do not apply to any distribution which is governed by section 311(d)(1).

* * * * *

PAR. 5. The following new section is added immediately after 1.311–1 to read as follows:

§ 1.311–2 Appreciated property used to redeem stock.

(a) *In general.* (1) Section 311(d)(1) provides, in general, that gain is recognized to a corporation which distributes appreciated property (other than an obligation of such corporation) to its shareholders after November 30, 1969, in a redemption (as defined in section 317(b) of its stock to which subpart A, part I, subchapter C, chapter 1 of the Code applies, regardless of whether the redemption is treated as a distribution of property to which section 301 applies. Paragraphs (b) through (i) of this section contain exceptions and limitations provided by section 311(d)(2) and section 905(c) of the Tax Reform Act of 1969 to the application of section 311(d)

(1). These exceptions and limitations prevent the recognition of gain to a corporation upon a distribution of appreciated property, but do not broaden the general nonrecognition provisions of section 311(a). Thus, for example, if the proceeds of the sale of property in form made by a shareholder, who received such property from a corporation, are imputed to the corporation (see § 1.311–1(a)), the exceptions and limitations of section 311(d)(2) would have no application.

(2) Section 311(d) applies only where there is an actual redemption of stock as a result of the distribution. Thus, section 311(d) does not apply where there is a distribution of appreciated property pro rata among all shareholders and such shareholders do not transfer any of their stock to the distributing corporation in exchange for such property even though the effect of the transaction would have been the same if there had been actual redemptions. Section 311(d) applies where an acquisition of stock by a corporation is treated under section 304 as a distribution in redemption of the stock of either the acquiring or issuing corporation. Section 311(d)(1) does not apply to a distribution in partial or complete liquidation of a corporation (see sections 331 through 346). In general, the section does not apply to a distribution pursuant to a reorganization to which part III or IV of subchapter C applies or to a distribution of stock or securities of a controlled corporation to which section 355 (or so much of section 356 as relates to section 355) applies. However, if the distribution is in substance a redemption, section 311(d) will apply. Thus, if one class of shareholders exchanges preferred stock for a lesser amount of new preferred stock (having similar rights and privileges) and for other property, the transaction will be considered a redemption for purposes of section 311(d) rather than a distribution pursuant to a reorganization to which part III or IV of subchapter C would apply.

(3) For purposes of this section, the term "appreciated property" means any property whose fair market value on the date of distribution exceeds its adjusted basis in the hands of the distributing corporation. For purposes of determining the amount of gain which will be recognized under this section, gain realized from the distribution of appreciated property shall not be offset by any loss realized from the distribution of property whose adjusted basis exceeds its fair market value. The amount and nature of gain recognized to a corporation which distributes appreciated property shall be determined as if such property were sold for its fair market value on the date of distribution. The nature of such gain shall be determined by reference to all applicable provisions of law, including section 1245.

(b) *Complete redemption of a 10-percent shareholder.* (1) Section 311(d)(2)(A) provides that section 311(d)(1) shall not apply to a distribution in complete redemption of all the stock of a "10-percent shareholder," provided such distribution qualifies as a redemption in complete termination of such shareholder's interest under section 302(b)(3). Sales and redemptions of stock which are substantially contemporaneous in time and pursuant to a single plan shall be treated as having occurred simultaneously for purposes of determining whether a complete redemption has occurred and whether the distributee is a "10-percent shareholder". For purposes of this paragraph, section 318(a)(1) shall not apply with respect to a distribution described in section 302(b)(3) where section 302(c)(2)(B) does not apply and where immediately after the distribution the distributee has no interest in the corporation (including an interest as an officer, director, or employee) other than an interest as a creditor.

(2) A "10-percent shareholder," for purposes of this paragraph, is a person who, at all times within the 12-month period ending on the date of distribution, owned [, without regard to section 318 (relating to constructive ownership of stock),] at least 10 percent of the fair market value of all the outstanding stock of the distributing corporation. For purposes of this paragraph, the ownership of stock shall be determined without the application of section 318 (relating to constructive ownership of stock), and where under the provisions of subpart E, part I, subchapter J, of the Code, any person is treated as the owner of any portion of a trust, stock owned by such trust shall not be considered as owned by such person. For purposes of this paragraph, a person shall be considered to have owned stock during the period he is considered to have held the stock by reason of the application of section 1223 but where, under the provisions of subpart E, part I, subchapter J, of the Code, any person is treated as the owner of any portion of a trust, the holding period of such trust for any of its stock shall not include the holding period of such person.

(c) *Distribution of stock of controlled corporation.* (1) Section 311(d)(2)(B) provides that section 311(d)(1) shall not apply to a distribution of stock or an obligation of a controlled corporation—

(i) Which is engaged in at least one trade or business, and

(ii) Which has not received property (including money) constituting a substantial part of its assets from the distributing corporation, in a transaction to which section 351 applied or as a contribution to capital, within the 5-year period ending on the date of distribution.

For purposes of this paragraph, a corporation is a "controlled corporation" if at least 50 percent of the fair market value of its outstanding stock was owned by the distributing corporation at any time within the 9-year period ending 1 year before the date of distribution. A distribution of stock of a controlled corporation does not qualify for treatment under section 311(d)(2)(B) if the trade or business of such corporation was acquired for the purpose of qualifying the distribution for treatment under that section. However, a trade or business which was acquired more than 1 year before the date of distribution will be presumed not to have been acquired for such a purpose. For purposes of this paragraph, the corporation whose stock is distributed will be considered to be engaged in a trade or business if it owns stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of another corporation which has been engaged in the active conduct of a trade or business throughout the 1-year period ending on the date of distribution. The term "active conduct of a trade or business" shall have the same meaning in this paragraph as in paragraph (c) of § 1.355–1.

(2) (i) In determining, for purposes of subparagraph (1)(ii) of this paragraph, whether property received from the distributing corporation within the 5-year period ending on the date of distribution constitutes a substantial part of the controlled corporation's assets, the amount of money received within such period plus the total fair market value (determined on the date of distribution) of the items of property specified in subdivisions (ii), (iii), and (iv) of this subparagraph shall be compared with the total fair market value of all the controlled corporation's assets on the date of distribution.

(ii) Property other than money received from the distributing corporation shall be taken into account, provided it is held or owned by the controlled corporation on the date of distribution.

(iii) If money is transferred from the distributing corporation to the controlled corporation and then is used, pursuant to a plan of the distributing corporation existing at the time of transfer, to acquire property which the controlled corporation holds or owns on the date of distribution, then the acquired property, in lieu of the money transferred, shall be taken into account.

(iv) If property (other than money) received from the distributing corporation (or property acquired pursuant to plan with money received from the distributing corporation) is exchanged for other property in a transaction in which gain or loss is not recognized in whole or in part to the controlled corporation, the property received in the exchange shall be taken into account, provided it is held or owned by the controlled corporation on the date of distribution.

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

Example (1). Corporation M, a toy manufacturer, is a controlled corporation of corporation N. On June 1, 1970, N contributes $200,000 to M's capital. On January 1, 1971, N contributes real estate with a fair market value of $50,000 to M's capital. On February 1, 1975, when N distributes M stock to its shareholders in redemption of its own stock, such real estate, still owned by M, has a fair market value of $100,000. On the date of distribution the total fair market

value of all M's assets is $10 million. The distribution meets the requirements of section 311(d)(2)(B) and therefore no gain is recognized to N under section 311(d)(1).

Example (2). Corporation R is a controlled corporation of corporation S. On April 1, 1970, S contributes $500,000 to R which, pursuant to a plan of S existing at the time of the contribution, R uses to purchase certain securities. On July 1, 1970, S contributes an office building to R. On December 1, 1972, such building is exchanged for another building in a transaction to which section 1031 (relating to exchange of property held for productive use or investment) applies. On February 1, 1975, when S distributes R stock to its shareholders in redemption of its own stock, both the purchased securities and the building received in the exchange are owned by R. On such date, the building and the securities each has a fair market value of $2 million. The total value of contributed property for purposes of subparagraph (1)(ii) of this paragraph is $4 million. On the date of distribution the total fair market value of all R's assets is $8 million. The distribution fails to meet the requirements of section 311(d)(2)(B) since S contributed to R's capital a substantial part of R's assets within the 5-year period ending on the date of distribution.

(d) *Certain distributions made before December 1, 1974.* Section 311(d)(2)(C) provides that section 311(d)(1) shall not apply to a distribution before December 1, 1974, of stock of a corporation substantially all of the assets of which the distributing corporation (or a corporation which is a member of the same affiliated group (as defined in section 1504(a)) as the distributing corporation) held on November 30, 1969, if such assets constitute a trade or business which has been actively conducted throughout the 1-year period ending on the date of distribution. For purposes of this paragraph, the determination that a corporation is a member of the same affiliated group (as defined in section 1504(a)) as the distributing corporation must be satisfied only on November 30, 1969, and not on the date of the distribution to which this paragraph applies. Thus, if the assets of a trade or business were held on November 30, 1969, by any member of the affiliated group and such trade or business has been actively conducted throughout the 1-year period ending on the date of distribution, section 311(d)(1) will not apply to a distribution of stock of any member of the affiliated group substantially all the assets of which consists of either (1) the assets so held on November 30, 1969, (2) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of another corporation substantially all the assets of which consist of the assets so held on November 30, 1969, or (3) both. The term "active conduct of a trade or business" shall have the same meaning in this paragraph as in paragraph (c) of § 1.355-1.

(e) *Distributions pursuant to antitrust judgments.* Section 311(d)(2)(D) provides that section 311(d)(1) shall not apply to a distribution of stock or securities pursuant to the terms of a final judgment rendered by a court with respect to the distributing corporation in a court proceeding under the Sherman Act (26 Stat. 209; 15 U.S.C. 1–7) or the Clayton Act (38 Stat. 730; 15 U.S.C. 12–27), or both, to which the United States is a party, but only if the distribution of such stock or securities in redemption of the distributing corporation's stock is in furtherance of the purposes of the judgment. A distribution in redemption of the distributing corporation's stock will be considered in furtherance of the purposes of the judgment if the court finds that such distribution is necessary or appropriate to effectuate the policies of the Sherman Act, or the Clayton Act, or both. Absent such a finding by the court, it is a question of fact in each case whether the distribution is in furtherance of the purposes of the judgment.

(f) *Distributions in redemption of stock to pay death taxes.* Section 311(d)(2)(E) provides that section 311(d)(1) shall not apply to a distribution to the extent that section 303(a) (relating to distributions in redemption of stock to pay death taxes) applies to such distribution. If a corporation distributes both appreciated property and other property in a single distribution and if the total distribution exceeds the amount which qualifies for treatment under section 303, then for purposes of applying section 311(d)(2)(E) and this paragraph, the appreciated property shall be considered as distributed before such other property and to be in redemption of stock described in section 303(a) to the extent thereof.

(g) *Distributions to private foundations.* Section 311(d)(2)(F) provides that section 311(d)(1) shall not apply to a distribution to a private foundation (as defined in section 509) in redemption of stock described in section 537(b)(2)(A) and (B) and the regulations thereunder. If a coporation distributes to a private foundation both appreciated property and other property in a single distribution and if the total distribution exceeds the amount which qualifies for treatment under section 537(b)(2)(A) and (B), then for purposes of applying section 311(d)(2)(F) and this paragraph, the appreciated property shall be considered as distributed before such other property and to be in redemption of stock described in section 537(b)(2)(A) and (B), to the extent thereof.

(h) *Distribution by regulated investment company.* Section 311(d)(2)(G) provides that section 311(d)(1) shall not apply to a distribution by a corporation to which part I, subchapter M, chapter 1 of the Code (relating to regulated investment companies) applies, provided such distribution is in redemption of a redeemable security (as defined in section 2(a)(32) of the Investment Company Act of 1940 (54 Stat. 790; 15 U.S.C. 80a-2(a)(32))).

(i) *Transitional Rules.* Section 311(d) does not apply to—

(1) A distribution before April 1, 1970, pursuant to the terms of—

(i) A written contract which was binding on the distributing corporation on November 30, 1969, and at all times thereafter before the distribution,

(ii) An offer made by the distributing corporation before December 1, 1969,

(iii) An offer made in accordance with a request for a ruling filed by the distributing corporation with the Internal Revenue Service before December 1, 1969, or

(iv) An offer made in accordance with a registration statement filed with the Securities and Exchange Commission before December 1, 1969.

For purposes of subdivisions (ii), (iii), and (iv) of this subparagraph, an offer shall be treated as an offer only if it was in writing and not revocable by its express terms.

(2) A distribution by a corporation of specific property in redemption of stock outstanding on November 30, 1969, if—

(i) Every holder of such stock on such date had the right to demand redemption of his stock in such specific property, and

(ii) The corporation had such specific property on hand on such date in a quantity sufficient to redeem all of such stock.

For purposes of the preceding sentence, stock shall be considered to have been outstanding on November 30, 1969, if it could have been acquired on such date through the exercise of an existing right of conversion contained in other stock held on such date.

(3) A distribution by a corporation of property (held on December 1, 1969, by the distributing corporation or a corporation which was a wholly owned subsidiary of the distributing corporation on such date) in redemption of stock outstanding on November 30, 1969, which is redeemed and canceled before July 31, 1971, if—

(i) Such redemption is pursuant to a resolution adopted before November 1, 1969, by the Board of Directors authorizing the redemption of a specific amount of stock constituting more than 10 percent of the outstanding stock of the corporation at the time of the adoption of such resolution; and

(ii) More than 40 percent of the stock authorized to be redeemed pursuant to such resolution was redeemed before December 30, 1969, and more than one-half of the stock so redeemed was redeemed with property other than money.

(4) A distribution of stock by a corporation organized prior to December 1, 1969, for the principal purpose of providing an equity participation plan for employees of the corporation whose stock is being distributed (hereinafter referred to as the "employer corporation") if—

(i) The stock being distributed was owned by the distributing corporation on November 30, 1969,

(ii) The stock being redeemed was acquired before January 1, 1973, pursuant to such equity participation plan by the shareholder presenting such stock for redemption (or by a predecessor of such shareholder),

(iii) The employment of the shareholder presenting the stock for redemption (or the predecessor of such shareholder) by the employer corporation commenced before January 1, 1971,

(iv) At least 90 percent in value of the assets of the distributing corporation on November 30, 1969, consisted of common stock of the employer corporation, and

(v) At least 50 percent of the outstanding voting stock of the employer corporation is owned by the distributing corporation at any time within the 9-year period ending 1 year before the date of such distribution.

PAR. 6. Section 1.312 is amended by revising section 312(c)(3) and the historical note to read as follows:

§ 1.312 Statutory provisions; effect on earnings and profits.

SEC. 312. *Effect on earnings and profits.* * * *

(c) *Adjustment for liabilities, etc.* * * *

(3) Any gain to the corporation recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), section 1245(a), 1250(a), 1251(c), or 1252(a).

* * * * *

(Sec. 312 as amended by sec. 13(f)(3), Rev. Act 1962 (76 Stat. 1035); sec. 231(b)(3), Rev. Act 1964 (78 Stat. 105); sec. 1(b)(1), Act of Aug. 22, 1964 (Public Law 88-484, 78 Stat. 597); sec. 1(b)(3), Act of Sept. 12, 1966 (Public Law 89-570, 80 Stat. 762); secs. 211(b)(3) and 905(b)(2), Tax Reform Act 1969 (83 Stat. 570, 714))

PAR. 7. Section 1.312-3 is amended to read as follows:

§ 1.312-3 Liabilities.

The amount of any reductions in earnings and profits described in section 312 (a) or (b) shall be (a) reduced by the amount of any liability to which the property distributed was subject and by the amount of any other liability of the corporation assumed by the shareholder in connection with such distribution, and (b) increased by the amount of gain recognized to the corporation under section 311 (b), (c), or (d), or under section 341(f), 617(d), 1245(a), 1250(a), 1251(c), or 1252(a).

[FR Doc.72-16831 Filed 10-3-72;8:45 am]

Title 7—AGRICULTURE

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

[Docket Nos. AO-225-A25, AO-247-A18; Milk Orders 40, 43]

PART 1040—MILK IN SOUTHERN MICHIGAN MARKETING AREAS

PART 1043—MILK IN UPSTATE MICHIGAN MARKETING AREA

Order Amending Orders

Findings and determinations. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

The following findings and determinations are hereby made with respect to each of the aforesaid orders:

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the respective marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than October 1, 1972. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The recommended decision of the Deputy Administrator, regulatory programs, was issued August 29, 1972, and the decision of the Assistant Secretary containing all amendment provisions of this order was issued September 15, 1972. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective October 1, 1972, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the FEDERAL REGISTER. (Sec. 553(d), Administrative Procedure Act 5 U.S.C. 551-559)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Southern Michigan and Upstate Michigan marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the aforesaid orders, as amended, and as hereby further amended, as follows:

I. In Part 1040—Southern Michigan:

1. Revise § 1040.10 to read as follows:

§ 1040.10 Producer milk.

"Producer milk" means all skim milk and butterfat contained in milk:

(a) Received from producers at a pool plant or by a cooperative association in its capacity as a handler pursuant to § 1040.7(c); and

(b) Diverted to a nonpool plant by the operator of a pool plant or a cooperative association as a handler pursuant to § 1040.7(d) subject to the following conditions:

(1) In any month that less than 6 days' production of a producer is delivered to pool plants the quantity of milk of the producer diverted during the month shall not be producer milk.

(2) In any month of October through March, the quantity of milk of any producer diverted to nonpool plants that exceeds the quantity of such producer's milk physically received at pool plants, as measured by days of production, shall not be producer milk. The days of production last diverted, which exceed the days of production received at pool plants shall not be producer milk.

(3) Milk which is subject to pooling under another Federal order, shall not be producer milk.

II. In Part 1043—Upstate Michigan:

Revise § 1043.11 to read as follows:

§ 1043.11 Producer.

"Producer" means any qualified dairy farmer whose milk is:

(a) Received directly from the farm at a pool plant; or

(b) Diverted from a pool plant to a nonpool plant for the account of a handler or cooperative association, subject to the following conditions:

(1) In any month that less than 6 days' production of a producer is delivered to pool plants the quantity of milk of the producer diverted during the month shall not be producer milk.

(2) In any month of October through March, the quantity of milk of any producer diverted to nonpool plants that exceeds the quantity of such producer's milk physically received at pool plants, as measured by days of production, shall not be producer milk. The days of production last diverted, which exceed the days of production received at pool plants shall not be producer milk.

(3) Milk which is subject to pooling under another Federal order, shall not be producer milk.

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

Effective date: October 1, 1972.

Signed at Washington, D.C., on September 28, 1972.

RICHARD E. LYNG,
Assistant Secretary.

[FR Doc.72-16878 Filed 10-3-72;8:48 am]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

[Docket No. 72-560]

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:

1. In § 76.2, in paragraph (e) (7) relating to the State of Kentucky, subdivision (i) relating to Breckinridge and Hardin Counties is amended to read:

(7) *Kentucky.* (i) The adjacent portions of Breckinridge, Hardin, and Meade Counties comprised of all of the city of Garfield in Breckinridge County and the adjacent portions of Breckinridge, Hardin and Meade Counties bounded by a line beginning at the junction of U.S. Highway 60 and State Highway 333 in Breckinridge County; thence, following U.S. Highway 60 in a generally southwesterly direction to the eastern boundary of the city of Garfield; thence, following the eastern boundary of the city of Garfield in a southerly direction to Locust Hill Road; thence, following Locust Hill Road in a southeasterly, then southwesterly direction to State Highway 1073; thence, following State Highway 1073 in a southeasterly direction to Fairfield Road; thence, following Fairfield Road in a southeasterly direction to State Highway 690; thence, following State Highway 690 in a northeasterly direction to Constantine Road; thence, following Constantine Road in a generally easterly direction to State Highway 401; thence, following State Highway 401 in a northeasterly direction to State Highway 86; thence, following State Highway 86 in a northeasterly direction to Grandview Church Road in Hardin County; thence, following Grandview Church Road in a northeasterly direction to State Highway 1073 in Breckinridge County; thence, following State Highway 1073 in a northeasterly direction to the junction of the Breckinridge-Hardin-Meade County lines; thence, following the Meade-Hardin County line in a northeasterly direction to State Highway 64 in Meade County; thence, following State Highway 64 in a northwesterly direction to State Highway 448; thence, following State Highway 448 in a northwesterly direction to State Highway 64; thence, following State Highway 64 in a generally northwesterly direction to State Highway 448; thence, following State Highway 448 in a southwesterly direction to the Meade-Breckinridge County line; thence, following the Meade-Breckinridge County line in a southeasterly direction to State Highway 1238 in Breckinridge County; thence, following State Highway 1238 in a southwesterly direction to State Highway 333; thence, following State Highway 333 in a southwesterly, then northwesterly direction to its junction with U.S. Highway 60.

2. In § 76.2, in paragraph (e) (12) relating to the State of Tennessee, a new subdivision (iii) relating to Knox County is added to read:

(iii) That portion of Knox County bounded by a line beginning at the junction of the Knox-Anderson County line and U.S. Highway 25W, State Highway 9; thence, following U.S. Highway 25W, State Highway 9 in a generally southeasterly direction to State Highway 33; thence, following State Highway 33 in a southerly, then southeasterly direction to the north bank of the Tennessee River; thence, following the north bank of the Tennessee River in a generally southwesterly direction to the north bank of the Fort Loudoun Lake; thence, following the north bank of the Fort Loudoun Lake in a generally northwesterly direction to Secondary Road 2405; thence, following Secondary Road 2405 in a northeasterly, then northwesterly direction to Lovell Road; thence, following Lovell Road in a northwesterly direction to Secondary Road 2519; thence, following Secondary Road 2519 in a northwesterly direction to the Knox-Anderson County line; thence, following the Knox-Anderson County line in a southeasterly, then northeasterly direction to its junction with U.S. Highway 25W, State Highway 9.

3. In § 76.2, in paragraph (e) (9) relating to the State of Indiana, subdivision (iii) relating to Carroll County is amended to read:

(iii) That portion of Carroll County bounded by a line beginning at the junction of the Carroll-Tippecanoe County line and the east bank of the Wabash River; thence, following the east bank of the Wabash River in a generally northeasterly direction to the Carroll-Cass County line; thence, following the Carroll-Cass County line in a southerly, then easterly, then southerly direction to the junction of the Carroll-Cass-Howard County lines; thence, following the Carroll-Howard County line in a southerly direction to Division Road; thence, following Division Road in a westerly direction to State Highway 18; thence, following State Highway 18 in a westerly direction to Division Road; thence, following Division Road in a westerly direction to the Carroll-Tippecanoe County line; thence, following the Carroll-Tippecanoe County line in a northerly direction to its junction with the east bank of the Wabash River.

4. In § 76.2, paragraph (e) (4) relating to the State of Texas is deleted.

(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; 37 F.R. 6327, 6505)

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

The amendments quarantine a portion of Meade County in Kentucky, a portion of Knox County in Tennessee, and an additional portion of Carroll County in Indiana 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 areas.

The amendments exclude all of Nueces and a portion of Parker Counties in Texas from the areas quarantined because of hog cholera. Therefore, the restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas contained in 9 CFR Part 76, as amended, do not apply to the excluded areas, but will continue to apply to the quarantined areas described in § 76.2(e). Further, the restrictions pertaining to the interstate movement of swine and swine products from nonquarantined areas contained in said Part 76 apply to the excluded areas. No areas in Texas remain under quarantine.

Insofar as the amendments impose certain further restrictions necessary to prevent the interstate spread of hog cholera, they must be made effective immediately to accomplish their purpose

in the public interest. Insofar as the amendments relieve restrictions presently imposed but no longer deemed necessary to prevent the spread of hog cholera, they 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 the 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 amendments are impracticable, unnecessary and contrary to the public interest, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 28th day of September 1972.

G. H. WISE,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc.72-16880 Filed 10-3-72;8:48 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 72-EA-78]

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

Alteration of Transition Area

On page 15384 of the FEDERAL REGISTER for August 1, 1972 the Federal Aviation Administration published a proposed rule which would alter the Ocean City, Md., Transition Area (37 F.R. 2254).

Interested parties were given 30 days after publication in which to submit written data or views. No objections to the proposed regulations have been received.

In view of the foregoing, the proposed regulation is hereby adopted, effective 0901 G.m.t., December 7, 1972.

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749; 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y., on September 20, 1972.

CLAY W. HEDGES,
Acting Director, Eastern Region.

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Ocean City, Md., 700-foot floor transition area and insert the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the center 38°18'35" N., 75°07'09" W. of Ocean City Airport, Ocean City, Md.; within 2.5 miles each side of the Snow Hill, Md., VORTAC 047° radial, extending from the 5-mile radius area to 18.5 miles northeast of the VORTAC and within 2.5 miles each side of the Salisbury, Md., VORTAC 097° radial, extending from the 5-mile radius area to 15.5 miles east of the VORTAC, excluding the portion outside the United States.

[FR Doc.72-16896 Filed 10-3-72;8:49 am]

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

Alteration of Control Zone and Transition Area

On page 15385 of the FEDERAL REGISTER for August 1, 1972, the Federal Aviation Administration published proposed regulations which would alter the Salisbury, Md., control zone (37 F.R. 2126) and transition area (37 F.R. 2278).

Interested parties were given 30 days after publication in which to submit written data or views. No objections to the proposed regulations have been received.

In view of the foregoing, the proposed regulations are hereby adopted, effective 0901 G.m.t., December 7, 1972.

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749; 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y., on September 20, 1972.

CLAY W. HEDGES,
Acting Director, Eastern Region.

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Salisbury, Md., control zone and insert the following in lieu thereof:

Within a 5-mile radius of the center, 38°20'21" N., 75°30'41" W. of Salisbury-Wicomico County Airport, Salisbury, Md.; within 3.5 miles each side of the Salisbury VORTAC 209° radial, extending from the 5-mile radius zone to 10.5 miles southwest of the VORTAC; within 3.5 miles each side of the Salisbury VORTAC 052° radial, extending from the 5-mile radius zone to 9.5 miles northeast of the VORTAC and within 3.5 miles each side of the Salisbury VORTAC 132° radial, extending from the 5-mile radius zone to 10.5 miles southeast of the VORTAC.

2. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Salisbury, Md., 700-foot floor transition area and insert the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the center, 38°20'21" N., 75°30'41" W., of Salisbury-Wicomico County Airport, Salisbury, Md.; within 3.5 miles each side of the Salisbury VORTAC 209° radial, extending from the 6.5-mile radius area to 11.5 miles southwest of the VORTAC; within 3.5 miles each side of the Salisbury VORTAC 052° radial, extending from the 6.5-mile radius area to 11 miles northeast of the VORTAC; and within 3.5 miles each side of the Salisbury VORTAC 132° radial, extending from the 6.5-mile radius area to 11.5 miles southeast of the VORTAC.

[FR Doc.72-16897 Filed 10-3-72;8:50 am]

[Airspace Docket No. 72-RM-21]

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

Designation and Revocation of Transition Areas

On August 8, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 15936) stating that the Federal Aviation Administration was considering amendments to Part 71 of the Federal Aviation Regulations that would revoke the Carbondale, Colo., transition area and designate the Aspen, Colo., transition area.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections. No objections have been received.

Subsequent to publication of the notice of proposed rule making, it was determined that minor changes are required for two of the geographical coordinates used to describe the proposed Aspen, Colo., transition area. Also, the words "latitude" and "longitude" were inadvertently omitted from this proposed description. Accordingly, action is taken herein to correct these errors.

In consideration of the foregoing, § 71.181 of Part 71 of the Federal Aviation Regulations is amended effective 0901 G.m.t., December 7, 1972, as hereafter set forth:

In § 71.181 (37 F.R. 2143) the Carbondale, Colo., transition area is deleted.

In § 71.181 (37 F.R. 2143) the following transition area is added:

ASPEN, COLO.

That airspace extending upward from 1,200 feet above the surface within the area bounded by a line beginning at latitude 39°41'00" N., longitude 107°12'30" W., to latitude 39°31'30" N., longitude 107°25'00" W., to latitude 39°17'30" N., longitude 107°09'00" W., to latitude 39°10'24" N., longitude 106°56'04" W.; thence clockwise via a 5-mile arc from the Aspen-Pitkin County Airport (latitude 39°13'30" N., longitude 106°52'09" W.) to latitude 39°16'-33" N., longitude 106°48'12" W., to latitude 39°27'30" N., longitude 107°01'00" W. to point of beginning.

(Sec. 307(a), Federal Aviation Act of 1958, as amended, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Aurora, Colo., on September 25, 1972.

I. H. HOOVER,
Acting Director, Rocky Mountain Region.

[FR Doc.72-16898 Filed 10-3-72;8:50 am]

[Airspace Docket No. 71-SO-75]

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

Designation of Additional Control Area

On July 27, 1972, a notice of proposed rule making (NPRM) was published in

the FEDERAL REGISTER (37 F.R. 15003) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would add a control area east of the Florida Peninsula.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., December 7, 1972, as hereinafter set forth.

Section 71.163 (37 F.R. 2048) is amended by adding:

CONTROL 1489

That airspace extending upward from 2,000 feet MSL, bounded on the south by latitude 27°00'00" N., on the east-northeast by Control 1151 and on the west-northwest by Control 1150.

(Secs. 307(a), 1110, Federal Aviation Act of 1958, 49 U.S.C. 1348(a) and 1510; Executive Order 10854, 24 F.R. 9565; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on September 27, 1972.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.72-16899 Filed 10-3-72;8:50 am]

[Airspace Docket No. 72-SW-18]

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

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Alteration of Jet Route Segments

On June 3, 1972, a notice of proposed rule making (NPRM) was published in the FEDERAL REGISTER (37 F.R. 11189) stating that the Federal Aviation Administration (FAA) was considering alterations to segments of Jet Routes Nos. 22, 29, 37, and 138.

Shorter routes and greater operational flexibility should result from the alterations involved.

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

In consideration of the foregoing, Parts 71 and 75 of the Federal Aviation Regulations are amended, effective 0901 G.m.t., December 7, 1972, as hereinafter set forth.

1. Section 75.100 (37 F.R. 2382) is amended as follows:

a. In Jet Route No. 22 delete "INT of the Corpus Christi 049° and the Houston Tex., 226° radials; Houston;" and substitute "Palacios, Tex.;" therefor.

b. In Jet Route No. 29 delete "INT of the Corpus Christi 049° and the Houston, Tex., 226° radials; Houston; INT of Houston 348° and Lufkin, Tex., 204° radials; Lufkin;" and substitute "Palacios, Tex.; Humble, Tex.; Lufkin, Tex.; therefor.

c. In Jet Route No. 37 heading and text delete "(New Orleans, La., to United States/Canadian border). From New Orleans, La., via" and substitute "Houston, Tex., to United States/Canadian border). From Houston, Tex., via INT of the Houston 090° and New Orleans, La., 257° radials; New Orleans;" therefor.

d. Jet Route No. 138 is changed to read "Jet Route No. 138 (Fort Stockton, Tex., to Lake Charles, La.). From Fort Stockton, Tex.; San Antonio, Tex.; Houston, Tex.; to Lake Charles, La."

2. Section 71.161 (37 F.R. 2047) is amended by adding the following:

Jet Route No. 37 from Houston, Tex., to INT of Houston 090° and New Orleans, La., 257° radials.

(Secs. 307(a), 1110, Federal Aviation Act of 1958, 49 U.S.C. 1348(a) and 1510; Executive Order 10854, 24 F.R. 9565; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on September 27, 1972.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.72-16900 Filed 10-3-72;8:50 am]

Chapter II—Civil Aeronautics Board

[Reg. ER-756; Amdt. 3]

CHANGE OF TITLE OF HEARING EXAMINER TO ADMINISTRATIVE LAW JUDGE

Correction

In F.R. Doc. 72-15846 appearing at page 18908 of the issue for Saturday, September 16, 1972, the third paragraph is corrected to read as follows: "Appropriate changes in Chapter II, including a specific change in Part 384, Statement of Organization, Delegation of Authority, and Availability of Records and Information,[3] are being made."

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-768, Amdt. 212-8]

PART 212—CHARTER TRIPS BY FOREIGN AIR CARRIERS

Substitution of "Passenger List" for "Passenger Manifest"

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 28th day of September 1972.

In EDR-183/PSDR-24, dated May 8, 1970, the Board proposed comprehensive amendments of the charter regulations, and took the occasion to make other changes, including the substitution of the term "passenger list" for "passenger manifest." The Board explained that "manifest" is a technical term not accurately applicable to the passenger lists referred to in our charter regulations, and its use could thus result in confusion to the public.[1] Since, by inadvertence, the term "passenger manifest" continues to appear in § 212.7(a)(1) and in other parts of our regulations, we are now substituting the term "passenger list" therefor, for the above-stated reason.[2]

This regulation is issued by the undersigned pursuant to a delegation of authority from the Board to the General Counsel in 14 CFR 385.19, and shall become effective on October 24, 1972. Procedures for review of this amendment by the Board are set forth in Subpart C of Part 385 (14 CFR 385.50 and 385.54).

Accordingly, the Board hereby amends Part 212 of the Economic Regulations (14 CFR Part 212) effective October 24, 1972, as follows:

1. Amend § 212.7(a)(1) to read as follows:

§ 212.7 Records and record retention.

(a) Each foreign air carrier * * *

(1) True copies of all passenger lists, air waybills, invoices, and other traffic documents covering off-route charter trips performed under a statement of authorization.

* * * * *

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324.)

By the Civil Aeronautics Board.

[SEAL] R. TENNEY JOHNSON,
General Counsel.

[FR Doc.72-16954 Filed 10-3-72;8:55 am]

[Reg. ER-769; Amdt. 214-11]

PART 214—TERMS, CONDITIONS, AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS AUTHORIZING CHARTER TRANSPORTATION ONLY

Substitution of "Passenger List" for "Passenger Manifest"

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 28th day of September 1972.

For the reasons set forth in ER-768 (Part 212), published contemporaneously herewith, the Board is amending Part 214 of the Economic Regulations by substituting the term "passenger list" for the term "passenger manifest."[3]

This regulation is issued by the undersigned pursuant to a delegation of authority from the Board to the General Counsel in 14 CFR 385.19, and shall become effective on October 24, 1972. Procedures for review of this amendment by the Board are set forth in Subpart C of Part 385 (14 CFR 385.50 and 385.54).

Accordingly, the Board hereby amends Part 214 of the Economic Regulations (14 CFR Part 214) effective October 24, 1972, as follows:

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[1] Footnote 5, page 10 (mimeo.), 35 F.R. 7587, May 15, 1970.

[2] Similar changes are being made in Parts 214 and 249 by ER-769 and ER-770, respectively, which are being issued contemporaneously herewith.

[3] A similar amendment is also being made in Part 249 by ER-770, published contemporaneously herewith.

1. Amend § 214.6(a)(2) to read as follows:

§ 214.6 Record retention.

(a) * * *

(2) All passenger lists including those filed by charterers: 2 years; and

* * * * *

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324)

By the Civil Aeronautics Board.

[SEAL] R. TENNEY JOHNSON, *General Counsel.*

[FR Doc.72-16955 Filed 10-3-72;8:55 am]

[Reg. ER-770; Amdt. 249-21]

PART 249—PRESERVATION OF AIR CARRIER ACCOUNTS, RECORDS, AND MEMORANDA

Substitution of "Passenger List" for "Passenger Manifest"

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 28th day of September 1972.

For the reasons set forth in ER-768 (Part 212), published contemporaneously herewith, the Board is amending Part 249 of the Economic Regulations by substituting the term "passenger list" for the term "passenger manifest." [1]

This regulation is issued by the undersigned pursuant to a delegation of authority from the Board to the General Counsel in 14 CFR 385.19, and shall become effective on October 24, 1972. Procedures for review of this amendment by the Board are set forth in Subpart C of Part 385 (14 CFR 385.50 and 385.54).

Accordingly, the Board hereby amends Part 249 of the Economic Regulations (14 CFR Part 249) effective October 24, 1972, as follows:

1. Amend § 249.8 to read in part as follows:

§ 249.8 Period of preservation of records by supplemental air carriers.

* * * * *

Category of records	*Period to be retained*
* * * * *	
13. * * *	
(b) All passenger lists, including those filed by charterers.	6 months.
* * * * *	

2. Amend § 249.12(c) to read in part as follows:

§ 249.12 Period of preservation of records by foreign air carriers.

* * * * *

(c) * * *

(1) True copies of all passenger lists, air waybills, invoices, and other traffic documents covering off-route charter trips performed under a statement of authorization: 2 years;

* * * * *

3. Amend § 249.13(e)(2) to read as follows:

§ 249.13 Period of preservation of records by certificated route air carriers.

* * * * *

(e) * * *

(2) All basic original documents, such as pilots' flight logs, aircraft weight and balance reports, and passenger lists, which are relevant to a determination of the validity of the carrier's operational records described in subparagraph (1) of this paragraph.

* * * * *

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324)

By the Civil Aeronautics Board.

[SEAL] R. TENNEY JOHNSON, *General Counsel.*

[FR Doc.72-16956 Filed 10-3-72;8:55 am]

SUBCHAPTER D—SPECIAL REGULATIONS

[Reg. SPR-61]

PART 372a—TRAVEL GROUP CHARTERS

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 27th day of September 1972.

By advance notice of proposed rule making SPDR-22, January 29, 1971,[1] the Board gave notice that it was considering proposal of a rule to establish a new category of charter tentatively denominated as "Non-Affinity Charter." The Board stated that the new class of charter was intended to be applicable to all direct air carriers and foreign air carriers, as an additional alternative to the kinds of affinity charters presently authorized under Parts 207, 208, 212, and 214 of the Economic Regulations and to inclusive tour charters under Part 378.

The proposal stemmed from two principal factors: (1) The Board's growing concern that our existing rules, limiting charter travel to groups having a "prior affinity," tended to discriminate against members of the public who did not belong to qualified organizations with a membership large enough to successfully mount a charter program; and (2) the fact that our existing rules had proven to be extremely difficult to enforce. We recognized that these two factors are closely interrelated, in that the operators of illegal charters have been satisfying an ever increasing demand for low-cost charter travel by members of the public who simply do not share the kind of "affinity" required by our existing rules. We therefore tentatively concluded that it would be desirable to authorize travel charters for groups which, while having no "prior affinity" based on nontransportation considerations, could nonetheless have a true affinity arising solely from the special terms and conditions governing their transportation arrangements. The tentatively suggested features of the proposed new type of charter rule would thus have enabled any group of 50 or more persons to form a charter group at least 6 months prior to flight departure, if each member paid by that time a nonrefundable deposit equal to not less than 25 percent of the transportation charges.

Responses received included those from trunkline carriers, several foreign scheduled carriers, supplemental carriers, the travel agency industry, consumer oriented groups, and airline employee unions.

The scheduled carriers opposed the proposed charter concept, claiming that such charters would cause substantial diversion of traffic from the scheduled services. In addition, they argued that the proposed charters could not be established because they would violate the provisions of the Act. The supplemental carriers supported the charter proposal and contended that the markets for scheduled and supplemental traffic were separate and distinct, and therefore the scheduled carriers would suffer no diversion from such new charters. The vast majority of the travel agency industry supported the basic concept of the proposed new-charter rule, while objecting to the proposed prohibition against commissions payable by direct air carriers and requesting that the business of forming eligible groups thereunder be limited to recognized travel agents. Consumer groups also voiced support for the proposal, on the basis of the need for low-cost charter travel, while cautioning against the prescription of conditions which might restrict the free availability of these charters to the general public. Unions representing employees of the scheduled carriers argued, in opposition to the proposal, that the new type of charter would divert susbtantial traffic from the scheduled services, and ultimately force the scheduled carriers to reduce employment.

By notice of proposed rule making EDR-218/SPDR-22A [2] (hereafter referred to as EDR-218), dated December 30, 1971, the Board proposed, and submitted for public comment, a charter rule along the lines set forth in the advance notice. The principal features of the proposed rule, reflecting our basic concept, made it clear that we contemplated the formation of groups whose members would engage in a joint undertaking to charter all, or part of, an aircraft for their own transportation, solely on a round-trip basis, sharing equally in the cost of transportation and assuming a mutual limited responsibility for one another's defaults. The newly authorized class of travel groups was to be formed by charter organizers, who would act as agents for the passengers, rather than on behalf of the direct air carrier. These organizers, in turn, would be classified as indirect air carriers; as such, their authority to operate under the proposed

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[1] A similar amendment is also being made in Part 214 by ER-769, published contemporaneously herewith.

[1] 36 F.R. 2514, Feb. 5, 1971.

[2] 37 F.R. 222, January 7, 1972.

rule would be conditioned upon their compliance with requirements designed for the protection of the traveling public whose agents they would become. Thus, the Board proposed amendments to Parts 207,[3] 308,[4] 212,[5] and 214,[6] of its economic regulations, and the adoption of a new Part 372a of its special regulations, establishing a new class of charter to be called "Travel Group Charter."

Pursuant to the notice of rule making a large number of comments on the proposals have been filed.[7] Subsequently, pursuant to supplemental notice of proposed rule making and notice of oral argument[8] the Board heard oral argument on April 27, 1972, with respect to the proposals in EDR–218 as well as on the additional issue whether this new class of Travel Group Charters should be a substitute for, rather than an alternative to, the presently authorized affinity charters.

Upon consideration, we find that the facts which led us to propose the rule compel us to adopt it—namely, that there is an irresistible and understandable public demand for low-cost air transportation, much of it on charter services; that this demand has heretofore been met all too often by flouting existing charter rules; and that it is therefore in the public interest to promulgate new rules which will enable the consumers' needs to be satisfied in a lawful manner. For the reasons hereinafter set forth, the Board has therefore determined to adopt the rules as proposed, but with the following principal modifications: (1) The proposed minimum 6 month lead time for filing charter contracts with the Board is being reduced to 3 months; (2) we are adding a minimum-stay requirement of 7 days for North American charters (as defined herein),[9] and 10 days for all other charters; (3) the proposed minimum group size of 50 is being reduced to 40; (4) travel group charters originating in a foreign country may be organized by foreign charter organizers, over whom the Board will decline to exercise its jurisdiction, but we will require the direct air carrier (United States or foreign) to ascertain that a travel group charter so formed complies with applicable rules (see § 372a.40, infra); (5) a foreign charter organizer may conduct a U.S.-originated charter if his section 402 permit contains such authority; (6) if the charter includes land accommodations, tour conductors may accompany the group, with the cost of their air transportation to be borne pro rata by the charter participants, but the number of tour conductors must be specified in the contract and may not exceed one for each 40 participants; (7) the proposed nonrefundability of the 25-percent deposit has been modified to permit refunds in case of death or illness of a charter participant, but only until the "tentative adjusted price" is computed (no later than 45 days before the date of scheduled flight departure), after which time no payments are refundable to defaulting participants; (8) the organizer may file either a prescribed surety bond alone, or utilize the combined surety bond-depository agreement arrangement which was provided for in our proposed rule; (9) although the travel group charter must be on a round-trip basis, the outgoing and incoming legs may be performed by different direct air carriers, so long as all the air transportation for the charter group is covered by a single charter contract; and (10) there will be no prohibition against advertising the charters to the public at large. Also, in order to emphasize the experimental nature of the within TGC rules, we are explicitly providing that the part shall terminate on December 31, 1975. Thus, if the TGC rules are to become permanent, further regulatory action will have to be taken in light of our study of the experiment. Such study will be based, at least in part, on our evaluation of data disclosed in carriers' reports filed under Parts 217 and 241, as amended contemporaneously herewith. Except as modified herein, the tentative findings and conclusions set forth in EDR–218 are incorporated and made final.

We are not here determining the issue whether travel group charters should replace existing affinity charters; however, making proceeding to consider whether the affinity charter rules should remain in effect during the pendency of the travel group charter experiment. Also, since none of the comments filed in this proceeding included draft standard forms for the charter contract and the contract between the charter organizer and the charter participants, as the Board requested in EDR–218, we have been unable to adopt herein a standard form for either contract; however, we continue to believe that a standard form for both contracts—or at least for certain basic provisions which both contracts should contain—is feasible and desirable, and we therefore expect to institute in due course a rule making proceeding directed specifically toward adoption of such standard forms. Until such standard forms are adopted, it must be anticipated that considerable delay may be entailed by our staff's duty to review the varying relevant provisions of each filed contract. Our developing experience with this expected regulatory problem in administering the new rules will thus determine how urgent will be the need to prescribe standardized "boilerplate," to the maximum feasible extent.

I. *Legality of the Travel Group Charters ("TGC").*—In the notice the Board tentatively concluded that travel group charters would be lawful charters under the Act. Acknowledging the legal requirement that charter service must be distinguishable from individually ticketed service, we then proceeded to explain, that, in our view, this distinction would be maintained by the requirements which were to characterize this new class of charters:[10] (1) the TGC participant becomes a party to the charter contract itself, bearing a pro rata share of the total cost of the charter and incurring a limited risk of increased transportation costs resulting from defaults by his fellow participants, whereas the individually ticketed passenger pays a fixed price;[11] (2) the TGC participant assumes the considerable risk of flight cancellations which may be attributable to various contingencies—such as, a sufficient number of defaults by participants who have become parties to the charter contract—as contrasted with the minimal risks of flight cancellation in individually ticketed scheduled service; (3) the travel group must be fully formed, and further membership foreclosed, several months[12] prior to the departure date, by which time each main list participant must make a substantial nonrefundable deposit, whereas last-minute travel plans are possible for individually ticketed passengers; (4) all participants in a TGC must move together as a group, on both legs of the air transportation portion of the trip, with no intermingling of passengers among different groups on the outbound and inbound flight legs, and with no one-way passengers, whereas no restrictions need be imposed on an individually ticketed traveler.

In their comments, opponents of the subject proposal have challenged the legality of travel group charters, from a substantive standpoint, contending that the Board lacks statutory authority to permit charters by groups having no prior affinity or common objective of

[3] Governing charter trips and special services of U.S. route carriers.

[4] Governing U.S. supplemental air carriers.

[5] Charter trips by foreign air carriers.

[6] Terms, conditions and limitations of foreign air carrier permits authorizing charter transportation only.

[7] A list of the initial and reply comments is filed as part of the original document.

[8] EDR–218B/SPDR–22C, 37 F.R. 6322, March 28, 1972.

[9] In § 372a.2, "North American charter" is defined as "a travel group charter between a point or points in any State of the United States, the District of Columbia, Puerto Rico or the U.S. Virgin Islands, on the one hand, and a point or points in any other State of the United States or in Canada, Mexico, or the 'Islands of the Caribbean' (as defined in Part 207 (14 CFR Part 207) on the other hand."

[10] The criteria for travel group charters set forth in the final rule do not differ materially from those in the proposed rule. Although the final rule reduces the proposed 6-month lead time for filing TGC contracts and the proposed minimum group size, we do not believe that either reduction is so substantial as to vitiate the legally required distinction between TGC participation and individually ticketed service. On the other hand, the new minimum-stay requirement which we are adding in the final rule should serve to further distinguish the TGC from ordinary individually ticketed service.

[11] In the notice the Board stated, in part (mimeo. 8): "Thus, unlike the conventional case of individually ticketed transportation, the cost to the participant in a travel group charter may well vary, depending on the load factor achieved on the flight, and the precise charge may not be known until flight departure."

[12] As indicated above, the proposed 6-month lead time has been reduced.

traveling together after arrival at their destination; moreover, it is argued that our proposed requirements for this new class of charter do not constitute a legally sufficient basis to distinguish a TGC from individually ticketed service. Finally, as a procedural matter, they insist that the Board may not adopt this new class of charter without first conducting an evidentiary hearing.

A. *A travel group charter is a true "charter" within the purview of the act.*—Neither the filed comments nor the oral arguments submitted by the opponents in this proceeding have persuaded us to alter our tentative conclusion in the notice that travel group charters, as proposed in EDR–218 and adopted herein, are lawful "charter trips" within the meaning of section 101 (34) of the act.

On the contrary, we have found to be far more persuasive the arguments which have been advanced in this proceeding in favor of the legality of our proposal, and our conclusion has been particularly fortified by the unqualified support set forth in the comments of the Department of Justice.

We regard as settled the basic legal proposition that, under the act and pertinent court decisions, the Board is fully authorized to reasonably define the term "charter" so long as we preserve the critical distinction between charter service and individually ticketed service. That proposition is as valid today as when it was restated by the District of Columbia Circuit Court (per then Circuit Judge Burger) in 1965, where the Board was upheld in authorizing split charters for the first time:

> We are unable to conclude that the term charter trips has a fixed meaning or that Congress intended to restrict the Board to a definition of one aircraft—one charter. We conclude that Congress intended, although not without limits, that the Board should be free to evolve a definition in relation to such variable factors as changing needs and changing aircraft * * *. We agree with the Board that the legislative history reveals that a prime concern of Congress was to maintain the integrity of the charter concept—to preserve the distinction between group and individually ticketed travel; within these limits it is for the Board to evolve reasonable definitions. American Airlines, Inc. v. C.A.B., 348 F. 2d 349, 354 (D.C. Cir. 1965).

The validity of that proposition was in no way weakened by the subsequent legislative action to specifically authorize inclusive tour charters, necessitated by the judicial impasse which had been reached on the question. Compare American Airlines, Inc. v. C.A.B., 365 F. 2d 939 (D.C. Cir. 1966), with Pan American World Airways, Inc. v. C.A.B. 380 F. 2d 770 (2d Cir. 1967), aff'd by an equally divided court sub nom. World Airways, Inc. v. Pan American World Airways 391 U.S. 461 (1968). Indeed, the legislative history of the 1968 amendment of the act, expressly including inclusive tours within the term "charter,"[13] indicates that the purpose was to clarify the Board's existing authority. Thus, in H. Rept. No. 1639, 90th Cong. 2d Sess. (1968), it was specifically noted:

> We think that shifting economic considerations and the public convenience and necessity may require modifications in the regulations. We do not undertake here to proscribe the usual rulemaking procedures of the CAB, and will leave the Board with its present flexibility, which must be exercised within the confines of the statute, due process, and full participation on the part of interested parties in the Board's rulemaking proceedings.

Accordingly, the principal legal issue in these proceedings is whether the newly authorized class of travel group charters is in fact distinguishable from individually ticketed service; and on this issue, we conclude that—in view of the aforedescribed restrictions and limitations on performance of travel group charters, none of which are applicable to individually ticketed service—the answer must unquestionably be affirmative.[14] Moreover, even if the traditional usage of "group travel" necessarily connotes the existence of a bond shared by the members of the group, apart from their mere physical accompaniment of one another during point-to-point flights, the TGC concept does entail such a mutual relationship. As we have said earlier, the bond among the TGC participants arises from the fact that they are engaged in a joint undertaking (paid for a specified period in advance) to charter all, or part of, an aircraft for their own transportation solely on a round-trip basis and for a specified period of time, sharing equally in the cost of the transportation.

The scheduled air carriers argue further that the Board may not authorize the supplemental carriers to operate TGC flights, unless it first makes a legally required finding that TGC's performed by supplemental carriers would in fact "supplement the scheduled service," within the express terms of section 101(34) of the act; and that, indeed, no such finding could be made here because the TGC's will supplant, rather than supplement, the scheduled service.

This is basically the same argument which the route carriers raised against the Board's original inclusion of ITC's within the supplementals' certificated authority. Just as we then rejected this argument as against ITC's, so we now reject it as against TGC's, and our explanation there is equally applicable here:

> The use of the charter mechanism, combined with the restrictions which we are imposing by regulation, necessarily results in a service to the public which is different in significant respects from that available on scheduled services. Supplemental Air Service Proceeding, E–23350, Mar. 11, 1966. (Mimeo p. 11.)

We therefore regard it as well established that the charter authority of the supplemental carriers need not be so circumscribed as to completely preclude the supplemental carriers from competing for passenger traffic which might otherwise use scheduled services. The announced policy of the United States government is that "[b]oth scheduled carriers and supplemental carriers should be permitted a fair opportunity to compete in the bulk transportation market."[15] Moreover, the courts have regarded the public interest standard of section 102(d) of the act as embodying a "national policy which contemplates the 'existence of a market structure conducive to maximum feasible competition'"[16] among scheduled and supplemental carriers.

In short, the requirement of section 101 (34) of the act that the charter services "supplement the scheduled service" permits the Board to authorize charter services which it finds are a desirable adjunct to the overall system. Considering the rule's conditions and limitations, the special nature of the prospective market, and our findings, infra, respecting impact upon scheduled services, we conclude that operations under this part will supplement the scheduled service within the meaning of section 101(34) of the act.

B. *An evidentiary hearing is not required.*—The procedural argument of the trunkline carriers and others is that the Board cannot authorize travel group charters unless evidentiary hearing is provided. There are two aspects to this argument: (a) since the travel group charter rule is so far reaching, it is tantamount to an amendment of the certificates of the supplemental carriers and the route carriers involved, and, as such, notice and hearing with respect thereto are required by the statute;[17] and (b) even if these rule making proceedings do not constitute certificate amendments required by the act to be predicated on an evidentiary hearing, the Board would nonetheless be abusing its administrative discretion if it promulgated these particular rules following only such procedures as are appropriate for ordinary rule making.

We cannot accept the argument that the travel group charter authority

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[13] Public Law 90–514, 90th Cong., 2d Sess. (1968).

[14] We cannot but be puzzled by the trunkline carriers' attempt to equate TGC service with individually ticketed service. Particularly incomprehensible is their assertion that, just as TGC participants "have agreed to share equally in the cost of the transportation, * * * so have all the passengers using a particular fare on a scheduled service flight." Comments of Certain Trunkline Carriers, p. 6.

[15] "Statement of International Air transportation Policy," approved by the President, June 22, 1970. The policy statement reads, in part, as follows: "We consider passengers traveling at group rates on scheduled services to be part of that market. Regulatory and promotional policies should give greater recognition to the dimensions, characteristics and needs of the bulk transportation market, as such, and less emphasis to the type of carrier that is serving that market. However, the Government should not allow enjoyment of the right to perform both scheduled service and charter service to result in decisive competitive advantages for scheduled carriers."

[16] NACA v. C.A.B., 442 F. 2d 862, 874 (D.C. Cir. 1971), quoting from NACA v. C.A.B., 436 F. 2d 185, 194 (D.C. Cir. 1970).

[17] The act requires that notice and hearing must precede amendment of a U.S. carrier's certificate or a foreign carrier's permit. Sec. 401(g) and 402(f), respectively.

granted herein is tantamount to amendment of existing certificates or permits of air carriers. This proceeding clearly involves the adoption of a "rule," as defined in section 2 of the Administrative Procedure Act (5 U.S.C. 551(4)). We are prescribing standards which are of general applicability to various classes of carriers and which are of future effect. That the operations of direct air carriers under their certificates or permits will be affected thereby does not transform our rule making action into the kind of adjudicative action involved in amending certificates and permits issued to carriers pursuant to the act. American Airlines, Inc. v. C.A.B., 359 F. 2d 624 (D.C. Cir. 1966) (en banc).

It should be noted that the charter rules which we are herein prescribing will be available to all classes of direct air carriers, both scheduled and supplemental, foreign as well as domestic. It is thus by no means certain that these new rules will have a detrimental effect on the operations of any particular class of licensed air carrier. Yet, even if such were the intended or foreseeable effect, it has been settled that "economic damage to an existing licensee is not a modification of the existing license * * * " Delta Airlines, Inc. v. C.A.B., 275 F. 2d 632, 641 (D.C. Cir. 1960), cert. den. 362 U.S. 969 (1960).[18]

Nor do we believe that we are required, in the exercise of sound administrative discretion, to conduct evidentiary hearings in these proceedings. None of the filed comments or oral arguments have persuaded us to depart from the view which we expressed in EDR-218 that, insofar as the principal factual issues here involve largely unpredictable questions as to the traffic which these new rules will generate or cause to be diverted from scheduled carriers, they can best be resolved in light of experience gained through actual experimentation. As in American Airlines, Inc. v. C.A.B., supra, where the issue was the effect of the Board's "blocked space" rule on petitioners' business, so here the issues involve what are properly characterized as "legislative" rather than "adjudicative" facts. And thus the court's further observation as to the appropriate means for resolving such issues is equally appropriate here.

> It is the kind of issue involving expert opinions and forecasts which cannot be decisively resolved by testimony. It is the kind of issue where a month of experience will be worth a year of hearings. 359 F. 2d 624, 633.

II. *Impact on scheduled services.*—In EDR-218 the Board tentatively concluded that the proposed TGC rule would not divert vast amounts of traffic from scheduled service nor would it impair the ability of the scheduled carriers to provide adequate service on their routes. The Board further found that any diversion of traffic from scheduled services would be minimized by the nature of the various restrictions with which our rules would circumscribe the availability of travel group charters. The Board stated its belief that this new class of charters would tend to attract primarily those price-conscious travelers who are not users of scheduled services, and that, in any event, since the exact degree of the generation of new traffic could be ascertained only after some period of experimentation with the rule, we would carefully scrutinize results of the experiment, taking appropriate action to curtail any undue diversion from scheduled services which might develop. We affirm these conclusions now.

No one, of course, can be sure what will take place under the new rules, and it is indeed one purpose of the experiment to find out. It seems clear that TGC charters will not supplant the scheduled services, which alone will remain available to provide reliable, flexible, definitively timed transportation on either short or long notice. We fully realize that these rules may well result in the reduction by route carriers of the number of their scheduled flights in particular markets, especially during peak travel periods, and the allocation of some of their aircraft to the transportation of TGC traffic. However, we would not necessarily regard as undesirable some adjustment in the ratio maintained by a route carrier, in any given market, between its scheduled service and charter service, so long as its total service continued to be adequately responsive to the public's demand for both kinds of service in the market.

The trunkline carriers and others[19] continue to maintain, inter alia, that the bulk of the pleasure air travel market would be subject to diversion, notwithstanding the Board's restrictive requirements condition the use of TGC. Specifically, it is contended that our proposed 6 months' deadline for commitments would not effectively prevent substantial diversion, since many travelers make their travel plans 6 or more months in advance, as evidenced by surveys conducted by carriers.[20] They also contend that the nonrefundability of the initial 25-percent deposit would not be a serious deterrent, since assignments could easily be arranged. Finally, they assert that travel agents, who supply a large percentage of the scheduled airlines' passengers, will divert their customers to travel group charters because their remuneration for services in connection with travel group charters would be larger than commissions earned in connection with the sale of scheduled services.

These assertions are not persuasive.[20a] The surveys and studies submitted in support of the claim of substantial diversion cannot possibly be reliable, since they have not been based upon actual experience with travelers' reactions to a group travel arrangement involving the complex of restrictions surrounding travel group charters. For example, in contending that the advance-purchase requirement for travel group charters would not materially diminish the extent of diversion from scheduled services, the trunkline carriers rely principally upon carrier data and surveys showing that many persons book airline reservations or plan trips far in advance of the date of departure. It is one thing for a passenger to plan a trip or book a reservation on a scheduled flight several months in advance, knowing that he is free to change his plans or reservations at will, without incurring monetary risk; but that situation is quite different from the kind of advance planning and risk entailed by participation in a TGC. And insofar as the trunkline carriers contend that assignments of deposits from a TGC's "main list" participant to a "standby" participant can easily be effected, they are at the very least ignoring the real risk that an individual participant will not be able to assign his interests if the maximum number (20 percent) of such assignments have already been effected. Similarly, the claim that travel agents will channel traffic away from scheduled service in favor of travel group charters in order to receive a larger remuneration for their services is sheer speculation, since it is not now foreseeable what the average "service charge" of a charter organizer will be, or how much of this charge the organizer will be prepared to share with a travel agent, by way of commission or otherwise.

Finally, we regard as farfetched the argument that a regular customer of scheduled service, such as a business traveler, could routinely "hedge" his reservation for a scheduled flight by concurrently becoming a "main list" or "standby" member of one or more travel group charters which he learns are scheduled to depart at the same date and for the same destination as his scheduled flight. It is suggested that this could be a routine practice, because it involves no risks to the traveler and would work as follows: If a TGC materializes, then the business traveler will cancel his scheduled flight and fly at the low charter rate; and if no TGC materializes, then he will receive refund of any advance

[18] See also American Airlines, Inc. v. C.A.B., 359 F. 2d 624 (D.C. Cir. 1966).

[19] Four foreign air carriers (British Overseas Airways Corp. (BOAC), Iberia, Lineas Aereas de Espana, S.A. (Iberia), Deutsche Lufthansa Aktiengesellschaft (Lufthansa), and Swissair, Swiss Air Transport Co. Ltd. (Swissair)); a travel agent, Don Travel Service, Inc. (Don Travel); a labor union, United Air Lines Pilots' Master Executive Council (UAL-MEC); a trade association, Association of Retail Travel Agents (ARTA); and a government organization, European Civil Aviation Conference (ECAC).

[20] It is claimed that surveys conducted by various carriers and others show that between 28 percent and 73 percent of transatlantic passengers decide to travel 6 or more months in advance of regular departure.

[20a] We note that in the transatlantic supplemental charter authority renewal case (Docket 20569, Order 72-5-9), we found that the record did not support the assertion by the scheduled carriers that the supplementals have substantially impaired, or threaten substantial impairment of, scheduled services in the transatlantic market. (See our opinion, dated January 24, 1972.)

payments he may have made as a TGC participant and proceed with the scheduled flight at a price which he was prepared to pay anyway. Thus, the business traveler would incur no actual risk, since he might succeed in paying less, but in no event will he pay more, than the cost of his individual ticket. The argument is specious, however, if for no other reason than that it overlooks the fact that a TGC is round trip, of a fixed minimum duration, and permits no intermingling of passengers, so that the business traveler must find a TGC which is scheduled not only to depart for his destination on his planned date but also to turn on his planned date. Moreover, as to the possibility of becoming a "main list" participant (by paying at least a 25-percent initial deposit) in more than one TGC, the traveler would be incurring thereby the considerable risk of becoming a defaulting participant in any of the additional travel group charters which might materialize and, consequently, of forfeiting his initial deposit(s).

III. *Changes from proposed rule*—A. *Predeparture filing lead time.* The proposed rule provided for a predeparture lead time of 6 months for filing TGC contracts in all instances. Several of the comments which supported the basic proposal but opposed particular proposed provisions as overly restrictive, suggested that we adopt a lead time of less than 6 months or no lead time at all. It was argued that a lengthy lead time would merely make travel group charters less attractive than existing affinity charters. Pan American and the other trunkline carriers, on the other hand, argued against our adoption of a shorter lead time than the proposed 6-month period, on the ground that such liberalization would further increase the amount of diversion from scheduled service resulting from the TGC rule.

We have decided to prescribe a 3-month minimum lead time.[21] The need for prescribing some substantial period of lead time is essential to implementation of the TGC rule. This is an integral component of the complex of requirements with which we must circumscribe our basic TGC concept within the legal framework of a type of charter service which is distinguishable from, and does not unduly divert from, individually ticketed service. Yet, we recognize of course that any attempt to fix the precise duration of a lead time which will be sufficiently restrictive to help maintain the TGC's identity as a charter and, at the same time, sufficiently liberal to enable the TGC experiment to work, inevitably involves some degree of arbitrariness.

In our judgment, the 6-month time limit proposed in the notice is likely to prove unduly restrictive. It must be remembered that, under the rule, the lead time fixes the latest date for filing TGC contracts with the Board. Since the signing-up process is one which can normally be expected to take weeks or months, it is evident that the use of a 6-month lead time would mean that individual charter participants would be required to make firm commitments substantially earlier than the 6-month deadline. We are concerned that, considering the novelty of the TGC concept and the uncertainties involved, an insufficient number of persons would be willing to make such advance commitments to provide a meaningful test of the program.

We have therefore determined to prescribe that TGC contracts and other documents must be filed with the Board no earlier than 4 months and no later than 3 months before the scheduled departure date. Since the minimum 3-month lead time represents a filing deadline for legal compliance with our TGC rules, it should be clear that, from the standpoint of persons interested in successfully carrying out a particular TGC, plans and commitments will have to be made far in advance of such 3-month filing deadline. Indeed, it would seem quite realistic to expect that our regulatory requirement that TGC papers must be filed no later than 3 months before date of flight departure entails a practical requirement that many interested TGC participants will have to sign up as early as 5 or more months prior to departure, even though deposits are fully refundable until the TGC contract is filed, which can be no earlier than 4 months before departure.

In considering this aspect of the rule, we have noted that proposals for advance-purchase charters now pending before other governments almost uniformly contemplate a 3-month advance requirement. While we have fashioned the rule in the light predominantly of this country's needs, as we see them, we have also considered that it would be desirable to achieve as much similarity as is possible among the charter rules of the various countries. This consideration strengthens, although it does not dictate, our selection of the 3-month advance requirement.

As is true of other aspects of the rule, our decision as to the appropriate lead time is subject to further review in the light of the results of the experiment.

Indeed, in the explanatory statement of our proposal we explicitly stated that we would adjust either the precise duration of lead time or the precise minimum amount of nonrefundable deposit, or both, if such action appeared necessary to prevent undue diversion. (EDR–218/SPDR–22A, mimeo p. 11.) If a longer lead time than 3 months will appear necessary to prevent undue diversion, we shall not hesitate to adjust the requirement by appropriate amendment of these rules.

B. *Minimum-stay requirement.* The proposed rule did not provide that a TGC shall be subject to a minimum-stay requirement. However, consistent with our repeated objective of fashioning rules which will clearly distinguish TGC travel from individually ticketed service and prevent undue diversion from scheduled traffic, we have now determined to include such a requirement in the final rule. Moreover, in the belief, based on our general observations, that vacation travel in North America is likely to be of shorter duration than vacation travel from the United States to other parts of the world, we are providing for a difference in their respective minimum-stay requirements, 7 days for North American TGC's charters, and 10 days for all others.

This new requirement does not represent a substantial variance from the proposed rule, but is, rather, in the nature of a modification of the various restrictive features which were included in our proposal. We are therefore of the view that we may now adopt this restrictive modification without conducting further public proceedings thereon, just as we have here adopted several liberalizing modifications.

C. *Minimum size of group.* EDR–218 proposed a minimum group size for travel group charters of 50 persons; our final rule provides for a minimum group size of 40. This will conform the minimum group size for a TGC to the minimum size generally prescribed for split charters in our existing regulations. Moreover, by decreasing the minimum group size of a TGC from 50 to 40, we shall be facilitating the availability of land transportation to TGC touring groups, since the seating capacity of most European sightseeing buses accommodates 42 or 43 passengers.

D. *Foreign charter organizers.* The proposed rule limited travel group charter organizers to U.S. citizens. Caledonian, Cook, and Kuoni request that indirect air carriers which are not U.S. citizens be authorized to conduct travel group charters in foreign air transportation, both those which are foreign-originated and those which are U.S.-originated. In the case of foreign-originated charters, it is requested that the Board decline to exercise its jurisdiction over such charter programs or that it condition such declination upon the filing with the Board of appropriate documents. In the case of U.S.-originated charters, it is suggested that foreign indirect air carriers holding section 402 permits to conduct inclusive tour charters (under Part 378 of the Board's special regulations, 14 CFR Part 378), be authorized to conduct travel group charters which originate in the United States without further amendment of their permits.

We shall modify our proposed definition of travel group charter organizer so as to include a foreign charter organizer. As to foreign-originated travel group charters formed by a foreign charter organizer, the Board will decline to exercise its jurisdiction over the charter

[21] We do not agree with the trunkline carriers' assertion that reduction in the proposed lead time, as set forth in EDR–218, would require a further notice of proposed rule making. The reduction we have made is, in our view, not such a material change from the proposal as to be outside the scope of this proceeding. It may be noted that many of the comments received recommended further reductions in the proposed lead time, and the trunkline carriers had full opportunity to reply to those comments and recommendations.

organizer,[21a] but not over the TGC which he has formed. This means that we will decline to enforce our TGC rules directly against the foreign charter organizer, but we will expect the direct air carrier (United States or foreign) who deals with such a charter organizer to see to it that our TGC rules are complied with, insofar as they are applicable to foreign-originated charters.[21b] On the other hand, as to U.S.-originated travel group charters formed by a foreign charter organizer, only an organizer having a section 402 permit explicitly authorizing such activity will be permitted to operate under our TGC rules, which will be as directly enforceable against him as against a foreign direct air carrier.

Caledonian maintains that the Board should make clear that it is willing to sanction the performance of any foreign-originating TGC which conforms with the originating country's rules governing a TGC (or analogous charter concept) so long as those foreign rules are substantially similar to ours. We are inclined to agree with this in principle. The Board has previously indicated the desirability of such an approach. For example, in disapproving IATA Resolution 045, we suggested that charter worthiness might be determined on the basis of the laws and regulations where the charter originated.[21c] As a practical matter, however, we are not yet faced with the situation which Caledonian envisions, since as yet no foreign country has promulgated a comparable charter rule. Nor does it appear appropriate at this juncture to attempt to fix predetermined standards for determining whether a foreign country's charter concept is "substantially similar" to the TGC. We are prepared, however, to deal with this matter as it arises, giving consideration to the interests of the public and the various competing classes of carriers, either through further amendments to these regulations, waivers, or such other action as may be appropriate. The Board specifically desires to make clear that it has no intention to dictate the precise details of foreign-originated travel group charter regulations to other governments.

E. *Tour conductors.* The proposed rule did not provide for the carriage of tour conductors on travel group charters since it contemplated the transportation of TGC participants only, with each passenger paying his pro rata share. ASTA suggests that, where ground arrangements are provided as a part of the charter, free transportation for tour conductors should be permitted, with one pass for each 40 participants and a maximum of two passes per travel group charter. We believe that this suggestion is reasonable, and we are therefore providing that, if the charter includes land accommodations, tour conductors may accompany the TGC flight, at the common expense of the participants, so long as the number of tour conductors is specified in the contract between the charter organizer and participants, and does not exceed one tour conductor for each 40 charter participants. However, we do not perceive any need to adopt ASTA's suggested maximum of two tour conductors per TGC. The maximum ratio of one tour conductor to each 40 participants should adequately serve to deter abuse of the TGC concept.

F. *Refund of deposit in case of death or ill health of participant.*—The proposed rule provided that, after the charter contract was filed, there could be no refund of his 25-percent initial deposit to a defaulting participant, unless the charter was canceled on one of the grounds set forth in § 372a.18 of the proposed rule. ACT maintains that the 25-percent deposit should be refundable under circumstances where the reason for a participant's default is clearly beyond his control, as in the case of his death or illness. We are modifying the rule so as to reflect our limited adoption of that suggestion, by providing for the refundability of all advance payments, including the 25 percent initial deposit, in case of the death or illness of the charter participant; however, this relaxation of the nonrefundable nature of such deposit will prevail only until the "tentative adjusted price" is actually computed. After computation of the tentative adjusted price, all advance payments including the initial deposit, may be refunded only if the charter is canceled pursuant to the provisions of § 372a.18. To this extent, we think it is fair that each participant assume the risk of his default,[22] for whatever reason, rather than impose such risk on his fellow participants. Once the tentative adjusted price has been computed, the participants should be assured that their pro rata cost will not be increased for any reason, as would be necessary if any subsequent refunds were allowed.

G. *Surety bond provisions.*—The proposed rule included bond and escrow provisions adapted from similar provisions applicable to tour operators. However, unlike other charter operators, the proposed rule did not offer the travel group charter organizer the option of filing a bond only.[23]

The NACA carriers ask that the travel group charter organizers be given the same alternative opportunity of filing a bond only, as is available to inclusive tour operators under Part 378, and to study group charter operators under Part 373. They state that although most charter organizers would probably be unable to obtain a sufficiently large bond to cover their entire liability, those who can may well prefer to do so, thus avoiding the need to tie up large amounts of cash in an escrow account. ACAP opposes this suggestion of the NACA carriers.

As indicated above, we have reconsidered our proposal, and shall permit a surety bond alone as an alternative to the surety bond depository agreement security arrangement, thereby conforming the security provisions under this part to those governing other authorized charter operators. The amount of surety bond when it is the sole security offered participants has been patterned after the bond-only surety provisions in Part 378 applicable to ITC's.

We are also making some technical modifications to the proposed provisions on security. The proposed rule provided that a bonding or surety company would be qualified for purposes of the travel group charters only if the company's surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6 and the company is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. The purpose of the proposed absolute standard was to relieve the Board from the burden of determining the qualifications of bonding companies on a case-by-case basis. Prior to the issuance of EDR–218, we had issued SPDR–26,[24] in which we proposed, inter alia, to adopt the same absolute standard for surety bonds pursuant to Parts 373,[25] 378,[26] and 378a[27] of the Board's Special Regulations, as well as other amendments to the bond provisions. All of the amendments to the general bond provisions proposed in SPDR–26 were incorporated as proposals in EDR–218.

Although the comments in this proceeding did not focus on these particular technical provisions, we have nevertheless decided not to adopt them here. The particular security provisions with regard to travel group charters should be consistent with those applying generally throughout the comparable parts of the Board's regulations. Accordingly, we have determined not to adopt in this proceeding the proposed provisions which are counterparts to the amendments proposed in SPDR–26 (with one exception),[28] but rather to defer the

[21a] For the same reasons on which we decided to decline jurisdiction over foreign ITC operators in Order E–24697, which was affirmed in Pan American World Airways v. C.A.B., 392 F. 2d 483 (D.C. Cir. 1968).

[21b] Certain nonessential provisions of the attached rule are, by their very terms, already inapplicable to foreign organizers of foreign-originated TGC's; moreover, as noted below, we anticipate taking future action affecting application of our TGC rules to foreign-originated TGC's, either by rule amendment, waiver or otherwise.

[21c] Order 72–6–91, June 21, 1972.

[22] It should be emphasized that, though the defaulting participant's interest is not refundable, it is assignable at any time, if a permissible assignment can be effected.

[23] The proposed rule provided for a higher bond if the charter organizer furnished ground accommodations and that the escrow arrangement governed payments both for air transportation and for ground accommodations, if any. These provisions will be adopted as proposed.

[24] Oct. 26, 1971, 36 F.R. 20895 (Docket 23940).

[25] Study group charters.

[26] Inclusive tour charters.

[27] Contract bulk inclusive tours.

[28] Effective date of the bond will be the date of its filing with the Board, as proposed in EDR–218.

question to the more general rule making proceeding in SPDR–26. The opposite side of the coin is that such general amendments as we may ultimately adopt in SPDR–26 would at the same time be adopted for this Part 372a, by parallel amendment, so as to maintain consistency among all other charter rules on this subject.

By the same token, we are adopting in this proceeding certain modifications of the reporting requirements for depository banks which we recently issued with respect to the counterpart security provisions in Parts 373 and 378 of the Board's Special Regulations.[29] These modifications, adopted after public rule making proceedings initiated by SPDR–27,[30] are intended to provide a more effective means of protecting charter participants in their dealings with indirect air carriers and should therefore apply to the TGC rule as well. (See §§ 372a.25(a) and 372a.50(c).)

H. *Outgoing and incoming legs of the flight performed by different carriers.*—The proposed rule defined "travel group charter" as a round-trip charter arranged by a charter organizer for a travel group. Consortium suggests that the various charter legs that constitute a round trip be allowed to be booked by different carriers, provided that satisfactory evidence is presented to the Board by the charter organizer that direct air carriers have made commitments to perform the charter for both the outgoing and incoming legs of the trip. We did not intend in the proposed rule to proscribe such action and we shall expressly authorize it herein. However, in order to avoid inconsistencies among the terms and conditions of separate charter contracts between the charter participants and different carriers, we are conditioning this authority upon the utilization of the single charter contract covering the entire round trip of the TGC flight.[31]

I. *Mass media advertising.*—We have decided not to retain in the final rule the proposed prohibition against mass media advertising. We are persuaded that a ban on the availability of these charters to the public at large tends toward the same kind of discrimination which is inherent in the affinity charters. Under such a ban, certain members of the public might not know of the availability of TGC charters simply because they were not recipients of "limited distribution" advertisements and other publications aimed at selected audiences. Moreover, we believe that the workability of the TGC concept and the public demand for it will be more validly tested if all members of the public have reasonable opportunities to participate in such TGC's as may be organized.

IV. *Principal changes in the proposed rule which were requested but are not being made.*—A. *Restricting TGC to domestic markets.*—We have declined to adopt DOT's suggestion, urged upon us at the oral argument, to restrict the within TGC experiment only to certain selected domestic markets, on a 1-year trial basis, but not to venture at this time into international markets.

DOT's position is based principally on two grounds. It first contends that before introducing this experiment into the international market, we should make a determination as to the level of scheduled service which is required in international markets, so that we may impose such restrictions on charter service as are "necessary to avoid prejudice to the scheduled service level thus established." (Oral Argument Transcript, p. 130.) Insofar as this contention parallels that of the trunkline carriers, we need not deal with it again here, and we refer instead to what we have said above, at pages 14–17. In addition, we have serious doubts as to whether such a determination is feasible and, if it were, whether it would be useful. No one has shown how charter policies can be drawn to guarantee particular levels of scheduled service.

DOT next contends that in view of the fact that novel principles of charter service (somewhat comparable to those embodied in our TGC rule) have recently become a subject of discussion by ECAC, we should defer implementation of our rules herein until we "may take into account the results of the ECAC discussions." (Id., at p. 131.) We applaud the increasingly widespread attention which is being devoted to the exploration of various ways to meet the international public demand for low cost charter travel. However, our primary responsibility is to be concerned with the air transportation needs of the American public, and we do not believe that we would adequately meet that responsibility by postponing our innovative actions until other interested governmental bodies decide whether or not to join us. We, of course, hope that they will do so, or make comparable innovations of their own, to meet the developing needs of the traveling public. There will undoubtedly be differences in the particulars of the various proposals which foreign governments may eventually adopt as counterparts to our TGC. We look forward to benefiting from one another's experiments, and we stand ready, within the limits of our legal authority, to adjust our rules to the demonstrated needs of the international community. On the other hand, were we to defer implementation of our TGC proposal until other governments would agree to implement uniformly similar charter concepts, then our inaction would likely contribute to an interruption of the current momentum in the international community of civil aviation toward devising new charter concepts. In these circumstances, we think it clear that we should move forward rather than mark time.

B. *Reduced fares for children.*—With respect to reduced fares for children, we stated in the Explanatory Statement of EDR–218 (mimeo. p. 15):

> The Board's pro rata charter regulations generally require that all participants pay an equal share of the charter cost, but permit an exception for reduced fares for children. Because the subject charters will be held out to the general public, this exception does not appear desirable. Since the price to an individual participant would necessarily vary with the number of children accompanying other participants, reduced children's fares would produce an inequitable result and would add a further element of complexity and uncertainty in estimating the minimum pro rata price to be paid if all seats are sold.

The NACA carriers and Caledonian ask that the matter of children's fare discounts be left to the discretion of the charter organizer, as is the case with affinity charters. As to the complexity involved in establishing the minimum pro rata price, they maintain that the problem can be solved by assuming no children (or an arbitrary percentage of children) for the purpose of computing the pro rata price, and adjusting for the actual number of children at the time the "tentative" or "final adjusted charter price" is computed. Also, it is contended that travel group charters will not appeal to families with small children unless children's discounts are offered, and thus a considerable potential market for such charters would be lost. Caledonian points out that the rules could bar assignment of any adult seat to a child at reduced fares after the tentative adjusted price is computed, so as to avoid an increase in the final adjusted pro rata price resulting from the assignment.

We are not persuaded to depart from our tentative view that reduced fares for children should not be allowed. A childless charter participant should be able to know, at the time he signs the contract, what his minimum pro rata price will be, assuming that all seats are sold, without wondering whether he may be called upon to subsidize the cost of a fellow participant traveling with children. However the members of a fraternal organization may feel about bearing part of the cost of a fellow member's children under our present pro rata charter rules (and, in practice, we understand that children's discounts are actually quite rare in a bona fide pro rata charter), it must be remembered that the TGC participants need not have a prior affinity and thus may be total strangers to one another.

C. *Charter organizer as principal.*—The explanatory statement in EDR–218 indicated that the charter organizers are to act solely as agents for the travel group members with respect to air transportation. It went on to state that the organizer is to be neither a principal in the provision of air transportation nor an agent of the direct air carrier and that he will be engaged in the business of forming groups of persons, from among the general public, who will become parties to a charter contract with a direct air carrier (mimeo. pp. 16–17).

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[29] See SPR–58, adopted June 16, 1972.

[30] Dec. 8, 1971.

[31] The rule provides that where air transportation is to be performed by more than one direct air carrier, there shall be a single charter contract to which the charter participants (acting through the charter organizer) and all such direct air carriers (acting jointly and severally) shall be parties. (See § 372a.10(c).)

The trunkline carriers maintain that the Board's characterization of travel organizers as agents of the charter participants is legally untenable. They state that the proposed rule contemplates that an option agreement will be entered into between the organizer and the direct air carrier prior to the time when the TGC participants are known or knowable. The argument runs that this is an impossibility, since the organizer cannot, as agent, enter into an option agreement which is binding upon persons who have not yet become his principals. Thus, according to the trunkline carriers, only the organizer can be the principal with respect to the option granted by the direct air carrier to furnish air transportation for the TGC.

We adhere to our view that the charter organizer may act only as agent for the travel group with respect to the charter contract. There is nothing legally anomalous about his role in the transaction. It is true that at the time the organizer receives the TGC option from the direct air carrier he does not as yet act on behalf of known principals, and thus the option cannot be binding on any principal. But the fallacy in the trunklines' argument is that it assumes that an option is a bilateral contract binding on both parties. This misconceives the very nature of an option, which is distinguishable from a bilateral contract precisely in that an option creates only a unilateral obligation. Thus, in effect, the direct air carrier makes an offer to the organizer, by the terms of which the carrier undertakes to be bound by the proposed charter contract with the travel group which the organizer will form, if specified conditions are timely met. However, the option itself does not purport to be binding on the organizer's pincipals, and thus he need not have any principals when he accepts the option. See: Restatement of the Law of Contracts, sections 46–47; 17 *Am. Jur.* 2d, "Contracts," sections 32, 36.

D. *Licensing of charter organizers.*—In our proposal, we indicated that a charter organizer operating under the TGC rule would be deemed an indirect air carrier, and, as such, subject to our regulation. The regulatory scheme to which we proposed to subject these charter organizers is that which we apply generally to indirect air carriers of passengers, such as study group charterers [32] and inclusive tour operators.[33] Thus, we would authorize them to operate only in accordance with conditions which we prescribe for the protection of the public with whom they deal, but relieve [34] them from various statutory requirements such as certification and tariff filings.

ASTA urges us to limit the authorization of charter organizers under this rule to persons whom we would individually license. We have decided to adhere to our proposal, so that we will regulate charter organizers in the same way that we generally regulate other indirect air carriers of passengers.[35] In connection with our recently created class of charters called "Overseas Military Personnel Charters" [36] we did provide for individual licensing of the charter operators authorized as indirect air carriers thereunder. However, we anticipate that only a handful of persons will engage in the business of operating that special class of military charters, and, moreover they will be selling only transportation services, on what in effect will be an individually ticketed basis.[37] Charter organizers under our TGC rule are thus more analogous to those indirect air carriers of passengers whom we do not regulate through individual licensing procedures.

V. *Effective date.*—We have determined to make this rule effective immediately, since it imposes no burden on anyone but serves, rather, to relieve a restriction, in that it establishes a new class of charters which may be performed by direct air carriers, and authorizes a new class of indirect air carriers to operate, all in accordance with prescribed conditions.

In consideration of the foregoing, the Civil Aeronautics Board adopts Part 372a of its Special Regulations (14 CFR Pt. 372a), effective September 27, 1972, as set forth below.

NOTE: The reporting requirements herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

By the Civil Aeronautics Board.[38]

[SEAL] HARRY J. ZINK,
Secretary.

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372a.50 Reporting requirements.

AUTHORITY: The provisions of this Part 372a issued under sections 101(3), 204(a), 401, 402, 407, 416(a), and 1001 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737 (as amended), 743, 754 (as amended), 757, 766, 771, and 788; 49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386, and 1481.

Subpart A—General Provisions

§ 372a.1 Applicability.

This part establishes the terms and conditions governing the furnishing of travel group charters in air transportation by direct air carriers, including foreign air carriers, and by travel group charter organizers, including foreign charter organizers. This part also relieves such charter organizers (other than foreign charter organizers) from various provisions of Title IV of the Federal Aviation Act of 1958, as amended, for the purpose of enabling them to provide travel group charters utilizing aircraft chartered from such direct air carriers. Nothing contained in this part shall be construed as repealing or amending any provisions of any of the Board's regulations, unless the context so requires.

§ 372a.2 Definitions.

As used in this part, unless the context otherwise requires—

"Charter" means a travel group charter.

"Charter contract" means a contract for air transportation made by and between one or more direct air carriers

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[32] 14 CFR, Pt. 373.

[33] 14 CFR, Pt. 378.

[34] Sec. 101(3) of the act specifically empowers the Board to relieve indirect air carriers from the provisions of the act, "to the extent and for such periods as may be in the public interest." This is broader than the general exemptive power granted to the Board by sec. 416(b).

[35] It may be noted that the position of ASTA raises an issue which goes far beyond the limited scope of this rule making proceeding, namely, the question of whether travel agents and persons who sell package tours to the public should be individually licensed by the Federal Government. We note in this connection that there is currently pending before Congress legislation which could accomplish this result. However, the version passed by the Senate, S. 2577, excludes common carriers regulated by the Board and accordingly it is unclear whether it would cover travel group charter organizers or other persons whom we regulate as indirect carriers.

[36] 14 CFR Pt. 372, SPR–54, adopted May 18, 1972; 37 F.R. 11159, June 3, 1972.

[37] For the unique circumstances which justify this special class of charters, see SPR–54, 37 F.R. 11159, June 3, 1972.

[38] Dissenting statement by Gillilland, vice chairman, filed as part of the original document. Member Timm will issue a dissent at a later date.

and charter participants acting through a charter organizer.

"Charter organizer" means a travel group charter organizer.

"Charter participant" means a member of a travel group who is a party to a charter contract, either as a main list participant or as an assignee of a main list participant.

"Direct air carrier" means (1) an air carrier holding a certificate of public convenience and necessity issued pursuant to section 401 of the Act, or (2) a foreign air carrier which holds a permit issued under section 402 of the Act.

"Foreign charter organizer" means any person not a citizen of the United States, as defined in section 101(13) of the Act (other than a direct foreign air carrier) who is (a) engaged in the formation of travel groups for transportation on travel group charters which originate in a foreign country and over whom the Board has declined to exercise its jurisdiction, or (b) engaged in the formation of travel groups for transportation on travel group charters which originate in the United States who holds a permit issued pursuant to section 402 of the Act authorizing such transportation.

"Main list participant" means a member of a travel group who has duly authorized a charter organizer to enter his name on the main list filed with the Board pursuant to this part.

"North American charter" means a travel group charter between a point or points in any State of the United States, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands, on the one hand, and a point or points in any other State of the United States or in Canada, Mexico, or the "Islands of the Caribbean" (as defined in Part 207 (14 CFR Part 207)), on the other hand.

"Person" means any individual, firm, association, partnership or corporation.

"Pro rata charter price" means each participant's share of the total charter price payable to the direct air carrier(s), plus service charge.

"Service charge" means the compensation which the charter organizer may receive from each charter participant for organizing the group and acting as its agent in arranging for the charter transportation and services related thereto.

"Standby list member" means a member of a travel group who has duly authorized a charter organizer to enter his name on the standby list filed with the Board pursuant to this part.

"Travel group" means the aggregate of main list participants and standby list members.

"Travel group charter" means a round-trip charter to be performed by one or more direct air carriers which is arranged and sponsored by a charter organizer for a travel group, and which meets the requirements set forth in § 372a.10.

"Travel group charter organizer" means (1) any citizen of the United States, as defined in section 101(13) of the Act (other than a direct air carrier), who is authorized hereunder to engage in the formation of travel groups in accordance with the provisions of this part; or (2) a foreign charter organizer. With respect to the charter contract, such charter organizer acts solely as agent for, and holds all moneys received from any source in connection therewith as agent for, the members of the travel group.

§ 372a.3 Waivers.

A waiver of any of the provisions of this part may be granted by the Board upon its own initiative, or upon the joint submission by a direct air carrier and a charter organizer of a written request therefor not less than 30 days prior to the flight to which it relates, provided that such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein. Notwithstanding the foregoing, waiver applications filed less than 30 days prior to a flight may be accepted by the Board in emergency situations in which the circumstances warranting a waiver did not exist 30 days before the flight.

§ 372a.4 Enforcement.

In case of any violation of the provisions of the Act, or this part, or any other rule, regulation, or order issued under the Act, the violator may be subject to a proceeding pursuant to sections 1002 and 1007 of the Act before the Board or a U.S. district court, as the case may be, to compel compliance therewith, to civil penalties pursuant to the provisions of section 901(a) of the Act, or to criminal penalties pursuant to the provisions of section 902(a) of the Act; or other lawful sanctions.

§ 372a.5 Termination of part.

The exemption provided by this part shall terminate on December 31, 1975, and shall not apply to any charter, the return leg of which is scheduled to be performed subsequent to such date of termination.

Subpart B—General Conditions and Limitations

§ 372a.10 Travel group charter general requirements.

A travel group charter authorized under this part shall meet the following requirements:

(a) The charter must be arranged and sponsored by a charter organizer whose sole interest in the charter contract is as agent for the charter participants who become parties thereto, and not as agent for the direct air carriers.

(b) The charter contract must be for 40 or more seats.

(c) The charter must be on a round trip basis, but the departing flight and the returning flight need not be performed by the same direct air carrier: *Provided, however,* That if the air transportation is to be performed by more than one direct air carrier, then there shall be a single charter contract to which the charter participants (acting through the charter organizer) and all such direct air carriers (acting jointly and severally) shall be parties.

(d) There must be a minimum duration of seven (7) days, in the case of North American charters, and a minimum duration of ten (10) days, in the case of all other charters. The first day shall be the day that the originating flight takes off; the last day shall be the day the returning flight lands.

(e) The transportation portion thereof must be performed by direct air carriers which hold a certificate of public convenience and necessity under section 401 of the Act or a permit under section 402 of the Act.

(f) Passengers transported pursuant to the charter shall consist solely of charter participants, no less than 80 percent of whom shall be main list participants, plus tour conductors authorized to accompany the charter participants in accordance with this part.

(g) The total cost to each participant shall be the sum of the pro rata cost of air transportation, the service charge of the charter organizer, and the charge for land accommodations, if any.

(h) The sole compensation to be received by the charter organizer with respect to air transportation shall be the service charge paid by the charter participants.

§ 372a.11 Initial deposits.

Each main list participant, upon executing the contract between participants and organizer shall pay at least an initial deposit of 25 percent of the minimum pro rata charter price specified in the charter contract (or of the aggregate of the minimum pro rata charter prices specified in the contract, if there is more than one direct air carrier). This initial 25-percent deposit shall be nonrefundable to a charter participant who defaults in making any payment on the pro rata charter price subsequent to the filing of the charter contract, except as provided in §§ 372a.15 (g) and 372a.18.

§ 372a.12 Conditions precedent to contracts.

(a) The charter contract and the contract between the charter participants and the charter organizer shall become binding on the participants only upon the occurrence of all the following conditions precedent:

(1) The number of main list participants plus the number of tour conductors (which shall not exceed the maximum number permitted under this part) is equal to the number of seats specified in the charter contract;

(2) Each main list participant has paid at least an initial deposit of 25 percent of the minimum pro rata charter price specified in the charter contract; and

(3) The charter contract has been timely filed with the Board.

(b) At any time prior to the 4 months preceding the scheduled flight departure date, a participant may submit to the organizer written notice of his cancellation and he shall thereupon be entitled to receive forthwith a refund of all

moneys credited to his account, without deduction or penalty of any kind.

§ 372a.13 Assignments.

At any time during the 4 months preceding the scheduled flight departure date, a charter participant may assign his interest in the charter, but only in accordance with the following:

(a) The assignee must be a standby list member.

(b) No more than 20 percent of the main list participants may assign their interests.

(c) An assignment may be effected only by the charter organizer.

(d) The price for an assigned interest shall not exceed the total amount of pro rata charter price installments theretofore paid by the assignor, which amount shall then be credited to the account of the assignee.

(e) The charter organizer may charge the assignor a transfer fee not in excess of 5 percent of the minimum pro rata charter price.

(f) The charter organizer shall use his best efforts to effect an assignment, either at the request of a charter participant or upon the default of a charter participant in making any payment on the pro rata charter price.

§ 372a.14 Pro rata charter price; minimum, maximum, adjusted.

(a) The amount of the minimum pro rata charter price shall be equal to the total charter price for the total number of seats specified in the contract (including seats to be occupied by tour conductors) divided by the maximum number of charter participants, plus the service charge.

(b) The amount of the maximum pro rata charter price shall be equal to 20 percent more than the minimum.

(c) The adjusted pro rata charter price shall reflect the pro rata increase resulting from defaults in payments by participants and refunds made to participants pursuant to § 372a.15(g).

(d) The cost of the charter flight shall be prorated equally among all charter participants and no charter participant shall be allowed free or reduced-rate transportation: *Provided, however,* That, where land accommodations are included in the charter, tour conductors may be transported, if the number of such conductors is specified in the contract between the charter organizer and the participants, and is not more than one tour conductor for each 40 charter participants.

§ 372a.15 Full payment of charter price; refunds.

(a) No later than 60 days prior to the scheduled date of flight departure, there shall be due from each charter participant full payment of the minimum pro rata charter price. The contract between the participants and the organizer may also provide for the payment at the same time of a pro rata reserve deposit which shall be applied, as needed, toward payment of any adjustment in pro rata charter price resulting from defaults in payments by participants and refunds to participants pursuant to paragraph (g) of this section: *Provided, however,* That the total sum of the minimum pro rata charter price plus such reserve deposit shall not be greater than the maximum pro rata charter price: *And provided further,* That any portion of such reserve deposit as is not needed shall be forthwith refunded pro rata.

(b) Upon default by any participant in making such payment the charter organizer shall use his best efforts to effect assignment of his interest, in accordance with the provisions of § 372a.13, and the assignee shall thereupon become liable in place and instead of the assignor for the amount payable under paragraph (a) of this section.

(c) If the interest of any defaulting participant has not been assigned by the 45th day prior to the scheduled date of departure, then the initial 25-percent deposit of each such defaulting participant (unless refunded to him pursuant to paragraph (g) of this section) shall be applied toward payment of the charter price, and the pro rata charter price for each remaining participant shall be increased by an amount equal to his pro rata share in the unpaid balance of the defaulting participant's charter price.

(d) If the tentative adjusted pro rata charter price, as computed on the 45th day prior to the scheduled date of flight departure exceeds the specified maximum, then the charter shall be canceled and all moneys paid by the charter participants shall be refunded to them forthwith, without deduction or penalty of any kind: *Provided, however,* That the initial 25-percent deposit of each defaulting participant (unless refunded to him pursuant to paragraph (g) of this section) may be paid over as liquidated damages to the direct air carrier and the charter organizer pursuant to the terms of the charter contract and the contract between the organizer and participatns.

(e) If the tentative adjusted pro rata charter price, as computed on the 45th day prior to the scheduled date of flight departure, does not exceed the specified maximum, then each participant shall forthwith pay the balance, if any, due on such adjusted pro rata charter price and all moneys theretofore paid by charter participants shall be nonrefunded, except as provided in paragraph (f) of this section: *Provided, however,* That if the charter contract is subsequently canceled for any of the reasons set forth in § 372a.18, then all moneys paid by the charter participants shall be refunded to them forthwith, without deduction or penalty of any kind.

(f) The final adjusted pro rata price shall represent the tentative adjusted pro rata price as reduced by each participant's pro rata share of the total of any defaulted payments made subsequent to the date on which the tentative adjusted price was computed, and the amount by which the tentative adjusted price exceeds the final adjusted price shall be refunded by the organizer at the time he submits the post-flight accounting report required by § 372a.30.

(g) If the charter organizer receives written notice, prior to the time of computing the tentative adjusted price, that a charter participant has died, or that, as a result of accident or illness, verified by a medical doctor, it appears probable that he will be unable to participate in the travel group charter, then the charter organizer shall refund the charter price payments already made by such participant.

§ 372a.16 Payment to direct air carrier(s).

The direct air carrier(s) shall be paid in full for the cost of the round-trip charter transportation prior to scheduled date of flight departure, as provided for in the basic charter regulations applicable to the direct air carriers under Parts 207, 208, 212, and 214 of this chapter, as the case may be.

§ 372a.17 No intermingling of passengers.

There shall be no intermingling of passengers and each planeload group, or less-than-planeload group, shall move together as a group, on both legs of the air transportation portion of the trip, except under emergency circumstances provided for in the basic charter regulations applicable to the direct air carrier under Parts 207, 208, 212, and 214 of this chapter, as the case may be.

§ 372a.18 Cancellation of charter.

A charter authorized pursuant to this part shall be canceled and all payments by the charter participants shall be refunded in full if any of the following events occurs:

(a) The charter contract is not timely filed with the Board, in accordance with § 372a.22;

(b) The charter organizer's authority is suspended;

(c) A charter organizer's surety bond is canceled without substitution of a replacement satisfactory to the Board (see § 372a.25);

(d) A direct air carrier cancels the charter pursuant to the terms of the charter contract;

(e) The charter is for less than the entire capacity of an aircraft and the remaining capacity of the aircraft is not chartered to one or more other eligible persons in accordance with the applicable provisions of Parts 207, 208, 212, or 214 of this chapter, as the case may be.

Subpart C—Requirements Applicable to Charter Organizer and Foreign Charter Organizer

§ 372a.20 Exemption.

Subject to the provisions of this part and the conditions imposed herein, charter organizers (other than foreign charter organizers) are hereby relieved from the following provisions of title IV of the Federal Aviation Act of 1958, as amended, to the extent necessary to permit them to organize and arrange travel group charters:

Section 401.
Section 403.
Section 404(a), except the requirement to provide adequate service in connection with travel group charters operated hereunder.
Section 405(b).
Sections 407(b) and (c).
Sections 408(a) and 409, except control or interlocking relationships with direct air carriers.
Section 412.

§ 372a.20a Jurisdiction over foreign charter organizers.

The Board declines to exercise its jurisdiction over foreign charter organizers with respect to travel group charters which originate in a foreign country. The Board reserves the right to exercise its jurisdiction over any foreign charter organizer at any time if it finds that such action is in the public interest.

§ 372a.21 Suspension of exemption authority.

The Board reserves the power to suspend the exemption authority of any charter organizer, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public.

§ 372a.22 Operating authorization of charter organizer.

A charter organizer is authorized hereunder to organize and operate a travel group charter only in accordance with the provisions of this part, and subject to the following conditions:

(a) No charter organizer shall sell, or offer to sell, solicit or advertise a charter trip, until at least 15 days after he and the direct air carrier(s) have jointly filed with the Board (Supplementary Services Division, Bureau of Operating Rights) in duplicate:

(1) An option from the direct air carrier(s) under which the carrier(s) obligates itself for a specified period, which shall expire no later than 3 months prior to scheduled date of departure, to enter into a charter contract with the charter organizer as agent for the charter participants: *Provided, however,* That if the air transportation on the departing flight and the returning flight is to be performed by more than one direct air carrier, then there shall be a single option granted to the charter organizer by all such direct air carriers, acting jointly and severally;

(2) A copy of the proposed charter contract, setting forth specific terms and conditions upon which the carrier(s) will perform the charter, including the number of seats (specifically stating, where applicable, the number of seats to be occupied by tour conductors), the type of aircraft, the departure and return dates and points, and the minimum and maximum pro rata charter price;

(3) A copy of the proposed contract between the organizer and the participants;

(4) A duly subscribed and sealed surety bond, and if applicable a copy of a fully executed depository agreement, as provided in § 372a.25; and

(5) Samples of the promotional material which the charter organizer plans to use in his solicitation for charter participants: *Provided, however,* That if during the 15-day period following filing hereunder, the charter organizer has been notified that the Board has rejected such filing for noncompliance with this part, then he shall not sell or offer to sell, solicit, or advertise such charter trip until he has subsequently been notified by the Board that the filing has been accepted.

(b) No earlier than 4 months but no later than 3 months prior to the scheduled date of departure, the charter organizer and the direct air carrier(s) shall jointly file with the Board (Supplementary Services Division, Bureau of Operating Rights), in duplicate:

(1) A fully executed charter contract;

(2) A main list setting forth the names of participants in alphabetical order, their addresses and telephone numbers;

(3) A standby list, no larger than three times the number of main list participants, setting forth the same information called for in subparagraph (2) of this paragraph with respect to standbys who have authorized the organizer to include them in such list, as prospective assignees of main list participants, or a statement that there are no standby list members;

(4) A statement of the charter organizer affirming that each main list participant (i) has entered into a contract with the organizer as provided in this part, (ii) has paid his initial 25-percent deposit, and (iii) has been furnished by the organizer with an explanatory statement in the form set forth in Appendix A; and

(5) A statement of the depository bank, if any, affirming that it has received a deposit of no less than 25 percent of the total charter price payable to the direct air carrier(s).

(c) The service charge shall be separately stated and shall be equal for all participants.

§ 372a.23 Discrimination.

No charter organizer shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever, or subject any particular person, port, locality or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

§ 372a.24 Methods of competition.

No charter organizer shall engage in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof.

§ 372a.25 Surety bond and depository agreement.

(a) Except as provided in paragraph (b) of this section, a charter organizer (other than a foreign charter organizer over whom the Board has declined to exercise jurisdiction), before selling or offering to sell, soliciting or advertising any charter flight, shall furnish and file with the Board a surety bond in one of the following amounts dependent upon the length of the charter or series of charters: (1) For a charter or series of charters of 2 weeks or less, a bond in an amount of not less than the charter price for the air transportation to be furnished in connection with such charter or series of charters; (2) for a charter or series of charters of more than 2 weeks but less than 4 weeks, a bond in an amount of not less than twice the charter price; and (3) for a charter or series of charters of 4 weeks or more, a bond in an amount of not less than three times the charter price: *Provided, however,* That the liability of the surety to any charter participant shall not exceed the amounts paid by him to the charter organizer with respect to the charter.

(b) In lieu of furnishing a surety bond as provided under paragraph (a) of this section, the direct air carriers and the prospective charter organizer (except where he is a foreign charter organizer over whom the Board has declined to exercise jurisdiction) may elect, before selling or offering to sell, soliciting or advertising any charter flight, to comply with the requirements of subparagraphs (1) and (2) of this paragraph as follows:

(1) A surety bond in the following minimum amounts: (i) If the charter is for air transportation only, a bond in the amount of $5,000 per round trip charter flight, up to a maximum of $50,000 for a series of 10 or more round trip flights; or (ii) if the charter involves land accommodations in addition to air transportation, a bond in the amount of $10,000 per round trip flight, up to a maximum amount of $100,000 for a series of 10 or more round trip flights. The bond shall be for the protection of the charter participants and shall commence not later than the date on which it is filed with the Board and shall continue in effect until completion of the charter or series of charters: *Provided, however,* That the liability of the surety to any charter participant shall not exceed the amounts paid by him to the charter organizer with respect to the charter; and

(2) A copy of an agreement made between the direct air carrier(s), the charter organizer and a designated bank, by the terms of which all sums paid by participants to the charter organizer shall be deposited with and maintained by the bank in a separate escrow account, subject to the following conditions:

(i) The participants shall pay by check or money order payable to the bank, and any cash received by the charter organizer from a participant shall be deposited in, or mailed to, the bank no later than the close of the business day following the receipt of the cash;

(ii) The bank shall pay the direct air carrier(s) the charter price for the transportation not earlier than 60 days (including day of departure) prior to the scheduled day of departure of the originating or returning flight, upon certification of the departure date by the direct air carrier: *Provided,* That, in the case of a round trip charter contract to be performed by one carrier, the total round

trip charter price shall be paid to the carrier not earlier than 60 days prior to the scheduled day of departure of the originating flight;

(iii) Refund to participants from sums in the escrow account shall be paid by the bank directly to such participants, upon receipt of written notification from the charter organizer or a direct air carrier specifying the facts warranting such refund under this part;

(iv) As used in this section, the term "bank" includes a bank, savings and loan association, or other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

(v) The bank shall maintain a separate accounting for each charter;

(vi) After the charter price has been paid in full to the direct air carrier(s), the bank shall pay funds from the account directly to the hotels, sightseeing enterprises, or other persons or companies furnishing surface accommodations or services, if any, in connection with the charter or series of charters, upon presentation to the bank of vendors' bills and upon certification by the charter organizer of the amounts payable for such surface accommodations or services and the persons or companies to whom payment is to be made: *Provided, however,* That the total amounts paid by the bank pursuant to subdivisions (ii) and (vi) of this subparagraph shall not exceed either the total cost of air transportation, or 80 percent of the total deposits received by the bank (less any refunds made to charter participants pursuant to subdivision (iii) of this subparagraph), whichever is greater;

(vii) Except as provided in subdivisions (ii), (iii), and (vi) of this subparagraph, the bank shall not pay out any funds from the account prior to 2 banking days after completion of each charter, when the balance in the account shall be paid to the charter organizer, upon certification of the completion date by the direct air carrier performing the return flight.

(c) The bond required under paragraphs (a) and (b) of this section shall insure the financial responsibility of the charter organizer and the supplying of the transportation and all other accommodations, services, and facilities in accordance with the contract between the charter organizer and the charter participants, and shall be in the form set forth as Appendix B. Such bond shall be issued by a reputable and financially responsible bonding or surety company which is legally authorized to issue bonds of that type in the State in which the charter originates. For purposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia. The Board will consider that a bonding or surety company is prima facie qualified under this section if such company's surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6 and if such company is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the direct air carrier(s) and the charter organizer by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time set forth in such notification, the subject charter or charters shall be canceled.

(d) The bond required by this section shall provide that unless the charter participant files a claim with the charter organizer, within sixty (60) days after completion of the charter, the surety shall be released from all liability under the bond to such participant. The contract between the charter organizer and the charter participant shall contain notice of this provision.

§ 372a.26 Prohibition on operations unless tariffs are observed.

No charter organizer shall charter aircraft to provide air transportation to charter participants, and no direct air carrier shall operate such aircraft, except in accordance with the rates, fares, and charges, and all applicable rules, regulations, and other provisions for such transportation as set forth in the currently effective tariff or tariffs of the direct air carrier transporting charter participants; and no such organizer shall demand, collect, accept, or receive, in any manner, or by any device, directly or indirectly, or through any agent or broker, or otherwise, any portion of the rates, fares or charges so specified in the tariffs of such direct air carrier, and shall not demand, accept, or receive, either directly or indirectly, any privilege, service, or facility except those specified in the currently effective tariffs of such direct air carrier.

§ 372a.27 Charter costs.

(a) The charter organizer shall not make any charges to the charter participants other than his service charge for consummating the charter (or liquidated damages, as permitted hereunder, if the charter is canceled upon default of participants), and such transfer fee as may be due him from an individual participant for effecting an assignment.

(b) No part of the service charge shall be retained by the charter organizer unless the charter is completed: *Provided, however,* That the charter organizer may retain as liquidated damages a portion of the initial 25-percent deposits forfeited by defaulting participants in the event of cancellation of a charter, pursuant to the provisions of the charter contract and the contract between the charter participants and the charter organizer and in accordance with § 372a.15. Neither the charter organizer nor any member of the charter group may receive any gratuities or compensation, direct or indirect, from the carrier(s), or any organization which provides any service to the charter group with respect to air transportation. Nothing in this section shall prevent any member of the charter group from accepting such advertising and goodwill items as are customarily extended to passengers (e.g., a canvas traveling bag or a money exchange computer).

§ 372a.28 Statements of charges.

Any announcement or statement to prospective charter participants giving price per seat shall state that the price is dependent upon the number of seats sold and shall also set forth the total cost of the charter including the minimum and maximum pro rata charter price, the total service charge and the transfer fee. It shall also state that the minimum pro rata price is subject to an increase of no more than 20 percent as a result of defaults by participants, and that the charter will be canceled if the pro rata charter price increases by more than 20 percent over the minimum pro rata charter price. All announcements shall also identify the carrier(s), and the type of aircraft to be used for the charter. Solicitation materials shall separately state the cost of ground arrangements, if any, the cost of air transportation, the service charge, and the total cost of the entire trip. Solicitation material shall also state that for a person to be eligible to be a passenger on a charter flight he must be included in the main list or the standby list to be filed no later than 3 months before flight departure. All billings to charter participants shall separately state the pro rata cost of air transportation, the service charge, and the cost of land accommodations, if any.

§ 372a.29 Contract between charter organizer and charter participants.

The contract between the charter organizer and participants shall set forth the specific terms and conditions upon which the charter will be performed, including:

(a) The terms required by § 372a.22 to be specifically set forth in the charter contract;

(b) The terms required by § 372a.28 to be specifically set forth in statements of charges;

(c) The schedule of payments and the date by which the minimum price must be fully paid, which date shall not be later than 60 days before the scheduled departure date;

(d) The date on which the tentative adjusted pro rata price shall be computed, which date shall not be later than 45 days before the scheduled departure date;

(e) If applicable, the name and address of the depository bank and a statement that all installment payments are to be by check or money order made payable to the designated depository bank;

(f) The conditions upon which the contract between the charter organizer and the charter participants may be canceled, and the rights and obligations of all parties in the event of such cancellation;

(g) The conditions upon which the charter contract may be canceled, and the rights and obligations of all parties in the event of such cancellation;

(h) The conditions governing assignment of a participant's interest;

(i) The dollar amounts of the direct air carrier's(s') liability limitations for passengers' baggage, as set forth in the carrier's(s') tariff.

(j) The name and address of the surety and a statement that unless the charter participant files a claim with the charter organizer within sixty (60) days after completion of the charter, the surety shall be released from all liability under the bond to such charter participant.

§ 372a.30 Post-flight accounting report.

Not later than 10 days following completion of the charter, the charter organizer shall submit to each participant a statement in the form prescribed in Appendix C, setting forth the final adjusted pro rata price, which shall take into account all payments made by charter participants subsequent to the date on which the tentative adjusted price was computed, and such statement shall be accompanied by any refunds then due to the participants.

§ 372a.31 Record retention.[1]

(a) Every charter organizer (other than a foreign charter organizer over whom the Board has declined to exercise its jurisdiction) conducting a travel group charter pursuant to this part shall retain for 2 years after completion of the charter or series of charters true copies of the following documents at its principal or general office in the United States; (or, if it is a foreign charter organizer, then at its principal or general office):

(1) All documents which evidence or reflect deposits made by, and refunds made to, each charter participant;

(2) All statements, invoices, bills, and receipts from suppliers or furnishers of goods and services in connection with the travel group charter or series of charters.

(b) Every such charter organizer shall make the documents listed in this section available upon request by an authorized representative of the Board and shall permit such representative to make such notes and copies thereof as he deems appropriate.

Subpart D—Requirements Applicable to Direct Air Carrier

§ 372a.40 Charter not to be performed unless compliance with part.

A direct air carrier shall not perform air transportation in connection with a travel group charter unless it has made a reasonable effort to verify that all provisions of this part have been complied with, and that the charter organizer's authority under this part has not been suspended by the Board: *Provided, however,* That where a travel group charter is organized by a foreign charter organizer over whom the Board has declined to exercise its jurisdiction, pursuant to § 372a.20a, no direct air carrier may perform air transportation in connection with such travel group charter unless the charter is formed and implemented in accordance with the general conditions and limitations set forth in Subpart B of this part and the charter organizer performs all the acts and duties which this part requires to be performed by charter organizers within the Board's jurisdiction, other than the provisions set forth in §§ 372a.22(b)(4)(iii), 372a.25 and 372a.31.

§ 372a.41 Direct air carrier to identify enplanements.

A direct air carrier shall retain a true copy of each document which it has filed (jointly with the charter organizer) pursuant to section 372a.22(b), and shall make reasonable efforts to verify the identity of all enplaning charter participants (and tour conductors); and the documentary source of such verification shall be noted on the passenger list: *Provided, however,* That in the case of international flights the identity of each enplaning charter participant (and tour conductor) shall be verified by means of his passport or, if there be none, by means of any other travel identity document and the passport number or travel identity document number shall be entered on the passenger list.

§ 372a.42 No commissions to be paid.

No commissions, fees, or other compensation shall be paid by the direct air carrier to the charter organizer or to any other person in connection with the charter trip.

Subpart E—Reporting Requirements

§ 372a.50 Reporting requirements.

(a) Each direct air carrier shall prepare and file with the Board's Bureau of Enforcement within 7 days after performing the departure flight or the return flight, as the case may be, a list containing the name (in alphabetical order), address, telephone number, and passport number or other identity document number of each passenger and the carrier's verification of each enplaning passenger's identity shall be noted on such list, as provided in § 372a.41.

(b) The direct air carrier shall promptly notify the Board regarding any travel group charter flight covered by a filing under § 372a.22 which is subsequently canceled.

(c) If a charter organizer or foreign charter organizer relies upon the bond-depository option of § 372a.25(b) for compliance with the requirements of that section, the following monthly reports shall be filed with the Board's Bureau of Operating Rights not later than the 10th day of the month succeeding the reporting period: (1) By the depository bank, showing separately for each travel group charter, identified by departure date, the total amount of deposits received and disbursed during the reporting period, and the balance in the depository account at the end of the reporting period; and (2) by the charter organizer or foreign charter organizer showing separately for each travel group charter, identified by departure date, the total amount of customer deposits received by him or his agents, and the amount of refunds made by the bank to charter participants: *Provided,* That the depository bank may, in lieu of subparagraph (1) of this paragraph, elect to file a duplicate monthly statement of the same type it provides to depositors showing the information as specified in subparagraph (1) of this paragraph. When so elected, the reporting period for the charter organizer or foreign charter organizer in subparagraph (2) of this paragraph shall correspond to the reporting period of the bank. The term "bank" shall have the meaning set forth in § 372a.25. The reports shall be certified by the officer in charge of the bank's or the charter organizer's or foreign charter organizer's accounts, as the case may be, and the certification shall be in the following form:

CERTIFICATION [2]

I, the undersigned _____
(Title of officer in charge of accounts)

of the _____
(Full name of reporting company)

do certify that this report and all supporting documents which are submitted herewith, filed for the above indicated period, have been prepared by me or under my direction; that I have carefully examined them and declare that, to the best of my knowledge and belief, the information contained therein is complete and accurate.

_____
(Signature)

_____
(Bank's or charter organizer's or foreign charter organizer's post office address)

Date _____, 19__.

APPENDIX A

DESCRIPTION OF TRAVEL GROUP CHARTERS

Under Federal law, charter flights are permitted to be operated in air transportation within, and to or from, the United States. However, the terms and conditions governing participation in charter flights must distinguish this form of travel arrangement from the purchase by an individual passenger of an airline ticket for a regularly scheduled flight. The Civil Aeronautics Board (the Board) is the Federal agency which has the responsibility for prescribing these terms and conditions, and, over the years, several different types of charters have been authorized. Effective September 27, 1972, the Board adopted regulations authorizing a new type of charter, called "Travel Group Charters" (TGC), to be operated on a trial basis, until

[1] Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both. Title 18, U.S.C. § 1001.

[2] Title 18 U.S.C., sec. 1001, Crimes and Criminal Procedure, makes it a criminal offense, subject to a maximum fine of $10,000 or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

December 31, 1975. The pertinent regulations are set forth in Part 372a of the Board's Special Regulations (14 CFR Pt. 372a). Following is a summary of the principal provisions in those regulations as they directly affect participants in a TGC.

General Description of TGC.—The basic idea of a TGC is that 40 or more persons may enter into a charter contract, by which they hire an aircraft (or part of an aircraft) to provide themselves with round-trip air transportation for a trip which is to last a minimum of 7 days (10 days in some areas) on a pro rata basis, i.e., each charter participant shares equally in the cost of the charter. The charter contract must be filed with the Board several months before the scheduled date of departure.[1] At that time, the charter organizer must also file a "main list" identifying the people who have signed his contract and paid him an initial deposit of at least 25 percent of the "minimum pro rata charter price" (discussed below) specified in the contract. The number of persons on this "main list" must be equal to the number of seats which the contract specifies will be occupied by "charter participants."[2] At the same time, there may also be filed a "standby list" identifying any person who wants the opportunity to be substituted for a "main list" participant who might subsequently withdraw or default. The number of persons on the "standby list" may not exceed three times the number of "main list" participants, and a person on the "standby list" is under no obligation of any kind unless and until he actually becomes substituted for a "main list" participant. When the flight is performed, all the charter participants must be persons identified in either the "main list" or the "standby list" on file with the Board; and at least 80 percent of the charter participants must be from the "main list."

Pro Rata Charter Price.—The "minimum pro rata charter price," which must be set forth in the contract, is an amount equal to the total charter cost for all seats covered by the contract, divided by the maximum number of charter participants, plus the charter organizer's "service charge" (discussed below).

Example 1: A charter contract covers 123 seats (of which 3 seats are for tour conductors). The total contract price is $12,000, and the organizer is to be paid a $10 "service charge" by each passenger other than a tour conductor. The "minimum pro rata charter price" is $110 ($12,000 divided by 120, plus $10 for the service charge).

If all the seats intended for participants are sold,[3] fully paid for, and no refunds are made, then the minimum pro rata charter price will be the actual price which each charter participant will pay. However, if a participant defaults (or refund is made because of the death or illness of a participant) then the pro rata price of each remaining participant must be increased accordingly. In order to limit the liability of the remaining participants for an increase in the pro rata charter price, the Board has provided for a "maximum pro rata charter price", which is 20 percent more than the minimum. The charter organizer must compute, no later than 45 days before the scheduled departure date, whether defaults and refunds would result in increasing each remaining participant's share beyond the "maximum." If they would, then the charter must be canceled; otherwise, each remaining participant must pay the increase "adjusted pro rata price."[4]

Example 2: The minimum price is $110 (computed as shown in example 1). The maximum to which each remaining participant's price may be increased is $132.

Cancellations and Refunds.—A. Each participant is entitled to a full refund of all payments if a TGC is canceled for any of the following reasons:

1. The predeparture deadline for filing documents with the Board is not met.
2. The charter organizer's authority is suspended by the Board.
3. The charter organizer's surety bond is canceled and there is no replacement made which is satisfactory to the Board.
4. An air carrier cancels the charter pursuant to the terms of the charter contract.
5. The TGC is for less than the entire capacity of an aircraft and the remaining capacity of the aircraft is not chartered to one or more persons eligible under the Board's rules.

B. If a TGC is canceled because, as a result of defaults or refunds, the adjusted pro rata price would have to be increased beyond the maximum, then each participant not in default is entitled to a full refund. Those participants whose defaults necessitated the cancellation are entitled to have refunded only payments in excess of their initial 25 percent deposit; but the 25 percent deposit itself may be retained as liquidated damages for the organizer and/or the air carrier. (Death or illness of a participant before the adjusted pro rata price is computed does not constitute a default and, in such cases, full refund is to be made.)

C. Before a TGC is filed with the Board, any participant may give written notice to the organizer that he wishes to withdraw from the group, and he is then entitled to a full refund of all payments.

Example 3: On January 1, 1973, John Jones signs a contract with an organizer and pays a 25 percent deposit for a TGC scheduled to depart from New York to London on July 1, 1973. The TGC contract must be filed with the Board no earlier than March 1 and no later than April 1. Until March 1, Mr. Jones may withdraw and be entitled to a full refund.

Assignments.—Although a participant's initial 25 percent deposit is nonrefundable (except for death or illness) after a TGC contract has been filed, his interest in the TGC may be assigned at any time, but only to a person who is named in the filed "standby list." The other limitations on assignments are that no more than an aggregate of 20 percent of the main list participants may assign their interests, and no profit may be made by the assignor. To assure that these conditions are complied with, assignments may be made only through the organizer. For performing this function, the organizer may charge a transfer fee in an amount specified in his contract, but not to exceed 5 percent of the "minimum pro rata charter price."

Service charge.—In arranging air transportation for a TGC, the organizer acts as agent for the participants and not for any direct air carrier. He is therefore not permitted to receive any commission, fee or other compensation from any direct air carrier. As agent for the participants, he is permitted to receive from them a service charge (in addition to any transfer fees he may earn for arranging assignments). The Board does not set any maximum or minimum amount for a service charge. However, the amount of the service charge must be clearly set forth, as a separate item, in the organizer's solicitation material and in his contract, and the service charge must be equal to all participants.

APPENDIX B

TRAVEL GROUP CHARTER ORGANIZER'S SURETY BOND UNDER PART 372a OF THE SPECIAL REGULATIONS OF THE CIVIL AERONAUTICS BOARD (14 CFR PART 372a)

Know all men by these presents, That we _____
(Name of Travel Group Charter organizer)
(hereinafter called Principal), and _____
(Name of Surety)
a corporation created and existing under the laws of the State of _____
(State)
as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the sum of _____
(See § 372a.25 of Part 372a)
for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the Principal intends to become a travel group charter organizer pursuant to the provisions of Part 372a of the Board's Special Regulations and other rules and regulations of the Board relating to insurance or other security for the protection of travel group charter participants, and has elected to file with the Civil Aeronautics Board such a bond as will insure financial responsibility and the supplying of transportation and other services subject to Part 372a of the Board's Special Regulations in accordance with contracts, agreements, or arrangements therefor, and

Whereas, this bond is written to assure compliance by the Principal as an authorized travel group charter organizer with Part 372a of the Board's Special Regulations, and other rules and regulations of the Board relating to insurance or other security for the protection of charter participants, and shall inure to the benefit of any and all charter participants to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to charter participants any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Principal while this bond is in effect for the supplying of transportation and other services pursuant to and in accordance with the provisions of Part 372a of the Board's Special Regulations, then this obligation shall be void, otherwise to remain in full force and effect.

The liability of the Surety with respect to any charter participant shall not exceed the total cost to such charter participant for transportation and other services in accordance with his contract with the charter organizer.

[1] The charter contract and other documents are to be filed no earlier than 4 months, and no later than 3 months, before the scheduled date of departure.

[2] The only other authorized passengers on the charter flight are tour conductors, whose seats are paid for by the charter participants. The number of tour conductors must be specified in the contract and may not exceed one for each 40 participants.

[3] If not all the seats intended for participants are sold prior to the deadline for filing the contract, then the charter must be canceled and all moneys refunded.

[4] Once this "adjusted pro rata price" is computed, there can be no further increase in the pro rata price. However, there may be a subsequent decrease in price, as a result of late payments by delinquent participants or as a result of assignments.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penalty. The Surety agrees to furnish written notice to the Civil Aeronautics Board forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective upon its filing with the Civil Aeronautics Board and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice to the Civil Aeronautics Board at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Board. The Surety shall not be liable hereunder for the payment of any of the damages hereinbefore described which arise as the result of any contracts, agreements, undertakings, or arrangements for the supplying of transportation and other services made by the Principal after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such damages arising as the result of contracts, agreements or arrangements for the supplying of transportation and other services made by the Principal prior to the date such termination becomes effective. Liability of the Surety under this bond shall in all events be limited only to a charter participant or charter participants who shall within sixty (60) days after the termination of the particular travel group charter described herein give written notice of claim to the charter organizer and all liability on this bond shall automatically terminate sixty (60) days after the termination date of the particular travel group charter covered by this bond except for claims filed within the time provided herein.

In witness whereof, the said Principal and Surety have executed this instrument on the _____ day of _____, 19__.

PRINCIPAL

Name _____
By _____
(Signature and title)
Witness _____

SURETY

Name _____ (SEAL)
By _____
(Signature and title)
Witness _____

Only corporations may qualify to act as surety and they must meet the requirements set forth in § 372a.25(b) of Part 372a.

APPENDIX C

POST-FLIGHT ACCOUNTING REPORT

Instructions:

The charter organizer shall furnish a report in this form to each charter participant not later than 10 days following completion of the charter.

1. Name of carrier: _____
_____
2. Name and address of charter organizer: _____
_____
3. Reconciliation of price computations:

(a)	minimum pro rata charter price, compute on basis of _____ participants, at $ _____ per participant, plus service charge of $ _____	$_____
(b)	maximum pro rata charter price	_____
(c)	participant's tentative adjusted pro rata charter price, as computed on	_____
(d)	(1) total payments received from charter participants subsequent to date on which tentative price computed	_____
	(2) pro rata share of said total payments credited to each participant not in default	_____
(e)	participant's final adjusted charter price	_____
(f)	amount by which tentative adjusted price exceeds final adjusted price. (This is the amount of refund due each participant who paid the tentative adjusted price, and which must accompany this report.)	_____

CERTIFICATION [1]

I, the undersigned _____
(name of charter
_____ do certify that this report has organizer)
been prepared by me or under my direction, that I have carefully examined it and that to the best of my knowledge and belief it is a complete and accurate statement, and a copy hereof has been distributed to each charter participant.

_____
(Signature of charter organizer)

By _____
(Officer of charter organizer if a company)

[FR Doc.72-16841 Filed 10-3-72;8:45 am]

Title 29—LABOR

Chapter XVII—Occupational Safety and Health Administration, Department of Labor

PART 1904—RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

Employees Not in Fixed Establishments

On July 25, 1972, a document was published in the FEDERAL REGISTER (37 F.R. 14813) proposing to amend 29 CFR 1904.5, 1904.12 and to establish a new § 1904.14 relating to recordkeeping obligations under the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 657) with respect to employees who do not work in fixed establishments.

Interested persons were provided 30 days to submit written comments with respect to the proposal. After consideration of all comments received, I have decided to adopt the proposal without change.

Effective date. These amendments shall become effective 30 days after publication in the FEDERAL REGISTER.

[1] Title 18 U.S.C., Sec. 1001, Crimes and Criminal Procedure, makes it a criminal offense, subject to a maximum fine of $10,000 or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

Signed at Washington, D.C., this 29th day of September 1972.

GEORGE C. GUENTHER,
Assistant Secretary of Labor.

1. Subparagraph (1) of § 1904.5(d) is amended to read as follows:

§ 1904.5 Annual summary.

* * * * *

(d)(1) Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under § 1903.2(a) of this chapter. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report or work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary during the month of February of the following year to each such employee who receives pay during that month. For multiestablishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

2. Subparagraph (3) of § 1904.12(g) is amended by adding the phrase "and who are generally not supervised in their daily work" to read as follows:

§ 1904.12 Definitions.

* * * * *

(g) * * *

(3) Records for personnel who do not primarily report or work at a single establishment, and who are generally not supervised in their daily work, such as traveling salesmen, technicians, engineers, etc., shall be maintained at the location from which they are paid or the base from which personnel operate to carry out their activities.

3. A new § 1904.14 is established to read as follows:

§ 1904.14 Employees not in fixed establishments.

Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of §§ 1904.2, 1904.4, and 1904.6 with respect to such employees by:

(a) Maintaining the required records for each operation or group of operations which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

(b) Having the address and telephone number of the central place available at each worksite; and

(c) Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

(Sec. 8, 84 Stat. 1598; 29 U.S.C. 657)

[FR Doc.72-16908 Filed 10-3-72;8:50 am]

PART 1904—RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

Small Employers

On July 19, 1972, a document was published in the FEDERAL REGISTER (37 F.R. 14316) proposing to amend 29 CFR Part 1904 by establishing a new § 1904.15 relating to the recordkeeping obligations of small employers.

Interested persons were provided 30 days to submit written comments with respect to the proposal. After consideration of all comments received, I have decided to adopt the proposal. Because, however, several comments indicated that it contained some ambiguity, the text has been reworded to add clarity.

It should be noted that the rules adopted in this document are not considered to affect obligations of employers under State law for the keeping of records relating to job safety and health. Further, when obligations of employers arise under a State law which is the subject of a plan submitted or to be submitted by a State under section 18 of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 667), the State may require recordkeeping by an employer who is exempt from Federal obligations under this rule, so long as the State obtains the information involved with a minimum burden upon employers, especially those operating small businesses.

The new § 1904.15 is hereby established to read as follows:

§ 1904.15 Small employers.

(a) An employer who had no more than seven (7) employees at any one time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this part except § 1904.8 concerning fatalities or multiple hospitalization accidents (i.e., he need not prepare the log, OSHA 100, the supplementary record, OSHA 101, nor prepare or post the summary, OSHA 102).

(b) Paragraph (a) of this section shall not apply when an employer has been notified in writing by the Bureau of Labor Statistics that he has been selected to participate in a statistical survey of occupational injuries and illnesses. If selected, an employer will be required to maintain a log of occupational injuries and illnesses (OSHA 100) in accordance with § 1904.2 and to make reports in accordance with § 1904.21 for the period of time which is specified in the notice.

This amendment shall become effective January 1, 1973. The reason for the extended delay in the effective date is that the Bureau of Labor Statistics is conducting a survey of injuries and illnesses for calendar year 1972. In order to complete this survey with respect to small employers, no alteration of the recordkeeping requirements until the close of the calendar year is appropriate.

(Sec. 8, 84 Stat. 1598; 29 U.S.C. 657)

Signed at Washington, D.C., this 29th day of September 1972.

G. C. GUENTHER,
Assistant Secretary of Labor.

[FR Doc.72-16907 Filed 10-3-72;8:50 am]

Title 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

SUBCHAPTER B—SALES AND SERVICES

PART 818a—PERSONAL COMMERCIAL AFFAIRS

Subchapter B of Chapter VII of Title 32 of the Code of Federal Regulations is amended as follows:

Part 818a is revised to read as follows:

Sec.
818a.0 Purpose.
818a.1 Definitions.
818a.2 Life insurance policy content prerequisites.
818a.3 The accreditation program.
818a.4 Use of allotment for payment of life insurance premiums.
818a.5 Solicitation of motor vehicle liability insurance.
818a.6 Counseling on the purchase of life insurance.
818a.7 When solicitation is permitted.
818a.8 Solicitation notice.
818a.9 Equal solicitation opportunity.
818a.10 Letters of authorization.
818a.11 Prohibited solicitation practices.
818a.12 Revocation of on-base solicitation privileges.
818a.13 Procedures for revocation or suspension of on-base solicitation privileges.

AUTHORITY: The provisions of this Part 818a issued under 10 U.S.C. 8012.

§ 818a.0 Purpose.

This part establishes policy on private commercial solicitation on Air Force installations.

§ 818a.1 Definitions.

(a) *Agent.* An individual who receives remuneration as a member, representative, or salesman for an insurer or an insurance carrier.

(b) *Association.* Any organization which has been established, whether or not the word "Association" appears in its title, and which:

(1) Is composed of and serves exclusively members of the Armed Forces of the United States (on active duty, in a Reserve status, in a retired status, or individuals who entered into such associations while on active duty) and their dependents.

(2) Operates either as a profit or nonprofit organization under criteria set forth in the Internal Revenue Code, whether by mail or through an agency sales force, or both, and

(3) Offers its members life insurance coverage, either as part of the membership dues or as a separately purchased plan made available through an insurance carrier or the association as a self-insurer, or a combination of both.

(c) *Department of Defense (DOD) personnel.* Unless the context indicates otherwise, DOD personnel as used in this part means all civilian employees, including special Government employees, of all the offices, agencies, and departments carrying on functions on a defense installation (including nonappropriated fund activities) and all active duty officers (commissioned and warrant) and enlisted members of the Army, Navy, Air Force, and Marine Corps.

(d) *Insurance carrier.* An insurance company accredited by the DOD and issuing insurance through an association or reinsuring or coinsuring such insurance.

(e) *Insurance policy.* A policy or certificate of insurance issued by an insurer or by an insurance carrier or evidence of insurance coverage issued by self-insured association.

(f) *Insurer.* An insurance company accredited hereunder by the DOD.

(g) *Solicitation.* (1) As used in this part, solicitation means selling or attempting to sell goods or services, including life insurance, motor vehicle liability insurance, mutual funds, and securities. Solicitation in this context means making an appointment for the purpose of such selling.

(2) The term does not apply to:

(i) Residence services such as milk delivery, laundry services, etc., when such services are authorized by the installation commander.

(ii) Solicitation and sale of life insurance on oversea installations. Such solicitation will be conducted under regulations issued by the unified or specified command having authority in the oversea area.

(h) *State.* The 50 political jurisdictions of the United States, the District of Columbia, and the territories and possessions of the United States.

§ 818a.2 Life insurance policy content prerequisites.

(a) Insurance policies, other than certificates or other evidence of insurance issued by a self-insured association, offered and sold to personnel on a military installation world-wide must:

(1) Comply with the insurance laws of the State in which the installation is located and the procedural requirements of this part,

(2) Contain no restrictions by reason of military service or military occupational specialty of the insured, unless such restrictions are clearly indicated on the face of the policy,

(3) Plainly indicate on the face of the policy any extra premium charges imposed by reason of military service or military occupational specialty, and

(4) Not provide for a variation in the amount of death benefit or premium based upon the length of time and the policy has been in force, unless such variations are clearly described therein and appear on the face of the policy as well.

(b) Premiums shall reflect only the actual premiums payable for life insurance coverage.

§ 818a.3 The accreditation program.

(a) Any life insurance company is considered as automatically accredited if it is licensed under the insurance laws of the State in which the installation is located and is entitled to the allotment of pay.

(b) The insurance carrier of an association is considered accredited and eligible to receive the allotment of pay if the insurance carrier currently appears on the fiscal year list of accredited companies authorized to solicit the sale of life insurance on military installations in oversea areas.

(c) Associations involved in self-insured plans as of March 31, 1972, are considered as automatically accredited. However, some associations are not organized within the supervision of insurance laws of either the Federal or State Governments. While some are organized for profit, others function as nonprofit associations under Internal Revenue Service regulations. Only Internal Revenue Service-designated nontaxable or nonprofit associations are permitted to receive the military allotment of pay for life insurance.

§ 818a.4 Use of allotment for payment of life insurance premiums.

Such allotments may be made as prescribed by the DOD Military Pay and Allowances Entitlements Manual, AFM 177–2, and AFM 177–105.

§ 818a.5 Solicitation of motor vehicle liability insurance.

The minimum requirements for motor vehicle liability insurance at Air Force installations are based on the financial responsibility laws of the State in which the installation is located and are further governed by AFR 125–14. Solicitation of the sale of motor vehicle liability insurance which does not meet these requirements is prohibited.

§ 818a.6 Counseling on the purchase of life insurance.

No allotment for the payment of life insurance premiums will be accepted by the Accounting and Finance Office Military Pay area (AFO–MP) for personnel in grades E–1, E–2, and E–3 until the individual has been counseled by CBPO–DPMS. CBPO–DPMS will furnish the AFO–MP a statement that the individual has been counseled in accordance with this part. CBPO–DPMS will, without comment as to the merit of the policy, insure that personnel are completely aware of all provisions of the policy and its place in the spectrum of survivor benefits. CBPO–DPMS will not advise against the purchase of a policy unless it is absolutely clear that the contract of insurance will be to the individual's detriment. For personnel in pay grades E–1, E–2, and E–3, at least 7 days should elapse for counseling between the signing of a life insurance application and the certification of an allotment unless the first two monthly premiums have been paid in advance. The purchaser's unit commander may grant a waiver to this requirement for good cause, such as the purchaser's impending permanent change of station. Normally, all insurance contracts should be accompanied by advance payment of the first two monthly premiums unless the policy is to be made effective after the establishment of the allotment.

§ 818a.7 When solicitation is permitted.

Solicitation is permitted when:

(a) The installation commander has not, for reasons of security or other good cause, prohibited it.

(b) When the solicitor has been specifically invited by a base resident to his quarters or another place designated by the installation commander. (Solicitation on the installation of nonresidents of the installation is prohibited.)

(c) The solicitor is duly licensed in the jurisdiction in which the installation is located.

(d) It is consistent with AFR 147–7.

§ 818a.8 Solicitation notice.

A conspicuous notice of solicitation restrictions will be posted in such form and place as to give notice to all wishing to solicit on the installation.

§ 818a.9 Equal solicitation opportunity.

Commanders will insure that all agents are extended equal opportunity for interviews by appointment at the designated areas and that DOD personnel do not act in any capacity as liaison with agents to arrange appointments. Where space and other considerations dictate the limiting of the number of agents using the designated interviewing area, the installation commander may develop and publish local policy consistent with this concept.

§ 818a.10 Letters of authorization.

No letter or other form of authorization will be issued to a solicitor. (This does not apply to routine visitor passes.)

§ 818a.11 Prohibited solicitation practices.

(a) Making appointments with or soliciting military personnel who are in an "on-duty" status.

(b) Procuring or supplying (or attempting to procure or supply) rosters or listings to any person for the purpose of solicitation, direct or indirect.

(c) Offering unfair or deceptive inducements to purchase or trade.

(d) Using any manipulative, deceptive, or fraudulent device, scheme or artifice, including misleading advertising and sales literature.

(e) Any representation which suggests or gives rise to the appearance that the Department of Defense or any of its components sponsor the company, its agent, or its goods or services.

(f) Any breach of warranty or contract not promptly adjusted on demand.

(g) Soliciting recruits, trainees, and transient personnel in a "mass" or "captive" audience.

(h) Use of official identification cards by retired or Reserve members of the armed forces to gain access to a military installation for the purpose of soliciting.

(i) Solicitation by a military member of another military member who is equal to or lower in grade, whether on or off duty, in or out of uniform, on or off a military installation at any time.

(j) Department of Defense personnel are expressly prohibited from representing any insurance company as an agent for the solicitation of insurance to personnel on a military installation, with or without compensation.

(k) The use of an agent as a participant in any military sponsored insurance education or orientation program. Even representatives of nonprofit associations cannot act in this capacity unless their representatives are entirely free from self-serving interest or emphasis, direct or indirect.

(l) Agents assuming or using titles such as "Battalion Insurance Counselor," "Unit Insurance Adviser," "Servicemen's Group Life Insurance (SGLI) Conversion Consultant," etc.

(m) The assignment of desk space for an interview for other than a specific prearranged appointment. During such appointment, the agent will not display desk or other signs announcing name or company affiliation.

(n) The use of the base bulletins or any other notice, official or unofficial, announcing the presence of an agent and his availability.

(o) The distribution, or availability for distribution, of literature other than to the person being interviewed.

§ 818a.12 Revocation of on-base solicitation privilege.

The privilege of on-base solicitation may be denied for any of the following reasons, provided the offender can be reasonably informed by prior notice of the violation of which he is accused.

(a) Violation of any restriction, prohibition or requirement imposed by this part or any supplemental regulation hereto. This specifically includes solicitation without prior invitation of the member(s) being solicited.

(b) Substantiated adverse complaints or reports regarding the quality of goods, services, or the manner in which they were offered for sale.

(c) Knowing and willful violation of the Truth-in-Lending Act, Regulation Z of the Federal Reserve Board, or any similar State or local law, ordinance, or regulation.

(d) Personal misconduct by the solicitor while on base.

(e) Failure to substantially incorporate the Standards of Fairness (AFR 35–10, Attachment 8, October 31, 1969) in every contract of sale made on the base.

(f) Possession of or any attempt to obtain supplies of allotment forms.

§ 818a.13 Procedures for revocation or suspension of on-base solicitation privileges.

(a) *Individual responsibilities.* Any person having information which may constitute grounds for revocation or suspension of solicitation privileges will report the information to the Consolidated Base Personnel Office, Personal Affairs Section (CBPO–DPMS). CBPO–DPMS will report the situation to the installation commander through personnel

channels. Where there is no Personal Affairs Section, the installation commander will designate an office to handle this function.

(b) *Action by the installation commander*—(1) *Revocations.* (i) The installation commander may close the case without action and advise the complainant of the reasons for his actions. He may offer the alleged offender (in writing) an opportunity to show cause why his on-base solicitation privilege should not be revoked. This written notice will describe the substance of the complaint and offer the alleged offender the opportunity to rebut or mitigate the violation either in person or in writing.

(ii) If the alleged offender fails to respond, rebut or mitigate the complaint the installation commander will advise him in writing that his privilege to solicit on the installation has been revoked. Such revocation will be for a reasonable period not to exceed 1 year. (If the solicitor has not been licensed by civil authority or if such license has been withdrawn, the period of revocation will be at least equal to the unlicensed period.) Notice of revocation will be in writing and delivered in person or by registered/certified mail, return receipt requested.

(iii) When the commander believes the offender may solicit on other military installations, he will advise the other installation commanders of his action. If the offender is known to be operating extensively on military installations, or such appears probable, the commander will advise AFMPC/DPMSAB, Randolph Air Force Base, Tex. 78148, and the local Armed Forces Disciplinary Control Board.

(2) *Suspensions.* The installation commander may immediately suspend solicitation privileges, pending investigation and "show cause" action, for a period of 30 days. ("Show cause" means the grieved party is afforded an opportunity to present facts on his behalf on an informal basis for the consideration of the installation commander.) Notice of such suspension will be in writing and delivered either in person or by registered/certified mail, return receipt requested.

By order of the Secretary of The Air Force.

JOHN W. FAHRNEY,
Colonel, U.S. Air Force, Chief, Legislative Division, Office of The Judge Advocate General.

[FR Doc.72-16860 Filed 10-3-72;8:46 am]

SUBCHAPTER C—PUBLIC RELATIONS

PART 824—AIR FORCE PARTICIPATION IN PUBLIC EVENTS

Use of Aircraft

Part 824, Subchapter C of Chapter VII of Title 32 of the Code of Federal Regulations is amended as follows:

Section 824.7 is amended by correcting paragraph (a)(4) and adding a new subparagraph (6) under paragraph (a) to read as follows:

§ 824.7 Use of aircraft.

* * * * *

(a) *On-base participation requirements.* * * *

(4) Mass parachute jumps, equipment drops, assault aircraft demonstrations, standard tactical aircraft maneuvers, or helicopter troop landings under simulated tactical conditions may be held only on military installations capable of providing necessary support and only during an "open house" event.

* * * * *

(6) Aerobatic performance or aircraft demonstrations by civilians require the approval of HQ USAF. Requests will be forwarded through channels to SAF/OIC a minimum of 60 days in advance of the event. Insurance and landing rights requirements are contained in Part 855 of Subchapter F of this chapter.

* * * * *

(10 U.S.C. 8012)

By order of the Secretary of the Air Force.

JOHN W. FAHRNEY,
Colonel, U.S. Air Force, Legislative Division, Office of The Judge Advocate General.

[FR Doc.72-16859 Filed 10-3-72;8:46 am]

Title 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency

SUBCHAPTER E—PESTICIDES PROGRAMS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Interim Tolerances; Deletions

In the FEDERAL REGISTER of August 30, 1972 (37 F.R. 17554), interim tolerances were established for residues of the herbicide 2-(*m*-chlorophenoxy) propionic acid and its corresponding amide 2-(*m*-chlorophenoxy)propionamide in or on the raw agricultural commodity peaches at 0.1 part per million and the insecticide dipropyl isocinchomeronate in or on the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.1 part per million. The interim tolerances were established pending final review and evaluation of the data on the subject pesticides.

Subsequently, the review and evaluation of the above pesticides have been completed and ordinary tolerances have been established for 2-(*m*-chlorophenoxy) propionic acid, its corresponding amide (37 F.R. 20825), and dipropyl isocinchomeronate (37 F.R. 16937; August 23, 1972).

Therefore, the listing of interim tolerances for these two pesticides is no longer necessary and § 180.319 *Interim tolerances* is amended by deleting the items "2-(*m*-chlorophenoxy)propionamide and 2-(*m*-chlorophenoxy) propionic acid" and "dipropyl isocinchomeronate" from the list of items in the table.

Since the order established by this document prevents duplication of tolerances and is noncontroversial, notice, public procedure, and delayed effective date are not prerequisites to this promulgation.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (10-4-72).

Dated: September 25, 1972.

EDWIN L. JOHNSON,
Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.72-16945 Filed 10-3-72;8:54 am]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

2-(*m*-chlorophenoxy)propionic Acid

A petition (PP 2F1222) was filed by Amchem Products, Inc., Ambler, Pa. 19002, in accordance with provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), proposing establishment of tolerances for negligible residues of the plant regulator 2-(*m*-chlorophenoxy) propionic acid from application of the acid or its corresponding amide 2-(*m*-chlorophenoxy) propionamide in or on the raw agricultural commodities peaches and nectarines at 0.25 part per million.

Subsequently, the petitioner amended the petition by reducing the requested tolerances of 0.25 part per million to 0.1 part per million.

Based on consideration given the data submitted in the petition and other relevant material, it is concluded that:

1. The plant regulator is useful for the purpose for which the tolerances are being established.

2. There is no reasonable expectation of residues in eggs, meat, milk, or poultry, and § 180.6(a)(3) applies.

3. The tolerance established by this order will protect the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), the authority transferred to the Administrator of the Environmental Protection Agency (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs (36 F.R. 9038), Part 180 is amended by adding the following new section to Subpart C:

§ 180.325 2-(*m*-Chlorophenoxy)propionic acid; tolerances for residues.

A tolerance of 0.1 part per million is established for negligible residues of the plant regulator 2-(*m*-chlorophenoxy) propionic acid from application of the acid or of 2-(*m*-chlorophenoxy)propionamide in or on the raw agricultural commodities peaches and nectarines.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Environmental Protection Agency, Room 3125, South Agriculture Building, 12th Street and Independence Avenue SW., Washington, DC 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (10–4–72).

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: September 25, 1972.

EDWIN L. JOHNSON,
Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.72–16946 Filed 10–3–72;8:54 am]

Title 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation

[CGD 72–150R]

SUBCHAPTER D—TANK VESSELS

PART 31—INSPECTION AND CERTIFICATION

SUBCHAPTER H—PASSENGER VESSELS

PART 71—INSPECTION AND CERTIFICATION

SUBCHAPTER I—CARGO AND MISCELLANEOUS VESSELS

PART 91—INSPECTION AND CERTIFICATION

Inspection and Certification; Factors of Safety

The purpose of this amendment is to make the regulations on cargo gear factors of safety consistent with recognized industry standards. The amendment allows the use of yield point, as an alternative to breaking strength, in calculating the minimal safety factors in the design of cargo gear. It also expands the list of gear items to include factors of safety for stayed masts, pins, and connections.

This amendment is based on a notice of proposed rule making published in the March 1, 1972, issue of the FEDERAL REGISTER (37 F.R. 4292), and in the Marine Safety Council Public Hearing Agenda dated March 27, 1972. The proposed amendment was identified as Item 6–72 in the notice and the agenda.

The Coast Guard invited interested persons to submit comments by April 3, 1972. It also encouraged participation at the public hearing. In response, the Coast Guard received three written comments.

Two of the commenters pointed out that safety factors based on yield strength resulted in overly conservative structures and suggested that the Coast Guard incorporate into the regulations dynamic factors. The Coast Guard prefers a conservative standard for safe cargo handling that can be applied by the industry with minimum difficulties. Accordingly, the suggestion was not approved.

One commenter suggested that footnote 1 of Table 31.37–25(a) be changed by adding the word "the" to precede the final word "steel." The commenter pointed out that "steel" without the suggested definitive article refers only to mild steel. The Coast Guard has accepted this suggestion and added the word "the" to precede the word "steel" in footnote 1.

Accordingly, the Coast Guard amends Parts 31, 71, and 91 as follows:

1. By revising § 31.37–25 to read as follows:

§ 31.37–25 Factors of safety.

(a) Except as provided in paragraph (b) of this section, in the design of cargo gear, the minimal safety factors in Table 31.37–25(a) must be used to meet the requirements of § 31.37–15.

(b) The Commandant may permit the use of safety factors different than those in Table 31.37–25(a) in the design of cargo gear that he considers special.

TABLE 31.37–25(a)

Safe working loads for component parts	Safety factors based on [1]— Ultimate strength	Yield point	Breaking test load
All metal structural parts except steel booms, stayed masts, pins, and connections:			
5 tons or less working load of the assembled gear	5.00	[1] 2.75	
15 tons working load of the assembled gear	4.00	[1] 2.20	
60 tons or more working load of the assembled gear	3.75	[1] 2.05	
Steel booms:			
10 tons or less working load of the assembled gear		3.00	
13 tons or more working load of the assembled gear		2.50	
Stayed masts:			
10 tons or less working load of assembled gear	5.00		
13 tons or more working load of assembled gear	4.00		
Pins and connections:			
10 tons or less working load of assembled gear		[1] 3.00	
13 tons or more working load of assembled gear		[1] 2.50	
Wire rope:			
10 tons or less working load			5.00
13 tons or more working load			4.00
Fiber rope:			
For running rigging	7.00		
For fixed gear and vangs	5.00		
Wooden structural parts	8.00		
Chains	4.50		

[1] Intermediate values of safety factors may be used.
[2] The minimum yield point for design purposes shall not be considered greater than 72 percent of the minimum ultimate strength of the steel.

§§ 71.47–25, 91.37–25 [Amended]

2. By revising §§ 71.47–25 and 91.37–25 to read exactly the same as § 31.37–25, except that the tables within the two sections should be designated §§ 71.47–25(a) and 91.37–25(a) respectively.

(R.S. 4405, as amended, R.S. 4462, as amended, R.S. 4417a, as amended, by Public Law 92–340, 86 Stat. 424, 427 (July 10, 1972), sec. 6(b)(1), 80 Stat. 937; 46 U.S.C. 375, 416, 391a, 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

Effective date. This amendment is effective on November 6, 1972.

Dated: September 28, 1972.

C. R. BENDER,
Admiral, U.S. Coast Guard, Commandant.

[FR Doc.72–16794 Filed 10–3–72;8:45 am]

Title 49—TRANSPORTATION

Chapter I—Department of Transportation

SUBCHAPTER B—OFFICE OF PIPELINE SAFETY

[Amdt. 192–9; Docket OPS–13]

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

Modification of Pressure Relief Limitations

This amendment to § 192.201(a) changes the restriction on accidental pressure buildup in pipelines, other than low pressure distribution systems, which have a maximum allowable operating pressure (MAOP) of less than 60 p.s.i.g.

On November 10, 1971, the Department issued a notice of proposed rule making in the FEDERAL REGISTER proposing these regulatory changes (OPS Notice 71–6, 36 F.R. 21834, November 16, 1971). Interested persons were afforded an opportunity to participate in the rule making by submitting written information, views, or arguments. Several comments subsequently were received and have been

given full consideration. However, the amendment is issued without substantive change from the proposal.

Two commenters recommended making the proposed changes available for systems with MAOP's up to 150 p.s.i.g. Justification for such recommendations was based on an expressed desire to avoid possible difficulties arising in utilizing present pressure relief systems under the amended standards. As it is only when the MAOP of a system is below 60 p.s.i.g. that present-day regulating equipment cannot accurately limit accidental overpressure to the present 10 percent of MAOP standard, it is in the best interest of overall safety that the proposed amendment allowing an increase in the limits for accidental overpressure be restricted to systems with MAOP's of 60 p.s.i.g. or less.

Another comment suggested a revision in the proposed amendment to make the maximum pressure limitation applicable only at the most remotely located pressure limiting station in order to reduce the possibility of having to vent gas into the atmosphere in Class 3 or 4 locations. However, it is felt that the potential hazard of such venting is negligible in comparison with the greater risks involved in allowing the pressure in the entire system to be monitored at its most remotely located point. Such a procedure has the potential to allow pressure buildups well above the established limits in other parts of the distribution system.

Section 4(a) of the Natural Gas Pipeline Safety Act requires that all proposed standards and amendments to such standards be submitted to the Technical Pipeline Safety Standards Committee and that the Committee be afforded a reasonable opportunity to prepare a report on the "technical feasibility, reasonableness, and practicability of each such proposal." This amendment to Part 192 has been submitted to the Committee and it has submitted a favorable report. The Committee's report and the proceedings of the Committee which led to that report are set forth in the public docket for this amendment which is available at the Office of Pipeline Safety.

In consideration of the foregoing, Part 192 of Title 49 of the Code of Federal Regulations is amended by revising § 192.201(a) to read as follows, effective November 4, 1972

§ 192.201 Required capacity of pressure relieving and limiting stations.

(a) Each pressure relief station or pressure limiting station or group of those stations installed to protect a pipeline must have enough capacity, and must be set to operate, to insure the following:

(1) In a low pressure distribution system, the pressure may not cause the unsafe operation of any connected and properly adjusted gas utilization equipment.

(2) In pipelines other than a low pressure distribution system—

(i) If the maximum allowable operating pressure is 60 p.s.i.g. or more, the pressure may not exceed the maximum allowable operating pressure plus 10 percent, or the pressure that produces a hoop stress of 75 percent of SMYS, whichever is lower;

(ii) If the maximum allowable operating pressure is 12 p.s.i.g. or more, but less than 60 p.s.i.g., the pressure may not exceed the maximum allowable operating pressure plus 6 p.s.i.g.; or

(iii) If the maximum allowable operating pressure is less than 12 p.s.i.g., the pressure may not exceed the maximum allowable operating pressure plus 50 percent.

* * * * *

(Sec. 3, Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1672; § 1.58(d) of the regulations, Office of the Secretary of Transportation, 49 CFR 1.58(d); redelegation of authority to the Director, Office of Pipeline Safety, set forth in Appendix A to Part 1 of the regulations, Office of the Secretary of Transportation, 49 CFR Part 1)

Issued in Washington, D.C., on September 28, 1972.

JOSEPH C. CALDWELL,
Director,
Office of Pipeline Safety.

[FR Doc.72-16933 Filed 10-3-72;8:53 am]

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. 1093, Amdt. 2]

PART 1033—CAR SERVICE

Burlington Northern Inc., Authorized To Operate Over Tracks of Minneapolis Industrial Railway Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 27th day of September 1972.

Upon further consideration of Service Order No. 1093 (37 F.R. 9028 and 12727), and good cause appearing therefor:

It is ordered, That:

Section 1033.1093 *Service Order No. 1093* (Burlington Northern Inc. authorized to operate over tracks of Minneapolis Industrial Railway Co.) be, and it is hereby, amended by substituting the following paragraph (d) for paragraph (d) thereof:

(d) *Expiration date.* This section shall expire at 11:59 p.m., January 31, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., September 30, 1972.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-16962 Filed 10-3-72;8:55 am]

[S.O. 1096, Amdt. 1]

PART 1033—CAR SERVICE

Southern Railway Co. and Missouri Pacific Railroad Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 27th day of September 1972.

Upon further consideration of Service Order No. 1096 (37 F.R. 7794), and good cause appearing therefor:

It is ordered, That:

Section 1033.1096 *Service Order No. 1096* (Southern Railway Co. authorized to operate over tracks of St. Louis-San Francisco Railway Co. and over tracks of Missouri Pacific Railroad Co.; Missouri Pacific Railroad Co., authorized to operate over tracks of Southern Railway Co.) be, and it is hereby, amended by substituting the following paragraph (h) for paragraph (h) thereof:

(h) *Expiration date.* This section shall expire at 11:59 p.m., March 31, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., September 30, 1972.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-16963 Filed 10-3-72;8:55 am]

Title 50—WILDLIFE AND FISHERIES

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

PART 32—HUNTING

Cape Romain National Wildlife Refuge, S.C.

The following special regulations are issued and are effective on date of publication in the FEDERAL REGISTER (10–4–72).

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

SOUTH CAROLINA

CAPE ROMAIN NATIONAL WILDLIFE REFUGE

Public hunting of rails on the Cape Romain National Wildlife Refuge, S.C., is permitted only on the area designated by signs as open to hunting. This open area, comprising approximately 12,000 acres, is delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, Ga 30323. Hunting shall be in accordance with all applicable State regulations covering the hunting of rails, and shall be subject to the following special conditions:

(1) Open season: October 15–November 21, 1972.

(2) Guns must be encased or otherwise rendered incapable of firing except when in the designated hunting area.

(3) The use of dogs is permitted.

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 November 21, 1972.

C. EDWARD CARLSON,
Regional Director, Bureau of Sport Fisheries and Wildlife.

SEPTEMBER 26, 1972.

[FR Doc.72-16884 Filed 10-3-72;8:48 am]

Title 6—ECONOMIC STABLIZATION

Chapter III—Price Commission

PART 300—PRICE STABILIZATION

Acquisitions and Divestitures of Entities

The purpose of these amendments is to add a new § 300.203 to the regulations of the Price Commission to provide guidance for accounting information for business combinations, in the filing of reports or other documents with the Price Commission. The purpose of the new section is to provide that, when there are changes in the business structure, the quarterly information submitted on Form PC–51 is consistent with the base period information reported on Form PC–50. A new Subpart D "Exceptions" is also added to consolidate provisions relating to that subject and to provide a specific procedure for the consideration of requests for exceptions to restate base period profit margins to reflect acquisitions or divestitures that are not poolings of interests, spin-offs, or split-offs.

The new § 300.203 states generally that accounting information for business combinations may be restated only in accordance with generally accepted accounting principles, consistently applied. Restatement of prior accounts is required for changes accounted for as a pooling of interests, a spin-off, or a split-off, but is generally not authorized for other acquisitions or divestitures.

The Commission recognizes, however, that for sound business reasons, a large number of acquisitions and divestitures are not accounted for as poolings of interests, spin-offs, or split-offs although such transactions may have substantially the same economic impact on the acquiring or divesting firm. If the impact of the transaction on a company's base period profit margin is substantial, the difference in treatment accorded such transactions may be inequitable in certain cases.

Therefore, provision has been made in §§ 300.371, 300.373, and 300.375 to establish the specific requirements for the filing of a request for an exception for the purpose of restating a base-period profit margin to reflect acquisitions and divestitures that may not normally be used for such a restatement. Special provision is made for processing, on a 10-day basis, a request for an exception to reflect proposed acquisitions or divestitures of sole proprietorships, corporations, subsidiaries, or other separate legal entities, if they will cause a 10-percent net change (on a pro forma basis) in the base-period profit margin, and certain other specific requirements will be met. Those requests not eligible for processing under the 10-day provision as a proposed acquisition or divestiture will be given the normal processing accorded other requests for exceptions.

Since the purpose of these amendments is to provide immediate guidance and information with respect to compliance with price stabilization rules, it is hereby found that notice and public procedure is impracticable and that good cause exists for making them effective less than 30 days after publication in the FEDERAL REGISTER.

(Economic Stabilization Act of 1970, as amended, Public Law 91–379, 84 Stat. 799; Public Law 91–558; 84 Stat. 1468; Public Law 92–8, 85 Stat. 13; Public Law 92–15, 85 Stat. 38; Public Law 92–210, 85 Stat. 743; and E.O. 11640, as amended)

In consideration of the foregoing, Part 300 of Title 6 of the Code of Federal Regulations is amended as set forth herein, effective October 4, 1972.

Issued in Washington, D.C., on October 2, 1972.

C. JACKSON GRAYSON, Jr.,
Chairman, Price Commission.

1. Section 300.5 is amended by inserting the following new definitions in proper alphabetical sequence:

§ 300.5 Definitions.

* * * * *

"Pooling of interests" means a combination of two or more corporations which meets the conditions set forth in Opinion No. 16 of the Accounting Principles Board of the American Institute of Certified Public Accountants (effective date October 31, 1970), 666 Fifth Avenue, New York, NY 10019. Copies are available from that address for $0.75 each.

* * * * *

"Spin-off" means the distribution of the controlling stock in a corporation, by another corporation which owned such stock imediately before that distribution, to the shareholders of the distributing corporation without the surrender by those shareholders of stock or securities in the distributor.

* * * * *

"Split-off" means the distribution of the controlling stock in a corporation, by another corporation which owned such stock immediately before that distribution, to the shareholders of the distributing corporation with the surrender by those shareholders of stock or securities in the distributor.

2. The following new section is inserted at the beginning of Subpart B:

§ 300.203 Accounting for business combinations.

When filing a report or other document under this part, accounting information for business combinations may be restated only in accordance with generally accepted accounting principles, consistently applied. Restatement of prior accounts is required for certain changes in business combinations accounted for as a pooling of interests and when there has been a spin-off or a split-off to a parent firm's shareholders. Restatement of prior accounts is generally not appropriate when there is an acquisition or divestiture of a business or other property which is otherwise accounted for. Net sales, costs, and expenses of discontinued operations may not be condensed to "one line" in submissions to the Price Commission, but shall be reported and accounted for on the same basis as continuing operations.

§ 300.127 [Revoked]

3. § 300.127 is revoked.

4. The following new subpart is added after Subpart C:

Subpart D—Exceptions

Sec.
300.351 Applicability.
300.353 Definitions.
300.355 Grant of exception: general.
300.371 Exception for adjustment of base period profit margin to reflect acquisition or divestiture.

300.373 Requirements for an exception under § 300.371.
300.375 Additional requirements for an exception under § 300.371(b).

AUTHORITY: The provisions of this Subpart D issued under the Economic Stabilization Act of 1970, as amended, Public Law 91-379, 84 Stat. 799; Public Law 91-558; 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38; Public Law 92-210, 85 Stat. 743; E.O. 11640, as amended.

Subpart D—Exceptions

§ 300.351 Applicability.

This subpart prescribes the criteria for obtaining an exception to this part.

§ 300.353 Definitions.

For the purposes of this subpart:

(a) "Acquisition" means the purchase of one entity by any means, but does not include an acquisition that is accounted for as a pooling of interests.

(b) "Divestiture" means the sale, exchange, or other disposition by one entity of all or a part of another entity, but does not include a divestiture by a spin-off or a split-off.

(c) "Entity" means a part of a person or consolidated group which is customarily regarded as being separate for cost, pricing, and profit decisions; and may be distinguished from other units of that firm because of separate or different management or profit responsibilities, industries, methods of doing business, or other logical and customary distinctions.

§ 300.355 Grant of exception: general.

(a) The Chairman of the Price Commission or any person to whom he delegates the authority may grant such exceptions to this part as may be necessary to prevent or correct a serious hardship or gross inequity, or to allow a restatement of base period profit margin under § 300.371.

(b) The general procedures for a request for an exception are prescribed in Subpart C of Part 305 of this chapter and in Subpart D of Part 401 of this title.

§ 300.371 Exception for adjustment of base period profit margin to reflect acquisition or divestiture.

(a) Each person requesting an exception for adjustment of its base period profit margin to reflect the acquisition or divestiture of an entity must comply with § 300.373.

(b) A person requesting an exception to adjust its base period profit margin to reflect a proposed acquisition or divestiture of an entity may request that the exception be granted within 10 days after the filing date to be specified in a letter of acknowledgment from the Price Commission or District Director of Internal Revenue, as the case may be, if the request also complies with § 300.375.

§ 300.373 Requirements for an exception under § 300.371.

(a) Each applicant for an exception under § 300.371 must show that the acquisition has brought about, or will bring about, control of the entity, or in the case of a divestiture, that the divestiture has caused, or will cause, loss of control of the entity.

(b) Each applicant for an exception under § 300.371 must furnish the following with the application:

(1) A list of each acquisition (including any combination accounted for as a pooling of interests), and each divestiture (including any spin-off or split-off) after the last day before its first base period year, including a description of the accounting method for the consolidation or dissolution.

(2) Financial statements of the person requesting the exception and of each acquired or divested entity based upon a consistent fiscal year basis from the applicant's first base period year forward. The financial statements must have been published or certified or the person requesting the exception must establish their validity to the satisfaction of the Price Commission.

(3) A separate Form PC-50 and PC-51 for the person requesting the exception and for each acquired or divested entity, not restated in accordance with § 300.203.

(4) A letter or report of an independent public accountant prepared in accordance with the procedures prescribed in Appendix IV of this part.

(5) The certification of a combined PC-50 and PC-51 using a base period as defined in § 300.5.

(b) The financial data describing each acquisition must be restated on Price Commission forms and reconciled with previous financial statements of the person requesting the exception as if each acquisition were accounted for as a pooling of interests. The financial data describing each divestiture must be restated on Price Commission forms reconciled with previous financial statements as if each divestiture were accounted for on the same basis as a spin-off or a split-off.

§ 300.375 Additional requirements for an exception under § 300.371(b).

(a) Each person requesting an exception under § 300.371(b) must, in addition to furnishing the information, data, and other proof specified in § 300.373, show that—

(1) The acquisition or divestiture would, if the exception were granted, cause at least a 10 percent net change in the person's base period profit margin;

(2) The entity being acquired or divested was in operation during the person's base period;

(3) Neither the acquiring or acquired entity in an acquisition, or the entity making a divestiture, is at the time of, or was immediately before, the acquisition or divestiture, in violation of the regulations of the Economic Stabilization Program; and

(4) The acquisition or divestiture is of a sole proprietorship, corporation, a subsidiary, or another separate legal entity.

(b) Upon receipt of a request for an exception under § 300.371(b), the Price Commission or District Director, as appropriate, shall send a letter of acknowledgment by certified mail to the person requesting the exception, specifying the date it was filed with the Price Commission or District Director. Unless that person is otherwise notified by the Price Commission or District Director, as appropriate, the exception requested becomes effective on the 10th day after the specified filing date.

[FR Doc.72-17095 Filed 10-3-72;8:45 am]

Rulings—Internal Revenue Service, Department of the Treasury

[Pay Board Ruling 1972-70]

QUALIFIED BENEFITS STANDARD

Pay Board Ruling

Facts. Corporation X has a qualified benefit plan for its employees. The corporation does not wish to increase the employee benefits or the contributions under the plan for the first control year. However, the corporation desires to increase its contributions to fund increased employee benefits under the qualified benefit plan in the second control year. It is provided by Economic Stabilization Regulations, 6 CFR 201.58(d)(2) (1972) that:

> For purposes of subparagraph (1) of this paragraph, the 0.7 percent referred to in subdivision (1) of such subparagraph may be used in future control years to the extent not utilized in a prior control year.

Issue. (1) Does § 201.58(d)(2) require that part of the 0.7 precent figure must be used by the corporation in a previous control year in order to use the remainder in a subsequent control year?

(2) Does § 201.58(d)(2) allow the 0.7 percent figure to be cumulative if not used?

Ruling. The answer with respect to the first issue is no. It is provided by § 201.58(d)(2) that the 0.7 percent increase "may be used in future control years to the extent not utilized in a prior control year." If no part of the 0.7 percent increase were utilized by the corporation in the prior control year, then the entire 0.7 percent increase may be carried over to the following control year, or carried over to a future control year.

The answer with respect to the second issue is yes. The 0.7 percent figure is cumulative if not used in a prior control year, and the corporation may accumulate credit for increasing its contribution to its qualified benefit plan in a future control year. Thus, Corporation X could have a 1.4 percent increase in the second control year under the qualified benefit standard without charging it against the general wage and salary standard.

This ruling has been approved by the General Counsel of the Pay Board.

Dated: September 22, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 22, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16915 Filed 10-3-72;8:51 am]

[Pay Board Ruling 1972-71]

SALES COMMISSION PLAN
Pay Board Ruling

Facts. On January 1, 1971, a retail firm established a sales commission plan, whereby an individual salesman's commission is computed weekly on the basis of the gross profit on the products he sells (i.e., the difference between the sales price and cost) and not on the gross sales price of the product.

Issue. (1) Is this an established sales commission plan or practice which meets the requirements of the Economic Stabilization Regulations, 6 CFR 201.72(g)(4) (1972), which defines a "pay practice previously set forth"?

(2) Does this sales commission plan meet the requirements of the Economic Stabilization Regulations, 6 CFR 201.77(a)(1) (1972), relating to established sales, commission, and production incentive plans or practices?

Ruling. (1) No. Section 201.72(g)(4) requires that the amount of the sales commission plan be determined by a definite method or clear formula, which is applied only to a wage or salary amount on a percentage or other similar basis without reference to profits, earnings, or any factor or item other than the actual wage or salary amount. Since the regulations rule out a commission based on profits, the sales commission plan here does not meet the requirements of § 201.72(g)(4).

(2) Yes. According to § 201.77(a)(1), sales, commission, and production incentive plans or practices may continue to operate in accordance with their provisions if they were established and in effect before November 14, 1971. Plans or practices which meet this requirement are those which directly reflect the performance of the employee participant in the form of sales or production output. Thus, since the sales commission plan here directly reflects employee performance, rather than being primarily tied to a percentage of profits without reference to the employee recipient's individual performance, it meets the requirements of § 201.77(a)(1).

This ruling has been approved by the General Counsel of the Pay Board.

Dated: September 27, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 27, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16916 Filed 10-3-72;8:51 am]

[Pay Board Ruling 1972-72; Cost of Living Council Ruling 1972-116]

DAVIS-BACON ACT
Pay Board Ruling and Cost of Living Council Ruling

Facts. The Davis-Bacon Act, 40 U.S.C. sec. 276a(1970), requires that employees working on Government highway construction contracts must be paid prevailing area wages. Thus, the pay of wage earning employees must conform to the prevailing wage scale as previously determined under the Davis-Bacon Act. Supervisory, clerical, and administrative salaried employees in the field crews, such as superintendents, field office managers, and administrators are not covered by the Davis-Bacon Act.

The needs of the highway construction industry require the transfer of employees from one geographical area to another to work on project locations. When the transfer is from a lower base economic area to a higher base economic area, by law the employer must meet the prevailing standard for wage earning employees. However, an economic differential is also experienced by salaried employees. Industry practice has been to also meet the prevailing wage for the salaried employees, because of the shortage of qualified personnel to fill these jobs and the employer's need to maintain a consistent work force to meet obligations under the contract being performed.

Issue. Can employers in highway construction work pay the equivalent of Davis-Bacon Act prevailing area wage to salaried supervisory, clerical, and administrative employees, who are not covered by the Davis-Bacon Act?

Ruling. The wages paid by an employer to his wage earning employees to comply with Federal statutes, such as the Davis-Bacon Act, have no effect on the salary paid to employees who are not covered by that Federal statute. The salaried supervisory, clerical, and administrative employees thus do not come within the exclusion from coverage in the Economic Stabilization Regulations, 6 CFR 101.103 (1972). However, the Economic Stabilization Regulations, 6 CFR 201.11(a)(6) (1972) provides that, under certain circumstances, an exception may be granted to maintain historical differentials within a unit affected by Davis-Bacon determinations. If some of the above employees are in the same appropriate employee unit as those who received Davis-Bacon increases, they may be eligible for an exception if the criteria of § 201.11(a)(6) are met. Prior approval of the Pay Board is required for this exception.

This ruling has been approved by the General Counsel of the Pay Board.

Dated: September 27, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 27, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16917 Filed 10-3-72;8:51 am]

[Price Commission Ruling 1972-245]

SANCTIONS
Price Commission Ruling

Facts. A is a manufacturer of custom products designed to buyers' specifications and prices the contracts pursuant to Economic Stabilization Regulation, 6 CFR 300.410 (1972) as custom services. A exceeds its base period profit margin at the end of a fiscal year by a $10,000 amount. This is a violation according to § 300.410(b)(2). All of A's customers are readily identifiable.

Issue. What sanctions may be imposed by the Price Commission on A for the profit margin violation?

Ruling. A may be ordered by the Price Commission to refund to its customers on a pro rata basis, the dollar value of the excess profit margin ($10,000) and to reduce prices of products it manufactures in the future by an amount equal to two times the dollar value of the excess profit margin ($20,000) by the end of the third fiscal quarter of the fiscal year following the year in which the violation occurred.

With respect to a violation of a profit margin limitation prescribed in Part 300 of the regulations, Economic Stabilization Regulation, 6 CFR 300.54(e) provides remedies available to the Price Commission. Generally, the Commission may require a firm to:

(1) Refund the revenues derived from the prices in violation to the extent that they exceed the revenues from prices which otherwise would have been chargeable, or the dollar value of the excess profit margin, whichever is less; and

(2) Reduce prices to the extent necessary to lower the person's revenues by an amount equal to two times the amount that the revenues derived from the prices in violation exceeded the revenues which otherwise would have been realized, or equal to two times the dollar value of the excess profit margin, whichever is less, by the end of the third quarter of the fiscal year in which the violation occurred.

While § 300.410 provides a method to determine base prices for custom products or services, any price so determined must not result in a profit margin over that which prevailed during the base period. A portion of either of the remedies provided in § 300.54(e) deals with the possible reduction of prices determined with reference to a price in excess of that price otherwise allowable except for the profit margin limitations. When a base price is determined under § 300.410 such a remedy is not available to the Commission because base price is a "price otherwise allowable" and revenues derived are allowable to the extent they do not result in a profit margin violation since A did not charge a price in excess of the base price, as determined pursuant to § 300.410. The remedies available are those remedies which affect the profit margin of A.

This ruling has been approved by the General Counsel of the Price Commission.

Dated: September 22, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 22, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16918 Filed 10-3-72;8:51 am]

[Price Commission Ruling 1972-246]

AVOIDANCE OF PROFIT MARGIN LIMITATION; DISCRETIONARY COSTS

Price Commission Ruling

Facts. During the current fiscal year, firm A has increased prices above the base prices in accordance with the Economic Stabilization Regulations. A has now determined that it will probably have a profit margin for the fiscal year which exceeds its base period profit margin. The increase in the profit margin is not directly related to increased prices, but rather to increased productivity and increased sales of other products on which there have been no price increases. To avoid a profit margin violation, A increases certain discretionary costs to the extent that profits are lowered and the base period profit margin is not exceeded. A increased expenditures for advertising and marketing, employee benefits, executive travel and entertainment, charitable contributions, research and development, and consultant fees.

Issue. Does firm A's increases in discretionary costs insure no violation of its profit margin limitation?

Ruling. No. A may have to capitalize rather than expense certain of these costs. Economic Stabilization Regulations, 6 CFR 300.12, 300.13, 300.18, and 300.19 (1972) subject the firms to which they apply to a profit margin limitation. A firm which charges a price in excess of a base price during any fiscal year and during that same fiscal year exceeds its base period profit margin is held to be in violation of its profit margin limitation. Economic Stabilization Regulations, 6 CFR 300.54(b)(1)(1972), Price Commission Ruling 1972-206, 37 F.R. 13192 (1972).

A firm's profit margin is calculated pursuant to the definition of that term in Economic Stabilization Regulations, 6 CFR 300.5 (1972) which requires the use of generally accepted accounting principles and the practices as customarily followed by the firm applied consistently prior to August 14, 1971. Further, only costs of sales and normal and generally recurring costs of business operations are includable as part of the profit margin calculation. To the extent that the increased discretionary costs have a definite and measurable future value, if material, these additional costs must be capitalized and not expensed for Price Commission purposes and their cost amortized over the period benefited in order to maintain a proper ratio of operating income and net sales.

Changes in accounting practice and amounts may be immaterial for financial statement purposes, but material for Price Commission reporting purposes if the profit margin is lowered during the current period as a result of the change or amount. Extraordinary items, however, are determined with the same measure of materiality for basic financial statements and for Price Commission purposes.

Dated: September 22, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 22 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16919 Filed 10-3-72;8:51 am]

[Price Commission Ruling 1972-247]

HOUSING FOR ELDERLY

Price Commission Ruling

Facts. A home for the elderly offers several different combinations of accommodations and diversified services, ranging from purely residential apartments to licensed 24-hour medical services. The combination used determines the price charged. The management would like to raise prices but is not sure which guidelines to use.

Issue. Whether rent or institutional providers of health care regulations apply to homes for the elderly which provide housing and health services?

Ruling. The Economic Stabilization Regulations categorize homes for the elderly into (1) purely residential shelter with no health services; (2) "sheltered care" which includes residents' beds, and health-related services providing continuous general supervision, with only occasional direct personal care; (3) "personal care" which includes all the functions and facilities of "sheltered care" and direct personal care for residents who need regular assistance but who do not need nursing services; (4) nursing care which may include all or part of "personal care" and which furnishes licensed 24-hour, inpatient medical services. Economic Stabilization Regulations, 6 CFR Part 300, Appendix I(d) (1972). Institutions providing purely residential shelter, "sheltered care", or "personal care" are not restricted as institutional providers of health services but are subject to rent regulations. Economic Stabilization Regulations, 6 CFR 301.3(b)(3)(ii) (1972).

Any institution which, solely or in part, operates a licensed 24-hour, inpatient health care facility, skilled nursing home, extended or intermediate care facility is subject to Economic Stabilization Regulations, 6 CFR 300.18 (1972) Part 300, Appendix I(a). Although rates vary according to services used by residents, the availability of licensed 24-hour medical services benefits all residents and, especially for the elderly, increases the worth of that residence. Notwithstanding qualifications of prior Price Commission rulings, an institution that provides licensed 24-hour inpatient medical services to some residents comes within the definition of Part 300, Appendix I(a) and thus is covered by § 300.18 which regulates institutional providers of health services.

This ruling has been approved by the General Counsel of the Price Commission.

Dated: September 22, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 22, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16920 Filed 10-3-72;8:52 am]

[Price Commission Ruling 1972-248]

CAPITAL IMPROVEMENT INCREASE; 10 PERCENT RULE

Price Commission Ruling

Facts. On February 1, 1972, landlord L makes a certain capital improvement which benefits tenant A's residence. An increase in monthly rent in an amount equal to 1½ percent of the part of the cost of the improvement allocable to A's residence, as authorized by Economic Stabilization Regulations, § 301.101(a)(3), 37 F.R. 13226 (1972), results in a 15 percent increase in A's monthly rent. L wishes to increase A's monthly rent on September 1, 1972, after proper notice, without seeking prior approval from the appropriate District Director of the Internal Revenue Service in accordance with the provisions of § 301.101(a)(3). The capital improvement is not required by local law or by the terms of a mortgage or deed of trust.

Issue. May L increase A's monthly rent by 10 percent without seeking prior approval from the appropriate District Director of the Internal Revenue Service and then seek approval of the remaining 5 percent increase?

Ruling. Section 301.101(a)(3) authorizes an increase in monthly rent for a residence which has been benefited by a capital improvement made after August 15, 1971, by an amount equal to 1½ percent per month of the part of the cost allocable to the residence. However, § 301.101(a)(3) also provides that no rent may be increased by more than 10 percent per month until the entire increase has been approved by the local District Director of the Internal Revenue Service, unless the improvement is required by State or local law, or by the terms of a mortgage or deed of trust in effect before December 29, 1971. Thus, L may not increase A's monthly rent 10 percent and seek approval for the additional 5 percent increase.

However, to avoid the requirement for prior approval, L may increase A's monthly rent under § 301.101(a)(3) by an amount which is less than 1½ percent per month of the part of the cost allocable to A's residence and which results in an increase in A's monthly rent

by an amount equal to 10 percent or less. Once established, however, the percentage-of-cost increase may not be raised beyond the percent which results in a 10 percent increase in A's monthly rent. For example, if L increases A's monthly rent under § 301.101(a)(3) in an amount equal to 1 percent of the part of the cost of the capital improvement allocable to A's residence and such increase results in a 10 percent increase in A's monthly rent, prior approval for the increase is not required. However, if L subsequently wishes to increase A's monthly rent by a percentage amount which results in a total increase equal to the 1½ percent amount otherwise authorized under § 301.101(a)(3) and seeks approval for the additional percentage increase, § 301.101(a)(3) prohibits the additional increase since prior approval for the entire increase was not obtained.

This ruling has been approved by the General Counsel of the Price Commission.

Dated: September 22, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 22, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16921 Filed 10-3-72;8:52 am]

[Price Commission Ruling 1972-249]

BASE PRICES FOR WARRANTY AND NONWARRANTY SERVICES

Price Commission Ruling

Facts. Company A is an automobile dealer that sells and services automobiles. In its servicing operation, it performs various maintenance and repair operations on automobiles that are under warranty of the manufacturer and also on those that are no longer under warranty. By agreement with the auto manufacturer, A charged the manufacturer at specified rates for warranty work performed from July 16, 1971, through August 14, 1971, that were lower than the rates charged for the same services it performed during the same period on automobiles that were not under warranty.

A is now seeking to renegotiate the rates it will charge the auto manufacturer for services it performs on automobiles under the manufacturer's warranty, and believes that it may increase the rates for warranty services up to the nonwarranty service rates without cost justification because those rates are its "base prices" for such services.

Issue. May rates for nonwarranty services during the freeze base period be used to determine the "base prices" for the same services performed on automobiles under warranty?

Ruling. The rates for nonwarranty work may not be used to determine base prices for the same services performed on automobiles under manufacturer's warranty if the rates were not the same during the freeze base period.

Economic Stabilization Regulations, 6 CFR 300.14 (1972), provide that a "service organization" such as A may charge a price in excess of the base price only to reflect increases in allowable costs, and only to the extent that its profit margin is not thereby increased.

The "base price" for the sale of services is "the highest price specified by the seller in contracts with specific class of purchasers in a substantial number of transactions involving that * * * service during the freeze base period." Economic Stabilization Regulations, 6 CFR 300.405 (a) (1972). A "class of purchasers" consists of "purchasers to whom a person has charged a comparable price for comparable * * * service during the freeze base period based on customary price differentials between those purchasers and other purchasers." A "customary price differential" includes a "price distinction based on a discount, allowance, add-on, premium, and an extra" which may in turn be based on a "difference in volume, grade, quality or location or type of purchaser or term or condition of sale or delivery." Economic Stabilization Regulations, 6 CFR 300.5 (1972).

Since the rates A charged to the auto manufacturer for certain services it performed on automobiles subject to warranty during the freeze base period were lower than those it charged to others, nonwarranty customers, and since this distinction was based on the type of customer for whom the services were performed, the base price for those services under the Economic Stabilization Program must be determined separately for each of these "classes of purchasers." Therefore, prices specified in nonwarranty transactions may not be used to establish base prices for the same services performed on automobiles under warranty.

This ruling has been approved by the General Counsel of the Price Commission.

Dated: September 26, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 26, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16922 Filed 10-3-72;8:52 am]

[Price Commission Ruling 1972-250]

RENT INCREASE DUE TO ALLOWABLE COST INCREASE

Price Commission Ruling

Facts. City A has the following payable dates for its local property tax. First quarter tax—February 1, second quarter tax—May 1, third quarter tax—August 1, fourth quarter tax—November 1. The final tax bill of the year is mailed out in July and includes an invoice for the tax due on August 1 and November 1. The bill also includes an invoice for the first and second payments of the following year. In practice, the city does not determine the total tax liability for the year until the mailing of the final tax bill. The existence of a year-to-year tax increase is not known until this time.

Issue. Where a final tax bill stating the total liability for the tax year is not mailed until midyear, when may rents be increased to reflect increases in allowable costs and how must the increase be measured and reflected in an increased rent?

Ruling. The rent may not be increased before the fact is established that an increase in taxes for the most recent tax year has occurred. The increase is the difference between the allowable costs which were paid in a 12-month period prior to February 1 and the allowable costs which will be paid in the 12-month period following February 1. Further, the increase attributable to the period between February 1 and August 1, or a later date on which the rent is increased if it was not increased on that date, may be collected during the 12 months following August 1 or that later date.

Economic Stabilzation Regulations, 6 CFR 301.101(a)(2) (1972) permits rent to be increased above the base rent to pass through increases in allowable costs which occur after August 15, 1971. To justify an increase in rent under this rule, the first installment or all of "an allowable cost which has been increased" must be payable after August 15, 1971, i.e. be subject to the imposition of interest or penalty if not paid. Section 301.101(a)(2)(i). The words "allowable costs which have been increased" in the context of real estate taxes refers to the taxes which will be paid for a tax year.

In this case, the first installment for each tax year is payable February 1, However, it cannot be determined whether the real estate taxes on any residence have been increased for the tax year until August 1. The general rule is that the rent of a residence may be increased as soon as the first installment of the allowable costs related to that residence reflecting the increase is payable or has been paid whichever is earlier. Section 301.101(a)(2)(iii). However, if the existence of an increase is not certain, the rent of the residence may not be increased before the fact is established that an increase has occurred.

The amount of the allowable cost is computed under § 301.101(a)(2)(ii). The increase is measured by subtracting the allowable costs related to the residence which were charged during the 12-month period immediately prior to the date the first installment reflecting an increase is payable, February 1, from the allowable costs related to the residence which will be charged during the 12-month period beginning on February 1. This amount is divided by 12 to determine the monthly rent increase.

The recovery of an increase in allowable costs attributable to the period after December 28, 1971, which could have been passed through in an increased rent but was not is provided in § 300.101(a)(2)(v). This section states:

If an allowable cost increase has not been reflected in an increased rent, the amount of

the increase which may be charged for the period after December 28, 1971, must, if it is to be charged, be prorated over the 12-month period following the expiration of the current lease unless that current lease specifically provides otherwise.

In this case, the rent could have been increased by the allocable amount of the allowable cost increase beginning on February 1 if the existence of that increase had been known at that time. Therefore, the amount of increased rent which could have been charged between February 1 and August 1, or a later date on which the rent was increased if not increased on that date, may now be charged by prorating it over a 12-month period.

This rule prevents a different treatment of a lessor who receives a final tax bill which establishes the existence of an increase at the beginning of a tax year and those who receive such a bill part way through the year.

This ruling has been approved by the General Council of the Price Commission.

Dated: September 22, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 22, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16923 Filed 10-3-72;8:52 am]

[Price Commission Ruling 1972-251]

PRICE—LOW PROFIT RETAILER—LIMITATION

Price Commission Ruling

Facts. Retailer R, a low profit firm and an item pricer, traditionally takes a customary initial percentage markup of 20 percent on product X, and 100 percent on product Y. R sells only X and Y. R realizes that the price increases authorized for low profit firms are subject to the 8 percent limitation of § 300.31 (e). Economic Stabilization Regulations, § 300.31(e), 37 F.R. 19378 (1972).

Issue. What is the maximum markup that R can make on product X and Y under limitation of § 300.31(e)?

Ruling. Section 300.31(e) provides in part that in the course of any of a retailer's fiscal years, a retailer may not increase the price of any of its products under § 300.31 by an amount resulting in an increase of more than 8 percent of the customary initial percentage markup of such product. Economic Stabilization Regulations, § 300.31(e), 37 F.R. 19378 (1972). In other words, the increased price cannot be greater than the price which would result from a percentage markup which is the product of 108 percent multiplied by the CIPM. In the present case, the permitted percentage markup for product X is 21.6 percent (i.e., 108 percent × 20 percent), whereas the permitted percentage markup for product Y is 108 percent (108 percent × 100 percent).

This ruling has been approved by the General Counsel of the Price Commission.

Dated: September 22, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 22, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16924 Filed 10-3-72;8:52 am]

[Price Commission Ruling 1972-252]

LOW PROFIT FIRMS

Price Commission Ruling

Facts. An automobile dealer meets the requirements of Economic Stabilization Regulation, 6 CFR 300.31 and 300.32 (1972) as far as being in a loss situation. The dealer wishes to increase prices in his service department, which comprises less than 10 percent of his total revenues. The remainder of its revenues comes from retail sales.

Issue. Can the dealer use the low-profit regulations to increase prices in his service department?

Ruling. The automobile dealer can raise prices of his service department pursuant to Regulation § 300.31. Regulation § 300.31(a) defines a "low profit firm" for purposes of this section to mean "any manufacturer, retailer, or wholesaler which, during its most recently ended fiscal year, did not obtain more than 10 percent of its revenues from the providing of services * * *." Regulation § 300.31(i) states that this section does not apply to any service organization.

In determining whether a person can avail himself of the low-profit section, one looks to the predominant activity. The predominant activity of the dealer is a retailer of automobiles. The caveat in Regulation § 300.31(i) only refers to those persons who derive substantial revenue (more than 10 precent) from the providing of services. Since the service revenue is less than 10 percent, the dealer is not prohibited in using this section.

This ruling has been approved by the General Counsel of the Price Commission.

Dated: September 22, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 22, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16925 Filed 10-3-72;8:52 am]

[Price Commission Ruling 1972-253]

DETERMINATION OF ALLOWABLE COST INCREASE

Price Commission Ruling

Facts. Company A is a manufacturer. Since its last price increase on product Y, the following events have occurred:

(1) A State Product Safety Act has been passed which has necessitated an additional quality control person on the production line for product Y. This resulted in a higher labor cost for producing a unit of product Y.

(2) The hourly wage paid to all workers on the production line has increased with the result of further increasing total labor costs.

(3) The price of the raw material used in product Y has increased. To meet the new, more stringent quality control requirements, A has increased the amount of raw material used in each unit of product Y.

(4) The cost of certain supply items used on the production line has increased by 10 percent, but the consumption of these supplies to produce the same output as previously has declined by 5 percent.

Issue. Which of the above events constitute allowable cost increases which would justify an increased price for product Y?

Ruling. All of the above events constitute allowable cost increases. In computing the increase attributable to the supply items, A must take into account the decreased consumption of the items as well as the price increase.

A manufacturer may increase a price to reflect increases in allowable costs that it has incurred and is continuing to incur since the last price increase in the item concerned or that it incurred after January 1, 1971, whichever is later. Economic Stabilization Regulations, 6 CFR 300.12 (1972). The increase in allowable costs referred to in this section is the percentage increase in the allowable cost "per unit of output" in effect for the current period compared with the allowable costs "per unit of output" in effect at the time of the last price increase or on January 1, 1971, if no price increase has occurred. See Part IV, Specific Instructions to Form PC-1, and Price Commission Ruling 1972-13, 37 F.R. 765 (1972). Allowable cost increases may thus result from an increase in the physical amount of either the overhead, direct labor or the material required to produce a particular item, or an increase in the acquisition cost of any of these inputs.

Cost per unit of output must be calculated using both increases and decreases in the cost of the inputs used per unit as well as any increase or decrease in the amount of the input used per unit in the current period compared to that used at the time of the last price change. See Part IV, Specific Instructions to Form PC-1. In the case of the supply items, A's current per unit costs of Y must be determined by taking into

account the re-reduced consumption of the supply items as well as the increase in the cost of those items.

This ruling has been approved by the General Counsel of the Price Commission.

Dated: September 26, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 26, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16926 Filed 10-3-72;8:52 am]

[Price Commission Ruling 1972-254]

PROFIT MARGIN DETERMINATION; INCOME TAX ACCOUNTING

Price Commission Ruling

Facts. The Internal Revenue Service has conducted an income tax audit of Firm X. The service has required the following adjustments to the firm's expense items. To determine the firm's taxable income for the two selected base period fiscal years, $500,000 of repair and maintenance expense was disallowed and required to be capitalized. Fifty-five thousand dollars of bad debts expense and $5,220 of travel and entertainment expense were disallowed. An increase in depreciation expense was allowed.

Issue. Must a firm determine its base period profit margin under Economic Stabilization Regulations, 6 CFR 300.5 (1972) by using all adjustments required by the Internal Revenue Service to determine taxable income?

Ruling. No. The determination of a firm's profit margin, as that term is defined in § 300.5 of the regulations, requires the use of generally accepted accounting principles consistently applied. Income tax accounting may frequently require the use of different principles than those accepted for financial accounting purposes. Therefore, merely because an adjustment is required by the Internal Revenue Service to determine taxable income does not necessarily mean that the base period profit margin must be changed to reflect that adjustment.

If it can be shown in this case that the calculation of items of expense to which the Internal Revenue Service took exception was made by the application of incorrect accounting principles, or that a correct principle was applied incorrectly, or that there was an oversight or misuse of facts in the preparation of the base period financial statements and such errors in the basic financial statements are of the nature and magnitude to require the reissuance of the basic financial statements in accordance with generally accepted accounting principles, then the base period profit margin must be adjusted accordingly. (See Opinion No. 20 of the Accounting Principles Board, Paragraph 13 (1971).) Price Commission Forms PC-50 and PC-51 should also be resubmitted to correct errors in those forms or errors in the reconciliation from published financial statements.

This ruling has been approved by the General Counsel of the Price Commission.

Dated: September 26, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 26, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16927 Filed 10-3-72;8:52 am]

[Price Commission Ruling 1972-255]

HEALTH CLUBS AND MASSAGE PARLORS

Price Commission Ruling

Facts. X owns a health club which for a yearly fee allows a customer the use of its exercise facilities. Y owns a massage parlor. A customer for a fee can walk in off the street and receive a massage from a State licensed masseur. Both X and Y want to raise fees to recoup certain cost increases.

Issue. Are either X or Y considered noninstitutional health providers governed by Economic Stabilization Regulation, 6 CFR 300.19 (1972)?

Ruling. The health club and massage parlor are considered service organizations governed by Economic Stabilization Regulation, 6 CFR 300.14 (1972). The health club is basically a recreational facility not a health provider.

Economic Stabilization Regulation, 6 CFR Appendix I, Part b(35) (1972) states that a physiotherapist is considered a noninstitutional provider of health. A physiotherapist is an individual who treats disease or physical defects by massage, gymnastics, etc., rather than by drugs. A masseur cannot be compared with a physiotherapist since the physiotherapist performs a true health service. The masseur performs a limited health function and is not considered a noninstitutional provider of health services. A physiotherapist works usually with a physician's guidance in basic rehabilitation work.

This ruling has been approved by the General Counsel of the Price Commission.

Dated: September 27, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 27, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16928 Filed 10-3-72;8:52 am]

[Price Commission Ruling 1972-256]

RENT ADJUSTMENTS FOR FURNISHING APARTMENTS UNDER RENT REGULATIONS PUBLISHED DECEMBER 30, 1971

Price Commission Ruling

Facts. At a cost of $300, lessor L purchases a new refrigerator which he installs in an unfurnished apartment rented by tenant A for $150 per month.

Tenant B requests a furnished apartment. L places in B's unfurnished apartment furniture and furnishings which he removes from the furnished apartment occupied by tenant C who is renting his apartment for $175 per month.

A new tenant D also requests a furnished apartment. L places in D's apartment furniture and furnishings which he leases from a rental agency at a cost of $15 per month.

Base rent for the apartments occupied by A, B, and D is $150, and by C is $175, as computed under Economic Stabilization Regulations, 6 CFR 301.202(a) (1972).

Issue. To what extent shall rental adjustments be made under the Economic Stabilization Regulations?

Ruling. The purchase and installation of a refrigerator in the apartment occupied by A qualifies as a capital improvement, as defined in Economic Stabilization Regulations, 6 CFR 301.2 (1972), and a rental adjustment pursuant thereto is authorized under the provisions of § 301.103(a). Economic Stabilization Regulations, 6 CFR 301.103(a) (1972). Paragraph (b) of § 301.103 allows an increase in monthly rent up to 1½ percent of the cost of the capital improvement. Thus, L may increase A's monthly rent $4.50 pursuant to the installation of the refrigerator.

By furnishing B's apartment with furniture and furnishings removed from the furnished apartment occupied by C, B's apartment is benefited by a capital improvement, as defined in § 301.2, whose "cost" for purposes of applying the 1½ percent rule for a rental increase under § 301.103(b) is the basis of the property determined under § 1012 of the Internal Revenue Code of 1954, adjusted as provided in section 1016 of the Code. Thus, with respect to the furnishing of B's apartment, L may increase B's monthly rent by an amount not in excess of 1½ percent of the "cost" of the property.

In removing furniture and furnishings from the apartment heretofore occupied by C as a furnished apartment, L has effected a decrease in the quality of substantially the same property or services provided C in the rental of his furnished apartment. A decrease in the quality of substantially the same property or services is a price adjustment, as defined in § 101.2. Economic Stabilization Regulations, 6 CFR 101.2 (1972). Rent means "any price for the use of the residence * * *." Economic Stabilization Regulations, 6 CFR 301.3 (1972). Thus, an unauthorized rent increase over base rent

for the use of C's apartment has occurred with respect to the removal of the furniture and furnishings, and L shall be required to reduce C's rent to reflect the decrease in the quality of the property or services. The measure of the decrease in rent shall be commensurate with the fair market value of the use of the property or quality of the service. In such case, rent shall be reduced by an amount equal to the difference between rent C was charged for the use of a furnished apartment and rent C would have been charged for his apartment had it been rented by L in an unfurnished condition.

Finally, with respect to the rental of D's apartment, the property L leases from a rental agency for use in that apartment does not qualify as property which is subject to an allowance for depreciation under the provisions of section 167 of the Code, since the allowance is available only with respect to property owned by taxpayer. Since it is not subject to an allowance for depreciation, the property leased by L and placed in D's apartment does not constitute a capital improvement for which a rental increase is authorized under § 301.103(a). In furnishing D's apartment, L is providing a service in connection with the use of the residence. Rent is defined to include "* * * any charge * * * for any service in connection with the residence * * *" § 301.3(a). Section 301.102(a) provides in part that a person may charge a monthly rent in excess of base rent only to the extent that the monthly rent does not exceed the sum of the base rent plus 2½ percent of the base rent for the residence with respect to each consecutive 12-month period beginning after December 28, 1971. Economic Stabilization Regulations, 6 CFR 301.102(a)(1) (1972). Since a charge for a service in connection with the residence is part of rent for the use of the residence, a rental increase is subject to the 2½ percent limitation of § 301.102(a)(1). See Price Commission Ruling 1972–212, 37 F.R. 13650 (1972).

Price Commission Ruling 1972–195, 37 F.R. 13115 (1972), is distinguished from the case at hand. There a landlord assumed the costs of providing heat for his tenants who had previously provided their own heat, and it was held that in such case a landlord may increase rent by the amount of direct costs he incurs in providing these services. Providing services heretofore provided by the tenants for themselves, for which the landlord incurs certain costs, constitutes an increase in the quality of substantially the same property or services. Since a decrease in the quality of substantially the same property or services is a price increase, as defined in § 101.2, an increase in the quality of substantially the same property or service must be a price decrease. Rent means "any price for the use of the residence * * *" § 301.3(a). To reflect the rent decrease, the landlord may increase each tenant's monthly rent commensurate with the dollar-for-dollar costs incurred by the landlord in providing the increase in the quality of property or services. However, such a rental decrease occurs only where an increase in the quality of substantially the same property or services occurs. Providing a new service to a tenant is not an increase in the quality of the same property or services. Thus, where the landlord furnishes an apartment previously unfurnished, or hires a security guard where none was provided in the past, and incurs certain costs therefor, an increase in the quality of the same property or services has not occurred. Rather, any charge in providing the new service is part of rent for the use of the residence, and any increase in rent is controlled by the provisions of subpart B.

This ruling is applicable only to rents subject to the regulations published on December 30, 1971, and amendments to those regulations.

This ruling has been approved by the General Counsel of the Price Commission.

Dated: September 29, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 29, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Departmetn of the Treasury.

[FR Doc.72–16929 Filed 10–3–72;8:52 am]

[Price Commission Ruling 1972–257]

DELIVERY OF RENT INCREASE NOTIFICATION

Price Commission Ruling

Facts. A landlord wishes to increase a tenant's rent by an amount allowable under Subpart B of Part 301 of the Economic Stabilization Regulations. The landlord mails to the tenant's residence by certified mail a notice of the rent increase 45 days before the increase is to become effective. The contents of the notice comply with the requirements of Economic Stabilization Regulations, § 301.301(c), 37 F.R. 13226 (1972). The tenant refuses to sign for and accept the certified letter.

Issue. Has there been a valid delivery of notification of a rent increase?

Ruling. Yes. Section 301.301(e) relating to delivery of notification states that a signed receipt must be obtained from the tenant or his representative unless the notice is mailed to the tenant's residence. No signed receipt is necessary where the notice is mailed. Where the notice is sent by mail to the tenant's residence, valid delivery occurs at the time the notification reaches the residence. Thus, if the contents of the notice are proper under § 301.301(c) and if the notice is delivered at least 30 days before the rent increase is to become effective, there has been a valid notification where a certified letter is mailed to a tenant, even though the tenant refuses to sign for and accept the letter.

This ruling has been approved by the General Counsel of the Price Commission.

Dated: September 27, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 27, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72–16930 Filed 10–3–72;8:52 am]

[Price Commission Ruling 1972–258]

PRICES; MOVIE EXHIBITORS

Price Commission Ruling

Facts. A movie theater owner E licenses movies from distributors and exhibits them to the public in his movie theater, E realizes that he must determine the base price of his service in order to comply with the requirements of the Economic Stabilization Regulations.

Issue. How does E determine the base price of his exhibition service under the Economic Stabiliaztion Regulations?

Ruling. An exhibitor of motion pictures determines its base price under the provisions of § 300.405(a) of the Economic Stabilization Regulations. Section 300.405(a), 37 F.R. 11473 (1972). An exhibitor may not determine its base price under the new service rules, Economic Stabilization Regulations, 6 CFR 300.409 (1972), merely because it shows a different movie. In addition, movie exhibitors may pass through increases in allowable costs under the provisions of Economic Stabilization Regulations, 6 CFR 300.14 (1972).

An exhibitor of motion pictures is classified as a service organization under The Economic Stabilization Regulations, 6 CFR 300.5 (1972). The base price of a service is determined under the provisions of § 300.405(a) which provides in part as follows:

> The base price with respect to a sale of a unit of * * * services to a specific class of purchasers is the highest price, at or above which, at least 10 percent of those units were priced by the seller in transactions with that class of purchasers during the freeze base period. Economic Stabilization Regulations. Section 300.405(a), 37 F.R. 11472 (1972).

The "freeze base period" is the period beginning on July 16, 1971, and ending on August 14, 1971, or if an exhibitor had no transaction during that period, the nearest 30-day period in which he had a transaction. Economic Stabilization Regulations, 6 CFR 300.5 (1972). "Class of purchasers" means purchasers to who an exhibitor has charged a comparable price for comparable services during the freeze base period pursuant to customary price differentials between those purchasers and other purchasers. Economic Stabilization Regulations, 6 CFR 300.5 (1972). The existence of price differentials which are based on the day of the week (e.g.

weekends versus weekday) or time of day (e.g. evening versus matinee) of the showing of the motion picture, indicate a different class of purchasers. In addition, in some cases an exhibitor may be able to demonstrate that it had in fact established price differentials for its exhibition service based on the type motion picture during the freeze base period. In these cases, if the exhibitor can demonstrate that the price differentials are consistently and appropriately applied in the sale of its exhibition service after November 13, 1971, the difference in prices may be considered to be based on the base prices of the different classes of purchasers.

In order for a movie exhibitor to determine the base price for its exhibition service under the new products rule, Economic Stabilization Regulations, 6 CFR 300.409 (1972), it must show that the service is substantially different from the previous service in purpose, function, quality or technology or the use of that service must effect a substantially different result. The essence of the service offered by an exhibitor is entertainment in a proper setting for a performance. Even though the show changes, the same service is offered by the theater owner. However, if a movie exhibitor has never shown a picture, or has not shown a picture within a 1-year period, it may determine its base price under § 300.409.

Since exhibitors are classified as service organizations, the provisions of § 300.14 are applicable. Economic Stabilization Regulations, 6 CFR 300.14 (1972). Thus, a movie exhibitor may charge a price in excess of the base price if the increase can be cost justified under § 300.14.

This ruling has been approved by the General Counsel of the Price Commission.

Dated: September 27, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 27, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16931 Filed 10-3-72;8:53 am]

[Price Commission Ruling 1972-259]

SEPARATE CLASSES OF PURCHASERS

Price Commission Ruling

Facts. Doctor A, a noninstitutional provider of health services under Economic Stabilization Regulations, 6 CFR 300.19 (1972), bases charges for his services on the method of payment for those services rather than on the actual service performed. Doctor A has one fee schedule for those patients without insurance; a fee schedule for those patients carrying health insurance that covers the actual charges without specifying the amount of coverage for specific services; a fee schedule for those patients that carry insurance that specify the amount of coverage for specific services based on the geographical area; a fee schedule for those patients covered under the State's Workmen's Compensation Act; a fee schedule for those patients covered by Medicare, and a fee schedule for those patients on welfare.

Issue. What are the base prices for Doctor A's services?

Ruling. Doctor A's base prices are the separate fee schedules in effect during the freeze base period, July 16, 1971 to August 14, 1971. Section 300.405(a) states that:

> The base price with respect to a sale of a unit of personal property or services to a specific class of purchaser is the highest price, at or above which, at least 10 percent of those units were priced by the seller in transactions with that class of purchasers during the freeze base period. Economic Stabilization Regulations, § 300.405(a), 37 F.R. 11472 (1972).

Class of purchasers is defined as "purchaser to whom a person has charged a comparable price for comparable property or service during the freeze base period pursuant to customary price differentials between those purchasers and other purchasers." Economic Stabilization Regulations, 6 CFR 300.5 (1972).

Doctor A based his charges on the different methods of payment by his patients. His charges for the same service will vary depending on the method the patient uses for payment. To be sure, some of Doctor A's charges will be comparable and some will be identical, but Doctor A's customary practice of using a separate fee schedule for each kind of payment method establishes each of these groups as a separate class of purchasers for the purpose of determining base prices.

This ruling also applies to institutional providers of health services under § 300.18.

This ruling has been approved by the General Counsel of the Price Commission.

Dated: September 27, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 27, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16932 Filed 10-3-72;8:53 am]

[Price Commission Ruling 1972-260]

PROFIT MARGIN LIMITATION

Price Commission Ruling

Facts. Company A is a prenotification firm which engages in coal mining operations in State B. The legislature of State B recently provided for an increase in the State's severance tax collected from coal mining and other extractive operations and levied on the value of the coal or other resource extracted within the State's boundaries. A has not previously increased prices above base prices but will now increase its price of coal to pass on this tax dollar-for-dollar.

Issue. Is a manufacturer which increases prices dollar-for-dollar to recover an increase in allowable costs subject to the profit margin limitation in Economic Stabilization Regulations 6 CFR 300.12 (1972)?

Ruling. Yes. Any manufacturer which charges a price in excess of its base price for any item to recover any amount of allowable costs is subject to the profit margin limitation.

A manufacturer may charge a price in excess of the base price only to reflect allowable cost increases and only to the extent that the price charged does not result in an increase in its profit margin over that which prevailed during the base period. Section 300.12. Generally, an increase in taxes other than income taxes is an increase in allowable costs for the purpose of justifying a price increase. Price Commission Ruling 1972-127, 37 F.R. 7351 (1972). If the proposed price increase in this case is made, it will reflect an increase in allowable costs even though the increase is only a dollar-for-dollar passthrough of those costs and not the maximum percentage increase allowed under Price Commission Ruling 1972-13, 37 F.R. 765 (1972). Therefore, if A charges the price in excess of the base price to recover the increased severance tax, it becomes subject to the profit margin limitation of § 300.12.

This ruling has been approved by the General Counsel of the Price Commission.

Dated: September 27, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 27, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16934 Filed 10-3-72;8:53 am]

[Cost of Living Council Ruling 1972-117]

SMALL BUSINESS EXEMPTION, PARTNER-EMPLOYEES

Cost of Living Council Ruling

Facts. X partnership is a small Wall Street brokerage firm that deals in listed and over-the-counter securities. X in its most recent fiscal year had sales of less than $50 million. X has five general partners who manage the day-to-day affairs of the partnership and 160 special partners who take no active part in the business. X also employs 10 security salesmen who work on commission and 47 salaried employees who do the clerical functions. This is the employment level maintained from June 1, 1971, to date.

Issue. Is this partnership exempted by Economic Stabilization Regulation, 6 CFR 101.51 (1972)?

Ruling. X partnership is exempted by Regulation § 101.51. Regulation § 101.51 (a)(1) provides, * * * price and pay adjustments of any firm, existing on or before December 31, 1971, including a

local government, with an average of 60 or fewer employees * * * are exempt from and not included in the coverage of this title.

The partnership has 57 employees as determined by the definition of employee in the Federal Insurance Contributions Act, 26 U.S.C. 3121d (1972), which is the basis for the definition of employee in Regulation § 101.51(d)(1), 37 F.R. 16502 (1972). The salesmen and clerical personnel are considered employees by this section since a common law employer-employee relationship exists. Since X has maintained a steady employment average from June 1971, to date, the average number of employees as determined by Regulation § 101.51(a)(3) is 57.

Partners, whether general or special partners, are not considered employees. They are not subject to the Federal Insurance Contributions Act. A partner is an owner just as a shareholder is an owner. Partners share in profit and losses, they receive no salary. Blacks Law Dictionary 4th Ed. Thus, partners shall not be considered as employees and would not enter into the calculation of the average number of employees in Regulation § 101.51(a)(3).

This ruling has been approved by the General Counsel of the Cost of Living Council.

Dated: September 22, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel
Internal Revenue Service.

Approved: September 22, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel
Department of the Treasury.

[FR Doc.72-16911 Filed 10-3-72;8:51 am]

[Pay Board Ruling 1972-67]

PIECE-RATE COMPENSATION

Pay Board Ruling

Facts. X is a nonunion contractor engaged in the erection of drywall for residential, commercial, and industrial buildings. X pays his employees solely on a piece-rate basis and pays no fringe benefits or other compensation. Prior to the freeze, he paid his drywall installers (residential and commercial) 1.55 per piece and his drywall finishers (tapers, sanders, point-up men) 0.55 per piece for a one-story detached home with uniform 8' ceiling and a nail-on application. He also had different rates in effect prior to the freeze for more difficult hanging such as that required for multiple story residential construction, townhouses, high-rise apartments, cathedral ceilings, metal stud installations, etc. X wishes to grant an increase to his drywall installers and drywall finishers, but due to the diverse fluctuations in the labor force, the seasonal nature of the industry, and the effect of weather conditions on the piece rate, it is impossible to convert the piece rate to a straight-time hourly rate.

Issue. May X grant a 5.5 percent increase based on the piece rate in existence during the base period, where it is virtually impossible to convert the piece rate to a straight-time hourly rate?

Ruling. Yes, the piece-rate system that X uses to pay his employees is a type of production incentive plan under Economic Stabilization Regulations, 6 CFR 201.77 (1972). Pursuant to that section, any increase in the amount of compensation to the members of an appropriate unit which is due to a change in the method of calculating the earnings of any employee is considered to be an increase in the wages and salaries for the appropriate control year.

The facts of the case demonstrate that it is not possible to compute the increases on a straight-time hourly rate due to the particular nature of the industry. The proper method of computing the allowable piece rate in the first control year, therefore, is to take the piece rate in effect on the base date and add to it the product of the general wage and salary standard, or any applicable exceptions, and such piece rate.

This ruling has been approved by the General Counsel of the Pay Board.

Dated: September 22, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 22, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16912 Filed 10-3-72;8:51 am]

[Pay Board Ruling 1972-68]

WAGE INCREASES LESS THAN THE ALLOWABLE STANDARD

Pay Board Ruling

Facts. A operates a small manufacturing firm whose employees are seeking a 5.5 percent wage increase. Because of a decline in business during the past year, however, A can only afford to pay an increase of 2 percent. The employees agree to accept 2 percent but ask that the difference of 3.5 percent be carried forward and added to the permissible standard for wage and salary increases during the next control year. Assuming that the general wage and salary standard remains at 5.5 percent, would the maximum permissible increase for the next control year then be 9 percent?

Issue. If a wage increase during 1 control year is less than the maximum allowable increase, can the difference between the two be carried over and added to the allowable increase for a subsequent control year?

Ruling. No. The general wage and salary standard of 5.5 percent is the "maximum permissible annual aggregate wage and salary increase" for any given control year. Economic Stabilization Regulations, 6 CFR 201.10 (1972). The only exceptions to this limitation are set forth in § 201.11 of the regulations.

This ruling has been approved by the General Counsel of the Pay Board.

Dated: September 22, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 22, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16913 Filed 10-3-72;8:51 am]

[Pay Board Ruling 1972-69]

SUBSEQUENT WAGE DETERMINATIONS PURSUANT TO PREEXISTENT AUTHORITY TO INCREASE WAGES

Pay Board Ruling

Facts. The salary schedule for probation officers in State X, established by State statute, provides salaries for six officers which exceed the present salary of their superior, the Commissioner of Probation. Moreover, 37 other officers receive salaries which exceed the salaries of the Deputy Commissioners. Pursuant to State statute, the Y Committee on Probation has the power to remedy this inequity by increasing within certain specified limits the salaries of the Commissioner and Deputy Commissioners. The legislation providing the Y Committee with such power was enacted on September 1, 1970. In February of 1972, the Y Committee formally voted to correct the inequity by increasing the salaries of the Commissioner and Deputy Commissioners.

Issue. Does the State statute from which the Y Committee derives its authority to increase the salaries of the Commissioner and Deputy Commissioner constitute a "pay practice previously set forth" which existed prior to November 14, 1971, within the meaning of Economic Stabilization Regulations, 6 CFR 201.14 (1972)?

Ruling. No. Section 201.14(a) of the regulations provides in part that "employment contracts and pay practices previously set forth which existed prior to November 14, 1971, will be allowed to operate according to their terms". Section 201.14(b) provides in part that "a pay practice shall be previously set forth only if it can be documented that prior to November 14, 1971, an adjustment to wages and salaries was decided finally and formally in accordance with established procedure". Since the specific pay increases were not determined by the State statute but by the vote of the Y Committee, which did not occur until February 1972, there was no "pay practice previously set forth" prior to November 14, 1971.

This ruling has been approved by the General Counsel of the Pay Board.

Dated: September 22, 1972.

LEE H. HENKEL, Jr.,
Chief Counsel,
Internal Revenue Service.

Approved: September 22, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.72-16914 Filed 10-3-72;8:51 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[26 CFR Part 201]

DISTILLED SPIRITS PLANTS

Package Identification, Records and Reports

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Acting Director, Bureau of Alcohol, Tobacco and Firearms, with the approval of the Secretary of the Treasury or his delegate. Prior to final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Acting Director, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20224, within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. 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 Director, within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, 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] REX D. DAVIS,
Acting Director, Bureau of Alcohol, Tobacco and Firearms.

Approved: September 27, 1972.

EUGENE T. ROSSIDES,
Assistant Secretary.

NOTE: The Treasury decision to be issued pursuant to this notice will contain the necessary changes in titles and offices resulting from the establishment of the Bureau of Alcohol, Tobacco and Firearms as a separate agency under the Department of the Treasury.

In order to (1) prescribe a new identification system for packages of distilled spirits and provide for an adjustment of current package inventories to accommodate the changeover to the new system; (2) liberalize requirements for determination of production gage of packages of spirits; (3) simplify and reduce the amount of required information to be shown on packages of distilled spirits and liberalize requirements concerning additional information which may be so shown; (4) change the requirements for determining the quantity of spirits which may be weighed in a tank; (5) provide for greater use of mechanical and electronic equipment for maintenance and preservation of records; (6) liberalize record and report requirements for distilled spirits production and storage operations by reducing the number of required reports, consolidating the functions of required transaction forms, and utilizing, to a greater degree, information on proprietors' commercial records; (7) eliminate certain daily reports to the assigned officer; and (8) make editorial, conforming, and clarifying changes, the regulations in 26 CFR Part 201 are amended as follows:

PARAGRAPH 1. Section 201.11 is amended by adding, in alphabetical order, a definition of "Lot identification" and a definition of "Package identification number". As amended, § 201.11 reads as follows:

§ 201.11 Meaning of terms.

* * * * *

Lot identification. The lot identification described in § 201.513a.

* * * * *

Package identification number. The package identification number described in § 201.513a.

* * * * *

PAR. 2. Section 201.88 is amended to provide that, on request of an internal revenue officer, the proprietor shall furnish the location of, and the number of packages within, any particular lot of packages and to make an editorial change. As amended, § 201.88 reads as follows:

§ 201.88 Storage rooms or buildings.

Storage rooms or buildings provided on bonded premises for the storage of spirits in packages, cases, or similar portable approved containers shall be in the joint custody of the assigned officer and the proprietor, shall be locked with Government locks, and shall not be unlocked or remain unlocked except when such officer is on the plant premises or the premises of an adjacent bonded wine cellar. Deposits of spirits in, or removals of spirits from, such rooms or buildings in such portable containers shall be under direct supervision of assigned officers. The proprietor shall, on request of an internal revenue officer, furnish the exact locations (including the number of containers at each location) of all packages and similar portable approved containers within a given lot, and the exact location of each case stored on the bonded premises.

(72 Stat. 1357; 26 U.S.C. 5202)

PAR. 3. Paragraph (a) of § 201.95 is amended to (1) make it clear that the proviso which permits the proof of spirits to be packaged in porous wooden packages to be adjusted to within two-tenths of a whole degree applies only to packages which are so filled for storage in the warehouse and (2) to make an editorial change. As amended, paragraph (a) reads as follows:

§ 201.95 Adjustment of proof.

(a) *Packages in bond.* The proof of spirits in bond (except anhydrous spirits and spirits which are less than 100° of proof) which are to be filled into packages, including consolidated packages, shall be adjusted to any desired whole degree prior to such packaging: *Provided,* That when the spirits are to be packaged in porous wooden packages for storage, the proof may be adjusted to within two-tenths of a whole degree. The proof of spirits to be withdrawn after tax determination on the basis of individual package gage shall be determined to the nearest tenth and rounded to a whole degree in accordance with the provisions of Part 186 of this chapter.

* * * * *

PAR. 4. Paragraph (a) of § 201.243 is amended to provide that tanks in the storage facilities of a bonded warehouse which are not mounted on scales may not be used for filling packages unless such tanks are covered by a certificate of approval. As amended, paragraph (a) of § 201.243 reads as follows:

§ 201.243 Tanks.

(a) *General.* All tanks used as receptacles for spirits (including denatured spirits) or wines shall be located, constructed, and equipped so as to be suitable for the intended purpose and to permit ready examination. An accurate means of measuring the contents of each such tank shall be provided by the proprietor; in any case where such means of measuring is not a permanent fixture of the tank, the tank shall be equipped with a fixed device which will enable the approximate contents to be determined readily. Tanks used for determining the tax imposed by section 5001, IRC, shall be mounted on scales; and in addition thereto shall be provided with another suitable device for quickly and accurately determining the contents. The proprietor shall install walkways, landings, and stairways to afford safe access to all parts of tanks where the presence of an internal revenue officer is required. Tanks may be equipped with vents, flame arresters, foam devices, or other safety devices, if the construction is such to prevent extraction of the spirits. The proprietor shall be responsible for accurate calibration of all tanks. Receiving tanks which are a part of the production facilities, tanks in the storage facilities from which packages are to be filled, in the

manner provided in subparagraph (2) or (3) of paragraph (c) of § 201.269 as authorized by § 201.294, and bottling tanks shall not be used until a certificate of approval, Form 244, has been attached thereto. Pursuant to tax determination, spirits in a tank may be removed from bonded premises, and received on bottling premises, in the tank in which they are contained, if (1) the bonded premises are alternated to bottling premises in the manner provided in § 201.175, (2) the tank and/or all necessary connections thereto are locked or sealed in such manner as to prevent the mingling of spirits in bond with tax determined spirits, (3) the tank is properly redesignated, and (4) the structural separation of bonded and bottling premises required by § 201.231 is maintained.

* * * * *

PAR. 5. Section 201.247 is amended to change requirements for the minimum quantities of spirits which may be weighed in a tank. As amended, § 201.247 reads as follows:

§ 201.247 Beams or dials of scales.

Beams or dials of scales used to weigh packages of spirits (including denatured spirits) must indicate weight in half-pound graduations: *Provided,* That scales used to weigh packages or cases designed to hold 10 wine gallons or less shall indicate weight in ounces or in hundredths of a pound. Beams or dials of tank scales used to weigh spirits (including denatured spirits) must have minimum graduations not greater than the following:

Quantity to be weighed:	*Minimum graduation*
Not exceeding 2,000 pounds	½ pound.
Between 2,000 and 6,000 pounds	1 pound.
Between 6,000 and 20,000 pounds	2 pounds.
Between 20,000 and 50,000 pounds	5 pounds.
Over 50,000 pounds	10 pounds.

Except in the case of scales having a capacity of 2,000 pounds or less, the mimimum quantity which may be entered onto the weighing tank scale for gaging for tax determination shall be the greater of (a) 1,000 times the minimum graduation of the scale or (b) 5 percent of the total capacity of the weighing tank scale: *Provided,* That the weighing of lesser quantities for determination of tax may be authorized by the assistant regional commissioner where the beam of the scale is calibrated in ½ pound or 1 pound graduations and it is found by actual test that the scales break accurately at each graduation: *Provided further,* That lots of spirits weighing 1,000 pounds or less shall be weighed on scales having ½ pound graduations.

(72 Stat. 1320, 1358, 1391, 1395; 26 U.S.C. 5006, 5024, 5505, 5552)

PAR. 6. Section 201.269 is amended in its entirety. As amended, § 201.269 reads as follows:

§ 201.269 Production gage.

(a) *General.* All spirits shall be gaged (by measuring and proofing) within a reasonable time after production is completed. Except as otherwise specifically provided in this section, quantities may be determined by volume or by weight, or, when approved by the Director, by meter or other device or by other method which accurately determines the quantities. If caramel is added to brandy or rum, the proof of the spirits shall be determined after such addition. Spirits in a tank shall be gaged before and after each removal of spirits therefrom. Such gages shall be recorded by the proprietor in the records required by § 201.619.

(b) *Tax to be determined on production gage.* Tax may be determined on the basis of the production gage if:

(1) Spirits are filled by weight into wooden packages for immediate withdrawal from the production facilities, and the gage is made by an internal revenue officer;

(2) Spirits are weighed into bulk conveyances, and the gage is made by an internal revenue officer; or

(3) Spirits are uniformly filled by weight into metal packages, and the gage is made by the proprietor.

Production and deposit forms shall be marked "Withdraw on Original Gage."

(c) *Tax not to be determined on production gage.* If spirits are drawn from the production system into barrels, drums, or similar portable containers of the same rated capacity and such containers are filled to capacity, and the tax is not to be determined on the basis of the production gage, such gage may be made by:

(1) Weighing in a tank, converting the weight into proof gallons, and determining therefrom the average content of each container; or

(2) Measuring volumetrically, on approval by the assistant regional commissioner, in a calibrated tank, converting the wine gallons so determined into proof gallons, and determining therefrom the average content of each container: *Provided,* That the assistant regional commissioner may require the use of such meters or other measuring devices as he may deem necessary; or

(3) Converting the rated capacity into proof gallons to determine the average content of each container; or

(4) Determining by such device or method as may be approved under the provisions of paragraph (a) of this section, the total quantity filled into containers, and determining therefrom the average content of each container.

Proprietors who make production gauges for containers by any of the methods prescribed in this paragraph may record the weight of such containers for commercial purposes. The proprietor shall advise the assigned officer of the rated capacities of the packages. The rated capacity of new cooperage shall be as prescribed by specifications of the manufacturer. Proprietors may assign rated capacities to used packages if they have made a physical determination of the actual capacities of a representative number of such packages, or may use the manufacturer's original ratings, if known, and if there is no evidence that a significant change in the capacities of previously rated packages has occurred. If the assigned officer finds a significant variation between the assigned rated capacity and the actual capacity of a representative number of wooden packages, he shall not permit the proprietor to use the production method provided in subparagraph (3) of paragraph (c) of this section until the proprietor establishes and assigns a proper rated capacity to the cooperage in question. Any remnant container shall be gaged by weight, and marked as prescribed in Subpart P of this part.

(d) *Making of production gage*—(1) *By assigned officer.* The production gage shall be made by the assigned officer when spirits are to be withdrawn in approved containers other than metal packages from the production facilities on determination of tax, or when, pursuant to the proprietor's request to the assigned officer, spirits are to be withdrawn into bulk conveyances for withdrawal at a later date on determination of tax on the basis of the production gage.

(2) *By proprietor.* All production gages, other than those made under subparagraph (1) of this paragraph, shall be made by the proprietor under the direct supervision of the assigned officer: *Provided,* That when the production gage is made by the proprietor by means of meters or devices (comparable in accuracy and security to meters), approved by the Director, which enable the assigned officer to verify the accuracy of the gage, such gage shall be made under such supervision and in such manner as the Director may require.

(e) *Reports of production gage.* In computing the production gage on the basis of average content of packages as provided in paragraph (c) of this section, fractional proof gallons beyond the first decimal shall be dropped if less than 0.05 or added as 0.1 if 0.05 or more, and the average content so determined shall be used in computing the quantity produced. A separate Form 2629 shall be prepared for each lot of packages filled (see § 201.513a(b)) and for each removal by pipeline or bulk conveyance for deposit in storage facilities on the same plant premises. If spirits are to be denatured, transferred in bond, or withdrawn from bond, as authorized by this part, the report of production gage shall be made on the form required by this part to cover the transaction (accompanied by Form 2630 in the case of packages gaged for tax determination by the assigned officer). Each transaction form and Form 2630, if any, shall show:

(1) The real name (or basic operating name as provided in § 201.235) of the producer, and, if the spirits are produced under a trade name, the trade name under which produced.

(2) For each remnant container, the actual tax gallons in the container.

(72 Stat. 1357, 1358, 1362; 26 U.S.C. 5202, 5204, 5211)

PAR. 7. Section 201.271 is amended to delete the requirement that Form 2630, covering packages filled, accompany Form 2629. As amended, § 201.271 reads as follows:

§ 201.271 Entry.

Pursuant to the production gage, the proprietor shall make appropriate entry for (a) deposit of the spirits in storage on bonded premises, (b) withdrawal of the spirits on determination of tax, (c) withdrawal of the spirits free of tax, (d) withdrawal of the spirits without payment of tax, (e) transfer of the spirits for redistillation, or (f) immediate denaturation of the spirits. Entry for deposit in storage on the same plant premises shall be made on Form 2629. When spirits are entered for deposit in storage on another plant premises or are entered for withdrawal or redistillation, the provisions of Subpart L of this part shall be followed, and when spirits are entered for immediate denaturation, the provisions of Subpart M of this part shall be followed. The date of original entry is the date of production gage.

(72 Stat. 1362; 26 U.S.C. 5211)

PAR. 8. Paragraph (b) of § 201.291 is amended to delete the requirement for preparation of Form 2629 covering the transfer of spirits of less than 190° of proof between tanks and to provide a new requirement that Form 2323 (Form 1685 in the case of blended rums and brandies) be prepared to cover each tank in which spirits of less than 190° of proof are stored. As amended, paragraph (b) of § 201.291 reads as follows:

§ 201.291 Receipt and storage of spirits.

* * * * *

(b) *Tanks.* If spirits (including denatured spirits) are being deposited in a partially filled tank in the storage facilities on bonded premises, simultaneous withdrawals may not be made therefrom unless the flow of spirits both into and out of the tank is being measured by meters or other devices approved by the Director which permits a determination of the quantity being deposited and the quantity being removed. Proprietors shall prepare Form 2323 (1685 in the case of blended rums and brandies) in accordance with the instructions on the form, for each tank in which spirits of less than 190° of proof are stored. A separate Form 2323 (or 1685) shall be prepared in respect of each such tank for each deposit therein showing, as applicable, details respecting the spirits in the tank prior to the deposit, and the details respecting the spirits being deposited.

* * * * *

(72 Stat. 1356, 1357, 1362, 1366, 1398, 82 Stat. 1328; 26 U.S.C. 5201, 5202, 5211, 5212, 5231, 5601, 5232)

PAR. 9. Section 201.292 is amended to require that notation as to addition of oak chips prior to gage for withdrawal from bonded premises be made on transfer forms. As amended, § 201.292 reads as follows:

§ 201.292 Quick-aging of spirits, addition of oak chips to spirits, and addition of caramel to brandy and rum.

Spirits may be quick-aged by heating during storage on approval by the assistant regional commissioner of the proprietor's written description (in triplicate) of the process to be used. Oak chips which have not been treated with any chemical may be added to packages either prior to or after filling; if added prior to gage for withdrawal from bonded premises notation shall be made on the deposit form and, if transferred, on the transfer form. Caramel possessing no material sweetening properties may be added to rum or commercial brandy in packages or tanks. All such operations in storage facilities on bonded premises shall be pursuant to an application (in duplicate) to, and under the direct supervision of, the assigned officer.

(72 Stat. 1328, as amended, 1356, 1357; 26 U.S.C. 5025, 5201, 5202)

PAR. 10. Section 201.294 is amended to (1) require the proprietor to record tank gages involved in filling packages, and (2) make conforming and editorial changes. As amended, § 201.294 reads as follows:

§ 201.294 Filling of packages from tanks.

Spirits (including denatured spirits) may be drawn into packages from tanks in the storage facilities on bonded premises. The spirits in the tank shall be gaged prior to filling of packages, and when only a portion of the contents of the tank is packaged, the spirits remaining in the tank shall be again gaged and such gages shall be recorded by the proprietor in the records required by § 201.622. The provisions of § 201.269 regarding the filling of packages, the taking of production gage of packages, and the preparation of gage reports shall be applicable to the filling and gaging of packages of spirits under this section. Except in the case of spirits of 190° or more of proof, the gage report shall be noted to show the date of original entry for deposit.

(72 Stat. 1356, 1357; 26 U.S.C. 5201, 5202)

PAR. 11. Section 201.295 is amended to (1) delete the requirement for showing tare and gross weight on each new package on the deposit record and (2) make an editorial change. As amended, § 201.295 reads as follows:

§ 201.295 Change of packages.

Denatured spirits on bonded premises may be transferred to another package without prior approval by the assigned officer. Spirits in the storage facilities on bonded premises may be transferred from one package to another on written application (in duplicate) to, and approval of, the assigned officer. Except in the case of spirits of 190° or more of proof, each new package shall contain spirits from only one package. Packages shall be marked and branded as provided in Subpart P of this part. The proprietor shall note the record covering the deposit of the spirits in bond to show the tax gallons contained in each new package and shall furnish the assigned officer a report, in writing, of each package change and the new elements of gage. The provisions of this section do not apply when spirits are packaged subsequent to mingling.

(72 Stat. 1356, 1357; 26 U.S.C. 5201, 5202)

PAR. 12. Section 201.297 is amended to make clarifying and editorial changes. As amended, § 201.297 reads as follows:

§ 201.297 Mingling of homogeneous spirits.

Spirits which are homogeneous may be mingled on bonded premises for immediate withdrawal or for further storage in bond in tanks or packages. Spirits distilled at less than 190° of proof are presumed to be homogeneous if—

(a) They were produced,

(1) From the same class of materials,

(2) At approximately the same proof, and

(3) By the same proprietor (under his own or any trade name) at the same distillery, and

(b) In the case of spirits which have been stored in wooden packages so as to be in contact with the wood, they were stored in the same kind of cooperage under approximately the same conditions, and they differ in periods of such storage,

(1) Not more than 18 months in the case of spirits so stored in bond more than 8 years,

(2) Not more than 12 months in the case of spirits so stored in bond more than 4 years and not more than 8 years,

(3) Not more than 6 months in the case of spirits so stored in bond more than 2 years and not more than 4 years,

(4) Not more than 60 days in the case of spirits so stored in bond more than 1 year and not more than 2 years, or

(5) Not more than 30 days in the case of spirits so stored in bond not more than 1 year; and

(c) They do not differ in kind under the standards of identity prescribed in 27 CFR Part 5. The age of the youngest lot of spirits to be included in any mixture mingled under this section will determine the permissible variation in periods of storage. Spirits mingled under this section consisting of different distilling seasons and years may not be bottled in bond; mingled spirits which were originally produced and warehoused under different names may not be bottled in bond unless the name on the packages of such mingled spirits is the producer's real name; and mingled spirits which have been stored in tanks may not be bottled in bond unless the season of first mingling and of bottling are identical. If the mingled spirits are to be packaged, such packaging shall be conducted under the provisions of § 201.294; if so desired, the spirits may be returned to the packages from which they were dumped for mingling, or as many of such packages as are necessary.

(72 Stat. 1328, as amended 1367, as amended; 26 U.S.C. 5025, 5234)

PAR. 13. Section 201.300 is amended to require that transfer forms covering spirits transferred to another plant for redistillation be so noted. As amended, § 201.300 reads as follows:

§ 201.300 Mingling for redistillation.

Spirits (including denatured spirits) may be mingled on bonded premises for immediate redistillation at the same

plant or at another plant in accordance with the provisions of §§ 201.272 and 201.273. If such spirits are to be redistilled at another plant the transfer form shall show that the spirits are for redistillation.

(72 Stat. 1328, as amended, 1367, as amended; 26 U.S.C. 5025, 5234)

PAR. 14. Section 201.302 is amended to (1) exempt certain spirits dumped for immediate removal from its provisions, (2) delete the requirement that the proprietor submit a list of the serial numbers of packages to be dumped, (3) provide that Form 2629 be used to reflect the mingling and repackaging of 190 proof spirits, and (4) make conforming changes. As amended, § 201.302 reads as follows:

§ 201.302 Mingling packages of spirits.

Before dumping packages of spirits on bonded premises for mingling (except heterogeneous spirits covered in § 201.298, other spirits dumped for immediate removal to bottling premises, and spirits of 190° or more of proof) the proprietor shall prepare Form 2323, in triplicate, in accordance with the instructions on the form and, before mingling, deliver one copy to the assigned officer. When packages of spirits of 190° or more of proof are to be mingled, the proprietor shall notify the assigned officer and shall prepare Form 2629 to reflect the dumping of the packages for mingling and, when applicable, the repackaging, of the spirits. Each package of spirits to be mingled under this subpart shall be carefully examined by the proprietor, and if any package bears evidence of loss due to theft or unauthorized voluntary destruction, or loss in excess of normal storage losses, such package shall not be dumped until released by the assigned officer. On completion of mingling of spirits other than heterogeneous spirits, other spirits dumped for immediate removal to bottling premises, and spirits of 190° or more of proof, the proprietor shall record the mingling gage on the Form 2323. Each disposition from the tank shall be recorded on the form as it occurs. When final disposition of the spirits is made (or when a new Form 2323 is prepared because of an additional mingling of spirits in the tank) the proprietor shall complete the original and the copy of Form 2323, deliver the original to the assigned officer, and retain the copy for his files.

(72 Stat. 1367, as amended; 26 U.S.C. 5234)

PAR. 15. Section 201.303 is amended to provide for updating the records covering mingled spirits and to make clarifying and editorial changes. As amended, § 201.303 reads as follows:

§ 201.303 Determining date of original entry.

When spirits are mingled in accordance with the provisions of § 201.301, the date of original entry for the entire lot shall be the date of original entry of the youngest spirits that were mingled. When packages of spirits are mingled as provided in § 201.297 or are blended as provided in § 201.307, the date of original entry for the entire lot shall be the date of original entry of the oldest spirits that were mingled; however, the appropriate transaction forms shall show the dates of both the oldest and the youngest spirits in the lot: *Provided*, That, when spirits so mingled are held in a tank, the proprietor shall, at least once each calendar year, reexamine the records of deposits and withdrawals for the tank for the purpose of updating, on a first-in, first-out basis, the date of the oldest spirits.

(72 Stat. 1320, 1367, as amended; 26 U.S.C. 5006, 5234)

PAR. 16. Section 201.304 is amended to limit its application to spirits of less than 190° of proof and to make clarifying changes. As amended, § 201.304 reads as follows:

§ 201.304 Mingled spirits held in tanks.

When spirits of less than 190° of proof are mingled in a tank in the storage facilities on bonded premises for storage therein the proprietor shall gage the spirits in the tank under the direct supervision of an assigned officer and record the mingling gage on Form 2323. Mingled spirits in tanks may be drawn into packages in accordance with § 201.294, or may be transferred in bond or withdrawn from bond in accordance with this subpart and Subpart L of this part. The date of original entry for spirits of less than 190° of proof shall be noted on the deposit forms. Eligible spirits may be added to mingled spirits already on deposit in a tank on such premises.

(72 Stat. 1367, as amended; 26 U.S.C. 5234).

PAR. 17. Section 201.305 is amended to modify the requirements for showing date of original entry of spirits after mingling, on transfer and withdrawal forms. As amended, § 201.305 reads as follows:

§ 201.305 Withdrawal or transfer in bond of mingled spirits.

Spirits mingled under the provisions of §§ 201.296, 201.297, and 201.301 may be transferred in bond, or withdrawn from bond for any purpose for which the spirits could have been withdrawn before mingling. Transfer and withdrawal forms, except as to spirits mingled under § 201.296, shall be noted to show the date of original entry for the spirits after mingling, determined as provided in § 201.303, and, where spirits have been stored in wooden packages and then mingled under § 201.297, the forms shall also be noted to show the earliest date of mingling.

(72 Stat. 1362, 1367, as amended; 26 U.S.C. 5212, 5234)

PAR. 18. Section 201.307 is amended to (1) deleted the requirement that proprietors furnish a list of serial numbers of packages of rums and brandies to the assigned officer prior to blending and (2) make editorial and conforming changes. As amended, § 201.307 reads as follows:

§ 201.307 Permissible blending.

Fruit brandies distilled from the same kind of fruit at not more than 170° of proof may, for the sole purpose of perfecting such brandies according to commercial standards, be mixed or blended with each other, or with any mixture or blend of such fruit brandies on bonded premises. Rums may, for the sole purpose of perfecting them according to commercial standards, be mixed or blended with each other, or with any mixture or blend of rums on bonded premises. Before blending such rums or brandies, the proprietor shall give notice on Form 1685, in triplicate, in accordance with the instructions on the form and deliver one copy to the assigned officer. Brandies or rums mixed or blended in accordance with this subpart may be packaged, stored, transported, transferred in bond, withdrawn free of tax withdrawn without payment of tax, withdrawn on payment or determination of tax, or be otherwise disposed of, in the same manner as brandies or rums not mixed or blended. If brandy or rum has been mixed or blended in accordance with this subpart, the transaction form shall show such fact and whether the brandy or rum is subject to tax imposed by section 5023, I.R.C.

(72 Stat. 1367, as amended; 26 U.S.C. 5234)

PAR. 19. Section 201.308 is amended in its entirety. As amended, § 201.308 reads as follows:

§ 201.308 Blending procedure.

After giving notice on Form 1685, the proprietor shall dump the brandy or rum to be blended, and record the blending gage on the form. When the blended brandy or rum is to be packaged, such packaging shall be conducted under the provisions of § 201.294; if so desired, the brandy or rum may be returned to the packages from which it was dumped for blending, or as many of such packages as are necessary. Each disposition from the tank shall be recorded on the form as it occurs. When final disposition of the brandy or rum is made, the proprietor shall complete Form 1685, deliver the original to the assigned officer, and retain the remaining copy for his files.

(72 Stat. 1367, as amended; 26 U.S.C. 5234).

PAR. 20. Section 201.311 is amended to (1) delete the requirement for a separate record of each container sustaining a loss in bond and insert in lieu thereof provisions for recording information regarding loss and taxpayment on deposit and transfer forms, and (2) make a conforming change. As amended, § 201.311 reads as follows:

§ 201.311 Losses in bond.

Where a container of spirits (including denatured spirits) in bond sustains a loss in excess of normal storage or transit losses or as a result of theft or unauthorized voluntary destruction, the loss shall be determined at the time of discovery. When it appears that any container in bond has sustained a loss resulting from theft or unauthorized voluntary destruction, such loss or indica-

tion thereof shall be reported promptly by the proprietor to the assigned officer. Proprietors shall record on deposit and transfer forms for each container sustaining such a loss the container identification number, the quantity lost, and the apparent cause of the loss. If the proprietor pays the tax as provided in § 201.310, the release number and the date of the related Form 179 shall be recorded on the deposit record. Unusual losses from obvious cause other than theft or unauthorized voluntary destruction occurring or discovered at the time of withdrawal from bond or transfer in bond shall be noted on the appropriate withdrawal or transfer form in the manner prescribed above. When a loss appears to be due to theft or unauthorized voluntary destruction, the assigned officer shall place a detainer on the container unless the loss is determined at the time of a gage for withdrawal from bond and the proprietor acknowledges liability and elects to pay the tax on such loss. Where it is found that the contents of a container have been tampered with, or where a material deficiency is found without evidence of loss by leakage or casualty, or where deterioration in proof not accountable by variation in gage is disclosed, the assigned officer shall detain the package. In any case in which spirits (including denatured spirits) are lost or destroyed in bond, whether by theft or otherwise, the assistant regional commissioner may require the proprietor or other person liable for the tax to file a claim for relief from the tax in accordance with the applicable provisions of Subpart C of this part. Losses of spirits (including denatured spirits) sustained from the tanks and bulk conveyances in bonded warehouses shall be determined by the proprietor each time a tank or bulk conveyance is emptied and on the basis of a physical inventory at the close of each month. When the quantity lost from all the storage tanks and bulk conveyances in bonded warehouses exceeds 1 percent of the total quantity contained in the tanks and bulk conveyances during the month, or where any loss from storage tanks or bulk conveyances is due to illegal withdrawal, the loss shall be taxpaid unless a claim for remission is filed in accordance with the provisions of § 201.43 and is allowed by the assistant regional commissioner. If at any time any package recorded as deposited in the bonded warehouse cannot be located or otherwise lawfully accounted for, such fact shall be immediately reported to the assigned officer and a claim with respect thereto shall be filed under the provisions of § 201.43.

(72 Stat. 1323, as amended, 1375; 26 U.S.C. 5008, 5311)

PAR. 21. Section 201.312a is amended to (1) delete references to Forms 179, 236, and 2630 and insert in lieu thereof the term, "transaction forms" and (2) add a reference to § 251.173. As amended, § 201.312a reads as follows:

§ 201.312a Transfers and withdrawals of imported spirits.

Imported spirits transferred to internal revenue bond under section 5232, I.R.C., may, under the provisions of Subpart L of this part, be transferred in bond or withdrawn from bond for any purpose authorized by chapter 51, I.R.C., in the same manner as domestic distilled spirits. The rates of duty specified by the customs officer at the time of release from customs custody shall be shown on transaction forms, which shall also be marked with the designation "Imported" (see § 251.173 of this chapter).

PAR. 22. Section 201.312b is amended to (1) prescribe revised requirements for markings on containers of imported spirits, and (2) make conforming changes. As amended, § 201.312b reads as follows:

§ 201.312b Markings for containers of imported spirits.

Each tank, bulk conveyance, or similar container in which imported spirits are transferred from customs custody to bonded premises, stored in bond, transferred in bond, or withdrawn from bond on tax determination shall be marked with the word "Imported." Each package of imported spirits shall, when received on bonded premises under the provisions of § 201.312, or when filled on bonded premises, be marked with:

(a) The name of the importer;

(b) The country of origin;

(c) The kind of spirits;

(d) The package identification number;

(e) The date of original entry of the spirits, if other than the date incorporated in the lot identification;

(f) The proof; and

(g) The wine gallons of spirits in the package. Packages of imported spirits received from customs custody or filled from storage tanks on bonded premises shall be assigned package identification numbers as provided in § 201.513a. Such numbers shall be preceded by the symbol "IMP" and the appropriate distinguishing prefix prescribed by § 201.514. The proprietor who files Form 2609 to receive packages of imported spirits under the provisions of § 201.312 shall be responsible for having the required marks placed on such packages. Package identification numbers assigned under the provisions of this section to packages of spirits received from customs custody shall be recorded on the deposit forms by the proprietor who filed the Form 2609 to receive the spirits.

(72 Stat. 1360; 26 U.S.C. 5206)

PAR. 23. Section 201.312c is amended to (1) refer to identification numbers instead of serial numbers and (2) make an editorial change. As amended, § 201.312c reads as follows:

§ 201.312c Exceptions to specifications for package marking requirements.

The package marks prescribed by § 201.312b shall be placed on each package of imported spirits received from customs custody in the manner required by § 201.515, except in the circumstances, and under the conditions, set out in paragraph (a) or (b) of this section.

(a) *Temporary marks.* Pursuant to written application, in triplicate, the assistant regional commissioner may authorize the proprietor to place the prescribed marks on each such package by temporary means, such as by use of a suitable card securely affixed to the head of the package by tacks, staples, or adhesives where, within 30 calendar days after receipt from customs custody, the temporarily marked packages will be dumped into a tank for storage or for tax determination, or will be withdrawn from bond in such packages on determination of tax for removal to, and dumping at, bottling premises on or contiguous to the distilled spirits plant at which received from customs custody. Packages not dumped or removed as provided in this paragraph within the time prescribed must be promptly marked in the manner required by § 201.515.

(b) *Waiver of marking.* Pursuant to written application, in triplicate, the assistant regional commissioner may waive the placing of prescribed marks on such packages where the packages will, no later than the close of the workday next succeeding the date of receipt, be dumped into a tank for storage or for tax determination, or will be withdrawn from bond in such packages on determination of tax for removal to, and be dumped at, bottling premises on or contiguous to the distilled spirits plant at which received from customs custody. Packages not dumped or removed as provided in this paragraph within the time prescribed must be promptly marked in the manner required by § 201.515 unless the assistant regional commissioner authorizes the use of temporary marks under the provisions of paragraph (a) of this section.

The provisions of this section shall not be construed to waive, or authorize the waiver of, the requirements of this part for the assigning of package identification numbers or for the recording of such package identification numbers on deposit forms and the required recording of lot identification numbers and related information on other transaction forms, records, or reports.

(72 Stat. 1360; 26 U.S.C. 5206)

PAR. 24. A new section, § 201.312e, is inserted, immediately following § 201.312d, to read as follows:

§ 201.312e Recording gage.

At the time of receipt into internal revenue bond of packages of imported spirits, the proprietor shall use the last official gage to compute and record on deposit forms for each entry the average content of the packages being received, in the manner provided for seasonal accounts in § 201.628a. If the last official gage indicates a substantial variation in the contents of the packages, the proprietor shall group the packages into lots according to their approximate contents, and assign a separate lot identification to each group of packages, based on the date the packages were received on bonded premises.

(72 Stat. 1360; 26 U.S.C. 5206)

PAR. 25. Section 201.322 is amended to (1) designate Form 1515 as a notice, (2) delete the requirement for a list of serial numbers of the packages, (3) delete from its provisions the requirement that

spirits be gaged by weight and proof, and (4) make conforming changes. As amended, § 201.322 reads as follows:

§ 201.322 Entry and gage.

Proprietors shall make entry for the bottling of distilled spirits in bond on Form 1515. A separate notice on Form 1515 shall be prepared for each lot of spirits to be so bottled. Before dumping packages of spirits, the proprietor shall deliver one copy to the assigned officer and attach the remaining copies to the tank in which the spirits are to be gaged. Each package shall be carefully examined by the proprietor, and if any package bears evidence of loss due to theft or unauthorized voluntary destruction, or loss in excess of normal storage losses, such package shall not be dumped until released by the assigned officer; Form 1515 will be amended when necessary. The proprietor shall dump packages promptly. After dumping the packages, the proprietor shall gage the spirits and make a report of such gage on Form 1515. The spirits shall be gaged either in the storage portion of the bonded warehouse or in the bottling-in-bond facilities; spirits may be transferred to such facilities by pipeline.

(72 Stat. 1366; 26 U.S.C. 5233)

PAR. 26. Section 201.336 is amended to (1) prescribe revised requirements for recording removals of bottled-in-bond spirits, and (2) make an editorial change. As amended, § 201.336 reads as follows:

§ 201.336 Removal of spirits bottled.

When spirits are bottled in bond the filled bottles, with labels and strip stamps properly affixed, shall be placed in cases, and the cases then sealed, after which such cases shall be promptly removed from the bottling-in-bond facilities to the storage portion of the bonded warehouse, pursuant to Form 2629, or transferred in bond or withdrawn from bond, pursuant to the appropriate transaction form prescribed in Subpart L of this part. The proof gallons of bottled spirits so removed from the bottling-in-bond facilities, the date of removal, and the form number and serial number of each transaction form shall be entered daily on Form 1515. The tax on spirits withdrawn for export with benefit of drawback at less than 100° of proof shall be determined on a wine gallon basis. The removal to storage of cases temporarily sealed, pending affixing of brand labels or State stamps, may be authorized by the assigned officer. Such temporarily sealed cases may be transferred in bond to other premises. If the mandatory information required under 27 CFR Part 5 appears on the brand label rather than a separate label, the brand label shall be affixed at the time of bottling. Brand labels or State stamps (if to be affixed before withdrawal from bond) shall be affixed to the bottles in the bottling-in-bond facilities: *Provided*, That the assigned officer may authorize the affixing of such labels or stamps in the storage portion of a bonded warehouse where the need therefor is established, if space and facilities for such activities are available and the necessary supervision can be provided without the assignment of an additional internal revenue officer. Spirits in cases temporarily sealed shall be kept apart from other spirits in the warehouse.

(72 Stat. 1360, 1366; 26 U.S.C. 5206, 5233)

PAR. 27. Section 201.338 is amended to provide for immediate taxpayment of remnant cases of bottled-in-bond spirits, and make editorial and conforming changes. As amended, § 201.338 reads as follows:

§ 201.338 Marking and disposition of remnant cases.

If there is less than a case of bottled spirits remaining from a lot of spirits bottled, either for domestic use or for exportation, the remnant will be placed in a case and such case will be given the serial number of the last full case containing spirits in the same lot, followed by the letter "R", thus: "100–R": *Provided*, That where spirits, of the same kind and proof, produced by the same distiller at the same distillery during the same distilling season as the remnant, are to be bottled on the same or following business day, and are eligible for inclusion in the remnant case, such remnant case may be given the next serial number and held in the bottling-in-bond facilities, and the case filled with such spirits. Such remnant case, if not held in the bottling-in-bond facilities, shall be taxpaid for domestic consumption or removed with other cases to storage, and later taxpaid for domestic consumption, or returned to the bottling-in-bond facilities when the next lot of spirits of the same kind, produced by the same distiller, at the same distillery during the same distilling season is to be bottled, and (a) the bottles used for filling a complete case, if of the same proof and otherwise eligible, or (b) the contents dumped into the bottling tank and mingled with such other spirits for bottling. In any instance when a remnant case is removed to storage or returned to the bottling-in-bond facilities for use as provided in this section, appropriate notations will be made on the applicable Form 2629 or Form 1515, as the case may be.

(72 Stat. 1366; 26 U.S.C. 5233)

PAR. 28. Section 201.340 is amended by changing the word "application" to "notice." As amended, § 201.340 reads as follows:

§ 201.340 Remnant cases of spirits bottled in bond returned to bottling-in-bond facilities.

Remnant cases of spirits returned to the bottling-in-bond facilities for use in filling a complete case or dumping into a bottling tank shall be included in the notice on Form 1515, covering the withdrawal of bulk containers for bottling.

(72 Stat. 1366; 26 U.S.C. 5233)

PAR. 29. Paragraph (a) of § 201.343 is amended to prescribe revised requirements for completion of Form 1515. As amended, paragraph (a) of § 201.343 reads as follows:

§ 201.343 General.

(a) *Bottled alcohol.* Alcohol of 190° or more of proof may be bottled and cased in the bonded warehouse under the direct supervision of the assigned officer. Alcohol may be bottled in containers of 1 gallon or less, or in bottles complying with the provisions of § 201.504; however, the proprietor is required to comply with the provisions of Subpart Pa of this part where applicable. The proprietor shall prepare Form 1515 for alcohol to be bottled in the bonded warehouse. The heading of Form 1515 shall be prominently marked with the word "Alcohol." Part I of the form will be modified and completed only to show the tank from which bottled and the proof of the alcohol, and Part III will be completed as provided in § 201.336, and the instructions on the form.

* * * * *

(72 Stat. 1357, 1369; 26 U.S.C. 5202, 5235)

PAR. 30. Section 201.352 is amended by inserting the word, "taxpaid" before the word, "spirits" in the last sentence. As amended, § 201.352 reads as follows:

§ 201.352 Records and reports.

Form 1515, appropriately modified, shall be prepared by the proprietor to cover the rebottling, relabeling, or restamping of bottled-in-bond spirits. Spirits which have not been withdrawn from bond or which have been returned to bond as provided by § 201.586 shall be accounted for in the same manner as spirits originally entered for bottling in bond. Form 1515 covering taxpaid bottled-in-bond spirits returned to a bonded warehouse for rebottling, relabeling, or restamping shall be clearly and prominently marked to show that the spirits are taxpaid, and shall identify each lot of spirits, showing the quantity returned, losses in rebottling, and the quantity removed. Such taxpaid spirits shall not be included in any warehouse records or reports required by Subpart U of this part.

PAR. 31. Section 201.363 is amended to (1) prescribe revised requirements for withdrawals on original gage, and (2) make editorial changes. As amended, § 201.363 reads as follows:

§ 201.363 Withdrawal of spirits on original gage.

When the filling or production gage is made under the provisions of § 201.269 (b), spirits may be withdrawn from bonded premises for any lawful purpose on the original gage. Spirits not so filled or produced must be gaged when they are withdrawn from bonded premises on determination of tax. If the original gage was made by an internal revenue officer the spirits shall be withdrawn on such gage unless permission for a gage at time of withdrawal is obtained from the assistant regional commissioner. When spirits which are to be withdrawn on determination of tax on the original gage are transferred in bond, all copies of Form 236 shall be marked by the proprietor "Withdraw on Original Gage."

(72 Stat. 1357, 1358; 26 U.S.C. 5202, 5204)

PAR. 32. Section 201.364 is amended to make the average tare provisions applicable only to packages entered prior to the effective date of this document. As amended, § 201.364 reads as follows:

§ 201.364 Determination of tare.

When packages are to be individually gaged for withdrawal from bonded premises, actual tare shall be determined: *Provided,* That average tare may be taken, when authorized under Part 186 of this chapter and approved by the assigned officer, for packages that were entered into bonded storage prior to *(effective date)*. Actual or average tare shall be determined in accordance with Part 186 of this chapter.

(72 Stat. 1358; 26 U.S.C. 5204)

PAR. 33. Section 201.368 is amended to (1) delete requirements for preparation of Form 1620, and for Form 2630 except when packages are weighed at the time of shipment, and (2) make conforming and editorial changes. As amended, § 201.368 reads as follows:

§ 201.368 Consignor premises.

(a) *General.* (1) Form 236 shall be prepared by the consignor proprietor to cover the transfer of spirits or denatured spirits in bond, pursuant to an approved application on Form 2609. In the case of denatured spirits, Form 236 shall be prepared as a notice of shipment. In the case of spirits, Form 236 shall be prepared as an application to the assigned officer for approval of the release. Except as otherwise provided herein, a Form 236 shall be prepared for each conveyance. Each Form 236 shall show the real name (or the basic operating name as provided in § 201.235) of the producer (or the name of the importer in the case of imported spirits or the name of the packaging or bottling proprietor in the case of spirits of 190° of proof or more) and, if the spirits were produced under a trade name, shall also show the trade name under which produced. Spirits shall not be removed from the bonded premises until Form 236 (or, as authorized in subparagraph (2) of this paragraph, an authorized shipment and delivery order) has been submitted to the assigned officer and his approval received for the release of the spirits. In the case of pipeline transfers of spirits, the assigned officer shall not unlock the pipeline until he has approved the Form 236. On completion of lading (or completion of transfer by pipeline), the proprietor shall execute his certificate of removal on all copies of Form 236, and dispose of the forms in accordance with the instructions on Form 236.

(2) The proprietor may, on approval of the assistant regional commissioner, cover on one Form 236 all packages of spirits shipped by truck on the same day from his production facilities or storage facilities for deposit for storage in bond in another distilled spirits plant located in the same internal revenue region. In such case, the proprietor shall deliver, to the assigned officer at the shipping and delivery premises, a shipment and delivery order for each shipment, showing the number of barrels, their package identification numbers, the name of the producer, and the serial numbers of the Government seals (if any) applied to the truck. Such shipping and delivery order shall be properly authenticated, and shall constitute a complete record of the spirits so transferred in each truck each day. On completion of lading of the last truck for the day, the proprietor shall complete the Form 236 and dispose of the form in accordance with the instructions on the form.

(b) *Packages.* When spirits are to be transferred in bond in packages, the consignor proprietor shall weigh each package, except (1) when the transfer is to be made in a sealed conveyance, (2) when the individual packages have been securely sealed by the proprietor in a manner satisfactory to the assigned officer, or (3) when this requirement has been waived by the Director on a finding that, because of the location of the premises and the proposed method of operation, the transfer can be made under the control of the assigned officer, and there will be no jeopardy to the revenue. The proprietor shall load the packages into the conveyance and prepare the conveyance for sealing, if it is to be sealed. When packages are weighed at the time of shipment, the proprietor shall list the package identification number of each package and its gross shipping weight on Form 2630. A copy of Form 2630 shall accompany each copy of Form 236.

(c) *Bulk conveyances and pipelines.* When spirits are to be transferred in bond in bulk conveyances or by pipelines, the consignor shall gage the spirits under the direct supervision of the assigned officer and record the quantity so determined on Form 236. Bulk conveyances of spirits shall be prepared by the proprietor for sealing.

(72 Stat. 1362; 26 U.S.C. 5212)

PAR. 34. Section 201.369 is amended to (1) eliminate the reference to Form 1620, (2) revise the requirements for reporting losses sustained during transfer in bond, (3) prescribe revised requirements for recording receiving weights of packages if no Form 2630 accompanies the shipment, and (4) make an editorial change. As amended, § 201.369 reads as follows:

§ 201.369 Consignee premises.

(a) *General.* When spirits are received by transfer in bond the consignee proprietor shall notify the assigned officer who shall deliver the appropriate Form 236, and Form 2630, if any, to the consignee, except that where transfers are made under the provisions of § 201.368 (a)(2), the assigned officer shall note the receipt of the spirits on his copy of the shipping and delivery order and, on receipt, deliver to the consignee the Forms 236 and 2630 covering the transfers for the day. The assigned officer shall examine each sealed conveyance to determine whether the seals are intact and if so he shall authorize the proprietor to remove the seals. The proprietor shall examine all containers, and any container bearing evidence of loss in transit or of loss due to theft shall be held until released by the assigned officer. Spirits after examination (and, if held, after release by the assigned officer) shall be deposited in the warehouse immediately, or, if the spirits are to be redistilled, they shall be deposited in the production facilities immediately. After execution on the transfer forms of his receipt of the shipment of spirits (including denatured spirits), the consignee shall return the form or forms to the assigned officer. Losses shall be determined and reported on Form 236, by the assigned officer, with a notation (by package identification numbers for packages or serial numbers for cases) as to the apparent cause thereof.

(b) *Packages.* When spirits are received in packages, the consignee proprietor shall weigh each package, except (1) when the transfer is made in a sealed conveyance and the seals are intact on arrival, (2) when the individual packages have been sealed by the consignor proprietor and are intact on arrival, or (3) when the requirement for weighing the packages at the consignor premises has been waived under the provisions of § 201.368(b)(3). If Form 2630 accompanies the shipment, the consignee proprietor shall record the receiving weight of each package on the Form 2630. If no Form 2630 accompanies the shipment, the consignee proprietor shall prepare a list showing the package identification number of each package and its receiving weight and attach one copy to each copy of Form 236 in his possession. All packages in a sealed conveyance on which the seals are not intact, on arrival, and all packages not intact on receipt, shall be segregated, after weighing, and held until released by the assigned officer. When denatured spirits are received in packages, the consignee proprietor shall prepare Form 1467, appropriately modified, to record their deposit on bonded premises; a separate sheet shall be used for each formula.

(c) *Bulk conveyances and pipelines.* When spirits are received in bulk conveyances or by pipeline, the consignee shall gage the spirits under the direct supervision of the assigned officer and record the gage on Form 236: *Provided,* That the assistant regional commissioner may waive the requirement for gaging spirits on receipt by pipeline if he finds that, because of the location of the premises, the transfer can be made under the control of assigned officers, and there will be no jeopardy to the revenue.

(72 Stat. 1358, 1362; 26 U.S.C. 5204, 5213)

PAR. 35. Section 201.370 is amended by deleting the requirement for furnishing a list of serial numbers of packages or cases to be dumped. As amended, § 201.370 reads as follows:

§ 201.370 Removal of spirits from storage for redistillation.

A proprietor intending to remove spirits (including denatured spirits) from storage to production facilities on the same bonded premises for redistillation, in accordance with the provisions

of §§ 201.272 and 201.273, shall prepare Form 2629 to cover such removal. Each lot of spirits (except bottled spirits) shall be gaged by the proprietor under the direct supervision of the assigned officer. Such gage may be made either in the storage or the production facilities and shall be reported on Form 2629. The packages or cases shall be examined by the proprietor, and if any package or case bears evidence of loss due to theft or unauthorized destruction, or loss in excess of normal storage losses, such package or case shall not be dumped until released by the assigned officer; Form 2629 shall be amended when necessary. Packages or cases shall not be dumped until the assigned officer has given his approval therefor. Before removing the spirits from storage, Form 2629 shall be submitted to the assigned officer for his approval.

PAR. 36. Section 201.371 is amended to (1) provide for identification of spirits treated with oak chips on Form 179, and (2) make conforming and editorial changes. As amended, § 201.371 reads as follows:

§ 201.371 Application.

Spirits to be withdrawn from bonded premises on determination of the tax thereon shall be in such containers or cases as are prescribed in this part. The proprietor of the bottling premises to which the spirits are to be removed or the proprietor of the bonded premises from which the spirits are to be withdrawn, shall make application of Form 179 for tax determination and withdrawal. When spirits are to be withdrawn on determination of tax, the tax thereon shall be paid before removal of the spirits from the bonded premises unless the proprietor making application for the withdrawal has furnished bond on Forms 2613, 2614, or Form 2615 to secure payment of tax. When the spirits are to be withdrawn by the proprietor of bottling premises from bonded premises not on the same plant premises, he shall, on execution of his portion of the application on Form 179, deliver one copy to the assigned officer at such bottling premises and forward the remaining copies of the form to the proprietor of the bonded premises. Form 179 shall be noted by the proprietor of the bonded premises to identify spirits that have been treated with oak chips. When the proprietor of bottling premises intends to withdraw spirits which are to be bottled in bond after tax determination as provided in § 201.114, he shall specify on Form 179 the purpose for which the spirits are being withdrawn. On completion of the application the proprietor of the bonded premises shall deliver all copies of the application to the assigned officer at his premises. When an alternating proprietor has been authorized pursuant to § 201.174 to commence operations of bottling facilities at a specified future time, he may apply for the withdrawal of spirits from bond on Form 179 in anticipation of such commencement of operations, but spirits so applied for will not be eligible for loss allowance or bottling in bond after tax determination unless such spirits are withdrawn directly from bond and unless such spirits are received on his bottling premises during the time he is authorized to operate such premises.

(72 Stat. 1363; 26 U.S.C. 5213)

PAR. 37. Section 201.372 is amended to (1) revise the requirements for execution of agreement to pay or prepay tax on Form 179, (2) add references to Part 170, and (3) make editorial changes. As amended, § 201.372 reads as follows:

§ 201.372 Proprietor's statement.

When tax is to be paid pursuant to a return on Form 2522 or on Form 4077, the proprietor making application for the withdrawal shall execute on all copies of Form 179 a statement in which he (a) agrees to pay, in accordance with law and this part, the amount of tax shown on the form, or to be shown thereon, and (b) certifies, under the penalties of perjury, that he is not in default in any payment of tax chargeable against his bond, Forms 2613, 2614, or Form 2615, as applicable, and that the penal sum of such bond (1) is in the maximum penal sum or (2) is sufficient to cover such amount in addition to all other amounts chargeable against such bond. When tax is to be prepaid on return Form 2521, the proprietor making application for the withdrawal shall execute on all copies of Form 179 a statement that the tax is to be prepaid. Statements relative to agreement to pay, or to prepayment of, tax shall be executed at the time Form 179 is initiated. The full amount of tax determined shall, as to proprietors of bonded premises, be included for payment in a tax return on Form 2522 or Form 2521, filed as provided in §§ 201.383 and 170.45 of this chapter, or, as to proprietors of bottling premises, be included for payment in a tax return on Form 4077 or Form 2521 as provided in §§ 170.46 and 170.51 of this chapter. Nothing in this part shall be construed as precluding an adjustment after taxpayment, pursuant to law and regulations, of any overpayment or underpayment of tax.

PAR. 38. Section 201.373 is amended to (1) revise requirements for use of Form 2630 and (2) make a clarifying change. As amended, § 201.373 reads as follows:

§ 201.373 Packages.

When spirits in packages are to be withdrawn from bonded premises on determination of tax on the basis of individual package gage, each package shall be gaged unless the tax is to be determined on the original gage. When the packages are to be withdrawn, the proprietor shall prepare Form 2630, completing only the heading of the form and inserting the package identification number of each package and, when the packages are to be regaged by the average tare method as provided in § 201.364, the filling tare for each package, and deliver the form to the assigned officer with Form 179. Spirits in wooden packages shall be gaged by the assigned officer and reported on Form 2630. Spirits in metal packages which are to be tax determined on other than the original gage, shall be gaged by the proprietor (under the direct supervision of an assigned officer) and reported on Form 2630 which shall be delivered, with Form 179, to the assigned officer. Spirits in wooden packages filled from storage tanks for tax determination shall be gaged and reported on Form 2630 by an assigned officer on receipt of Form 179; metal packages so filled shall be gaged (under the direct supervision of an assigned officer) and reported on Form 2630 by the proprietor, and the proprietor shall deliver Form 2630 to such officer with Form 179. In the case of spirits of less than 190° of proof, the date of original entry shall be shown on Form 2630. In the case of spirits mingled pursuant to section 5234(a)(1)(C), IRC (homogeneous spirits) the dates of original entry of the oldest and the youngest spirits in the mingled spirits shall be shown. On completion of gage (if any) and computation of tax, the assigned officer will return Forms 179 and 2630 to the proprietor.

(72 Stat. 1358, 1362; 26 U.S.C. 5204, 5213)

PAR. 39. Section 201.378 is amended in its entirety. As amended, § 201.378 reads as follows:

§ 201.378 Withdrawal procedure; bonded premises.

The spirits to be taxpaid shall be inspected or gaged and the amount of tax found due shall be entered on Form 179 by the assigned officer. If the tax is to be prepaid, as indicated by the withdrawing proprietor on Form 179, the assigned officer will inform the proprietor from whose premises the spirits are being withdrawn of the amount of tax determined. The proprietor will deliver to the assigned officer the prepayment return, Form 2521, with remittance, or when prepayment is made in cash to the district director, the proprietor will deliver a receipted Form 2521 to the assigned officer. Once the tax is prepaid, or, if the tax is not to be prepaid, and the bond of the withdrawing proprietor is adequate, the assigned officer will execute his statement of tax determination, release the spirits in accordance with § 201.385, retain one copy of Form 179, and return the original and remaining copies and any accompanying reports to the proprietor as authority to remove the spirits from bonded premises. At the time of removal the proprietor will assign to and enter on each Form 179 a release number, assigned in serial order, starting with "1" for the first such form each calendar year. Distribution of Form 179 will be made according to instructions on the form.

§ 201.379 [Revoked]

PAR. 40. Section 201.379 is revoked.

PAR. 41. The heading and text of § 201.385 are amended to (1) eliminate reference to the release of spirits by the assigned officer, and (2) make clarifying and editorial changes. As amended, § 201.385 reads as follows:

§ 201.385 Removal of spirits on tax determination.

No spirits shall be removed from bonded premises, except as otherwise provided by law, unless the tax thereon has been determined. If the Form 179, and Form 2521 (if required) with remittance, are in order and cover the full amount of the tax on the spirits to be withdrawn, the assigned officer shall execute his certificate of tax determination authorizing the removal of the spirits. The assigned officer shall not execute his certificate of tax determination where a proprietor of bottling premises, whose bond on Form 2614 or 2615 is not in the maximum penal sum, has assumed liability for the tax on the spirits, and the tax is greater than the amount shown on Form 179 as charged against his bond. If Form 2521 has been filed with the district director, as required by § 201.383(b), the certificate regarding tax determination shall not be executed before the assigned officer has received a receipted copy of the return from the district director. When a proprietor of bottling premises has made application for withdrawal of spirits for bottling in bond after tax determination, the assigned officer shall not execute his certificate of tax determination unless the spirits to be withdrawn meet the aging and packaging requirements prescribed for spirits to be bottled in bond and are otherwise eligible. On execution of the certificate of tax determination authorizing removal of the spirits the assigned officer shall issue distilled spirits stamps for packages or bulk conveyances of spirits to be removed from bonded premises. Distilled spirits stamps shall be affixed, canceled, and protected in the manner provided in Subpart Q of this part. When the distilled spirits stamps have been affixed by the proprietor to the containers and the containers have been properly marked, they shall be immediately removed from the bonded premises. When spirits are to be removed by pipeline, the appropriate Form 179, after execution of the certificate of tax determination shall be attached to the gage tank, and shall remain thereon until the spirits have been removed from the tank. Spirits bottled in bond before determination of tax which are to be withdrawn from bonded premises on determination of tax may be so withdrawn subsequent to bottling, without being returned to the storage portion of the bonded warehouse, if the proprietor executes Form 179 in advance of withdrawal to cover a specific quantity of such spirits that shall be equal to or more than the quantity of spirits he expects to withdraw. In such case the assigned officer shall execute the certificate of tax determination only if he is satisfied that adequate means and methods are provided for accurately ascertaining the quantities of spirits to be so withdrawn at time of bottling and that the Form 179 is otherwise in order. On completion of the withdrawal covered by Form 179, the proprietor shall complete the forms, identifying the cases and showing the actual quantity of spirits so withdrawn (and any adjustments); such information shall be verified by the assigned officer. When any spirits have been removed from the bonded premises as provided in this section, the proprietor shall execute, under the penalties of perjury, the statement of removal on all copies of Form 179 and distribute them in accordance with the instructions on the form.

PAR. 42. Section 201.387 is amended to delete the requirement for preparing (1) Form 1620 to cover wine spirits removed in cases, and (2) Form 2630 to cover wine spirits removed in packages on original gage. As amended, § 201.387 reads as follows:

§ 201.387 Withdrawals of spirits for use in wine production.

Wine spirits withdrawn without payment of tax for use in wine production may be removed in approved containers for shipment to a bonded wine cellar on receipt of an approved application, Form 257, submitted by the proprietor of the bonded wine cellar in accordance with the provisions of Part 240 of this chapter. Each package of wine spirits (unless withdrawn on the original gage) and each lot of wine spirits transferred by pipeline or by bulk conveyance shall be gaged by the proprietor under the direct supervision of the assigned officer: *Provided*, That spirits transferred by pipeline may be so gaged on the bonded wine cellar premises. Form 2629 shall be prepared by the consignor to cover each removal of wine spirits pursuant to an approved Form 257. When wine spirits in packages are to be removed (unless to be withdrawn on the original gage), the consignor shall also gage the packages and prepare Form 2630. Bulk conveyances shall be prepared by the proprietor for sealing and each such conveyance shall bear a label, dated and signed by the proprietor, showing the intended use of the wine spirits and the name and plant number of the consignor and the name and registry number of the consignee. When the gage (if any) has been completed, and the containers have been marked, and appropriate entries have been made in the gage report by the assigned officer, he shall release the spirits.

(72 Stat. 1362, as amended, 1382, as amended; 26 U.S.C. 5214, 5373)

PAR. 43. A new section, § 201.513a, is inserted, immediately following § 201.513, to read as follows:

§ 201.513a Package identification numbers.

(a) *General.* Packages of spirits shall when filed on bonded premises atfer (*effective date*) be marked with a package identification number, consisting of a lot identification and serial number as follows:

(1) A lot identification representing the date the package is filled, and consisting, in the order shown, of—

(i) The last two digits of the calendar year;

(ii) An alphabetical designation from "A" through "L", representing January through December, in that order;

(iii) The digits corresponding to the day of the month; and

(iv) When more than one lot is filled into packages during the same day, for successive lots after the first lot, a letter suffix, in alphabetical order, with "A" representing the second lot, "B" representing the third lot, and so forth.

The first three lots filled into packages on March 4, 1972, would be identified as "72C04," "72C04A," "72C04B." The lot identification for packages of spirits so filled shall, when applicable, be preceded by a distinguishing prefix as provided in § 201.514(a).

(2) A serial number for each package of spirits within a lot consecutively numbered by the proprietor commencing with "1" for each lot and appearing adjacent to the lot identification, as "72C04–1", "72C04A–25".

(b) *Packages constituting a lot.* Packages of spirits filled on bonded premises during any one day shall be given the same lot identification subject to the following conditions:

(1) They are of the same type and either are of the same rated capacity or are uniformly filled with the same quantities by weight or other method approved by the Director as provided in § 201.269 and which is acceptable to the assistant regional commissioner;

(2) They are filled with spirits of the same kind and same proof;

(3) In the case of domestic spirits, they are filled with spirits which were produced by the same distiller at the same distillery, except that this condition shall not apply to spirits of 190° or more of proof, spirits mingled under § 201.298 or § 201.299, or to beverage rums or brandies blended under § 201.307;

(4) If they are filled with spirits of less than 190° of proof, the spirits are of the same age and have the same date of original entry; and

(5) In the case of spirits imported or brought into the United States, they are filled with spirits meeting the requirements for mingling for imported spirits, Puerto Rican spirits, or Virgin Islands spirits, as applicable.

Any remnant package shall itself constitute a lot.

(c) *Waiver of requirement for serial numbers.* Notwithstanding the provisions of paragraph (a) of this section, the assistant regional commissioner may, upon application in duplicate from the proprietor, waive the requirement for assigning serial numbers to packages of spirits at the time of filling or receipt on bonded premises if he finds that the revenue will not be jeopardized, or administrative difficulties caused, by such waiver. When such waiver has been granted, the lot identification shall constitute the package identification number: *Provided*, That when it becomes necessary, as a result of a transaction (such as the transfer in bond of the packages in an unsealed conveyance, withdrawal of the packages from bond on the basis of an individual package gauge, et cetera) occurring after deposit of such unnumbered packages, the proprietor who is conducting the transaction shall consecutively number each package involved in the transaction and such number, in

conjunction with the lot identification, shall thereafter constitute the package identification number.

PAR. 44. Section 201.514 is amended to make conforming changes respecting the newly prescribed package identification system. As amended, § 201.514 reads as follows:

§ 201.514 Numbering of packages and cases.

Packages of spirits filled on bonded premises shall be consecutively numbered by the proprietor commencing with "1" for each lot of packages filled, as provided in § 201.513a. Packages of spirits filled on bottling premises, packages of denatured spirits, packages containing more than 5 gallons of completely denatured alcohol, and cases containing bottles or other containers of spirits (including denatured spirits) shall, when filled, be consecutively numbered in a separate series by the proprietor commencing with "1" in each series of serial numbers, except any series of such numbers in use may be continued, but in any such case the prefix required by paragraph (a) of this section shall be used. When the numbering in any series reaches "1,000,000," the proprietor may recommence the series: *Provided*, That a recommenced series for packages of spirits filled on bottling premises or for packages of denatured spirits shall be given an alphabetical prefix or suffix.

(a) The identification numbers for packages filled on bonded premises, or the serial numbers for packages of spirits filled on bottling premises shall be given applicable prefixes as follows:

Packages of spirits	Distinguishing prefix	Examples of identification Nos.[1]
(1) Filled from production facilities	None	72C15-1, 72C15-2.
(2) Filled from bonded storage facilities, spirits of less than 190° of proof.	T and identification of plant	T-12-Ind-72C15-1.
(3) Filled from bonded storage facilities, spirits of 190° of proof or more.	T	T-72C15-1.
(4) Filled on bottling premises	BP	BP-1, BP-2.
(5) Mingled under § 201.301	CS and identification of plant	CS-12-Ind-72C15-1.
(6) Mingled under § 201.297	CP and identification of plant	CP-12-Ind-72C15-1.
(7) Blended under §§ 201.307 and 201.308	BL	BL-72C15-1.

[1] Examples illustrate numbering at DSP-Ind-12 for packages filled on Mar. 15, 1972.

(b) Further, cases of spirits bottled in bond on bonded premises, cases of spirits bottled in bond on bottling premises, and cases of spirits otherwise bottled shall be numbered in separate series. The proprietor may establish more than one series of serial numbers for cases on either bonded or bottling premises where more than one bottling unit is used and each series is distinguished from each other by the use of alphabetical prefixes or suffixes. For additional identification, separate series of serial numbers, distinguished from each other by the use of alphabetical prefixes or suffixes, may be established to identify size of bottles, brand names, or other information, on written application (in triplicate) to, and approval of, the assistant regional commissioner. Remnant cases shall be given the serial number of the last full case followed by the letter R.

* * * * *

(72 Stat. 1360; 26 U.S.C. 5206)

PAR. 45. Section 201.516 is amended to make conforming changes respecting the newly prescribed package identification system, and editorial changes. As amended, § 201.516 reads as follows:

§ 201.516 Marks on packages of spirits filled on bonded premises.

(a) *General.* Except as otherwise provided in this part packages of spirits filled on bonded premises shall be marked with—

(1) The name of the producer, or his trade name as provided in paragraph (e) of this section;

(2) The plant number of the producer, such as "DSP-KY-708";

(3) The kind of spirits or, in the case of distillates removed under § 201.275, the kind of distillates such as "Grape distillate," "Peach distillate," etc.;

(4) The package identification number;

(5) The date of original entry, if other than the date incorporated in the lot identification;

(6) "BSA," "OC," or "QA" when spirits are treated with caramel or oak chips or are subjected to a quick-aging process, as the case may be;

(7) The rated capacity of the package in gallons shown as "RC_____G".

(b) *Spirits of 190° or more of proof.* In the case of spirits of 190° of proof or more, the date of original entry need not be shown. If packages of such spirits are filled by other than the producer, the name (or trade name) and plant number of the packaging proprietor shall be substituted for that of the producer.

(c) *Packages of heterogeneous spirits.* Packages of heterogeneous spirits, mingled under the provisions of § 201.298 and filled for immediate removal, shall be marked as provided in paragraph (a) of this section (except subparagraph (5)), except that the name and plant number of the packaging proprietor shall be shown in lieu of the producer. The kind of spirits shall be shown as "Heterogeneous Whisky," "Heterogeneous Rum," etc., for spirits of the same kind, and as "Heterogeneous Spirits" for spirits of different kinds. Packages so filled shall also be marked to show the proof gallons.

(d) *Packages of homogeneous spirits.* Packages filled as provided in § 201.384 and which contain homogeneous spirits, shall, in addition to the marks required by paragraph (a) of this section, be marked to show that they are consolidated packages, the plant number of the premises at which filled, the kind of cooperage in which the spirits were stored, and the number of months the youngest spirits in the lot were stored in such cooperage.

(e) *Real or trade names.* The producer's real name, or any trade name authorized (as provided in § 201.146) at the time of production, may be placed on any package filled at the time of production gage, or at the time of original packaging of the spirits in wood when, as provided in § 201.270, the spirits were not filled into wooden packages at the time of production gage. When spirits have been mingled under § 201.297 or § 201.301, the proprietor may use any of the names represented in the mingled spirits, but no other name, as the name of the producer to be marked on packages filled with such mingled spirits: *Provided*, That if the proprietor was the actual producer of the spirits he may in any case use his real name. When spirits have been mingled under § 201.297 and are not eligible for bottling in bond, the name of the producer marked on the package shall be followed by the letter "X" to evidence such ineligibility of the spirits.

(72 Stat. 1360; 26 U.S.C. 5206)

PAR. 46. A new section, § 201.517a, is added, immediately following § 201.517, to read as follows:

§ 201.517a Authorized abbreviations to identify spirits.

The following abbreviations may be used, either alone or in conjunction with descriptive words, to identify the kind of spirits on transaction forms and records:

Kind of Spirits:	*Abbreviation*
Alcohol	A
Brandy	BR
Bourbon whisky	BW
Canadian whisky	CNW
Corn Whisky	CW
Grain spirits	GS
Irish whisky	IW
Light whisky	LW
Malt whisky	MW
Neutral spirits	NS
Rye whisky	RW
Scotch whisky	SW
Tequila	TEQ
Vodka	V
Whisky	W

PAR. 47. Section 201.518 is amended to prescribe revised requirements for new packages, when spirits are transferred from one package to another, and make an editorial change. As amended, § 201.518 reads as follows:

§ 201.518 Change of packages.

When spirits are transferred from one package to another as authorized in § 201.295, each new package shall be given the same package identification number, marks, and brands as the original package except the gross weight and tare, if any. The proprietor shall prepare and sign a label to be affixed to the head of each new package in the manner prescribed for affixing distilled spirits stamps. The label shall be in the following form:

The spirits in this _____ (Kind of cooperage) _____ package identification No. _____, were transferred from a _____ (Barrel or drum) _____ (Kind of cooperage) _____ (Barrel or drum) on _____ (Date), under authority dated _____ (Proprietor)

PAR. 48. Section 201.524 is amended to permit additional data to be shown on the Government head or side of packages. As amended, § 201.524 reads as follows:

§ 201.524 Additional marks on portable containers.

In addition to the other marks required by this part, portable containers (other than bottles enclosed in cases) of spirits (including denatured spirits, as applicable) to be withdrawn from the bonded premises—

(a) Without payment of tax, for export, transfer to customs manufacturing bonded warehouses, transfer to foreign-trade zones or supplies for certain vessels and aircraft shall be marked as provided in Part 252 of this chapter;

(b) On determination of tax shall be marked, if wooden packages, with the words "Rinsed" or "Not Rinsed"; if rinsed, the temperature of the water used shall be shown as provided in § 201.377; or

(c) Tax-free alcohol shall be marked to show the number of the permit of the tax-free user, the date of withdrawal, and the purpose of withdrawal, as, for example, "Hospital Use," "Scientific Purposes," "Use of U.S."

The proprietor may show on the Government head or side other information such as brand or trade name; caution notices and other material required by Federal, State or local law or regulations; wine or proof gallons; and plant control data: *Provided,* That such marks or attachments do not conceal, obscure, interfere with or conflict with the markings required by this subpart.

(72 Stat. 1360; 26 U.S.C. 5206)

PAR. 49. Paragraph (c) of § 201.549 is amended to provide for showing package identification numbers on distilled spirits stamps. As amended, paragraph (c) of § 201.549 reads as follows:

§ 201.549 General.

* * * * *

(c) *Information on stamp.* The prescribed distilled spirits stamp is serially numbered. It shall be marked, in the space provided, by the proprietor withdrawing or removing the spirits, to show the name and plant number of such proprietor, the date of affixing the stamp to the container, and the serial number or package identification number, as applicable, of the container. When spirits are withdrawn under the provisions of § 201.386(a)–(d) the proprietor shall insert the word "Export" on the stamp. When spirits are removed from bottling premises the proprietor shall insert on the stamp the words "Filled on Bottling Premises" and if the spirits have been rectified he shall also insert the words "Rectified Product."

(72 Stat. 1358, 1393; 26 U.S.C. 5205, 5522)

PAR. 49a. Section 201.551 is amended to include "other containers" and to refer to package identification numbers. As amended, § 201.551 reads as follows:

§ 201.551 Restamping packages, conveyances, or other containers.

Any package, conveyance, or other container of spirits which has been duly stamped with a distilled spirits stamp, but from which the stamp has been lost or destroyed by accident, shall, except as otherwise provided in this chapter, be restamped with another distilled spirits stamp. Applications for such restamping shall be made in writing, in triplicate, to the assistant regional commissioner for the region in which the package, conveyance or other container to be restamped is located. The application shall set forth the following:

(a) The package identification number or serial number, as applicable, of each package, conveyance or other container (and proprietor's name thereon);

(b) The location of the package, conveyance, or other container;

(c) A description of the content;

(d) The applicant's interest in the property;

(e) The tax status of the spirits (supported by certified copies of the withdrawal forms);

(f) Statement by the applicant (or person having knowledge of the facts) that the package, conveyance, or other container was once duly stamped (and evidence thereof); and

(g) The circumstances connected with the destruction or loss of the stamps.

The application shall be executed under the penalties of perjury. If the assistant regional commissioner is satisfied that the package, conveyance, or other container had been properly stamped, and that the loss or destruction of such stamp is satisfactorily explained, he will issue, or cause to be issued, a distilled spirits stamp for the package, conveyance, or other container.

(72 Stat. 1358; 26 U.S.C. 5205)

PAR. 50. Section 201.587 is amended to (1) delete the requirement for recording packages and cases on Forms 2630 and 1620, respectively, when returned to storage, and (2) provide for destruction of stamps on returned containers of spirits previously removed for export. As amended, § 201.587 reads as follows:

§ 201.587 Procedure at plant.

The receipt and deposit of denatured spirits, recovered denatured spirits, recovered articles, articles, and spirits residues, shall be under the general supervision of the assigned officer; the receipt and deposit of other spirits returned to bonded premises shall be under the direct supervision of the assigned officer. The proprietor shall, at the time of receipt, determine, by gage when necessary, the quantity of the spirits, denatured spirits, recovered denatured spirits, recovered articles, articles, and spirits residues, and prepare a report thereof on Form 2629 or Form 2612, as appropriate. When containers of spirits are emptied, the proprietor shall comply with the applicable provisions of § 201.531. When containers of spirits removed for export are returned to bond pending subsequent removal for a lawful purpose, the export marks shall be effaced and the stamps, if any, shall be destroyed. If the shipment was made pursuant to Form 1473, the proprietor shall execute the certificate of receipt on such form and forward the original thereof to the assistant regional commissioner through the assigned officer. Spirits recovered by the redistillation of denatured spirits, recovered denatured spirits, recovered articles, articles, and spirits residues may not be withdrawn from bonded premises except for industrial use or after denaturation thereof. All spirits redistilled under the provisions of this subpart shall, subject to the provisions of this subpart, be treated the same as if such spirits had been originally produced by the redistiller and all provisions of this part and Chapter 51, I.R.C., applicable to the original production of distilled spirits, shall be applicable thereto. The receipt, redistillation, storage, and disposition, as applicable, of spirits, denatured spirits, recovered denatured spirits, recovered articles, articles, and spirits residues shall be recorded in the appropriate records and reports of the proprietor as prescribed in Subpart U of this part. Except as otherwise provided in this subpart, all spirits (including denatured spirits) returned to bonded storage may be withdrawn for any purpose authorized by this part and chapter 51, I.R.C. Nothing in this section shall be construed as affecting any provision of law or regulations relating to the labeling, marking, branding, or identification of distilled spirits.

(72 Stat. 1362, as amended, 1365, as amended; 26 U.S.C. 5214, 5223)

PAR. 51. Paragraph (c) of § 201.603 is amended to provide for package identification numbers on sample schedules, and make an editorial change. As amended, paragraph (c) of § 201.603 reads as follows:

§ 201.603 Schedule of samples.

* * * * *

(c) The place from which the sample is to be removed, or, in the case of a package, the package identification number or serial number, as applicable, and the location of the package and the name and plant number of the packaging proprietor if other than the one taking the sample;

* * * * *

(72 Stat. 1362, as amended, 1382, as amended; 26 U.S.C. 5214, 5373)

PAR. 52. Section 201.606 is amended to (1) require the proprietor to prepare Form 1615, (2) require identification of Forms 2521 covering prepaid samples on the semimonthly report of taxable samples, and (3) make editorial changes. As amended, § 201.606 reads as follows:

§ 201.606 Taxable samples.

Samples taken of spirits in bond which are used for purposes other than testing or laboratory analysis, and samples withdrawn free of tax in excess of any limitations, as provided in § 201.601, are taxable. The proprietor shall prepare a report on Form 1615 of all taxable samples withdrawn. If the proprietor is qualified to defer payment of the tax, the tax due on samples shall be included in the proprietor's tax return on Form 2522 for the period in which the samples were withdrawn. If a proprietor is not qualified to defer the payment of tax, the tax on samples shall be paid by return on Form 2521 and the semimonthly report of taxable samples, required by § 201.631a, shall be modified to indicate, for each sample upon which the tax has been prepaid, the serial number of the applicable Form 2521.

(72 Stat. 1362, as amended, 1382, as amended; 26 U.S.C. 5214, 5373)

PAR. 53. Paragraph (f) of § 201.607 is amended by changing the word "fourth" to "second." As amended, paragraph (f) of § 201.607 reads as follows:

§ 201.607 Labels.

* * * * *

(f) Whether taxable or free of tax, and if taxable, the proof gallon content to the second decimal place;

* * * * *

(72 Stat. 1362, as amended, 1382, as amended; 26 U.S.C. 5214, 5373)

PAR. 54. Section 201.612 is amended by adding provisions for maintaining records on data processing equipment. As amended, § 201.612 reads as follows:

§ 201.612 Maintenance and preservation of records.

Records required by this part shall be kept by the proprietor at the plant where the operation or transaction occurs and shall be available for inspection by any Internal Revenue officer during business hours. Whenever any record, because of its condition, becomes unsuitable for its intended or continued use, the proprietor shall reproduce such record, by a process approved by the Director under § 201.616 for reproducing records, and such reproduction shall be treated and considered for all purposes as though it were the original record, and all provisions of law applicable to the original shall be applicable to such reproduction. Records required by this part shall be preserved for a period of not less than 4 years from the date thereof or the date of the last entry required to be made thereon, whichever is the later, except that records covering spirits of 190° or more of proof in storage tanks, transferred to an inactive file in accordance with § 201.628(b), shall be preserved for a period of not less than 4 years from the date of removal from the active file, and that records of all other spirits stored on bonded premises shall be preserved for not less than 4 years from the date the spirits covered thereby are removed from the proprietor's bonded premises. Notwithstanding any other provision of this section, record data maintained on data processing equipment may be kept at a location other than the plant premises if the daily records required by §§ 201.619–201.624 and the reports required by §§ 201.631a–201.634 are kept available for inspection at the plant premises. Data which has been accumulated on cards, tapes, discs, or other accepted record media must be retrievable within 5 business days.

(72 Stat. 1361; 26 U.S.C. 5207)

PAR. 55. The heading and text of § 201.614 have been revised to prescribe more flexible requirements for variations from prescribed forms and records. As amended, § 201.614 reads as follows:

§ 201.614 Variations from prescribed forms or records.

(a) *General.* Proprietors may, subject to the approval of the Director, modify certain prescribed forms, or subject to the approval of the assistant regional commissioner, maintain substitute records in lieu of the records required by §§ 201.628 and 201.629 in order to adapt the use of such forms and records to data processing equipment or special operations, to provide additional information, or for other good cause, if such changes are not inconsistent with the general requirements of clarity and accuracy and do not result in difficulty in processing or filing such forms or difficulty in maintaining and examining such records. Such modified forms or substitute records shall (1) contain the information which would have been on the prescribed form or record, (2) constitute the record or report required by this part, and (3) be subject to the same requirements as the prescribed forms or records.

(b) *Application.* An application to use modified forms shall be submitted, in triplicate, to the Director through the assistant regional commissioner. It shall be accompanied by (1) three copies of each proposed form with typical entries thereon and (2) a statement, in triplicate, explaining the need for the use of the modified forms. Such modified forms shall not be used until approved by the Director. An application to use substitute records shall be submitted, in duplicate, to the assistant regional commissioner. It shall be accompanied by (i) two copies of each proposed record with typical entries thereon and (ii) a statement, in duplicate, explaining the need for the use of the substitute records. Such substitute records shall not be used until they are approved by the assistant regional commissioner.

(c) *Restrictions.* No modification shall be permitted on claims forms, tax return forms, or forms covering the reports required by §§ 201.633 and 201.634. Approval for the maintenance of substitute records in lieu of the records required by § 201.629 shall not relieve a proprietor from the requirements of § 201.302, § 201.304, § 201.307, or § 201.308 respecting the preparation of Form 1685 or Form 2323. The Director or the assistant regional commissioner, as applicable, may withdraw the approval of any modified form or substitute record when in his opinion the administration of this part will be served thereby.

(72 Stat. 1361; 26 U.S.C. 5207)

PAR. 56. Paragraphs (a), (c), and (f) of § 201.618 are amended to make conforming and editorial changes, and paragraph (f) is further amended to provide for package identification numbers. As amended, paragraphs (a), (c), and (f) of § 201.618 read as follows:

§ 201.618 Details of daily records.

* * * * *

(a) Spirits shall be recorded by kind and by quantity in proof gallons, or tax gallons if required by instructions on transaction forms, except that removals of bottled products from bottling premises shall be in wine gallons.

* * * * *

(c) Distilling materials produced on the premises shall be recorded by kind and by quantity in wine gallons. Chemical byproducts containing spirits, articles, spirits residues, and distilling materials received on the premises, shall be recorded by kind, by percent of alcohol by volume, and by quantity in wine gallons: *Provided*, That when nonliquid distilling materials which are not susceptible to such quantitative determination are received, the quantity of such materials may be determined by weight and shall be so recorded, and the alcohol content need not be recorded: *Provided, further*, That when it can be shown that it is impractical to weigh or otherwise determine the exact quantity of such nonliquid materials, the Director may, by approval of an application submitted by the proprietor in quadruplicate, authorize the proprietor, in lieu of weighing or measuring, to estimate the weight or volume of the material.

* * * * *

(f) Containers (other than packages bearing package identification numbers) or cases involved in each operation or transaction shall be recorded by type, serial number, and the number of containers (including identifying marks on bulk conveyances), or cases. Package identification numbers shall be recorded on all deposit forms reflecting production gages or filling of packages from tanks in the warehouse; however, only the lot identification need be shown for transactions in packages of spirits unless package identification numbers are specifically required by this part (see for example, § 201.628a(d)).

* * * * *

(72 Stat. 1361; 26 U.S.C. 5207)

PAR. 57. Section 201.619 is amended to prescribe revised requirements for production records. As amended, § 201.619 reads as follows:

§ 201.619 Daily production records.

Each proprietor shall maintain daily records of operations of his production facilities showing:

(a) The receipt of fermenting material or other nonalcoholic material in-

tended for use in the production of spirits.

(b) The receipt and use of spirits, denatured spirits, articles, and spirits residues received for redistillation.

(c) The fermenting material set in each fermenter or other material used in the production of spirits.

(d) The distilling material produced, received on production facilities, and used in production of spirits, or destroyed or removed from the premises before being distilled (including the residue of beer returned to the producing brewery).

(e) The gage of spirits in each receiving tank both before and after the production gage of spirits removed therefrom, the production gage (in tax gallons) of spirits removed from each tank, the purpose for which removed, and the transaction form and its serial number covering each removal. (The date of production shall be the date of gage and removal from the production system, and the quantity produced shall be the quantity reported on the deposit or withdrawal forms.) If spirits are filled into packages, the record for each tank shall also show (1) the package identification numbers, (2) the average tax gallons per package, and (3) the number of packages involved in each transaction.

(f) The fermenting materials or other nonalcoholic materials removed from the premises.

(g) The quantity and alcohol content of fusel oil or other chemicals removed from the closed production system and the disposition thereof with the name of the consignee, if any.

(h) The kind and quantity of distillates removed from the production system pursuant to § 201.275.

(i) The kind and quantity of spirits lost or destroyed prior to production gage.

Records pertaining to production shall meet the requirements of § 201.630b and shall be maintained in such a manner that the spirits produced may be traced through the distilling system to the mash or other material from which produced, and the identity of the spirits thus traced may be clearly established.

(72 Stat. 1361; 26 U.S.C. 5207)

PAR. 58. Paragraph (b) of § 201.622 is amended by adding requirements for records for storage tanks on bonded premises. As amended, paragraph (b) of § 201.622 reads as follows:

§ 201.622 Daily bonded storage records.

* * * * *

(b) *Other transactions.* Each proprietor shall also maintain records reflecting:

(1) The mingling of spirits under §§ 201.297 and 201.301;

(2) The blending of beverage rums and brandies under §§ 201.307 and 201.308;

(3) The bottling of spirits under Subpart K of this part, including—

(i) Spirits entered for bottling in bond,

(ii) Spirits bottled and cased for domestic use or for export,

(iii) Bottled spirits returned to storage,

(iv) The rebottling, relabeling, or restamping of bottled spirits (domestic spirits rebottled, relabeled, or restamped for export shall be appropriately identified on the Form 1515),

(v) Alcohol bottled, and

(vi) The gains or losses determined during bottling;

(4) The change of packages under § 201.295; and

(5) The quick-aging of spirits, or the addition of oak chips to spirits or burnt sugar or caramel to brandy and rum under § 201.292.

Records for storage tanks on bonded premises which contain spirits of less than 190° of proof shall show the gage, in tax gallons, of spirits removed from each tank, the purpose for which removed, and the transaction form and its serial number covering the removal from the tank. If the spirits in such tanks are filled into packages, the record for each tank shall also indicate the gage of the spirits in the tank both before and after the gage of spirits removed therefrom; the number, average tax gallons per package, and the package identification numbers, of the packages filled; and the serial numbers of the related Form 2323 (Form 1685 in the case of blended rums or brandies) covering spirits deposited in the tank. The disposition of packages so filled shall be recorded by identifying the related transaction form (such as Form 179, 236, or 2629) and its serial number, and the number of packages involved in each transaction. The records shall meet the requirements of § 201.630b.

(72 Stat. 1361; 26 U.S.C. 5207)

PAR. 59. Section 201.624 is amended by inserting the words, "unaccounted for," after the word "mutilated" in the first sentence. As amended, § 201.624 reads as follows:

§ 201.624 Daily strip stamp record.

Each proprietor bottling spirits under the provisions of this part shall maintain, for each day a transaction in strip stamps occurs, a daily record of green bottled-in-bond strip stamps by denomination, of blue bottled-in-bond strip stamps and of red strip stamps by kind (blue or red) and by size (small or standard), and of alcohol strip stamps, showing the number received, used, lost, mutilated, unaccounted for, destroyed or otherwise disposed of, and on hand at the beginning and at the end of the day. The record shall also show, by size of bottle, the number of bottles to which blue strip stamps, red strip stamps, and alcohol strip stamps were affixed, except that, as to each kind of stamp, bottles of less than one-half pint capacity shall be recorded as one item.

(72 Stat. 1358, 1361; 26 U.S.C. 5205, 5207)

PAR. 60. Section 201.626 is amended to make editorial changes. As amended, § 201.626 reads as follows:

§ 201.626 Sample record for bonded premises.

Proprietors shall maintain daily records of samples taken by them from bonded premises to show (a) the date taken, (b) the kind of spirits (formula number in the case of denatured spirits), (c) the quantity in wine gallons, (d) the container from which taken, (e) the place from which taken, (f) the purpose for which taken, (g) the name and address of the consignee when samples are sent out, and (h) whether such samples are tax-free or tax-determined and if tax-determined, the proof and tax gallons.

(72 Stat. 1361; 26 U.S.C. 5207)

PAR. 61. Paragraph (b) of § 201.627 is amended to prescribe the forms to be used for recording losses disclosed by inventory of tanks on bonded storage facilities. As amended, paragraph (b) of § 201.627 reads as follows:

§ 201.627 Inventories.

* * * * *

(b) *Storage facilities.* Each proprietor of bonded storage facilities shall make a record of his monthly inventory of spirits in tanks and other vessels required by § 201.311, showing the date taken and the details thereof including the identifying marks on each such container, the kind and quantity of spirits or denatured spirits therein, and the losses, if any, disclosed by the inventory. Such losses, and the quantity disclosed by inventory, shall be recorded in respect of each tank or other vessel containing spirits of less than 190° of proof, on the respective current Form 2323 or 1685 covering the particular tank, and as to spirits of 190° or more of proof, on the current Form 1621 covering the particular spirits. The inventory shall be signed and retained as provided in paragraph (a) of this section.

* * * * *

(72 Stat. 1361; 26 U.S.C. 5207)

PAR. 62. Paragraphs (a) and (b) of § 201.628 are amended in their entirety, and paragraph (c) is deleted. As amended, § 201.628 reads as follows:

§ 201.628 Record of spirits in storage.

(a) *Records covering deposits.* The proprietor's copies of forms (for example, Forms 236, 1685, 2323, or 2629) covering (1) deposit in bonded storage of spirits received from production facilities, from other bonded premises, from customs custody, or by return to bond under Subpart S of this part, (2) packages filled from tanks and retained in bonded storage, (3) cases of spirits returned to the storage portion of the warehouse after bottling, (4) spirits retained in tanks after mingling or blending, and (5) spirits of less than 190° of proof transferred from one tank to another, shall be filed by the proprietor as permanent records. Before filing such forms, he shall enter the date of deposit of the spirits in the warehouse at the bottom of each form. Separate files shall be maintained for spirits in packages and in cases, and such files shall be arranged

by producers (by warehousemen in the case of blended rums or brandies, and spirits of 190° or more of proof, by the warehouseman who received the spirits from customs custody in the case of imported spirits, and by producer in the Virgin Islands or Puerto Rico in the case of Virgin Islands or Puerto Rican spirits), in chronological order according to the date of deposit in the warehouse, and, when possible, in sequence by lot identification for packages or serial numshall be maintained for spirits which have been mingled under § 201.301 and for spirits which have not been so mingled. (For the purpose of records under this section spirits produced under trade names shall be treated as being produced under the real name of the producer.) Also, files shall be maintained, in the manner prescribed by § 201.629, for spirits of less than 190° of proof in storage tanks, with a separate file for each tank of spirits. In the case of spirits of 190° or more of proof deposited in storage tanks, the proprietor shall maintain a separate consolidated file of deposit forms for all tanks, separately as to gin, vodka, and other spirits as applicable, of (i) all such domestic spirits, (ii) all such imported spirits duty paid at the beverage rate, (iii) all such imported spirits duty paid at the nonbeverage rate, (iv) all such Virgin Island spirits subject to rectification tax, (v) all such Virgin Islands spirits not subject to rectification tax, (vi) all such Puerto Rican spirits subject to rectification tax, and (vii) all such Puerto Rican spirits not subject to rectification tax. Such files shall be arranged chronologically by date of deposit in the warehouse.

(b) *Records covering withdrawals.* When spirits, other than spirits of 190° or more of proof in storage tanks, are withdrawn from bonded storage the proprietor shall note on the record of deposit required by paragraph (a) of this section, the date and disposition of the spirits so that the files shall currently reflect the spirits remaining in the warehouse. When spirits of 190° or more of proof are withdrawn from storage tanks the record of deposit need not be noted, but semiannually (as of June 30 and December 31) the proprietor shall remove from his consolidated files of active deposit forms all such forms in excess of those required to cover the "balance in warehouse" shown on Form 1621 for such spirits. The deposit forms so removed shall be those covering spirits which were "first-in-warehouse."

(72 Stat. 1361; 26 U.S.C. 5207)

PAR. 63. A new section, § 201.628a, is inserted, immediately following § 201.628, to read as follows:

§ 201.628a Adjustment of recorded quantities of spirits in packages in bond prior to (effective date).

Packages of spirits entered into bonded storage before (effective date) shall be accounted for by the proprietor as required by regulations in effect on (day before effective date), except that on and after (effective date) his accounts shall be adjusted as follows:

(a) Incidental, or prior, to the first transaction in packages comprising a basic seasonal account prescribed by § 201.629, the total recorded tax gallons in the account, based on a summation of the recorded original tax gallon content of the individual packages in the account, shall be converted to total tax gallons of record, calculated as provided in paragraph (d) of this section, and such quantity shall be recorded on the Form 1621 covering the account and the average content of the packages in the account shall be recorded on the related deposit record on Form 2630: *Provided*, That if, prior to the conversion, the recorded contents of the various packages within the account differ substantially, the packages shall be separated into groups according to their fill dates and recorded contents, and the total tax gallons of record shall be calculated for each group and such quantities shall be individually recorded on the Form 1621 covering the account and the average content of the packages in each group shall be recorded on the related deposit record.

(b) Upon receipt of packages of spirits transferred in bond which are eligible for inclusion in an account in which packages of spirits are on deposit, the total tax gallons received shall be adjusted on the basis of the average tax gallons of record (computed as prescribed in paragraph (a) of this section) contained in the packages already on deposit. Such average tax gallons per package shall be recorded on the deposit Form 236 and the adjusted total tax gallons shall be recorded on the Form 236 covering the shipment and on the Form 1621 covering the account.

(c) Upon receipt of packages transferred in bond for which a new seasonal account must be established, the total tax gallons of record as computed by the consignor and reported by him on the Form 236 shall be recorded on the Form 1621 covering the new account.

(d) When required to be established and recorded, the total tax gallons of record for all packages within a seasonal account or within a particular group within such seasonal account shall be calculated by (1) dividing the total original tax gallons of spirits contained in the packages within the account or group, as the case may be, by the number of packages within the account or group to establish the average content for all packages within the account or group and (2) multiplying such average content, rounded to the nearest one-tenth of a tax gallon, by the number of packages within the account or group, as applicable. For the purpose of section 5006(b), I.R.C., the most recently established average content of a package of spirits entered into bond before (effective date) shall be deemed to be the original quantity entered into bond in that package, unless the actual quantity can be otherwise specifically established. Forms covering transactions occurring on and after (effective date) involving packages filled prior to (effective date) shall show the average content of the packages and, under "identification", shall show a lot identification constructed in accordance with the instructions in subparagraph (1) of paragraph (a) of § 201.513a.

Nothing in this section shall be construed to require the alteration of marks and brands placed on packages filled before (effective date) to reflect any change in accounting specified herein.

PAR. 64. Section 201.629 is amended in its entirety. As amended, § 201.629 reads as follows:

§ 201.629 Warehouse summary accounts.

(a) *General.* Each bonded warehouse proprietor shall keep current summary accounts of spirits entered into, withdrawn from, and remaining in his warehouse in accordance with the provisions of this section. Separate accounts shall be maintained for domestic spirits, imported spirits, Virgin Islands spirits, and Puerto Rican spirits, with such further separation into basic accounts as is required by paragraph (b), (c), (d), and (e) of this section. Such basic accounts for imported spirits shall show the rate of duty paid on the spirits and such basic accounts for Virgin Islands and Puerto Rican spirits shall, if subject to rectification tax, show the rate of rectification tax.

(b) *Basic accounts of spirits in packages and cases.* Separate basic accounts for spirits in packages and for spirits in cases shall be maintained on Form 1621 for each producer (bonded warehouse proprietor in the case of blended rums or brandies and spirits of 190° or more of proof), by kind of spirits, and by season of production, showing the number of packages or cases, and the total tax gallons therein, deposited in, withdrawn from, and remaining in the warehouse. Basic accounts for spirits in packages which have been mingled under the provisions of § 201.301 shall be separately maintained from basic accounts for spirits which have not been so mingled. The basic accounts shall be arranged as follows:

(1) For domestic spirits, other than blended rums or brandies and spirits of 190° or more of proof, alphabetically by States and numerically by the plant number of the producer (spirits produced under trade names, for the purpose of this record, shall be treated as being produced under the real name of the producer);

(2) For domestic blended rums or brandies and spirits of 190° or more of proof, alphabetically by States and numerically by the plant number of the bonded warehouse proprietor who blended the rums or brandies or who filled the packages of spirits of 190° or more of proof, as the case may be;

(3) For imported spirits, alphabetically by States and numerically by the plant number of the bonded warehouse proprietor who received the spirits from customs custody; and

(4) For Virgin Islands or Puerto Rican spirits, alphabetically by the name of the producer in the Virgin Islands or in Puerto Rico.

(c) *Basic accounts of spirits of less than 190° of proof in tanks.* Separate basic accounts shall be maintained on Form 2323 or, in the case of blended rums or brandies, on Form 1685, of all spirits of less than 190° of proof in tanks (including tank cars, tank trucks, and similar vessels). Forms 2323 prepared as provided in §§ 201.291, 201.302 and 201.304 and Forms 1685 prepared as provided in §§ 201.291, 201.307, and 201.308 for the current month (including any Forms 2323 or 1685 prepared in a prior month that are current because of a lack of subsequent transactions) shall constitute the account prescribed by this paragraph: *Provided,* That other Forms 2323 and 1685 for noncurrent months shall be retained as provided in § 201.612.

(d) *Basic accounts of spirits of 190° or more of proof in tanks.* A basic account shall be maintained on Form 1621 for each kind of spirits of 190° or more of proof stored in tanks (including tank cars, tank trucks, or similar vessels). The account shall show the total tax gallons deposited in, withdrawn from, and remaining in all tanks covered by such account.

(e) *Summary of containers and kinds.* The basic accounts maintained in accordance with paragraphs (b), (c), and (d) of this section shall, at the end of each month (or such lesser period as required by the assistant regional commissioner) be summarized to show, for each type of container, the total tax gallons deposited in, withdrawn from, and remaining in the warehouse by each kind of spirits, and the total tax gallons deposited in, withdrawn from, and remaining in the warehouse for all kinds of spirits. Such summaries shall be maintained on Form 1621, and shall include all losses (or gains) such as those disclosed by inventory or on emptying a tank (see § 201.311).

(72 Stat. 1361; 26 U.S.C. 5207)

PAR. 65. Section 201.630 is amended by (1) revoking paragraph (a) and redesignating paragraphs (b) and (c), and (2) making a conforming change. As amended, § 201.630 reads as follows:

§ 201.630 Monthly summary records.

Each proprietor shall, within 10 days after the end of each month, summarize the transactions recorded in his daily records relating to:

(a) Denaturants as required by paragraph (a) of § 201.621.

(b) Alcoholic flavoring materials as required by paragraphs (a), (c), and (h) of § 201.623.

Such summary shall show the kind of material or denaturant and the quantity on hand the first of the month, received, used, otherwise disposed of, and on hand, end of the month. The summaries shall be filed with the daily records to which they pertain and shall be made available for inspection by internal revenue officers.

(72 Stat. 1361; 26 U.S.C. 5207)

PAR. 66. A new section § 201.630b, is inserted, immediately following § 201.630a, to read as follows:

§ 201.630b Style of production and bonded storage records.

When the proprietor's copies of prescribed forms show the details required by §§ 201.619 and 201.622 to be recorded for transactions, such forms shall constitute the required records. When the proprietor's commercial records show the details required by §§ 201.619 and 201.622 to be recorded for transactions, and there is no prescribed form showing such details, such commercial records may constitute the required records.

(72 Stat. 1361; 26 U.S.C. 5207)

PAR. 67. The heading and text of § 201.631 are amended to (1) include transaction forms and semimonthly reports, and (2) require the submission of monthly, quarterly, and semiannual reports by the 15th, instead of 10th day of a month. As amended, § 201.631 reads as follows:

§ 201.631 Submission of transaction forms and reports.

(a) *Transaction forms.* Copies of transaction forms required by this part shall be submitted to the assigned officer, or, if none is regularly assigned, to the assistant regional commissioner, as provided by this part and by instructions on the individual forms.

(b) *Reports.* Daily reports required by this part shall be submitted to the assigned officer, or other officer designated by the assistant regional commissioner, and shall be submitted on or before the close of business on the business day next succeeding that on which the transaction or operation occurs. Semimonthly reports (taxable samples) required by this part shall be submitted to the assigned officer on or before the close of business of the next succeeding tax return period. Monthly, quarterly, and semiannual reports required by this part shall be submitted to the assigned officer, or, if none is regularly assigned, to the assistant regional commissioner, on or before the 15th day following the close of the period for which rendered.

(72 Stat. 1361; 26 U.S.C. 5207)

PAR. 68. A new section, § 201.631a, is inserted, immediately following § 201.631, to read as follows:

§ 201.631a Semimonthly report of taxable samples.

Each proprietor of bonded premises shall prepare, in triplicate, a report on Form 1615 of taxable samples, if any, taken on his premises during the semimonthly period. The original and one copy of the report shall be submitted and the remaining copy shall be retained by the proprietor.

(72 Stat. 1361, 1395; 26 U.S.C. 5207, 5555)

§ 201.632 [Revoked]

PAR. 69. Section 201.632 is revoked.

PAR. 70. Section 201.633 is amended to prescribe revised requirements for preparation and distribution of monthly reports, and make an editorial change. As amended, § 201.633 reads as follows:

§ 201.633 Monthly reports.

Each proprietor shall, at the end of each month, report his operations on the forms prescribed below. Each report shall be prepared in triplicate. The original and one copy shall be filed as provided in § 201.631 and the remaining copy shall be retained by the proprietor.

Report	Prepared by—	Purpose
(a) Monthly report—Distilled spirits plant:		
Form 2730	Distillers	Reports production operations.
Form 2731	Bonded warehousemen.	Reports bonded storage operations.
Form 2732	Proprietors of bonded premises.	Reports denaturation operations for entire bonded premises.
Form 2733	Proprietors of bottling premises.	Reports rectification and bottling operations.
(b) [Reserved]		

(72 Stat. 1361, 1395; 26 U.S.C. 5207, 5555)

PAR. 71. Section 201.633a is amended to prescribe revised requirements for preparation and distribution of Form 2260, Quarterly Report of Strip Stamps. As amended, § 201.633a reads as follows:

§ 201.633a Quarterly report of strip stamps, Form 2260.

As of the close of business March 31, June 30, September 30, and December 31, of each year, each proprietor using strip stamps shall prepare Form 2260, in triplicate. A separate report shall be prepared for each kind of strip stamp used. The original and one copy shall be filed as provided in § 201.631 and the remaining copy shall be retained by the proprietor.

(72 Stat. 1361, 1395; 26 U.S.C. 5207, 5555)

PAR. 72. Section 201.634 is amended by inserting a new paragraph (a) and redesignating paragraphs (a), (b), and (c) as (b), (c), and (d), respectively. As amended § 201.634 reads as follows:

§ 201.634 Semiannual reports.

(a) *General.* Semiannual reports required by this section shall be prepared in triplicate; the original and one copy shall be filed as provided in § 201.631, and the remaining copy retained by the proprietor.

(b) *Form 332.* As of the close of business June 30, and December 31, of each year, each proprietor of a bonded warehouse shall prepare, on Form 332, a statement by kind, season, and year of production, of spirits in his bonded warehouse. A separate Form 332 shall be prepared for spirits which have been mingled under § 201.301 and for spirits which have not been so mingled. Spirits of 190° or more of proof (on which a record of age is not kept) shall be reported as a single item on Form 332; however, the quantity of such domestic spirits and of such imported spirits shall be reported separately. Imported spirits of less than 190° of proof shall be reported on a separate line, appropriately

identified as "Imported," giving the total quantity of each kind of such imported spirits in the appropriate column on Form 332.

(c) *Form 2546.* As of the close of business June 30, and December 31, of each year, each proprietor of a bonded warehouse shall prepare, on Form 2546, a report of spirits mingled under § 201.301 during the preceding 6-month period. A separate report shall be prepared for each kind of spirits.

(d) *Form 338.* As of the close of business June 30, and December 31, of each year, every proprietor who, in connection with his plant, conducts wholesale liquor dealer operations, or operates a taxpaid storeroom, on, contiguous to, adjacent to, or in the immediate vicinity of plant premises, or operates storage premises at another location from which distilled spirits are not sold at wholesale, shall prepare, on Form 338, a report showing the total quantity of distilled spirits received and disposed of during the preceding 6-month period.

(72 Stat. 1361, 1395; 26 U.S.C. 5207, 5555)

[FR Doc.72-16877 Filed 10-3-72;8:48 am]

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Qualified Export Receipts and Producer's Loans of a Domestic International Sales Corporation (DISC)

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 six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by November 3, 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 November 3, 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 request 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 (68 Stat. 917; 26 U.S.C. 7805).

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

In order to conform the Income Tax Regulations (26 CFR Part 1) to the provisions of section 993 of the Internal Revenue Code of 1954, as added by section 501 of the Revenue Act of 1971 (85 Stat. 535), such regulations are amended as follows:

The following new sections are added immediately after § 1.992-4:

§ 1.993 Statutory provisions; definitions.

Sec. 993. *Definitions*—(a) *Qualified export receipts*—(1) *General rule.* For purposes of this part, except as provided by regulations under paragraph (2), the qualified export receipts of a corporation are—

(A) Gross receipts from the sale, exchange, or other disposition of export property,

(B) Gross receipts from the lease or rental of export property, which is used by the lessee of such property outside the United States,

(C) Gross receipts for services which are related and subsidiary to any qualified sale, exchange, lease, rental, or other disposition of export property by such corporation,

(D) Gross receipts from the sale, exchange, or other disposition of qualified export assets (other than export property),

(E) Dividends (or amounts includible in gross income under section 951) with respect to stock of a related foreign export corporation (as defined in subsection (e)),

(F) Interest on any obligation which is a qualified export asset,

(G) Gross receipts for engineering or architectural services for construction projects located (or proposed for location) outside the United States, and

(H) Gross receipts for the performance of managerial services in furtherance of the production of other qualified export receipts of a DISC.

(2) *Excluded receipts.* The Secretary or his delegate may under regulations designate receipts from the sale, exchange, lease, rental, or other disposition of export property, and from services, as not being receipts described in paragraph (1) if he determines that such sale, exchange, lease, rental, or other disposition, or furnishing of services—

(A) Is for ultimate use in the United States;

(B) Is accomplished by a subsidy granted by the United States or any instrumentality thereof;

(C) Is for use by the United States or any instrumentality thereof where the use of such export property or services is required by law or regulation.

For purposes of this part, the term "qualified export receipts" does not include receipts from a corporation which is a DISC for its taxable year in which the receipts arise and which is a member of a controlled group (as defined in paragraph (3)) which includes the recipient corporation.

(3) *Definition of controlled group.*—For purposes of this part, the term "controlled group" has the meaning assigned to such term by section 1563(a), except that the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears therein, and section 1563(b) shall not apply.

(b) *Qualified export assets.*—For purposes of this part, the qualified export assets of a corporation are—

(1) Export property (as defined in subsection (c));

(2) Assets used primarily in connection with the sale, lease, rental, storage, handling, transportation, packaging, assembly, or servicing of export property, or the performance of engineering or architectural services described in subparagraph (G) of subsection (a)(1) or managerial services in furtherance of the production of qualified export receipts described in subparagraphs (A), (B), (C), and (G) of subsection (a)(1);

(3) Accounts receivable and evidences of indebtedness which arise by reason of transactions of such corporation described in subparagraph (A), (B), (C), (D), (G), or (H), of subsection (a)(1);

(4) Money, bank deposits, and other similar temporary investments, which are reasonably necessary to meet the working capital requirements of such corporation;

(5) Obligations arising in connection with a producer's loan (as defined in subsection (d));

(6) Stock or securities of a related foreign export corporation (as defined in subsection (e));

(7) Obligations issued, guaranteed, or insured, in whole or in part, by the Export-Import Bank of the United States or the Foreign Credit Insurance Association in those cases where such obligations are acquired from such bank or association or from the seller or purchaser of the goods or services with respect to which such obligations arose;

(8) Obligations issued by a domestic corporation organized solely for the purpose of financing sales of export property pursuant to an agreement with the Export-Import Bank of the United States under which such corporation makes export loans guaranteed by such bank; and

(9) Amounts (other than reasonable working capital) on deposit in the United States that are utilized during the period provided for in, and otherwise in accordance with, regulations prescribed by the Secretary or his delegate to acquire other qualified export assets.

(c) *Export property.*—

(1) *In general.* For purposes of this part, the term "export property" means property—

(A) Manufactured, produced, grown, or extracted in the United States by a person other than a DISC,

(B) Held primarily for sale, lease, or rental, in the ordinary course of trade or business, by, or to, a DISC, for direct use, consumption or disposition outside the United States, and

(C) Not more than 50 percent of the fair market value of which is attributable to articles imported into the United States.

In applying subparagraph (C), the fair market value of any article imported into the United States shall be its appraised value, as determined by the Secretary or his delegate under section 402 or 402a of the Tariff Act of 1930 (19 U.S.C., sec. 1401a or 1402) in connection with its importation.

(2) EXCLUDED PROPERTY.—For purposes of this part, the term "export property" does not include—

(A) Property leased or rented by a DISC for use by any member of a controlled group (as defined in subsection (a)(3) which includes the DISC, or

(B) Patents, inventions, models, designs, formulas, or processes, whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, for commercial or home use), good will, trademarks, trade brands, franchises, or other like property.

(3) PROPERTY IN SHORT SUPPLY.—If the President determines that the supply of any property described in paragraph (1) is insufficient to meet the requirements of the domestic economy, he may by Executive order designate the property as in short supply. Any property so designated shall be treated as property not described in paragraph (1) during the period beginning with the date specified in the Executive order and ending with the date specified in an Executive order setting forth the President's determination that the property is no longer in short supply.

(d) PRODUCER'S LOANS.—

(1) IN GENERAL.—An obligation, subject to the rules provided in paragraphs (2) and (3), shall be treated as arising out of a producer's loan if—

(A) The loan, when added to the unpaid balance of all other producer's loans made by the DISC, does not exceed the accumulated DISC income at the beginning of the month in which the loan is made;

(B) The obligation is evidenced by a note (or other evidence of indebtedness) with a stated maturity date not more than 5 years from the date of the loan;

(C) The loan is made to a person engaged in the United States in the manufacturing, production, growing, or extraction of export property (referred to hereinafter as the "borrower"); and

(D) At the time of such loan it is designated as a producer's loan.

(2) LIMITATION.—An obligation shall be treated as arising out of a producer's loan only to the extent that such loan, when added to the unpaid balance of all other producer's loans to the borrower outstanding at the time such loan is made, does not exceed an amount determiner by multiplying the sum of—

(A) The amount of the borrower's adjusted basis determined at the beginning of the borrower's taxable year in which the loan is made, in plant, machinery, and equipment, and supporting production facilities in the United States;

(B) The amount of the borrower's property held primarily for sale, lease, or rental, to customers in the ordinary course of trade or business, at the beginning of such taxable year; and

(C) The aggregate amount of the borrower's research and experimental expenditures (within the meaning of section 174) in the United States during all preceding taxable years beginning after December 31, 1971,

by the percentage which the borrower's receipts, during the 3 taxable years immediately preceding the taxable year (but not including any taxable year commencing prior to 1972) in which the loan is made, from the sale, lease, or rental outside the United States of property which would be export property if held by a DISC is of the gross receipts during such 3 taxable years from the sale, lease, or rental of property held by such borrower primarily for sale, lease, or rental to customers in the ordinary course of the trade or business of such borrower.

(3) INCREASED INVESTMENT REQUIREMENT.—An obligation shall be treated as arising out of a producer's loan in a taxable year only to the extent that such loan, when added to the unpaid balance of all other producer's loans to the borrower made during such taxable year, does not exceed an amount equal to—

(A) The amount by which the sum of the adjusted basis of assets described in paragraph (2) (A) and (B) on the last day of the taxable year in which the loan is made exceeds the sum of the adjusted basis of such assets on the first day of such taxable year; plus

(B) The aggregate amount of the borrower's research and experimental expenditures (within the meaning of section 174) in the United States during such taxable year.

(4) *Special limitation in the case of domestic film maker.*—(A) *In general.*—In the case of a borrower who is a domestic film maker and who incurs an obligation to a DISC for the making of a film, and such DISC is engaged in the trade or business of selling, leasing, or renting films which are export property, the limitation described in paragraph (2) may be determined (to the extent provided under regulations prescribed by the Secretary or his delegate) on the basis of—

(i) The sum of the amounts described in subparagraphs (A), (B), and (C) thereof plus reasonable estimates of all such amounts to be incurred at any time by the borrower with respect to films which are commenced within the taxable year in which the loan is made, and

(ii) The percentage which, based on the experience of producers of similar films, the annual receipts of such producers from the sale, lease, or rental of such films outside the United States is of the annual gross receipts of such producers from the sale, lease, or rental of such films.

(B) *Domestic film maker.*—For purposes of this paragraph, a borrower is a domestic film maker with respect to a film if—

(i) Such borrower is a U.S. person within the meaning of section 7701(a)(30), except that with respect to a partnership, all of the partners must be U.S. persons, and with respect to a corporation, all of its officers and at least a majority of its directors must be U.S. persons;

(ii) Such borrower is engaged in the trade or business of making the film with respect to which the loan is made;

(iii) The studio, if any, used or to be used for the taking of photographs and the recording of sound incorporated into such film is located in the United States;

(iv) The aggregate playing time of portions of such film photographed outside the United States does not or will not exceed 20 percent of the playing time of such film; and

(v) Not less than 80 percent of the total amount paid or to be paid for services performed in the making of such film is paid or to be paid to persons who are U.S. persons at the time such services are performed or consists of amounts which are fully taxable by the United States.

(C) *Special rules for application of subparagraph (B) (v).*—For purposes of clause (v) of subparagraph (B)—

(i) There shall not be taken into account any amount which is contingent upon receipts or profits of the film and which is fully taxable by the United States (within the meaning of clause (ii)); and

(ii) Any amount paid or to be paid to a U.S. person, to a nonresident alien individual, or to a corporation which furnishes the services of an officer or employee to the borrower with respect to the making of a film, shall be treated as fully taxable by the United States only if the total amount received by such person, individual, officer, or employee for services performed in the making of such film is fully included in gross income for purposes of this chapter.

(e) *Related Foreign Export Corporation.*—In determining whether a corporation (hereinafter in this subsection referred to as "the domestic corporation") is a DISC—

(1) *Foreign international sales corporation.*—A foreign corporation is a related foreign export corporation if—

(A) Stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned directly by the domestic corporation,

(B) Ninety-five percent or more of such foreign corporation's gross receipts for its taxable year ending with or within the taxable year of the domestic corporation consists of qualified export receipts described in subparagraphs (A), (B), (C), and (D) of subsection (a)(1) and interest on any obligation described in paragraphs (3) and (4) of subsection (b), and

(C) The adjusted basis of the qualified export assets (described in paragraphs (1), (2), (3), and (4) of subsection (b)) held by such foreign corporation at the close of such taxable year equals or exceeds 95 percent of the sum of the adjusted basis of all assets held by it at the close of such taxable year.

(2) REAL PROPERTY HOLDING COMPANY.—A foreign corporation is a related foreign export corporation if—

(A) Stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned directly by the domestic corporation, and

(B) Its exclusive function is to hold real property for the exclusive use (under a lease or otherwise) of the domestic corporation.

(3) ASSOCIATED FOREIGN CORPORATION.—A foreign corporation is a related foreign export corporation if—

(A) less than 10 percent of the total combined voting power of all classes of stock entitled to vote of such foreign corporation is owned (within the meaning of section 1563 (d) and (e)) by the domestic corporation or by a controlled group of corporations (within the meaning of section 1563) of which the domestic corporation is a member, and

(B) the ownership of stock or securities in such foreign corporation by the domestic corporation is determined (under regulations prescribed by the Secretary or his delegate) to be reasonably in furtherance of a transaction or transactions giving rise to qualified export receipts of the domestic corporation.

(f) Gross receipts.—For purposes of this part, the term "gross receipts" means the total receipts from the sale, lease, or rental of property held primarily for sale, lease, or rental in the ordinary course of trade or business, and gross income from all other sources. In the case of commissions on the sale, lease, or rental of property, the amount taken into account for purposes of this part as gross receipts shall be the gross receipts on the sale, lease, or rental of the property on which such commissions arose.

(g) United States defined.—For purposes of this part, the term "United States" includes the Commonwealth of Puerto Rico and the possessions of the United States.

[Sec. 993 as added by sec. 501, Rev. Act 1971 (85 Stat. 535)]

§ 1.993–1 Definition of qualified export receipts.

(a) *In general.* For a corporation to qualify as a DISC, at least 95 percent of its gross receipts for a taxable year must consist of qualified export receipts. Under section 993(a), the term "qualified export receipts" means any of the eight amounts described in paragraphs (b) through (i) of this section, except to the extent that any of the eight amounts is an excluded receipt within the meaning of paragraph (j) of this section. For purposes of this section and §§ 1.993–2 through 1.993–6—

(1) *DISC.* All references to a DISC mean a DISC, except when the context indicates that such term means a corporation in the process of meeting the conditions necessary for that corporation to become a DISC, or a corporation being tested as to whether it qualifies as a DISC.

(2) *Sale and lease.* The term "sale" includes an exchange or other disposition and the term "lease" includes a rental or a sublease.

(3) *Gross receipts.* The term "gross receipts" is defined by section 993(f) and § 1.993–6.

(4) *Qualified export assets.* The term "qualified export assets" is defined by section 993(b) and § 1.993–2.

(5) *Export property.* The term "export property" is defined by section 993(c) and § 1.993–3.

(6) *Related person.* The term "related person" means a person who is related to another person if either immediately before or after a transaction—

(i) The relationship between such persons would result in a disallowance of losses under section 267 (relating to disallowance of losses, etc., between related taxpayers), or section 707(b) (relating to losses disallowed, etc., between partners and controlled partnerships), and the regulations thereunder, or

(ii) Such persons are members of the same controlled group of corporations, as defined in section 1563(a) (relating to definition of controlled group of corporations), except that (*a*) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a) and the regulations thereunder, and (*b*) the provisions of section 1563(b) shall not apply in determining whether such persons are members of the same controlled group.

(7) *Related supplier.* The term "related supplier" is defined by § 1.994–1(a)(3)(ii) (as proposed in 37 F.R. 19625 for September 21, 1972). For the definition of the term "related person" applicable solely to § 1.994–1, see § 1.994–1(a)(3)(i).

(8) *Controlled group.* The term "controlled group" is defined by paragraph (k) of this section.

(b) *Sales of export property.* Qualified export receipts of a DISC include gross receipts from the sale of export property by such DISC, or by any principal for whom such DISC acts as a commission agent (whether or not such principal is a related supplier), pursuant to the terms of a contract entered into with a purchaser by such DISC or by such principal at any time or by any other person and assigned to such DISC or such principal at any time prior to the shipment of such property to the purchaser. Gross receipts from the sale of export property, whenever received, do not constitute qualified export receipts unless the seller (or the corporation acting as commission agent for the seller) is a DISC at the time of the shipment of such property to the purchaser. For example, if a corporation which sells export property under the installment method is not a DISC for the taxable year in which the property is shipped to the purchaser, gross receipts from such sale do not constitute qualified export receipts for any taxable year of the corporation.

(c) *Leases and licenses of export property*—(1) *In general.* Qualified export receipts of a DISC include gross receipts from the lease or license of export property provided that—

(i) Such property is held by such DISC (or by a principal for whom such DISC acts as commission agent with respect to the lease) either as an owner or lessee at the beginning of the term of such lease, and

(ii) Such DISC qualified (or was treated) as a DISC for its taxable year in which the term of such lease began.

(2) *Prepayment of lease receipts.* If the gross receipts from a lease of property are prepaid, then—

(i) All such gross receipts are qualified exports receipts of a DISC if it is reasonably expected at the time of such prepayment that throughout the term of such lease the lease will meet the requirements of this paragraph and that the property will be export proeprty; or

(ii) If it is reasonably expected at the time of such prepayment that throughout the term of such lease the requirements of subparagraph (1) of this paragraph will not be met, or that the prpperty will not be export property, only those receipts for the taxable years of the DISC for which such requirements will be met, and such property will be export property, are qualified export receipts.

(d) *Related and subsidiary services*—(1) *In general.* Qualified export receipts of a DISC include gross receipts from services furnished by such DISC which are related and subsidiary to any sale or lease (as described in paragraph (b) or (c) of this section) of export property by such DISC or with respect to which such DISC acts as a commission agent, provided that such DISC derives qualified export receipts from such sale or lease. Such services may be performed within or without the United States.

(2) *Services furnished by DISC.* Services are considered to be furnished by a DISC for purposes of this paragraph if such services are provided by—

(i) The person who sold or leased the export property to which such services are related and subsidiary, provided that the DISC acts as a commission agent with respect to the sale or lease of such property and with respect to such services or

(ii) The DISC as principal, or any other person pursuant to a contract with such DISC, provided the DISC acted as principal or commission agent with respect to the sale or lease of such property.

(3) *Related services.* A service is related to a sale or lease of export property if—

(i) Such service is of the type customarily and usually furnished with the type of transaction in the trade or business in which such sale or lease arose and

(ii)(*a*) The contract to furnish such service is contemporaneous with or a part of the contract under which such sale or lease occurs or

(*b*) The contract to furnish such service is a renewal of the services contract described in (*a*) of this subdivision.

Services which may be related to a sale or lease of export property generally include warranty service, maintenance service, repair service, installation service, and transportation (including insurance related to such transportation). Financing or the obtaining of financing for a sale or lease is not a related service for purposes of this paragraph.

(4) *Subsidiary services*—(i) *In general.* Services related to a sale or lease of export property are subsidiary to such sale or lease only if it is reasonably expected at the time of such sale or lease that the gross receipts from all related services furnished by the DISC (as defined in subparagraph (2) of this paragraph) will not exceed 50 percent of the sum of (*a*) the gross receipts from such sale or lease and (*b*) the gross receipts from related services furnished by the DISC. In the case of a sale, reasonable expectations are based on the gross receipts from all related services which may reasonably be performed at any time before the end of the 10-year period following the date of such sale. In the case of a lease, reasonable expectations are based on the gross receipts from all related services which may reasonably be performed at any time before the end of the term of such lease (determined without regard to renewal options).

(ii) *Allocation of gross receipts from services.* In determining whether the services related to a sale or lease of export property are subsidiary to such sale or lease, the gross receipts to be treated as derived from the furnishing of services may not be less than the amount of gross receipts reasonably allocated to such services as determined under the facts and circumstances of each case without regard to whether—

(*a*) Such services are furnished under a separate contract or under the same contract pursuant to which such lease or sale occurs or

(*b*) The cost of such services is specified in the contract of sale or lease.

(iii) *Transactions involving more than one item of export property.* If more than one item of export property is sold or leased in a single transaction pursuant to one contract, the total gross receipts from such transaction and the total gross receipts from all services related to such transaction are each taken into account in determining whether such services are subsidiary to such transaction. However, the provisions of this subdivision apply only if such items could be included in the same product line, as defined in § 1.994–1(c)(7) (as proposed in 37 F.R. 19626 for September 21, 1972).

(iv) *Renewed service contracts.* If under the terms of a contract for related services, such contract is renewable within 10 years after a sale of export property, or during the term of a lease of export property, related services to be performed under the renewed contract are subsidiary to such sale or lease if it is reasonably expected at the time of such renewal that the gross receipts from all related services which have been and which are to be furnished by the DISC will not exceed 50 percent of the sum of (*a*) the gross receipts from such sale or lease and (*b*) the gross receipts from related services furnished by the DISC. Reasonable expectations are determined as provided in subdivision (i) of this subparagraph.

(v) *Property used in services.* If a services contract described in subparagraph (3) of this paragraph provides for the furnishing of parts in connection with the furnishing of related services, gross receipts from the furnishing of such parts are not taken into account in determining whether under this subparagraph the services are subsidiary.

See paragraph (b) or (c) of this section to determine whether the gross receipts from the furnishing of parts constitute qualified export receipts. See § 1.993–3 (c) (2) (iv) and (e) (3) for rules regarding the treatment of such parts with respect to the manufacture of export property and the foreign content of such property, respectively.

(5) *Relation to leases.* If the gross receipts for services which are related and subsidiary to a lease of property have been prepaid at any time for all such services which are to be performed before the end of the term of such lease, then as of such time the rules in paragraph (c) (2) of this section (relating to prepayment of lease receipts) will determine whether prepaid services under this subdivision are qualified export receipts.

(6) *Relation with export property determination.* The determination as to whether gross receipts from the sale or lease of export property constitute qualified export receipts does not depend upon whether services connected with such sale or lease are related and subsidiary to such sale or lease. Thus, for example, assume that a DISC receives gross receipts of $1,000 from the sale of export property and gross receipts of $1,100 from installation and maintenance services which are to be furnished by such DISC within 10 years after the sale and which are related to such sale. The $1,100 which the DISC receives for such services would not be qualified export receipts since the services exceed 50 percent of the sum of the gross receipts from the sale and the gross receipts from the related services furnished by such DISC. The $1,000 which the DISC receives from the sale of export property would, however, be a qualified export receipt if the sale met the requirements of paragraph (b) of this section.

(e) *Gains from sales of certain qualified export assets.* Qualified export receipts of a DISC include gross receipts from the sale by such DISC of any assets (wherever located) which, as of the date of such sale, are qualified export assets other than export property (as defined in § 1.993–2). Gross receipts are derived from the sale of such assets only where such sale results in recognized gain (see § 1.993–6(a)). For purposes of this paragraph, losses from the sale of such qualified export assets shall not be taken into account for purposes of determining the DISC's qualified export receipts.

(f) *Dividends.* Qualified export receipts of a DISC for a taxable year include all dividends includible in the gross income of such DISC for such taxable year with respect to the stock of related foreign export corporations (as defined in § 1.993–5) and all amounts includible in the gross income of such DISC with respect to such corporations pursuant to section 951 (relating to amounts included in the gross income of U.S. shareholders of controlled foreign corporations).

(g) *Interest on obligations which are qualified export assets.* Qualified export receipts of a DISC include interest on any obligation which is a qualified export asset of such DISC, including any amount includible in gross income as interest (such as, for example, an amount treated as original issue discount pursuant to section 1232) or as imputed interest under section 483. Gain from the sale of obligations described in this paragraph is treated (to the extent such gain is not treated as interest on such obligations) as qualified export receipts pursuant to paragraph (e) of this section.

(h) *Engineering and architectural services*—(1) *In general.* Qualified export receipts of a DISC include gross receipts from engineering services (as described in subparagraph (5) of this paragraph) or architectural services (as described in subparagraph (6) of this paragraph) furnished by such DISC (as described in subparagraph (7) of this paragraph) for a construction project (as defined in subparagraph (8) of this paragraph) located, or proposed for location, outside the United States. Such services may be performed within or without the United States.

(2) *Services included.* Engineering and architectural services include feasibility studies for a proposed construction project whether or not such project is ultimately initiated.

(3) *Excluded services.* Engineering and architectural services do not include—

(i) Services connected with the exploration for minerals or

(ii) Technical assistance or know-how.

For purposes of this paragraph, the term "technical assistance or know-how" includes activities or programs designed to enable business, commerce, industrial establishments, and governmental organizations to acquire or use scientific, architectural, or engineering information.

(4) *Other services.* Receipts from the performance of construction activities other than engineering and architectural services constitute qualified export receipts to the extent that such activities are related and subsidiary services (within the meaning of paragraph (d) of this section) with respect to a sale or lease of export property.

(5) *Engineering services.* For purposes of this paragraph, engineering services in connection with any construction project (within the meaning of subparagraph (8) of this paragraph) include any professional services requiring engineering, education, training, and experience and the application of special knowledge of the mathematical physical, or engineering sciences to such professional services as consultation, investigation, evaluation, planning, design, or responsible supervision of construction for the purpose of assuring compliance with plans, specifications, and design.

(6) *Architectural services.* For purposes of this paragraph, architectural services include the offering or furnishing of any professional services such as consultation, planning, aesthetic, and structural design, drawings and specifications, or responsible supervision of construction (for the purpose of assuring compliance with plans, specifications, and design) or erection, in connection with any construction project (within the meaning of subparagraph (8) of this paragraph).

(7) *Definition of "furnished by such DISC".* For purposes of this paragraph, the term "furnished by such DISC" means architectural and engineering services furnished:

(i) By the DISC,

(ii) By another person (whether or not such person is a U.S. person) pursuant to a contract entered into by the DISC at any time prior to the furnishing of such services, or

(iii) By another person pursuant to a contract for the furnishing of such services entered into by, or assigned to, such person at any time, provided that the DISC acts as commission agent for the furnishing of such services by such person under a commission agreement entered into at any time prior to the furnishing of such services.

(8) *Definition of "construction project".* For purposes of this paragraph, the term "construction project" includes the erection, expansion, or repair (but not including minor remodeling or minor repairs) of new or existing buildings or other physical facilities including, for example, roads, dams, canals, bridges, tunnels, railroad tracks, and pipelines. The term also includes site grading and improvement and installation of equipment necessary for the construction. Gross receipts from the sale or lease of construction equipment are not qualified export receipts unless such equipment is export property (as defined in § 1.993–3).

(i) *Managerial services*—(1) *In general.* Qualified export receipts of a first DISC for its taxable year include gross receipts from the furnishing of managerial services provided for another DISC, which is not a related person, to aid such unrelated DISC in deriving qualified export receipts, provided that at least 50 percent of the gross receipts of the first DISC for such year consists of qualified export receipts derived from the sale or lease of export property and the furnishing of related and subsidiary services, as described in paragraphs (b), (c), and (d) of this section, respectively. Such managerial services may be performed—

(i) By the first DISC,

(ii) By any other person pursuant to a contract entered into with the first DISC at any time prior to the furnishing of such services, or

(iii) By any other person for whom the first DISC acts as commission agent with respect to the furnishing of such services.

(2) *Definition of "managerial services".* The term "managerial services" as used in this paragraph means activities relating to the operation of another unrelated DISC which derives qualified export receipts from the sale or lease of export property and from the furnishing of services related and subsidiary to such sales or leases. Such term includes staffing and operational services necessary to operate such other DISC, but does not include legal, accounting, sci-

entific, or technical services. Examples of managerial services are: (i) Export market studies, (ii) making shipping arrangements, and (iii) contacting potential foreign purchasers.

(3) *Status of recipient of managerial services.* Qualified export receipts of a first DISC include receipts from the furnishing of managerial services during any taxable year of a recipient if such recipient qualifies as a DISC (within the meaning of § 1.992–1(a) (as proposed in 37 F.R. 10368 for May 20, 1972)) for such taxable year. For purposes of this subparagraph, a recipient is deemed to qualify as a DISC for its taxable year if the first DISC obtains from such recipient a copy of such recipient's election to be treated as a DISC as described in § 1.992–2(a) (as proposed in 37 F.R. 18476 for September 12, 1972) together with such recipient's sworn statement that such election has been filed with the Internal Revenue Service Center. The copy of the election and the sworn statement of such recipient must be received by the first DISC within 6 months after the beginning of the first taxable year of the recipient during which such first DISC furnishes managerial services for such recipient. The copy of the election and the sworn statement of the recipient need not be obtained by the first DISC for subsequent taxable years of the recipient. A recipient of managerial services is not treated as a DISC with respect to such services performed during a taxable year for which such recipient does not qualify as a DISC if the DISC performing such services does not believe or if a reasonable person would not believe (taking into account the furnishing DISC's managerial relationship with such recipient DISC) at the beginning of such taxable year that the recipient will qualify as a DISC for such taxable year.

(j) *Excluded recipts*—(1) *In general.* Notwithstanding the provisions of paragraphs (b) through (i) of this section, qualified export receipts of a DISC do not include any of the five amounts described in subparagraphs (2) through (6) of this paragraph.

(2) *Sales and leases of property for ultimate use in the United States.* Property which is sold or leased for ultimate use in the United States does not constitute export property. See § 1.993–3(d)(4). Thus, qualified export receipts of a DISC described in paragraph (b) or (c) of this section do not include gross receipts of the DISC from the sale or lease of such property.

(3) *Sales of export property accomplished by subsidy.* Qualified export receipts of a DISC do not include gross receipts described in paragraph (b) of this section if the sale of export property (whether or not such property consists of agricultural products) is pursuant to any of the following:

(i) The development loan program of the Agency for International Development, unless the DISC shows to the satisfaction of the district director that, under the conditions existing at the time of the sale, the purchaser had a reasonable opportunity to purchase, on competitive terms and from a seller who was not a U.S. person, goods which were substantially identical to such property and which were not manufactured, produced, grown, or extracted (as described in § 1.993–3(c)) in the United States,

(ii) The Public Law 480 program authorized under Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1691, 1701–1710),

(iii) The Barter program of the Commodity Credit Corporation authorized by section 4(h) of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b(h)), and section 303 of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1692),

(iv) The Export Payment program of the Commodity Credit Corporation authorized by sections 5 (d) and (f) of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714c (d) and (f)),

(v) The section 32 export payment programs authorized by section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), and

(vi) The Export Sales program of the Commodity Credit Corporation authorized by sections 5 (d) and (f) of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714c (d) and (f)), and section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427), for the purpose of disposing of surplus agricultural commodities and exporting or causing to be exported agricultural commodities.

(4) *Sales or leases of export property and furnishing of architectural or engineering services for use by the United States*—(i) *In general.* Qualified export receipts of a DISC do not include gross receipts described in paragraph (b), (c), or (h) of this section if a sale or lease of export property, or the furnishing of architectural or engineering services, is for use by the United States or an instrumentality thereof in any case in which any law or regulation requires in any manner the purchase or lease of property manufactured, produced, grown, or extracted in the United States or requires the use of architectural or engineering services performed by a U.S. person. For example, a sale by a DISC of export property to the Department of Defense for use outside the United States would not produce qualified export receipts for such DISC if the Department of Defense purchased such property from appropriated funds subject to the Armed Services Procurement Regulations. Generally, such purchases by the Department of Defense would include purchases of goods for resale at commissaries but would not include purchases of goods for resale at an Army post exchange or Navy or Air Force base exchange.

(ii) *Direct or indirect sales or leases.* Any sale or lease of export property is for use by the United States or an instrumentality thereof if such property is sold or leased by a DISC (or by a principal for whom such DISC acts as commission agent) to—

(*a*) A person who is a related person with respect to such DISC or such principal and who sells or leases such property for use by the United States or an instrumentality thereof or

(*b*) A person who is not a related person with respect to such DISC or such principal if, at the time of such sale or lease, there is an agreement or understanding that such property will be sold or leased for use by the United States or an instrumentality thereof (or if a reasonable person would have known at the time of such sale or lease that such property would be sold or leased for use by the United States or an instrumentality thereof) within 3 years after such sale or lease.

(iii) *Excluded programs.* The provisions of this subparagraph do not apply in the case of a purchase by the United States or an instrumentality thereof if such purchase is pursuant to—

(*a*) A program under which the U.S. Government purchases property for resale, on commercial terms, to a foreign government or agency or instrumentality thereof, or

(*b*) A program (whether bilateral or multi-lateral) under which sales to the U.S. Government are open to international competitive bidding.

(5) *Services.* Qualified export receipts of a DISC do not include gross receipts described in paragraph (d) of this section (concerning related and subsidiary services) if the services from which such gross receipts are derived are related and subsidiary to the sale or lease of property which results in excluded receipts pursuant to this paragraph.

(6) *Receipts within controlled group*—(i) *In general.* Gross receipts of a corporation do not constitute qualified export receipts for any taxable year of such corporation if—

(*a*) At the time of the sale, lease, or other transaction resulting in such gross receipts, such corporation and the person from whom such receipts are derived are members of the same contolled group (as defined in paragraph (k) of this section), and

(*b*) Such corporation and such person each qualifies (or is treated) as a DISC for its taxable year in which such transaction occurs.

(ii) *Leased property.* See § 1.993–3(f)(2) regarding property not constituting export property in certain cases where such property is leased to any corporation which is a member of the same controlled group as the lessor.

(k) *Definition of "controlled group".* For purposes of sections 991 through 996 and the regulations thereunder, the term "controlled group" has the same meaning as is assigned to the term "controlled group of corporations" by section 1563(a), except that (1) the phrase "more than 50 percent" is substituted for the phrase "at least 80 percent" each place the latter phrase appears in section 1563(a), and (2) section 1563(b) shall not apply. Thus, for example, a foreign corporation subject to tax under section 881 may be a member of a controlled group. Furthermore, two or more corporations (including a foreign corporation) are

members of a controlled group at any time such corporations meet the requirements of section 1563(a) (as modified by this paragraph).

(1) *DISC's entitlement to income*—(1) *Application of section 994.* A corporation which meets the requirements of § 1.992–1(a) (as proposed in 37 F.R. 10368 for May 20, 1972) to be treated as a DISC for a taxable year is entitled to income, and the intercompany pricing rules of section 994(a) (1) or (2) apply, in the case of any transactions described § 1.992–1(a) (as proposed in 37 F.R. 19625 for Sept. 21, 1972) between such DISC and its related supplier (as defined in § 1.994–1(a)(3)) (as proposed in 37 F.R. 19625 for Sept. 21, 1972), provided that the relationship between the DISC and its related supplier is defined by a written agreement described in subparagraph (2) of this paragraph. For purposes of this paragraph, such DISC need not have employees or perform any specific function.

(2) *Written agreement.* A written agreement between a DISC and its related supplier satisfies the requirements of this subparagraph with respect to a transaction if such agreement provides for determination of the price payable by the DISC, or the commission payable to the DISC, with respect to such transaction and if the agreement is executed prior to such transaction (or, in the case of a sale pursuant to a contract assigned to the DISC or its related supplier, as described in paragraph (b) of this section, the agreement is entered into at any time before shipment of property to the purchaser).

(3) *Other transactions.* In the case of a transaction to which the provisions of subparagraph (1) of this section do not apply but from which a DISC derives gross receipts, the income to which the DISC is entitled as a result of the transaction is determined pursuant to the terms of the contract for such transaction and, if applicable, section 482 and the regulations thereunder.

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

Example (1). P Corporation forms S Corporation as a wholly-owned subsidiary. S qualifies as a DISC for its taxable year. S has no employees on its payroll. P enters into a written agreement with S whereby S is granted a franchise with respect to specified exports of P. P will sell such exports to S for resale by S. Such exports are of a type which produce qualified export receipts as defined in paragraph (b) of this section. Under the agreement, P's sales force will solicit orders in the name of S using S's order forms. S places orders with P only when S itself has received orders. No inventory is maintained by S. P makes shipments directly to customers of S. The agreement also provides that employees of P will act for S and that billings and collections will be handled by P in the name of S. The agreement provides that S will be entitled to net income on these transactions equal to the maximum amount permitted to be received under the intercompany pricing rules of section 994 of the Code. Under these facts, the income derived by S for such taxable year from the purchase and resale of the specified export is treated for Federal income tax purposes as the income of S, and the amount of income allocable to S will be determined under section 994 of the Code.

Example (2). P Corporation forms S Corporation as a wholly-owned subsidiary. S qualifies as a DISC for its taxable year. S has no employees on its payroll. P enters into a written agreement with S whereby S is granted a sales franchise with respect to specified exports of P and will receive commissions with respect to such exports equal to the maximum amount permitted to be received under the intercompany pricing rules of section 994 of the Code. Such exports are of a type which will produce gross receipts for S which are qualified export receipts as defined in paragraph (b) of this section. P's sales force will solicit orders in the name of P. Billings and collections are handled directly by P. Under these facts, the commissions paid to S for such taxable year with respect to the specified exports shall be treated for Federal income tax purposes as the income of S, and the amount of income allocable to S is determined under section 994 of the Code.

§ 1.993–2 Definition of qualified export assets.

(a) *In general.* For a corporation to qualify as a DISC, at the close of its taxable year it m ust have qualified export assets with adjusted bases equal to at least 95 percent of the sum of the adjusted bases of all its assets. An asset which is a qualified export asset under more than one paragraph of this section shall be taken into account only once in determining the sum of the adjusted bases of all qualified export assets. Under section 993(b), the qualified export assets held by a corporation are—

(1) Export property as defined in § 1.993–3 (see paragraph (b) of this section),

(2) Business assets described in paragraph (c) of this section,

(3) Trade receivables described in paragraph (d) of this section,

(4) Temporary investments to the extent described in paragraph (e) of this section,

(5) Producer's loans as defined in § 1.993–4 (see paragraph (f) of this section),

(6) Stock or securities (described in paragraph (g) of this section) of related foreign export corporations as defined in § 1.993–5,

(7) Export-Import Bank and other obligations described in paragraph (h) of this section,

(8) Financing obligations described in paragraph (i) of this section, and

(9) Funds awaiting investment described in paragraph (j) of this section.

(b) *Export property.* In general, export property is certain property held for sale or lease which meets the requirements of § 1.993–3.

(c) *Business assets.* For purposes of this section, business assets are assets used by a DISC (other than as a lessor) primarily in connection with—

(1) The sale, lease, storage, handling, transportation, packaging, assembly, or servicing of export property, or

(2) The performance of engineering or architectural services (described in § 1.993–1(h)) or managerial services (described in § 1.993–1(i)) in furtherance of the production of qualified export receipts.

Assets used primarily in the manufacture, production, growth, or extraction (within the meaning of § 1.993–3(c)) of property are not business assets.

(d) *Trade receivables*—(1) *In general.* For purposes of this section, trade receivables are accounts receivable and evidences of indebtedness due the DISC (or, if it acts as an agent, due its principal) and held by the DISC which arose by reason of transactions described in § 1.993–1 (b), (c), (d), (e), (h), or (i) which result in qualified export receipts for the DISC and for no other DISC. Any such account receivable or evidence of indebtedness may be acquired directly by the DISC as a result of any such transaction. If the DISC acted as commission agent for a principal (whether or not a related supplier) (as defined in § 1.994–1(a)(3), as proposed in 37 F.R. 19625, for September 21, 1972) in any such transaction, the DISC may acquire (with or without recourse) any such account receivable or evidence of indebtedness. Thus, for example, if a DISC acts as commission agent for a related supplier with respect to the furnishing of engineering or architectural services which result in qualified export receipts described in § 1.993–1(h), the related supplier's accounts receivable generated by the furnishing of such services may be purchased by the DISC and will be treated as trade receivables. For purposes of this section, an evidence of indebtedness is a written instrument of indebtedness.

(2) *Trade receivables representing commissions.* If a DISC acts as commission agent for a principal in a transaction described in § 1.993–1 (b), (c), (d), (e), (h), or (i) which results in qualified export receipts for the DISC, and if an account receivable or evidence of indebtedness held by the DISC and representing the commission payable to the DISC as a result of the transaction arises (and, in the case of an evidence of indebtedness, designated on its face as representing such commission), such account receivable or evidence of indebtedness shall be treated as a trade receivable. If, however, the principal is a related supplier (as defined in § 1.994–1(a)(3), as proposed in 37 F.R. 19625, for September 21, 1972), with respect to the DISC such account receivable or evidence of indebtedness will not be treated as a trade receivable unless it is payable and paid within 60 days after the close of the taxable year of the DISC in which the transaction occurred.

(3) *Indebtedness arising under § 1.994–1(e).* An indebtedness described in or arising under § 1.994–1(e) (3) or (5), as proposed in 37 F.R. 19627, for September 21, 1972 (other than an indebtedness described in subparagraph (2) of this paragraph) in favor of a DISC is not a trade receivable and is not a qualified export asset.

(e) *Temporary investments*—(1) *In general.* For purposes of this section, temporary investments are money, bank deposits (not including time deposits of more than 1 year), and other similar temporary investments to the extent maintained by a DISC as reasonably

necessary to meet its requirements for working capital. For purposes of this paragraph, a temporary investment is an obligation, including an evidence of indebtedness as defined in paragraph (d)(1) of this section, which is a demand obligation or has a period remaining to maturity of not more than 1 year at the date it is acquired by the DISC.

(2) *Determination of amount of working capital maintained.* For purposes of this paragraph—

(i) The working capital of a DISC is the excess of its current assets over current liabilities which is reasonably necessary to finance operating costs for the current normal operating cycle,

(ii) Current assets are cash and other assets which may reasonably be expected to be converted into cash or sold or consumed during the current normal operating cycle of the DISC's trade or business,

(iii) Current liabilities are obligations (or portions of obligations) due within the current normal operating cycle of the trade or business of the DISC whose satisfaction when due is reasonably expected to require the use of current assets, and

(iv) Generally accepted financial accounting treatments will be accepted.

(3) *Determination of amount of working capital reasonably required.* For purposes of this paragraph, a determination of the amount of money, bank deposits, and other similar temporary investments reasonably necessary to meet the requirements of the DISC for working capital will depend upon the nature and volume of the activities of the DISC existing at the end of the DISC's taxable year for which such determination is made. In making such determination, the expected requirements of the DISC for working capital as of the end of the taxable year for which the determination is made will be considered reasonably necessary to the extent that such requirements relate to the expected normal operating cycle of the trade or business of the DISC. See paragraph (j)(3) of this section for rules regarding working capital as of the end of each month of a taxable year for purposes of the 70 percent reasonableness standard with respect to certain deficiency distributions.

(4) *Relationship of working capital to other qualified export assets.* If a temporary investment is a qualified export asset under any provision of this section (other than this paragraph), this paragraph shall not affect its status as a qualified export asset. However, any such temporary investment is taken into account before other temporary investments in determining whether such other temporary investments are maintained by a DISC as reasonably necessary to meet its requirements for working capital. An obligation issued or incurred by a member of a controlled group (as defined in § 1.993–1(k)) of which the DISC is a member is not a qualified export asset under this paragraph.

(f) *Producer's loans.* For purposes of this section, a producer's loan is an evidence of indebtedness arising in connection with producer's loans which are made by a DISC and which meet the requirements of § 1.993–4.

(g) *Stock or securities of related foreign export corporations.* For purposes of this section, the term "stock or securities", with respect to a related foreign export corporation (as defined in § 1.993–5), has the same meaning as such term has as used in section 351 (relating to transfers to controlled corporations), except that the term "securities" does not included obligations which are repaid, in whole or in part, at any time during the taxable year of the DISC following the taxable year of the DISC during which such obligations were acquired by the DISC or were issued, unless the DISC demonstrates to the satisfaction of the district director that the repayment was for bona fide business purposes and not for the purpose of avoidance of Federal income taxes.

(h) *Export-Import Bank obligations*—(1) *In general.* For purposes of this section, subject to the limitation described in subparagraph (2) of this paragraph, the term "Export-Import Bank obligations" means obligations issued, guaranteed, insured, or reinsured (in whole or in part) by the Export-Import Bank of the United States or by the Foreign Credit Insurance Association, but only if such obligations are acquired by the DISC—

(i) From the Export-Import Bank of the United States,

(ii) From the Foreign Credit Insurance Association, or

(iii) From the person selling or purchasing the goods or services by reason of which such obligations arose, or from any corporation which is a member of the same controlled group (as defined in § 1.993–1(k)) as such person.

For purposes of subdivision (i) of this subparagraph, obligations issued by the Export-Import Bank of the United States are treated as acquired from such Bank by the DISC if acquired from any person not more than 90 days after any part of such obligations are first offered to the public. Examples of specific types of Export-Import Bank obligations include interest participation certificates and certificates of beneficial ownership.

(2) *Limitation.* Obligations described in subparagraph (1) of this paragraph which are acquired after November 3, 1972, are Export-Import Bank obligations only to the extent that the sum of the adjusted bases of such obligations (as determined under section 1011) held by the DISC does not exceed (i) the amount of its accumulated DISC income, reduced by (ii) the outstanding amount of producer's loans of the DISC. The sum of the adjusted bases of obligations described in subparagraph (1) of this paragraph and financing obligations described in paragraph (i)(1) of this section may not exceed the amount of accumulated DISC income of the DISC (as reduced by the outstanding amount of producer's loans of the DISC). If the sum of the adjusted bases of both such types of obligations exceeds the amount of accumulated DISC income of the DISC (as so reduced), the DISC shall identify on its books and records which obligations are within the limitation of this subparagraph.

(i) *Financing obligations*—(1) *In general.* For purposes of this section, subject to the limitation described in subparagraph (2) of this paragraph, financing obligations are obligations (held by a DISC) of a domestic corporation organized solely for the purpose of financing sales of export property pursuant to an agreement with the Export-Import Bank of the United States under which such corporation makes export loans guaranteed by such Bank.

(2) *Limitation.* Obligations described in subparagraph (1) of this paragraph which are acquired after November 3, 1972, are financing obligations only to the extent that under the principles of paragraph (h) of this section, the sum of the adjusted bases of such obligations (as determined under section 1011) does not exceed the amount of the accumulated DISC income of the DISC (as reduced by the outstanding amount of producer's loans of the DISC).

(j) *Funds awaiting investment*—(1) *In general.* For purposes of this section, subject to the limitation described in subparagraph (2) of this paragraph, if, at the close of a DISC's taxable year, the sum of the DISC's money, bank deposits, and other similar temporary investments is determined under paragraph (e) of this section to exceed an amount reasonably necessary to meet the DISC's requirements for working capital, the amount of the DISC's bank deposits in the United States to the extent of the amount of this excess are funds awaiting investment at the close of such taxable year.

(2) *Limitation.* Bank deposits described in subparagraph (1) of this paragraph are funds awaiting investment only if, at the end of each of the sixth, seventh, and eighth months after the close of such taxable year, the sum of the adjusted bases of the qualified export assets of the DISC equal or exceed 95 percent of the sum of the adjusted bases of all assets of the DISC. For purposes of this subparagraph, the adjusted bases of assets of a DISC are determined as of the end of each of the months referred to in this subparagraph. Funds awaiting investment as described in this paragraph need not be traceable to any of the qualified export assets held by the DISC at the end of any of the months referred to in this subparagraph.

(3) *Coordination with certain deficiency distribution provisions.* Under section 992(c)(3) and § 1.992–3(d) (as proposed in 37 F.R. 18479, for September 12, 1972), a deficiency distribution made on or before the 15th day of the ninth month after the end of a corporation's taxable year is deemed to be for reasonable cause if certain requirements are met, including the requirement (described in section 992(c)(3)(B) and § 1.992–3(d)(2) as proposed in 37 F.R. 18479, for September 12, 1972) that the sum of the adjusted bases of the qualified export assets held by the corporation on the last day of each month of

such year equals or exceeds 70 percent of the sum of the adjusted bases of all assets held by the corporation on each such last day. If, on any such last day, the sum of a DISC's money, bank deposits, and other similar temporary investments is determined under paragraph (e) of this section to exceed an amount reasonably necessary to meet the DISC's requirements for working capital, the amount of the DISC's bank deposits to the extent of the amount of this excess are funds awaiting investment on such last day, if either—

(i) The requirements of subparagraph (2) of this paragraph are satisfied with respect to the taxable year of the DISC which includes such month or

(ii) At the close of such taxable year the sum of the DISC's money, bank deposits, and other similar temporary investments is determined under paragraph (e) of this section not to exceed an amount reasonably necessary to meet the DISC's requirements for working capital.

§ 1.993–3 Definition of export property.

(a) *General rule.* Under section 993 (c), except as otherwise provided with respect to excluded property in paragraph (f) of this section and with respect to certain short supply property in paragraph (g) of this section, export property is property in the hands of any person (whether or not a DISC)—

(1) Manufactured, produced, grown, or extracted in the United States by any person or persons other than a DISC (see paragraph (c) of this section),

(2) Held primarily for sale or lease in the ordinary course of a trade or business to any person for direct use, consumption, or disposition outside the United States (see paragraph (d) of this section),

(3) Not more than 50 percent of the fair market value of which is attributable to articles imported into the United States (see paragraph (e) of this section), and

(4) Which is not sold or leased (i) by a DISC, or with a DISC as commission agent, to another DISC which is a member of the same controlled group (as defined in § 1.993–1(k)) as the DISC, or (ii) by any person to a Western Hemisphere trade corporation (as defined in section 921) which is a related person (as defined in § 1.993–1(a)(6)) with respect to the seller, lessor, or commission agent (if any).

(b) *Services.* For purposes of this section, services (including the written communication of services in any form) are not export property. Whether an item is property or services shall be determined on the basis of the facts and circumstances attending the development and disposition of the item. Thus, for example, the preparation of a map of a particular construction site would constitute services and not export property, but standard maps prepared for sale to customers generally would not constitute services and would be export property if the requirements of this section were otherwise met.

(c) *Manufacture, production, growth, or extraction of property*—(1) *By a person other than a DISC.* Export property may be manufactured, produced, grown, or extracted in the United States by any person, provided that such person does not qualify (and is not treated) as a DISC. Property held by a DISC which was manufactured, produced, grown, or extracted by it at a time when it did not qualify (and was not treated) as a DISC is not export property of the DISC. Property which sustains further manufacture or production outside the United States prior to sale or lease by a person but after manufacture or production in the United States will not be considered as manufactured, produced, grown, or extracted in the United States by such person.

(2) *Manufactured or produced*—(i) *In general.* For purposes of this section, property which is sold or leased by a person is considered to be manufactured or produced by such person if such property is manufactured or produced (within the meaning of either subdivision (ii), (iii), or (iv) of this subparagraph) by such person or by another person pursuant to a contract with such person. Except as provided in subdivision (iv) of this subparagraph, manufacture or production of property does not include assembly or packaging operations with respect to property.

(ii) *Substantial transformation.* Property is manufactured or produced by a person if such property is substantially transformed by such person. Examples of substantial transformation of property would include the conversion of woodpulp to paper, steel rods to screws and bolts, and the canning of fish.

(iii) *Operations generally considered to constitute manufacturing.* Property is manufactured or produced by a person if the operations performed by such person in connection with such property are substantial in nature and are generally considered to constitute the manufacture or production of property.

(iv) *Value added to property.* Property is manufactured or produced by a person if with respect to such property conversion costs (direct labor and factory burden including packaging or assembly) of such person account for 20 percent or more of—

(*a*) The cost of goods sold or inventory amount of such person for such property if such property is sold or held for sale, or

(*b*) The adjusted basis of such person for such property, as determined in accordance with the provisions of section 1011, if such property is held for lease or leased.

The value of parts provided pursuant to a services contract, as described in § 1.993–1(d)(4)(v), is not taken into account in applying this subdivision.

(d) *Primary purpose for which property is held*—(1) *In general*—(i) *General rule.* Under paragraph (a)(2) of this section, export property (*a*) must be held primarily for the purpose of sale or lease in the ordinary course of a trade or business to a DISC, or to any other person, and (*b*) such sale or lease must be for direct use, consumption, or disposition outside the United States. Thus, property cannot qualify as export property unless it is sold or leased for direct use, consumption, or disposition outside the United States. Property is sold or leased for direct use, consumption, or disposition outside the United States if such sale or lease satisfies the destination test described in subparagraph (2) of this paragraph, the proof of compliance requirements described in subparagraph (3) of this paragraph, and the use-outside-the-United States test described in subparagraph (4) of this paragraph.

(ii) *Factors not taken into account.* In determining whether property which is sold or leased to a DISC is sold or leased for direct use, consumption, or disposition outside the United States, the fact that the acquiring DISC holds the property in inventory or for lease prior to the time it sells or leases it for direct use, consumption, or disposition outside the United States will not affect the characterization of the property as export property. Export property need not be physically segregated from other property.

(2) *Destination test.* For purposes of subparagraph (1) of this paragraph, the destination test in this subparagraph is satisfied with respect to property sold or leased by a seller or lessor only if it is delivered by such seller or lessor (or an agent of such seller or lessor) regardless of the F.O.B. point or the place at which title passes or risk of loss shifts from the seller or lessor—

(i) Within the United States to a carrier or freight forwarder for ultimate delivery outside the United States to a purchaser or lessee (or to a subsequent purchaser or sublessee),

(ii) Within the United States to a purchaser or lessee, if such property is ultimately delivered outside the United States (including delivery to a carrier or freight forwarder for delivery outside the United States) by the purchaser or lessee (or a subsequent purchaser or sublessee) within 1 year after such sale or lease,

(iii) Within or outside the United States to a purchaser or lessee which, at the time of the sale or lease, is a DISC and is not a member of the same controlled group (as defined in § 1.993–1(k)) as the seller or lessor,

(iv) From the United States to the purchaser or lessee (or a subsequent purchaser or sublessee) at a point outside the United States by means of the seller's or lessor's own ship, aircraft, or other delivery vehicle,

(v) Outside the United States to a purchaser or lessee from a warehouse, a storage facility, or assembly site located outside the United States, if such property was previously shipped by such seller or lessor from the United States, or

(vi) Outside the United States to a purchaser or lessee if such property was previously shipped by such seller or lessor from the United States and if such property is located outside the United States pursuant to a prior lease by the

seller or lessor, and either (*a*) such prior lease terminated at the expiration of its term (or by the action of the prior lessee acting alone), (*b*) the sale occurred or the term of the subsequent lease began after the time at which the term of the prior lease would have expired, or (*c*) the lessee under the subsequent lease is not a related person (as defined in § 1.993–1(a)(6)) with respect to the lessor and the prior lease was terminated by the action of the lessor (acting alone or together with the lessee).

For purposes of this subparagraph (other than subdivisions (iii) and (vi)(*c*) thereof), any relationship between the seller or lessor and any purchaser, subsequent purchaser, lessee, or sublessee is immaterial. In no event is the destination test of this subparagraph satisfied with respect to property which is subject to any use (other than a resale or sublease), manufacture, assembly, or other processing (other than packaging) by any person between the time of the sale or lease by such seller or lessor and the delivery or ultimate delivery outside the United States described in this subparagraph. If property is located outside the United States at the time it is purchased by a person or leased by a person as lessee, such property may be export property in the hands of such purchaser or lessee only if it is imported into the United States prior to its further sale or lease (including a sublease) outside the United States. Paragraphs (a)(3) and (e) of this section (relating to 50 percent foreign content test) are applicable in determining whether such property is export property. Thus, for example, if such property is not subjected to manufacturing or production (as defined in paragraph (c) of this section) within the United States after such importation, it does not qualify as export property.

(3) *Proof of compliance with destination test*—(i) *Delivery outside the United States.* For purposes of subparagraph (2) of this paragraph (other than subdivision (iii) thereof), a seller or lessor shall establish ultimate delivery of property outside the United States by providing—

(*a*) A facsimile or carbon copy of the export bill of lading issued by the carrier who delivers the property,

(*b*) A certificate of an agent or representative of the carrier disclosing delivery of the property outside the United States,

(*c*) A facsimile or carbon copy of the certificate of lading for the property executed by a customs officer of the country to which the property is delivered,

(*d*) If such country has no customs administration, a written statement by the person to whom delivery outside the United States was made, or

(*e*) A facsimile or carbon copy of the shipper's export declaration authenticated by the U.S. Collector of Customs

A seller or lessor shall also establish the meeting of the requirement of subparagraph (2) of this paragraph (other than subdivision (iii) thereof), that the property was delivered outside the United States without further use, manufacture, assembly, or other processing within the United States.

(ii) *Sale or lease to an unrelated DISC.* For purposes of subparagraph (2)(iii) of this paragraph, a purchaser or lessee of property is deemed to qualify as a DISC for its taxable year if the seller or lessor obtains from such purchaser or lessee a copy of such purchaser's or lessee's election to be treated as a DISC as described in § 1.992–2(a) (as proposed in 37 F.R. 18476 for September 12, 1972) together with such purchaser's or lessee's sworn statement that such election has been filed with the Internal Revenue Service Center. The copy of the election and the sworn statement of such purchaser or lessee must be received by the seller or lessor within 6 months after the sale or lease. A purchaser or lessee is not treated as a DISC with respect to a sale or lease during a taxable year for which such purchaser or lessee does not qualify as a DISC if the seller or lessor does not believe or if a reasonable person would not believe at the time such sale or lease is made that the purchaser or lessee will qualify as a DISC for such taxable year.

(iii) *Failure of proof.* If a seller or lessor fails to provide proof of compliance with the destination test as required by this subparagraph, the property sold or leased is not export property.

(4) *Sales and leases of property for ultimate use in the United States*—(i) *In general.* For purposes of subparagraph (1) of this paragraph, the use test in this subparagraph is satisfied with respect to property which—

(*a*) Under subdivisions (ii) through (iv) of this subparagraph is not sold for ultimate use in the United States or

(*b*) Under subdivision (v) of this subparagraph is leased for ultimate use outside the United States.

(ii) *Sales of property for ultimate use in the United States.* For purposes of subdivision (i) of this subparagraph, a purchaser of property (including components, as defined in subdivision (vii) of this subparagraph) is deemed to use such property ultimately in the United States if any of the following conditions exists:

(*a*) Such purchaser is a related person (as defined in § 1.993–1(a)(6)) with respect to the seller and such purchaser ultimately uses such property, or a second product into which such property is incorporated as a component, in the United States.

(*b*) At the time of the sale, there is an agreement or understanding that such property, or a second product into which such property is incorporated as a component, will be ultimately used by the purchaser in the United States.

(*c*) At the time of the sale, a reasonable person would have believed that such property or such second product would be ultimately used by such purchaser in the United States unless, in the case of a sale of components, the fair market value of such components at the time of delivery to the purchaser constitutes less than 20 percent of the fair market value of the second product into which such components are incorporated (determined at the time of completion of the production, manufacture, or assembly of such second product).

For purposes of (*b*) of this subdivision, there is an agreement or understanding that property will ultimately be used in the United States if, for example, a component is sold abroad under an express agreement with the foreign purchaser that the component is to be incorporated into a product to be sold back to the United States. As a further example, there would also be such an agreement or understanding if the foreign purchaser indicated at the time of the sale or previously that the component is to be incorporated into a product which is designed principally for the United States market. However, such an agreement or understanding does not result from the mere fact that a second product, into which components exported from the United States have been incorporated and which is sold on the world market, is sold in substantial quantities in the United States.

(iii) *Use in the United States.* For purposes of subdivision (ii) of this subparagraph, property (including components incorporated into a second product) is or would be ultimately used in the United States by such purchaser if, at any time within 3 years after the purchase of such property or components, either such property or components (or the second product into which such components are incorporated) is resold by such purchaser for use by a subsequent purchaser within the United States or such purchaser or subsequent purchaser fails, for any period of 365 consecutive days, to use such property or second product predominantly outside the United States as defined in subdivision (vi) of this subparagraph).

(iv) *Sales to retailers.* For purposes of subdivision (ii)(*c*) of this subparagraph property sold to any person whose principal business consists of selling from inventory to retail customers at retail outlets outside the United States will be considered to be used predominantly outside the United States.

(v) *Leases of property for ultimate use outside the United States.* For purposes of subdivision (i) of this subparagraph, a lessee of property is deemed to use such property ultimately outside the United States during a taxable year of the lessor if such property is used predominantly outside the United States (as defined in subdivision (vi) of this subparagraph) by the lessee during the portion of the lessor's taxable year which is included within the term of the lease. A determination as to whether the ultimate use of leased property satisfies the requirements of this subdivision is made for each taxable year of the lessor. Thus, leased property may be used predominantly outside the United States for a taxable year of the lessor (and thus, constitute export property if the remaining requirements of this section are met) even if the property is not used predominantly outside the United States in earlier taxable years or later taxable years of the lessor.

(vi) *Predominant use outside the United States.* For purposes of this subparagraph, property is used predominantly outside the United States for any period if, during such period, such property is located outside the United States

more than 50 percent of the time. An aircraft, railroad rolling stock, vessel, motor vehicle, container, or other property used for transportation purposes is deemed to be used predominantly outside the United States for any period if, during such period, either such property is located outside the United States more than 50 percent of the time or more than 50 percent of the miles traversed in the use of such property are traversed outside the United States. However, any such property is deemed to be within the United States at all times during which it is engaged in transport between any two points within the United States, except where such transport constitutes uninterrupted international air transportation within the meaning of section 4262(c)(3) and the regulations thereunder (relating to tax on air transportation of persons). For purposes of applying section 4262(c)(3) to this subdivision, the term "United States" has the same meaning as in § 1.993–7.

(vii) *Component.* For purposes of this subparagraph, a component is property which is (or is reasonably expected to be) incorporated into a second product by the purchaser of such component by means of production, manufacture, or assembly.

(e) *Foreign content of property*—(1) *The 50 percent test.* Under paragraph (a)(3) of this section, no more than 50 percent of the fair market value of export property may be attributable to the fair market value of articles which were imported into the United States. For purposes of this paragraph, articles imported into the United States are referred to as "foreign content". The fair market value of the foreign content of export property is computed in accordance with subparagraph (4) of this paragraph. The fair market value of export property which is sold to a person who is not a related person with respect to the seller is the sale price for such property (not including interest, finance or carrying charges, or similar charges).

(2) *Application of 50 percent test.* The 50 percent test described in subparagraph (1) of this paragraph is applied on an item-by-item basis. If, however, a person sells or leases a substantial volume of substantially identical export property in a taxable year and if all of such property contains substantially identical foreign content in substantially the same proportion, such person may determine the portion of foreign content contained in such property on an aggregate basis.

(3) *Parts and services.* If, at the time property is sold or leased the seller or lessor agrees to furnish parts pursuant to a services contract (as provided in § 1.993–1(d)(4)(v)) and the price for the parts is not separately stated, the 50 percent test described in subparagraph (1) of this paragraph is applied on an aggregate basis to the property and parts. If the price for the parts is separately stated, the 50 percent test described in paragraph (1) of this paragraph is applied separately to the property and to the parts.

(4) *Computation of foreign content*—(i) *Valuation.* For purposes of applying the 50 percent test described in subparagraph (1) of this paragraph, it is necessary to determine the fair market value of all articles which constitute foreign content of the property being tested to determine if it is export property. The fair market value of such imported articles is determined as of the time such articles are imported into the United States and is their appraised value, as determined under section 402 or 402a of the Tariff Act of 1930 (19 U.S.C. 1401a or 1402) in connection with their importation. The appraised value of such articles is the full dutiable value of such articles, determined, however, without regard to any special provision in the United States tariff laws which would result in a lower dutiable value. Thus, an article which is imported into the United States is treated as entirely imported even if all or a portion of such article was originally manufactured, produced, grown, or extracted in the United States.

(ii) *Evidence of fair market value.* For purposes of subdivision (i) of this subparagraph, the fair market value of imported articles constituting foreign content may be evidenced by the customs invoice issued on the importation of such articles into the United States. If the holder of such articles is not the importer (or a related person with respect to the importer), the fair market value of such articles may be evidenced by a certificate based upon information contained in the customs invoice and furnished to the holder by the person from whom such articles (or property incorporating such articles) were purchased. If a customs invoice or certificate described in the preceding sentence is not available to a person purchasing property, such person shall establish that no more than 50 percent of the fair market value of such property is attributable to the fair market value of articles which were imported into the United States.

(iii) *Interchangeable component articles.* (*a*) Where identical or similar component articles can be incorporated interchangeably into property and a person acquires some such component articles that are imported into the United States and other such component articles that are not imported into the United States, the determination whether imported component articles were incorporated in such property as is exported from the United States shall be made on a substitution basis as in the case of the rules relating to drawback accounts under the customs laws. See section 313(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(b)).

(*b*) The provisions of (*a*) of this subdivision may be illustrated by the following example:

Example. Assume that a manufacturer produces a total of 20,000 electronic devices. The manufacturer exports 5,000 of the devices and subsequently sells 11,000 of the devices to a DISC which exports the 11,000 devices. The major single component article in each device is a tube which represents 60 percent of the fair market value of the device at the time the device is sold by the manufacturer. The manufacturer imports 8,000 of the tubes and produces the remaining 12,000 tubes. For purposes of this subdivision, in accordance with the substitution principle used in the customs drawback laws, the 5,000 devices exported by the manufacturer are each treated as containing an imported tube because the devices were exported prior to the sale to the DISC. The remaining 3,000 imported tubes are treated as being contained in the first 3,000 devices purchased and exported by the DISC. Thus, since the 50 percent test is not met with respect to the first 3,000 devices purchased and exported by the DISC, those devices are not export property. The remaining 8,000 devices purchased and exported by the DISC are treated as containing tubes produced in the United States, and those devices are export property (if they otherwise meet the requirements of this section).

(f) *Excluded property*—(1) *In general.* Notwithstanding any other provision of this section, property described in subparagraph (2) or (3) of this paragraph is not export property.

(2) *Property leased to member of controlled group.* Property leased to a person (whether or not a DISC) which is a member of the same controlled group (as defined in § 1.993–1(k)) as the lessor constitutes export property for any period of time only if during the period—

(i) Such property is held for sublease, or is subleased, by such person to a third person who is not a member of such controlled group; and

(ii) Such property is used predominantly outside the United States by such third person.

The provisions of paragraph (d)(4)(vi) of this section apply in determining under subdivision (ii) of this subparagraph whether such property is used predominantly outside the United States by such third person. For purposes of this subparagraph, property is deemed to be leased to a person which is a member of the same controlled group as the lessor if such property is leased to a person who is not a member of such controlled group but who subleases such property to a person who is a member of such controlled group. Thus, for example, if X, a DISC for the taxable year, leases a movie film to Y, a foreign corporation which is a member of the same controlled group as X, and Y then subleases the film to persons who are not members of such group for showing to the general public, the film is export property if the requirements of this section are met. If, however, the persons showing the film to the general public are members of the same controlled group as X, the film is not export property.

(3) *Intangible property.* Export property does not include any patent, invention, model, design, formula, or process, whether or not patented, or any copyright (other than films, tapes, records, or similar reproductions, for commercial or home use), goodwill, trademark, tradebrand, franchise, or other like property. Although a copyright such as a copyright on a book does not constitute export property, a copyrighted article such as a book or other copyrighted property is export property if the requirements of this section are otherwise satisfied.

(g) *Property in short supply.* If the President determines that the supply of any property which is otherwise export property as defined in this section is in-

sufficient to meet the requirements of the domestic economy, he may by Executive order designate such property as in short supply. Any property so designated will be treated as property which is not export property during the period beginning with the date specified in such Executive order and ending with the date specified in an Executive order setting forth the President's determination that such property is no longer in short supply.

§ 1.993–4 Definition of producer's loans.

(a) *General rule*—(1) *Definition.* Under section 993(d), a loan made by a DISC to a person, referred to in this section as the "borrower," is a producer's loan if—

(i) The loan is made out of accumulated DISC income within the meaning of subparagraph (3) of this paragraph,

(ii) The loan is evidenced by an obligation described in subparagraph (4) of this paragraph,

(iii) The requirement as to the trade or business of the borrower described in subparagraph (5) of this paragraph is satisfied,

(iv) At the time the loan is made, the obligation referred to in subdivision (ii) of this subparagraph bears a legend stating "This Obligation Is Designated A Producer's Loan Within The Meaning of Section 993(d) of the Internal Revenue Code" or words of substantially the same meaning,

(v) The limitation as to the export-related assets of the borrower described in paragraph (b) of this section is satisfied,

(vi) The requirement as to the increased investment of the borrower in export-related assets described in paragraph (c) of this section is satisfied, and

(vii) The requirement of paragraph (d) of this section as to proof of compliance with paragraphs (b) and (c) of this section is satisfied.

(2) *Application of this section*—(i) *In general.* A loan which is a producer's loan is a qualified export asset of the DISC (see § 1.993–2 (a)(5) and (f)). The interest on a producer's loan is a qualified export receipt of the DISC (see § 1.993–1 (g)). A producer's loan is not a dividend to a borrower which is also a shareholder of the DISC making the loan. For rules with respect to deemed distributions by reason of the amount of foreign investment attributable to producer's loans, see section 995 (b)(1)(E) and (d) and the regulations thereunder.

(ii) *No tracing of loan proceeds.* For purposes of applying this section, in order to qualify as a producer's loan, the proceeds of the loan need not be traced to an investment in any specific asset.

(iii) *Unrelated borrower.* For purposes of applying this section, it is not necessary for a borrower to be a related person with respect to the DISC from which it receives a producer's loan.

(iv) *Unpaid balance of producer's loans.* For purposes of applying this section, the unpaid balance of producer's loans does not include the unpaid balance of any producer's loan to the extent the loan has been deducted or charged off by the DISC as totally or partially worthless under section 165 or 166.

(v) *Refinancing, renewal, and extension.* For purposes of applying this section, the refinancing, renewal, or extension of a producer's loan shall be treated as the making of a new loan which may qualify as a producer's loan only if the requirements of subparagraph (1) of this paragraph are met.

(vi) *Events subsequent to time loan is made.* The determination as to whether a loan qualifies as a producer's loan is made on the basis of the facts existing at the time the loan is made. Thus, for example, if the accumulated DISC income of the lender is later reduced below the unpaid balance of all producer's loans previously made by the DISC, such subsequent decrease in the amount of accumulated DISC income will not result in later disqualification of such loan (or part thereof) as a producer's loan. Similarly, if a loan (or part of a loan) does not qualify as a producer's loan because of an insufficient amount of accumulated DISC income at the time the loan is made, a subsequent increase in the amount of accumulated DISC income will not result in later qualification of such loan (or part thereof) as a producer's loan.

(vii) *Application of tests under paragraphs (b) and (c) on controlled group bases.* If the borrower is a member of a controlled group (as defined in § 1.993–1(k)) at the time a loan is made, all amounts that must be determined for purposes of applying the limitation and increased investment requirement with respect to the export-related assets of the borrower (described in paragraphs (b) and (c), respectively, of this section) may be determined at the election of the borrower by aggregating such amounts for all members of the controlled group, determined for the taxable year of each member of the controlled group during which the loan is made, excluding only such members of the group as are DISC's or foreign corporations for such year. However, such amounts may be included only to the extent that such amounts have not already been taken into account in applying the limitation and increased investment requirement with respect to any other borrower. Amounts to be aggregated for all such members if such election is made include, for example, gross receipts (described in paragraph (b)(3) (i) and (ii) of this section) and export-related assets (described in paragraph (b)(2) of this section). The borrower may make such election by causing its written statement of election to be attached to the lending DISC's information return under section 6011(e)(2). A borrower who makes such election may revoke it only if it secures the consent of the Commissioner to such revocation upon application made through the lending DISC.

(3) *Loan out of accumulated DISC income*—(i) *In general.* A loan is a producer's loan only to the extent that it is made out of accumulated DISC income. A loan is made out of accumulated DISC income only if the amount of the loan, when added to the unpaid balance at the time such loan is made of all other producer's loans made by a DISC, does not exceed the amount of accumulated DISC income of the DISC at the beginning of the month in which the loan is made. The amount of accumulated DISC income at the beginning of any month is determined as if the DISC's taxable year closed at the end of the immediately preceding month.

(ii) *Presumption.* A loan made during a taxable year shall be deemed under subdivision (i) of this subparagraph to have been made out of accumulated DISC income if the balance of producer's loans at the beginning of the year and those made during the year do not exceed accumulated DISC income at the end of the year.

(iii) *Deemed distributions.* For purposes of this subparagraph, accumulated DISC income as of the end of any taxable year (or month) shall be determined without regard to deemed distributions under section 995(b)(1)(E) for the amount of foreign investment attributable to producer's loans for such year (or for the taxable year for which such month is a part) but actual distributions shall be taken into account.

(4) *Evidence and terms of obligation.* A loan is a producer's loan only if the loan is evidenced by a note or other evidence of indebtedness which is made by the borrower and which has a stated maturity date not more than 5 years from the date the loan is made. Accordingly, a loan which does not have a stated maturity date or which has a stated maturity date more than 5 years from the date such loan is made can never meet the 5-year requirement of this subparagraph. Thus, for example, even if there is a period of less than 5 years remaining to the stated maturity date of a loan, the loan can never be a producer's loan if it had a stated maturity date more than 5 years from the date it was made. For a further example, if a loan having a period remaining to maturity of 2 years is extended for a further period of 3 years (making a total of 5 years to maturity from the date of the extension), the extension of the loan would under subparagraph (2)(v) of this paragraph constitute the making of a new producer's loan and the original producer's loan would terminate. If, however, a loan having a period remaining to maturity of 2 years is extended for a further period of 4 years (making a total of 6 years to maturity from the date of the extension), the original producer's loan will terminate and the new loan will not be a producer's loan. If a producer's loan is not paid in full at its maturity date and is not formally refinanced, renewed, or extended, such loan shall be deemed to be a new loan which does not have a stated maturity date and, thus, will not be a producer's loan. For purposes of this subparagraph, an evidence of indebtedness is a written instrument of indebtedness. Section 482 and the regulations thereunder are applicable to determine, in the

case of a loan by the DISC to a borrower which is owned or controlled directly or indirectly by the same interests as the DISC within the meaning of section 482, whether the interest charged on such loan is at an arm's length rate.

(5) *Borrower's trade or business.* A loan is a producer's loan only if the loan is made to a person engaged in the activity of manufacture, production, growth, or extraction of export property (within the meaning of § 1.993–3(c)) in the United States by such person. The borrower may also be engaged in other trades or businesses, and the loan need not be traceable to specific investments in export property.

(b) *Borrower's export related assets limitation*—(1) *General rule.* A loan to a borrower is a producer's loan only to the extent that the amount of the loan, when added to the unpaid balance of all other producer's loans made by all DISC's to the borrower which are outstanding at the time the loan is made, does not exceed an amount equal to the amount of the borrower's export-related assets (determined under subparagraph (2) of this paragraph) multiplied by the fraction set forth in subparagraph (3) of this paragraph.

(2) *Amount of export-related assets*—(i) *In general.* For purposes of subparagraph (1) of this paragraph, the amount of the borrower's export-related assets is the sum of the amounts described in subdivisions (ii), (iii), and (iv) of this subparagraph.

(ii) *Borrower's plant and equipment.* The amount described in this subdivision is the sum of the borrower's adjusted bases (determined as of the beginning of the borrower's taxable year in which a loan is made to it) for plant, machinery, equipment, and supporting production facilities, which are located in the United States. Supporting production facilities are all property used primarily in connection with the manufacture, production, growth, or extraction (within the meaning of § 1.993–3(c)) or storage, handling, transportation, or assembly of property by the borrower.

(iii) *Borrower's property held primarily for sale or lease.* The amount described in this subdivision is the amount of the borrower's property (at the beginning of the taxable year of the borrower in which a loan is made to it) held primarily for sale or lease to customers in the ordinary course of its trade or business. The amount of such property held for sale is determined under the methods of identifying and valuing inventory normally used by the borrower. The amount of such property held for lease or leased is the borrower's adjusted basis, determined under section 1011, for such property.

(iv) *Borrower's research and experimental expenditures.* The amount described in this subdivision is the aggregate amount, whether or not charged to capital account, of research and experimental expenditures (within the meaning of section 174) incurred in the United States by the borrower during each of its taxable years which begin after December 31, 1971, and precede the taxable year in which the loan is made to the borrower. Such research and experimental expenditures need bear no relationship to export property (as defined in § 1.993–3) of the borrower. The aggregate amount of all such expenditures for each of such preceding taxable years is taken into account for purposes of this subparagraph, regardless of whether all or any portion of the aggregate amount has been taken into account with respect to producer's loans made to the borrower by any DISC in preceding taxable years. The aggregate amount of all such expenditures shall include such expenditures of a corporation, the assets of which were acquired by the borrower in a distribution or a transfer described in section 381(a) (1) or (2) (relating to carryovers in certain corporate acquisitions).

(3) *Fraction referred to in subparagraph (1) of this paragraph*—(i) *Numerator of fraction.* The numerator of the fraction set forth in this subparagraph is the sum of the borrower's gross receipts for each of its 3 taxable years immediately preceding the taxable year in which the loan is made (but not including any taxable year beginning before January 1, 1972) from the sale or lease of export property which is manufactured, produced, grown, or extracted (within the meaning of § 1.993–3(c)) by the borrower whether or not sold or leased directly or through a related Western Hemisphere trade corporation, or other domestic related person (notwithstanding § 1.993–3 (a) (4) and (f) (2)). If such property is so sold or leased to a domestic related person which resells or subleases such property, the borrower's gross receipts shall be the gross receipts derived by the domestic related person from the resale or sublease of the export property.

(ii) *Denominator of fraction.* The denominator of the fraction set forth in this subparagraph is the sum of the amount included in the numerator and all other gross receipts of the borrower, for each of its taxable years for which gross receipts are included in the numerator of the fraction, from all sales or leases of all property held by the borrower primarily for sale or lease to customers in the ordinary course of its trade or business

(iii) *Taxable years.* If the borrower has not engaged in the sale or lease of property (as described in this subparagraph) for the 3 immediately preceding taxable years, or if 3 taxable years beginning after December 31, 1971, have not elapsed, the fraction will be computed on the basis of such gross receipts for its taxable years immediately preceding the loan and beginning after December 31, 1971, during which the borrower has so engaged. No producer's loans can be made to a borrower until after the end of the first taxable year of the borrower beginning after December 31, 1971.

(c) *Requirement for increased investment in export-related assets*—(1) *In general.* A loan to a borrower is a producer's loan only to the extent that the amount of the loan, when added to the unpaid balance of all other producer's loans made by all DISC's to the borrower during the borrower's taxable year during which such loan is made does not exceed the amount of the borrower's increase for the year in investment in export-related assets. Such increase for any taxable year is the sum of—

(i) The increase (if any) in the borrower's adjusted basis of certain types of assets as determined under subparagraph (2) of this paragraph and

(ii) The amount (if any) during the year of its research and experimental expenditures as determined under paragraph (b) (2) (iv) of this section.

(2) *Increase in adjusted basis.* The amount under this subparagraph is the amount (not less than zero) by which—

(i) The borrower's adjusted basis (determined as of the end of its taxable year in which the producer's loan is made) in all of its property which is described in paragraph (b) (2) (ii) (plant and equipment), and (iii) (property held primarily for sale or lease) of this section, including any such property acquired by it during such taxable year, exceeds

(ii) Its adjusted bases in all such property (determined as of the beginning of such year).

(3) *Ordering rule.* If during the borrower's taxable year the amount of increase in investment in export-related assets determined under this subparagraph is exceeded by amounts loaned to the borrower during such year that would otherwise qualify as producer's loans, such loans shall be applied in the order made against the amount of such increase in order to determine which loans qualify as producer's loans.

(d) *Proof of borrower's compliance with paragraphs (b) and (c) of this section.* For purposes of paragraphs (b) and (c) of this section, a DISC shall be prepared to establish initially the compliance of the borrower with the requirements of such paragraphs by providing the written statement of the borrower, certified by a certified public accountant, stating that the borrower has complied with the limitation and increased investment requirement in section 993(d) (2) and (3) of the Internal Revenue Code of 1054. Additional full substantiation of the borrower's compliance with the requirements of such paragraphs may be required by the district director. If full substantiation of such compliance is not provided by the DISC (or the borrower) when required, the loan shall be deemed not to be a producer's loan.

(e) *Special limitation in the case of domestic film maker*—(1) *General rule.* The limitation of paragraph (b) of this section as to the export-related assets of the borrower will be considered satisfied if the DISC—

(i) Is engaged in the trade or business of selling or leasing films which are export property, or is acting as a commission agent for a person who is so engaged,

(ii) Makes a loan to a borrower which is a domestic film maker (as defined in subparagraph (5) of this paragraph) for the purpose of making a film, and

(iii) The amount of such loan, when added to the unpaid balance of all other producer's loans made by all DISC's to the borrower which are outstanding at the time the loan is made, does not exceed an amount determined by multiplying—

(*a*) The sum of (*1*) the amount of the export-related assets of the borrower (determined under paragraph (b)(2)(i) of this section as of the beginning of the borrower's taxable year in which the loan is made), plus (*2*) the amount of a reasonable estimate of the amount of such export-related assets obtained or to be obtained by the borrower during such year and subsequent years with respect to films as to which filming begins within such year by

(*b*) The percentage which, based on the experience of other film makers of similar films for the 5 calendar years preceding the calendar year in which the loan is made, the annual gross receipts (as described in § 1.993–6(a)(1), whether or not such films constitute property described therein) of such other film makers from the sale or lease of such films outside the United States is of the annual gross receipts of such other film makers from all sales or leases of such films.

(2) *Purpose of loan.* A loan by a DISC will be deemed to be for the making of a film if there exists a written agreement between the DISC and the borrower, executed at or before the time the loan is made, stating that the loan is made or to be made to enable the borrower to make such film.

(3) *Reasonable estimate of amounts.* For purposes of subparagraph (1)(iii)(*a*)(*2*) of this paragraph, a reasonable estimate shall be based on the conditions known by the DISC and borrower to exist at the time a loan is made (or which the DISC and borrower have reason to know to exist at such time).

(4) *Experience of film makers.* For purposes of subparagraph (1)(iii)(*b*) of this paragraph, the experience of other film makers of similar films for the 5 calendar years preceding the calendar year in which the loan is made shall be derived from such records and statistics as are acknowledged in the trade as reasonably reliable.

(5) *Domestic film maker.* For purposes of this section, a borrower is a domestic film maker with respect to a film if—

(i) The borrower is a U.S. person within the meaning of section 7701(a)(30), except that (*a*) with respect to a partnership all of the partners must be U.S. persons and (*b*) with respect to a corporation all of its officers and at least a majority of its directors must be U.S. persons,

(ii) The borrower is engaged in the trade or business of making the film with respect to which the loan is made,

(iii) Each studio, if any, used or to be used for filming or for recording sound incorporated into such film is located in the United States (as defined in section 7701(a)(9)),

(iv) At least 80 percent of the aggregate playing time of the film is or will be photographed within the United States (as defined in section 7701(a)(9)), and

(v) At least 80 percent of the total amount (not including any amount which is contingent upon receipts or profits of such film and which is fully taxable by the United States) paid or to be paid for services performed in the making of the film is either paid or to be paid to persons who are U.S. persons at the time such services are performed or consists of amounts which are fully taxable by the United States.

(6) *Amounts as fully taxable.* For purposes of subparagraph (5)(v) of this paragraph, an amount is considered fully taxable by the United States if the entire amount is included in gross income under section 61 or is subject to withholding under any provision of U.S. law or treaty to which the United States is a party and is not exempt from taxation under any provision of such law or treaty. Where a nonresident alien individual is engaged for the making of a film or where a foreign corporation is engaged to furnish the services of one of its officers or employees for the making of a film, the amount paid such individual or corporation will be considered as fully taxable by the United States only if it meets the test of this paragraph.

§ 1.993–5 Definition of related foreign export corporation.

(a) *General rule*—(1) *Definition.* Under section 993(e), a foreign corporation is a related foreign export corporation with respect to a DISC if—

(i) It is a foreign international sales corporation described in paragraph (b) of this section,

(ii) It is a real property holding company described in paragraph (c) of this section, or

(iii) It is an associated foreign corporation described in paragraph (d) of this section.

(2) *Application of this section.* It is necessary to determine whether a foreign corporation is a related foreign export corporation with respect to a DISC for the following two purposes:

(i) *Qualified export assets.* Under § 1.993–2(g), the stock or securities of a related foreign export corporation held by the DISC are qualified export assets.

(ii) *Qualified export receipts.* Under § 1.993–1 (e), (f), and (g), certain receipts of the DISC with respect to stock or securities of a related foreign export corporation held by the DISC are qualified export receipts.

(b) *Foreign international sales corporation*—(1) *In general.* A foreign corporation is a foreign international sales corporation with respect to a taxable year of a DISC if—

(i) On each day during such taxable year of the DISC on which the foreign corporation has stock issued and outstanding, the DISC owns directly stock of the foreign corporation possessing more than 50 percent of the total combined voting power of all classes of stock of the foreign corporation entitled to vote as determined under the principles of § 1.957–1(b) (relating to definition of controlled foreign corporation),

(ii) 95 percent or more of such foreign corporation's gross receipts (as defined in § 1.993–6) for its taxable year ending with or within such taxable year of the DISC consists of qualified export receipts described in § 1.993–1 (b) through (e) or interest described in § 1.993–1(g) derived from any obligations described in § 1.993–2 (d) or (e), and

(iii) The sum of the adjusted bases of the assets of the foreign corporation which are qualified export assets described in § 1.993–2 (b) through (e) and which are held by the foreign corporation at the close of its taxable year which ends with or within such taxable year of the DISC equals or exceeds 95 percent of the sum of the adjusted bases of all assets held by the foreign corporation at the close of such taxable year.

(2) *Certain determinations.* The determinations as to whether gross receipts are qualified export receipts described in subparagraph (1)(ii) of this paragraph and as to whether assets are qualified export assets described in subparagraph (1)(iii) of this paragraph are made by applying the requirements of §§ 1.993–1 and 1.993–2 to the foreign corporation as if it were a domestic corporation being tested to determine whether it is a DISC. For purposes of making either of such determinations, the principles of accounting applicable for purposes of computing earnings and profits under § 1.964–1 (relating to a controlled foreign corporation's earnings and profits) shall apply.

(c) *Real property holding company*—(1) *In general.* A foreign corporation is a real property holding company with respect to a taxable year of a DISC if—

(i) On each day during such taxable year of the DISC on which the foreign corporation has stock issued and outstanding, the DISC owns directly stock of the foreign corporation possessing more than 50 percent of the total combined voting power of all classes of stock of the foreign corporation entitled to vote as determined under the principles of § 1.957–1(b) and

(ii) The sole function of the foreign corporation is to hold title to real property situated outside the United States for the exclusive use of the DISC, title to which may not be held by the DISC (and, if the DISC subleases such property to a related supplier, as described in subparagraph (3) of this paragraph, by such related supplier) under the law of the country in which such property is situated.

(2) *Activities of the foreign corporation.* For purposes of subparagraph (1)(ii) of this paragraph, a foreign corporation which holds title to real property situated outside the United States may also perform activities with respect to such property (such as management, maintenance, and payment of taxes) which are ancillary to its function of holding title to such property.

(3) *Exclusive use by the DISC.* Real property held by the foreign corporation must be used exclusively by the DISC whether under a lease or any other arrangement. Real property is not so used by the DISC if the DISC subleases such

property to any other person. If, however, during a taxable year of the DISC—

(i) 90 percent or more of the qualified export receipts of the DISC for such year are derived from transactions with respect to which it is a commission agent for a related supplier (as defined in § 1.994–1(a)(3), as proposed in 37 F.R. 19625, for Sept. 21, 1972), and

(ii) The DISC subleases such property to such related supplier

then such property will be considered as used exclusively by the DISC during such year if such related supplier does not sublease such property.

(d) *Associated foreign corporation*—(1) *In general.* A foreign corporation is an associated foreign corporation with respect to a taxable year of the DISC if—

(i) On each day during such taxable year of the DISC on which the foreign corporation has stock issued and outstanding, the DISC, or one or more members of the same controlled group of corporations (as defined in subparagraph (2) of this paragraph) as the DISC, owns (within the meaning of sec. 1563 (d) and (e)) stock of the foreign corporation possessing less than 10 percent of the total combined voting power of all classes of stock of the foreign corporation entitled to vote, as determined under the principles of § 1.957–1(b), or owns no stock of such corporation, and

(ii) The ownership of stock, or of securities (as defined in § 1.993–2(g)), of the foreign corporation by the DISC or by one or more members of such controlled group of corporations reasonably furthers a transaction or transactions giving rise to qualified export receipts for the DISC.

(2) *Controlled group of corporations.* For purposes of this paragraph, the term "controlled group of corporations" has the same meaning assigned to the term in section 1563(a) and not section 993(a)(3) and § 1.993–1(k). Thus, for purposes of this paragraph, the test of control is 80 percent control and, since the rules of section 1563(b) apply, only domestic members are considered to be members of the controlled group.

(3) *Furtherance of qualified export receipts.* Ownership of stock or securities of a foreign corporation will be considered as reasonably furthering a transaction or transactions giving rise to qualified export receipts for a DISC if—

(i) The ownership is necessary to obtain or maintain the foreign corporation as a customer of the DISC or of a related supplier, as defined in § 1.994–1(a)(3) (as proposed in 37 F.R. 19625 for Sept. 21, 1972) of the DISC or to aid the sales distribution system of the DISC or of such related supplier, and

(ii) The amount of the investment in the foreign corporation bears a reasonable relationship to the amount of the DISC's annual net profit from transactions in its trade or business which it may reasonably expect to derive on account of such ownership.

In determining whether the amount of the investment is reasonable, there shall be taken into account any stock or securities of the foreign corporation owned by any other foreign corporation which, if it were a domestic corporation, would be a member of the same controlled group of corporations as the DISC.

§ 1.993–6 Definition of gross receipts.

(a) *General rule.* Under section 993(f), for purposes of sections 991 through 996, the gross receipts of a person for a taxable year are—

(1) The total amounts received or accrued by the person from the sale or lease of property held primarily for sale or lease in the ordinary course of a trade or business, and

(2) Gross income recognized from all other sources, such as, for example, from—

(i) The furnishing of services (whether or not related to the sale or lease of property described in subparagraph (1) of this paragraph),

(ii) Dividends and interest,

(iii) The sale at a gain of any property not described in subparagraph (1) of this paragraph, and

(iv) Commission transactions as and to the extent described in paragraph (e) of this section.

(b) *Nongross receipts items.* For purposes of paragraph (a) of this section, gross receipts do not include amounts received or accrued by a person from—

(1) The proceeds of a loan or of the repayment of a loan, or

(2) A receipt of property in a transaction to which section 118 (relating to contribution to capital) or 1032 (relating to exchange of stock for property) applies.

(c) *Nonreduction of total amounts.* For purposes of paragraph (a) of this section, the total amounts received or accrued by a person are not reduced by returns and allowances, costs of goods sold, expenses, losses, a deduction for dividends received under section 243, or any other deductible amounts.

(d) *Method of accounting.* For purposes of paragraph (a) of this section, the total amounts received or accrued by a person shall be determined under the method of accounting used in computing its taxable income. If, for example, a DISC receives advance or installment payments for the sale or lease of property described in paragraph (a)(1) of this section, for the furnishing of services, or which represent recognized gain from the sale of property not described in paragraph (a)(1) of this section, any amount of such advance payments is considered to be gross receipts of the DISC for the taxable year for which such amount is included in the gross income of the DISC.

(e) *Commission transactions.* (1) In the case of transactions which give rise to a commission on the sale or lease of property or the furnishing of services by a principal, the amount recognized by the commission agent as gross income from all such transactions shall be the gross receipts derived by the principal from the sale or lease of the property, or the gross income derived by the principal from the furnishing of services, with respect to which the commissions are derived. In the case of a commission agent for a related supplier (as defined in § 1.994–1(a)(3)) (as proposed in 37 F.R. 19625 for Sept. 21, 1972), the gross receipts or gross income of such agent shall be determined as if it used the same method of accounting as its related supplier. In the case of a commission agent for a principal other than a related supplier, the gross receipts or gross income of such principal shall be determined as if such principal used the same method of accounting as its agent.

(2) If the commission arrangement provides that the commission agent will receive a commission only with respect to sales or leases of export property, or the furnishing of services, which result in qualified export receipts, the commission agent will not take into account the gross receipts or gross income, as the case may be, derived by the principal from any transaction for which the commission agent would not be entitled to a commission under the commission arrangement.

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

Example. During 1973, M, a related supplier (as defined in § 1.994–1(a)(3) as proposed in 37 F.R. 19625 for Sept. 21, 1972) of N, is engaged in the manufacture of machines in the United States. N, a calendar year taxpayer, is engaged in the sale and lease of such machines in foreign countries. N furnishes services which are related and subsidiary to its sale and lease of such machines. N also acts as a commission agent in foreign countries for Z, an unrelated supplier, with respect to Z's sale of products. N receives dividends on stock owned by it in a related foreign export corporation (as defined in § 1.993–5), interest on producer's loans made to M and proceeds from sales of business assets located outside the United States resulting in a recognized gains and losses. N's gross receipts for 1973 are $3,550, computed on the basis of the additional facts assumed in the table below:

(1) N's sales receipts for machines manufactured by M (without reduction for cost of goods sold and selling expenses)	$1,500
(2) N's lease receipts for machines manufactured by M (without reduction for depreciation and leasing expenses)	500
(3) N's gross income from services for machines manufactured by M (without reduction for service expenses)	400
(4) Z's sale receipts for products manufactured by Z (without reduction for Z's cost of goods sold, commissions on sales, and commission sales expenses)	550
(5) Dividends received by N	150
(6) Interest received by N on producer's loans	200
(7) Proceeds received by N representing recognized gain (but not losses) from sales of business assets located outside the United States	250
(8) N's gross receipts	3,550

§ 1.993–7 Definition of United States.

Under section 993(g), the term "United States" includes the States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States. For the requirement that a DISC must be incorporated and existing under the laws of a State or the Dis-

trict of Columbia, see § 1.992–1(a)(1) (as proposed in 37 F.R. 10368 for May 20, 1972).

[FR Doc.72-16854 Filed 9-29-72;10:40 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 929]

CRANBERRIES GROWN IN CERTAIN STATES

Proposed Handling and Reporting

Notice is hereby given that the Department is considering a proposed amendment, as hereinafter set forth, of § 929.105 *Reporting* (Subpart—Rules and Regulations 7 CFR 929.100–929.150) currently in effect pursuant to the applicable provisions of the marketing agreement, as amended, and Order No. 929, as amended (7 CFR Part 929), regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The amendment of said rules and regulations was unanimously recommended by the Cranberry Marketing Committee, established under said amended marketing agreement and order, as the agency to administer the terms and provisions thereof. The amendment is designed to lengthen the period of time during which handlers must submit reports to the committee. The committee reports that the period of time afforded handlers for filing reports to the committee, especially with respect to information on the quantities of cranberries and cranberry products held by the handler on specified dates, has proved to be insufficient.

Therefore, it is proposed that paragraph (b) of § 929.105 be amended to read as follows:

§ 929.105 Reporting.

* * * * *

(b) Certified reports shall be submitted to the committee by each handler not later than the 20th day of November, February, May, and August of each fiscal period showing (1) the total quantity of cranberries the handler acquired and the total quantity of cranberries the handler handled during the 3-month period ending the last day of the month preceding the date the report is due and (2) the respective quantities of cranberries and cranberry products held by the handler on the first day of each of the specified months.

All persons who desire to submit written data, views, or arguments in connection with the proposed amendment should file the same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112–A, 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: September 29, 1972.

CHARLES R. BRADER,
Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-16879 Filed 10-3-72; 8:48 am]

[7 CFR Part 1139]

[Docket No. AO 374]

MILK IN THE LAKE MEAD MARKETING AREA

Notice of Hearing on Proposed Marketing Agreement and Order

Correction

In F.R. Doc. 72-16737 appearing at page 20563 of the issue for Saturday, September 30, 1972, the following proposals were inadvertently omitted immediately following the text of § 1139.86. The proposals should read as follows:

Proposal No. 2. In paying producers for milk, adopt a plan that would reflect appropriate transportation charges from the pool plant at which a producer's milk is received to the location of the producer's farm.

Proposal No. 3. Make appropriate provision in the order to reflect that a milk supply contract made by a producer or a cooperative association with a handler regulated by the order shall be made independent of any contract for hauling milk.

Proposal No. 4. Make appropriate provision in the order to reflect that no rate charged for hauling milk from a producer's farm to a pool plant, or diverted to a nonpool plant, in mobile vehicles owned or operated directly or indirectly by a regulated handler shall exceed prevailing rates for a common carrier engaged in the same class of service.

Rural Electrification Administration

[7 CFR Part 1701]

RURAL ELECTRIFICATION PROGRAM

Designs for Narrow Profile Electric Transmission Line

Notice is hereby given that, pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to issue REA Bulletin 62–3, Narrow Profile Electric Transmission Designs, to provide criteria in the use of narrow profile transmission line structure designs and to provide general guidelines on the design and construction in the use of these types of structures.

Persons interested in data and information in this bulletin may submit written data, views, or comments to the Director, Power Supply, Management and Engineering Standards Division, Room 3313, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 30 days from the 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 Director, Power Supply, Management and Engineering Standards Division during regular business hours.

The proposed bulletin is as follows:

REA BULLETIN 62–3

SUBJECT: NARROW PROFILE ELECTRIC TRANSMISSION LINE STRUCTURE DESIGNS

I. *Purpose.* To provide information and establish criteria in the use of narrow profile transmission line structure designs and to provide general guidelines on design and construction in the use of these types of structures.

II. *General.* In general, REA crossarmi-type transmission structures should be used where possible. It is recognized, however, that there may be some sections in a proposed transmission line where special structures will be required. The enclosed five drawings provide a selection of structure designs that may be used when either of the following conditions apply:

1. In scenic or highly developed areas where environmental considerations require special structures.

2. In areas where right-of-way is limited and the standard wood pole-crossarm type structure is not suitable.

When either one or both of the above conditions are met and REA concurs that the installation is justified, the approval of the proposed installation of the narrow profile structures will be indicated by REA approval of the design data. Information furnished with the design data should confirm that the installation conforms with the limitations outlined. Any proposed installation not conforming to the limited use criteria, outlined above, requires prior approval of the area director in accordance with REA Bulletin 44–7, Acceptance of Standards, Standard Specifications, Drawings, Materials, and Equipment for the Electric and Telephone programs, and such approval should be obtained prior to developing design data.

III. *Design and construction.* A. The narrow profile structure drawings are to be included in REA Form 805, Electric Transmission Specifications and Drawings, and the construction units are to be included in REA Form 831, Electric Transmission Construction Contract. REA procedures and requirements for transmission construction as set forth in REA Bulletin 40–6, Construction Methods and Purchase of Materials and Equipment, are applicable. The materials requirements for the narrow profile structures are included in the List of Materials Acceptable for Use on Systems of REA Electrification Borrowers.

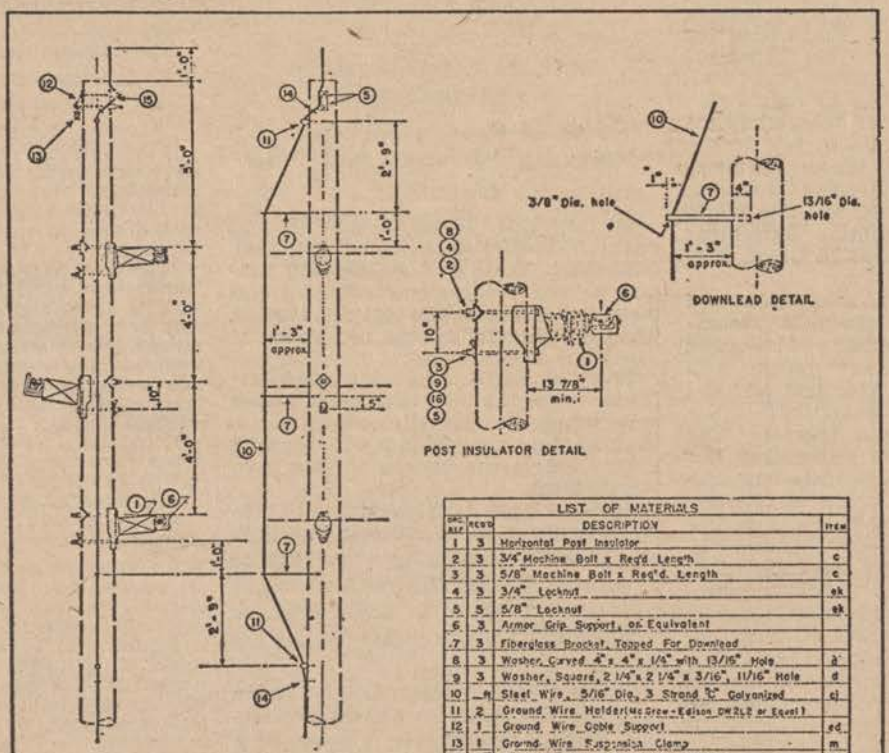
B. Where TUS–1 structures are used it will be necessary to specify the type and size of laminated arm required for the voltage and conductor loading requirements. Because of the variables involved, it also will be necessary to furnish pole drilling guides so that the poles needed for the installation can be framed for the particular type arms and brackets to be ordered. Metal shims should be used to properly adjust the arms when the brackets are located on uneven pole surfaces. It is recommended that the arms and poles be obtained from the same supplier, if possible.

C. Where TUS–2 structures are used the design information should include the footing details. The engineer should furnish complete design data including information on angle structure requirements to structure suppliers for development of proper structure designs. The supplier should in turn furnish complete data to assure the borrower and its engineer that the structures to be furnished will satisfy all requirements.

D. When the design data for the TP–34, TP–69 or TP–115 structures have been developed by the engineer and approved by REA, the necessary materials can be ordered from the suppliers shown on the Acceptable Material List. Metal shims should be used on these structures also to adjust the insulators when the brackets are located on uneven pole surfaces. Horizontal post insulators should not be used on concrete or metal poles. Experience has shown that a severe impact on a structure, a conductor break, or ice unloading can cause cascading failure of insulators in an entire line section because the concrete and steel poles do not absorb the shock impact in the same manner as wood poles.

Dated: September 27, 1972.

JAMES N. MYERS,
Acting Administrator.



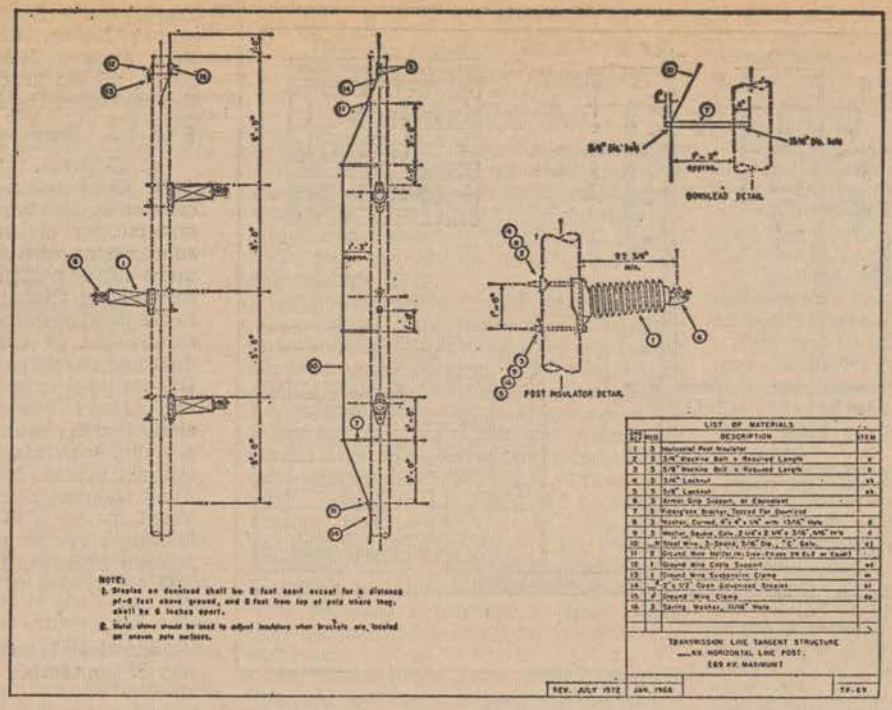
LIST OF MATERIALS

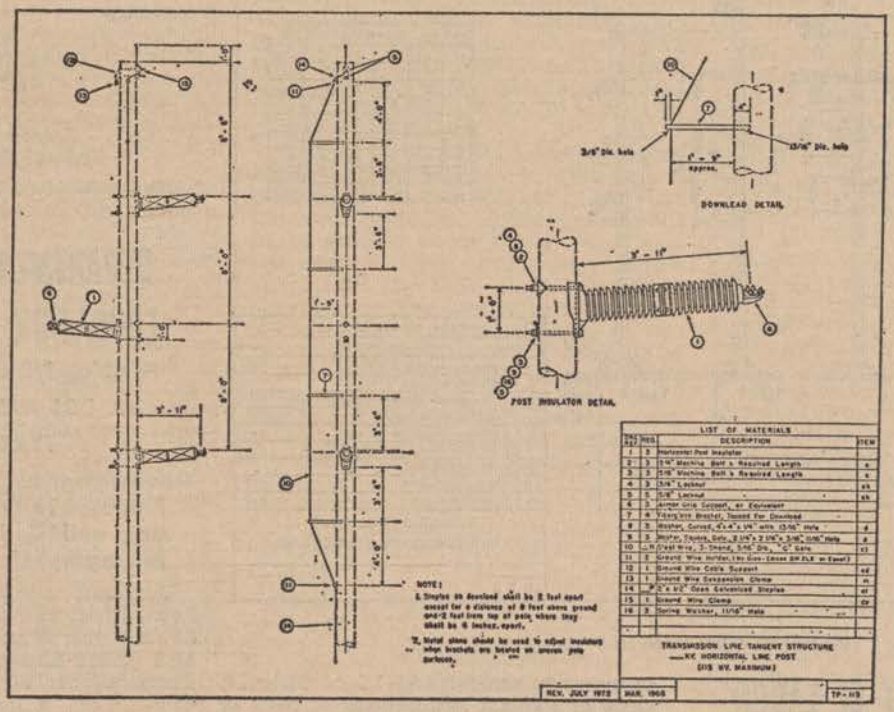
SPEC. ALT.	REQ'D	DESCRIPTION	ITEM
1	3	Horizontal Post Insulator	
2	3	3/4" Machine Bolt x Req'd Length	c
3	3	5/8" Machine Bolt x Req'd. Length	c
4	3	3/4" Locknut	ek
5	5	5/8" Locknut	ek
6	3	Armor Grip Support, or Equivalent	
7	3	Fiberglass Bracket, Topped For Downlead	
8	3	Washer, Curved 4" x 4" x 1/4" with 13/16" Hole	h
9	3	Washer, Square, 2 1/4" x 2 1/4" x 3/16", 11/16" Hole	d
10	n	Steel Wire, 5/16" Dia., 3 Strand "E" Galvanized	cj
11	2	Ground Wire Holder (Ilsco Grew-Edison DH2L2 or Equal)	
12	1	Ground Wire Cable Support	ed
13	1	Ground Wire Suspension Clamp	m
14	—	2" x 1/2" Open Galvanized Staples	ql
15	1	Ground Wire Clamp	dp
16	3	Spring Washer, 11/16" Hole	

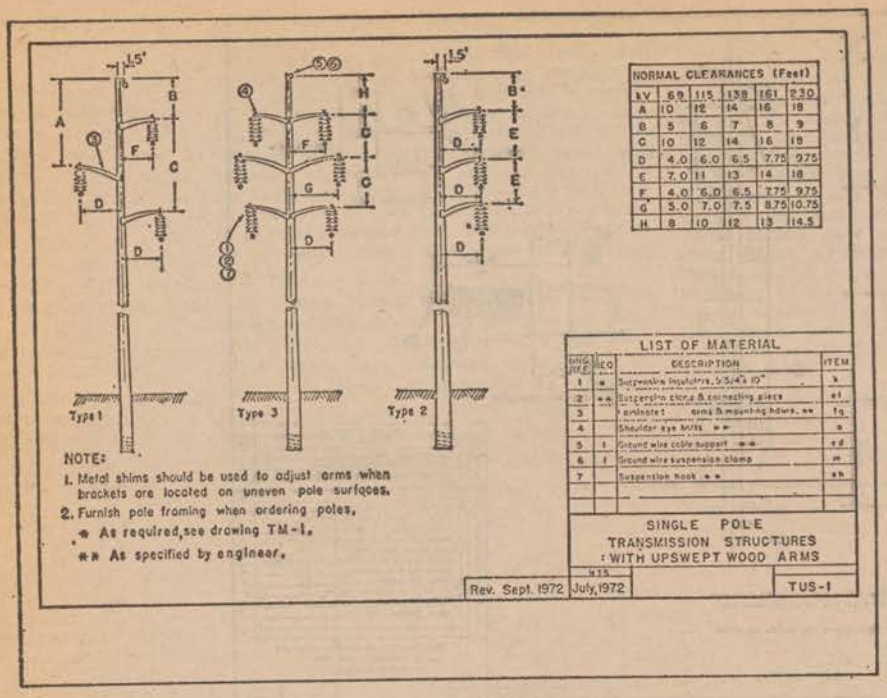
NOTE:
1. Metal shims should be used to adjust insulators when brackets are located on uneven pole surfaces.
2. Staples on Downlead Shall Be 2 Feet Apart Except for a Distance of 8 Feet Above Ground and 2 Feet from Top of Pole Where They Shall Be 6 Inches Apart.

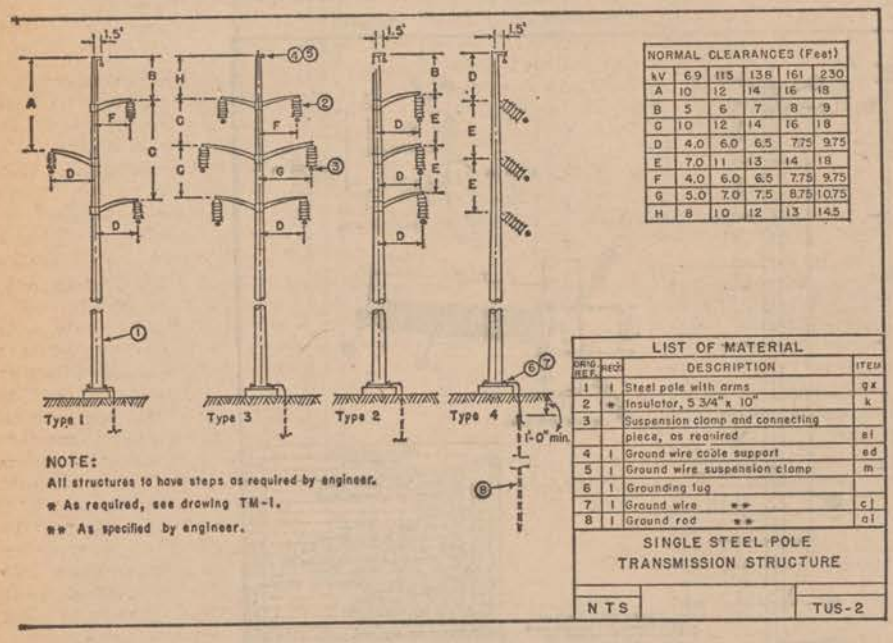
TRANSMISSION LINE TANGENT STRUCTURE
— KV. HORIZONTAL LINE POST
(34.5 KV. MAXIMUM)

REV. JULY 1972 | JAN. 1968 | TP-34


DOWNLEAD DETAIL
POST INSULATOR DETAIL
NOTE:
1. Steples on downlead shall be 2 feet apart except for a distance of 6 feet above ground, and 2 feet from top of pole where they shall be 6 inches apart.
2. Metal plates should be used to adjust insulators when brackets are located on uneven pole surfaces.
LIST OF MATERIALS
TRANSMISSION LINE TANGENT STRUCTURE
—KV HORIZONTAL LINE POST
(69 KV. MAXIMUM)
REV. JULY 1972
JAN. 1968
TP-69


DOWNLEAD DETAIL
POST INSULATOR DETAIL
NOTE:
1. Steples on downlead shall be 2 feet apart except for a distance of 8 feet above ground and 2 feet from top of pole, where they shall be 6 inches apart.
2. Metal plates should be used to adjust insulators where brackets are located on uneven pole surfaces.
LIST OF MATERIALS
TRANSMISSION LINE TANGENT STRUCTURE
—KV HORIZONTAL LINE POST
(115 KV. MAXIMUM)
REV. JULY 1972
MAR. 1968
TP-115





[FR Doc.72-16771 Filed 10-3-72;8:45 am]

DEPARTMENT OF LABOR

Office of Federal Contract Compliance

[41 CFR Part 60-1]

STATE AND LOCAL GOVERNMENTS

Affirmative Action Programs

Notice is hereby given that pursuant to Executive Order 11246 (30 F.R. 12319), as amended by Executive Order 11375 (32 F.R. 14303), the Department of Labor proposes to amend § 60-1.5 of Title 41, Code of Federal Regulations to read as set forth below.

This proposed rule making concerns matters relating to public contracts. While public participation in this rule making is not required by 5 U.S.C. 553, the Department wishes to invite written comments, suggestions, or objections regarding this proposed part. Accordingly, interested persons are invited to submit written comments regarding the proposed amendment to Philip J. Davis, Acting Deputy Assistant Secretary for Employment Standards, U.S. Department of Labor, 14th Street and Constitution Avenue NW., Washington, D.C. 20210, within 30 days of publication of this notice in the FEDERAL REGISTER.

§ 60-1.5 Exemptions.

(a) *General.* * * *

(4) *Contracts with State or local governments.* The requirements of the equal opportunity clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract. In addition, any agency, instrumentality or subdivision of such government, except for educational institutions and medical facilities, are exempt from the requirements of filing the annual compliance report provided for by § 60-1.7(a)(1) and maintaining a written affirmative action compliance program prescribed by § 60-1.40 and Part 60-2 of this chapter.

* * * * *

Signed at Washington, D.C., this 25th day of September 1972.

J. D. HODGSON,
Secretary of Labor.

R. J. GRUNEWALD,
Assistant Secretary for Employment Standards.

PHILIP J. DAVIS,
Acting Director, Office of Federal Contract Compliance.

[FR Doc.72-16906 Filed 10-3-72;8:50 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 141]

TYROTHRICIN

Microbiological Turbidimetric Assay; Proposal To Provide for Recodification and Updating of Tyrothricin Monographs; Correction

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), a notice of proposed rule making was published in the FEDERAL REGISTER of August 30, 1972 (37 F.R. 17561) to provide for the updating of the tyrothricin bulk drug monograph. The amendment of § 141.111, adding a footnote to the tyrothricin entry under the antibiotic column in the table in paragraph (a), inadvertently omitted a reference to the fact that the existing entries for tyrothricin under "Working standard stock solutions" and "Standard response line concentrations" were being

deleted. If this proposal is adopted, these items will be deleted.

Dated: September 28, 1972.

MARY A. MCENIRY,
Assistant to the Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc.72-16874 Filed 10-3-72;8:47 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 72-SW-62]

FEDERAL AIRWAY SEGMENT

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would modify the south alternate of VOR Federal Airway No. 14 between Oklahoma City, Okla., and Tulsa, Okla.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southwest Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Post Office Box 1689, Fort Worth, TX 76101.

All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The proposed amendment would realine the segment predicated on the Oklahoma City VORTAC via the 070°M (079°T) radial in lieu of the 078°M (087°T) radial. The modification of the airway segment would be utilized in revised departure routings from the Oklahoma City terminal area for northeastbound aircraft. Realinement of the airway as proposed would coincide with the departure routings.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on September 27, 1972.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.72-16901 Filed 10-3-72;8:50 am]

[14 CFR Part 71]

[Airspace Docket No. 72-WA-51]

FEDERAL AIRWAY SEGMENT

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the maximum altitude restriction on VOR Federal Airway V-39 between Myrtle Beach, S.C., and Fayetteville, N.C.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Post Office Box 20636, Atlanta, GA 30320. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

V-39 was established between Myrtle Beach and Fayetteville in 1965 with a ceiling of 5,000 feet MSL to provide for the continuation of military operations in the airspace above the airway. These operations can now be performed at and above 7,000 feet MSL which will permit the ceiling of the airway to be raised.

The airspace action proposed in this docket would redesignate a segment of V-39 airway by deleting "excluding the airspace at and above 5,000 feet MSL." and substituting "excluding the airspace at and above 7,000 feet MSL." therefor.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on September 27, 1972.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.72-16902 Filed 10-3-72;8:50 am]

ATOMIC ENERGY COMMISSION

[10 CFR Part 170]

FEES FOR LICENSES ISSUED TO GOVERNMENT AGENCIES FOR NUCLEAR POWERPLANTS

Removal of Exemption

The Atomic Energy Commission is proposing to amend its regulations in 10 CFR Part 170 to remove the exemption from payment of fees for a constuction permit or license applied for by, or issued to, a Government agency for a reactor producing power on a commercial basis.

On October 1, 1968, the Commission adopted regulations requiring payment of fees by applicants for and by holders of certain licenses, including licenses to construct and operate power reactors. Fees for power reactors are required at the time of application for the construction permit, issuance of the construction permit and operating license, and annually thereafter.

Because the Commission lacked statutory authority to charge Government agencies license fees, an exemption from the requirement for payment of license fees was provided to Government agencies.

On June 16, 1972, legislaton was enacted amending the Atomic Energy Act by adding a new subsection 161w which authorized the Commission to:

> w. Prescribe and collect from any other Government agency, which applies for or is issued a license for a utilization facility designed to produce electrical or heat energy pursuant to section 103 or 104b, any fee, charge, or price which it may require, in accordance with the provisions of section 483a of title 31 of the United States Code or any other law, of applicants for, or holders of, such licenses.

The Commission believes there is no sound reason for exempting from payment of license fees Government agencies which seek or hold a license to operate a nuclear reactor producing power for sale. Accordingly, in view of the new statute the Commission is proposing to amend § 170.11(a)(5) of Part 170 to remove the exemption for such licenses.

Pursuant to the Atomic Energy Act of 1954, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following amendment to Title 10, Chapter 1, Code of Federal Regulations, Part 170, is contemplated. All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendment should send them to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff, within 15 days after publication of this notice in the FEDERAL REGISTER. Comments received after that period will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed within the period specified. Copies of comments may be examined in the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

Subparagraph (5) of § 170.11(a) of 10 CFR Part 170 is amended to read as follows:

170.11 Exemptions.

(a) * * *

(5) A construction permit or license applied for by, or issued to, a Government agency, except for a utilization facility designed to produce electrical or heat energy pursuant to section 103 or

104(b) of the Atomic Energy Act of 1954, as amended.

* * * * *

(Sec. 501, 65 Stat. 290; 31 U.S.C. 483a)

Dated at Germantown, Md., this 26th day of September 1972.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.72-16855 Filed 10-3-72;8:46 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 2, 87]

[Docket No. 19590; FCC 72-840]

AERONAUTICAL RADIO NAVIGATION

Proposed Channel Spacing

In the matter of amendment of Parts 2 and 87 of the rules to provide 50 kHz channel spacing in the aeronautical radio navigation band 108–117.975 MHz, Docket No. 19590, RM 1888.

1. The Department of Transportation, Federal Aviation Administration (FAA) has requested that consideration be given to changes in the FCC rules and regulations, Parts 2 and 87, to accommodate 50 kHz channel spacing for certain navigation aids. The FAA states that service on new or modified ILS and VOR and Y channel DME/TACAN is proposed for implementation in 1973.

2. The navigation aids operate in the band 108–117.975 MHz which is allocated to the Aeronautical Radionavigation Service along with the bands 328.6–335.4 MHz and 960–1215 MHz similarly allocated. Presently, the rules require 100 kHz spacing between frequency assignments in the band 108–117.975 MHz.

3. The FAA reports that rapidly expanding aviation services have resulted in the need for additional instrument landing systems and enroute navigation aids. The radio frequency congestion for instrument landing systems (ILS) and VHF Omnirange (VOR) systems has become severe in the Boston/New York/Washington, Chicago/Detroit, and San Francisco/Los Angeles areas. Additionally, planned ILS systems will enlarge the areas of congestion problems. Presently, the shortage of frequencies has made it impossible to provide for proposed and required navigation aids. This places unacceptable limitations on the accommodation of certain planned National Airspace System (NAS) ground facilities.

4. Two separate studies on this subject have been conducted by the Electromagnetic Compatibility Analysis Center (ECAC) of the Department of Defense. The first of those studies revealed that 41 ILS channels would be required if every ILS at an airport were to be assigned a discrete frequency. If ILS's on opposite ends of the same runway could use a common frequency (time shared) the requirement would drop to 23. At present there are only 20 channels available. That study was the basis for the FAA decision, announced at the April 1970 FAA Planning Review Conference, that split channeling for the VOR, ILS, and TACAN/DME bands was a necessity. The second study indicated that by June 1972 a minimum of 24 channels would be required if every ILS at an airport utilized a discrete frequency, or 17 by sharing between ILS's at opposite ends of a runway. More recent FAA studies have disclosed that 50 kHz frequency assignment will be required to accommodate many of the new ILS's planned for fiscal year 1973.

5. It is of interest that the International Civil Aviation Organization (ICAO) has long recognized the need for 50 kHz spacing in the 108–117.975 band in certain areas and, as early as 1966, revised their Air Navigation Plan to provide for the utilization of the split channels. Several areas of Europe presently utilize 50 kHz channel spacing. France, for example, implemented some VOR's on odd 20ths of a megacycle (50 kHz spacing) in 1970. The FAA reports that actual equipment testing has shown that the ICAO limits for harmonic radiation provide satisfactory operation of adjacent channel 50 kHz VOR facilities.

6. The FAA, by their Advisory Circular No. AC–170–12 advised aircraft owners, operators, and radio manufacturers of plans for future implementation of split-channel assignments in the aeronautical radio-navigation bands. The circular gave advance notice that equipment not configured to utilize the new channels might have limited life expectancy, depending on the areas of usage.

7. Implementation of 50 kHz channel spacing will require an increase of frequency stability for the glide slope, localizer, and VOR ground transmitters. The frequency tolerances of these transmitters must necessarily be reduced from the present 0.005 percent to 0.002 percent. The airborne equipment of almost all general aviation and military aircraft will be affected by the implementation of channel splitting. The air carrier equipment will be affected to a lesser degree. Most airlines already have avionics equipment, except glide slope receivers, which is designed for 50 kHz operation or can be modified quickly and economically to operate in the split-channel environment. The greatest impact will be for all users of glide slope equipment because very few glide slope receivers in use today are capable of being used in the new environment or have the capability to be economically modified.

8. The FAA, as explained in Advisory Circular No. AC–170–12, has set a target date of January 1, 1973, for the beginning phase of their program for national implementation of the split-channel environment. The proposed implementation plan, as presented by the FAA, would confine the assignment of split-channel frequencies to those areas where 100 kHz assignments are impossible or impractical in terms of the number of frequency changes required at existing facilities. In addition, the initial facility separation criteria will minimize the interference by 100 kHz equipped aircraft tuned to adjacent channel 100 kHz ground facilities. In this regard the ICAO recommended figure is 26 db for rejection in a 100 kHz receiver when receiving a signal 50 kHz removed. It is expected that existing receivers that do not now possess the 26 db rejection capability can easily be adjusted or modified to obtain this rejection figure. The FAA states that the split channel assignments will consider existing ground and airborne equipment limitations, and that delay in permitting the use of these channels can be expected to result in increasing pressure on the safety service provided by the Navigation Aids.

9. We agree with the FAA in their conclusion that, in certain areas, the present 100 kHz channel spacing is inadequate. Additionally, we agree that it is necessary to split the channels and to revise the equipment frequency stability requirements to insure the operational feasibility of a 50 kHz system. We consider the investigative programs of the last several years to have given substantial proof of the channel-splitting requirement as well as having provided the basis for a conclusion that it is reasonable to expect the FAA's implementation program to provide service without undue hardship to either government or nongovernment system users. Further, we consider that the FAA, through such actions as their advisory circular No. AC–170–12 and actions with the ICAO, has kept the aeronautical community sufficiently informed as to make it possible for the start of implementation in 1973. We, therefore, intend to provide the additional channels by providing for 50 kHz separation as requested unless comments to this notice which present convincing evidence of the undesirability of such action are received.

10. The proposed amendment, as set forth below is issued pursuant to authority contained in sections 4(1), and 303(b), (g) and (r) of the Communications Act of 1934, as amended.

11. Pursuant to procedures set forth in § 1.415 of the Commission's rules, interested parties may file comments on or before November 8, 1972, and reply comments on or before November 17, 1972. All relative and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it in addition to the specific comments invited by this notice. Responses will be available for public inspection during regular business hours in the Commission's Broadcast and Docket Reference Room at its headquarters in Washington, D.C.

12. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all statements,

briefs, or comments filed shall be furnished the Commission.

Adopted: September 20, 1972.

Released: September 26, 1972.

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

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. In Part 2, Subpart B, § 2.106 Table of Frequency Allocations the listings in columns 10 and 11 of the band 108–117.975 MHz are amended to read as follows:

§ 2.106 Table of frequency allocations.

Frequency (MHz) 10	*Nature of services and stations 11*
* * *	* * *
108.05	Omni-directional range.
108.10	Localizer.
108.15	Do.
108.20	Omni-directional range.
108.25	Do.
108.30	Localizer.
108.35	Do.
108.40	Omni-directional range.
108.45	Do.
108.50	Localizer.
108.55	Do.
108.60	Omni-directional range.
108.65	Do.
108.70	Localizer.
108.75	Do.
108.80	Omni-directional range.
108.85	Do.
108.90	Localizer.
108.95	Do.
109.00	Omni.
109.05	Do.
109.10	Localizer.
109.15	Do.
109.20	Omni.
109.25	Do.
109.30	Localizer.
109.35	Do.
109.40	Omni.
109.45	Do.
109.50	Localizer.
109.55	Do.
109.60	Omni.
109.65	Do.
109.70	Localizer.
109.75	Do.
109.80	Omni.
109.85	Do.
109.90	Localizer.
109.95	Do.
110.00	Omni-directional range.
110.05	Do.
110.10	Localizer.
110.15	Do.
110.20	Omni.
110.25	Do.
110.30	Localizer.
110.35	Do.
110.40	Omni.
110.45	Do.
110.50	Localizer.
110.55	Do.
110.60	Omni.
110.65	Do.
110.70	Localizer.
110.75	Do.
110.80	Omni.
110.85	Do.
110.90	Localizer.
110.95	Do.
111.00	Omni.
111.05	Do.
111.10	Localizer.
111.15	Do.
111.20	Omni-directional range.
111.25	Do.
111.30	Localizer.
111.35	Do.
111.40	Omni.
111.45	Do.
111.50	Localizer.
111.55	Do.
111.60	Omni.
111.65	Do.
111.70	Localizer.
111.75	Do.
111.80	Omni.
111.85	Do.
111.90	Localizer.
111.95	Do.
112.00–117.95 (NG 34)	Omni-directional range.
* * *	* * *

[1] Commissioners Burch, Chairman; Johnson, Reid, and Wiley concurring in the result; Commissioner Robert E. Lee absent.

PART 87—AVIATION SERVICES

2. In § 87.65(a) the present footnote designators and footnotes are deleted, subparagraph (5) is amended and new footnotes 1 and 2 are added to read as follows:

§ 87.65 Frequency stability.

(a) * * *

(5) Band 100 to 136 MHz:	
Land stations	[1] 0.003
Mobile stations:	
Survival craft stations	.005
Aircraft and all other mobile stations	.005
Radionavigation stations	[2] .002

* * * * *

[1] The tolerance shown is applicable to all transmitters except that the use of types of transmitters which meet a tolerance of 0.005 percent and which were licensed before January 1, 1966, will be permitted to continue indefinitely.

[2] The tolerance shown in the table is applicable to transmitters first licensed after January 1, 1973. A tolerance of 0.005 is applicable to transmitters licensed before January 1, 1973. All transmitters to be used in the National Airspace System, however, must have 0.002 percent stability after January 1, 1973.

* * * * *

3. Part 87, Subpart N, § 87.501 (a) and (d) are revised to read as follows:

§ 87.501 Frequencies available.

* * * * *

(a) Localizer station with simultaneous radiotelephone channel. The frequencies:

MHz	*MHz*
108.10	110.10
108.15	110.15
108.30	110.30
108.35	110.35
108.50	110.50
108.55	110.55
108.70	110.70
108.75	110.75
108.90	110.90
108.95	110.95
109.10	111.10
109.15	111.15
109.30	111.30
109.35	111.35
109.50	111.50
109.55	111.55
109.70	111.70
109.75	111.95
109.90	111.75
109.95	111.90

* * * * *

(d) Radio Range stations: 112.05 MHz through 117.95 MHz and the following frequencies in the 108–112 MHz band.

MHz	*MHz*
108.20	110.20
108.25	110.25
108.40	110.40
108.45	110.45
108.60	110.60
108.65	110.65
108.80	110.80
108.85	110.85
109.00	111.00
109.05	111.05
109.20	111.20
109.25	111.25
109.40	111.40
109.45	111.45
109.60	111.60
109.65	111.65
109.80	111.80
109.85	111.85
110.00	112.00
110.05	112.05

* * * * *

4. Section 87.521(d) is revised to read as follows:

§ 87.521 Frequencies available.

* * * * *

(d) 108.0 MHz and the frequencies set forth in Subpart N of this part may be assigned to radionavigation land test stations for the testing of airborne receiving equipment. The frequencies normally assigned will be 108.0 and 108.05 MHz for VHF omnirange, 108.1 MHz for localizer, 334.7 MHz for glide slope, 978 and 979 MHz (X channel) and 1104 MHz (Y channel) for DME/TACAN, and 1030 MHz for ATC beacon. The power authorized on these frequencies normally will be 1 watt or less. The assignment of 108.0 MHz is subject to the condition that no interference shall be caused to the reception of FM broadcasting stations and stations using the frequency are not protected against interference from FM broadcasting stations.

[FR Doc.72-16491 Filed 10-3-72;8:55 am]

[47 CFR Part 73]

[Docket No. 19561]

TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS IN ALABAMA AND FLORIDA

Order Extending Time for Filing Comments and Reply Comments

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations. (Enterprise and Greenville, Ala.; Bonifay, Chipley, and Pensacola, Fla.), Docket No. 19561, RM–1844, RM–1855, RM–1982.

1. On July 26, 1972, the Commission adopted a notice of proposed rule making in the above-captioned proceeding. Publication in the FEDERAL REGISTER was given on August 8, 1972 (37 F.R. 15940). Comment and reply comment dates presently designated are September 22, and October 2, 1972, respectively.

2. On September 22, 1972, Robert J. Buenzle, attorney for Mr. Roy S. Hess, petitioner in RM–1982, filed a petition for extension of time in which to submit comments to and including October 6, 1972. Counsel states that since he was just retained by Mr. Hess on September 22, he has not had an opportunity to review the rule making proceeding or to prepare appropriate comments on behalf of Mr. Hess.

3. It appears that the requested extension is warranted and would serve the public interest: *Accordingly, it is ordered,* That the time for filing comments and reply comments in Docket No. 19561, is extended to and including October 6, 1972, and October 20, 1972, respectively.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281(d)(8) of the Commission's rules.

Adopted: September 27, 1972.

Released: September 28, 1972.

[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.72–16940 Filed 10–3–72;8:53 am]

[47 CFR Part 73]

[Docket No. 19550]

TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS IN SHOREWOOD AND OTTAWA, ILL.

Order Extending Time for Filing Reply Comments

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations. (Shorewood and Ottawa, Ill.), Docket No. 19550, RM–1859.

1. On July 19, 1972, the Commission adopted a notice of proposed rule making in the above-entitled proceeding and it was published in the FEDERAL REGISTER on July 28, 1972 (37 F.R. 15171). The date for filing comments has expired. The date for filing reply comments is September 21, 1972.

2. On September 20, 1972, Joseph Oswald filed a petition seeking an extension of the reply comment date to and including October 8, 1972. Mr. Oswald states that the additional time is needed in order to complete an investigation into statements made by the Joliet Radio Corp. who filed comments in this proceeding.

3. It appears that this requested extension is warranted and would serve the public interest. *Accordingly, It is ordered,* That the time for filing reply comments in Docket No. 19550 is extended to and including October 8, 1972.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281(d)(8) of the Commission's rules.

Adopted: September 22, 1972.

Released: September 26, 1972.

[SEAL] HAROLD L. KASSENS,
Acting Chief,
Broadcast Bureau.

[FR Doc.72–16941 Filed 10–3–72;8:53 am]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Customs

CARBON STEEL PLATES AND HIGH-STRENGTH STEEL PLATES FROM MEXICO

Notice of Countervailing Duty Proceedings

Information has been received pursuant to the provisions of § 16.24(b) of the Customs Regulations (19 CFR 16.24 (b)) which raises a question as to whether certain payments, bestowals, rebates or refunds granted by Mexico upon the manufacture, production or exportation of carbon steel plates and high-strength steel plates constitute the payment or bestowal of a bounty or grant, directly or indirectly, within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) upon the manufacture, production, or exportation of the merchandise to which the payments, bestowals, rebates or refunds apply.

The approximate amount of the payments, bestowals, rebates or refunds applicable to carbon steel plates and high-strength steel plates manufactured, produced or exported by manufacturers in Mexico has not yet been ascertained.

After the expiration of the time limits set forth in this notice, a determination will be made whether a bounty or grant is being paid or bestowed in connection with any such manufacture, production or export. If it is determined that a bounty or grant is being paid or bestowed, an appropriate countervailing duty order will be issued and published in accordance with § 16.24(b) of the Customs Regulations (19 CFR 16.24(b)).

Before a determination is made, consideration will be given to any relevant data, views or arguments submitted in writing with respect to the existence or nonexistence, and the net amount of a bounty or grant. Submissions should be addressed to the Commissioner of Customs, 2100 K Street NW., Washington, DC 20226, in time to be received by his office not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER.

This notice is published pursuant to § 16.24(d) of the Customs Regulations (19 CFR 16.24(d)).

[SEAL] EDWIN F. RAINS,
Acting Commisioner of Customs.

Approved: October 2, 1972.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.72-17096 Filed 10-3-72;9:04 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[Billings Area Office Redelegation Order 1, Amdt. 2]

SUPERINTENDENTS AND PROJECT ENGINEER

Delegation of Authority Regarding Functions Relating to Lands and Minerals

SEPTEMBER 20, 1972.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2 (32 F.R. 13938).

This delegation is issued under the authority delegated to the Commissioner of Indian Affairs from the Secretary of the Interior in section 25 of Secretarial Order 2508 (10 BIAM 2.1) and redelegated by the Commissioner to the area directors in 10 BIAM 3.

The Billings Area Office Redelegation Order 1 published in the June 11, 1969, issue of the FEDERAL REGISTER (34 F.R. 9219) is being amended by revoking section 2.10 which redelegates to superintendents the authority to grant archeological permits on Indian land. Section 2.10 is being revoked because the delegation of this authority to the Commissioner in section 13(k) of Secretarial Order 2508 was revoked and the revocation published on page 5514 of the March 16, 1972, FEDERAL REGISTER (37 F.R. 5514). The Secretary has redelegated the authority to grant archeological permits on Indian land to the Director, National Park Service, in 310 DM 7.2B.

Therefore, section 2.10 of Billings Area Office Redelegation Order 1 is hereby revoked.

JAMES F. CANAN,
Area Director.

Approved: September 27, 1972.

HAROLD D. COX,
Acting Deputy Commissioner of Indian Affairs.

[FR Doc.72-16886 Filed 10-3-72;8:48 am]

[Aberdeen Area Office Redelegation Order 2, Amdt. 20]

SUPERINTENDENT, TURTLE MOUNTAIN AGENCY

Delegation of Authority Regarding Land and Homesite Leases

SEPTEMBER 18, 1972.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2 (32 F.R. 13938).

This delegation is issued under the authority delegated to the Commissioner of Indian Affairs from the Secretary of the Interior in section 25 of Secretarial Order 2508 (10 BIAM 2.1) and redelegated by the Commissioner to the area director in 10 BIAM 3.

The Aberdeen Area Office Redelegation Order 2 published on page 8756 of the December 21, 1954, issue of the FEDERAL REGISTER (19 F.R. 8756), as amended, is further amended by adding two new sections 3.136 and 3.137 under the heading "Functions Relating to Lands and Minerals" in Part 3—Authority of Specifically Designated Employees. Section 3.136 gives the superintendent of the Turtle Mountain Agency authority to approve acquisitions, partitions, exchanges and sales of trust or restricted lands between individual Indians subject to certain provisions. Section 3.137 gives the superintendent of the Turtle Mountain Agency all of the authority of the area director relating to leases of tribal and individually owned trust or restricted lands for homesite purposes only to members of the tribe or to tribal housing authorities subject to certain provisions.

The sections are added to read as follows:

SEC. 3.136 *Approval for land acquisitions, partitions, exchanges, and sales—Turtle Mountain.* The superintendent of the Turtle Mountain Agency may exercise all of the authority of the area director relating to the approval of acquisitions, partitions, exchanges, and sales of trust or restricted lands between individual Indians: *Provided,* That the title to the land remains in a trust or restricted status; that fair market value is received by the Indian landowner in any transaction approved under this authority; and that all approved title documents be submitted to the Billings area office for recording in the Billings area title plant. This authority does not include the approval of issuances of patents in fee or the removal of restrictions from restricted fee patents or deeds.

SEC. 3.137 *Leases for homesite purposes—Turtle Mountain.* The superintendent of the Turtle Mountain Agency may exercise all of the authority of the area director relating to leases of tribal and individually owned trust or restricted lands for homesite purposes only to members of the tribe or to tribal housing authorities: *Provided,* That all approved leases be submitted to the Billings area office for recording in the Billings area title plant. The term of the lease may not exceed 25 years but the lease may include provisions authorizing a renewal or extension for one additional term of not to exceed 25 years.

DON Y. JENSEN,
Acting Area Director.

Approved: September 26, 1972.

HAROLD D. COX,
Acting Deputy Commissioner of Indian Affairs.

[FR Doc.72-16885 Filed 10-3-72;8:48 am]

Bureau of Land Management
IDAHO

[Serial No. I–5054]

Proposed Withdrawal and Reservation of Lands

SEPTEMBER 14, 1972.

The Department of Agriculture has filed an application, serial No. I–5054, for the withdrawal of the 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 desires the land for public purposes to develop valuable watershed stabilization improvements to protect the Dump Creek drainage into the Salmon River, Salmon National Forest.

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, Room 398, Federal Building, 550 West Fort Street, Post Office Box 042, Boise, ID 83702.

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 the 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.

He 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 Department of Agriculture.

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 it, a public hearing will be held at a convenient time and place which will be announced.

The lands involved in the application are:

SALMON NATIONAL FOREST

HIGH MOUNTAIN LAKES, MALLARD-LARKINS AREA

BOISE MERIDIAN

Coiner Watershed Protection Site

T. 23 N., R. 20 E. (unsurveyed).

Sections 12, 13, and 24 Lemhi Gold Placer and Moose Creek Hydraulic Placer Claims Mineral Survey 3057. Excepting therefrom the following described property:

A fraction of the Moose Creek Hydraulic Placer Mineral Survey No. 3057, more particularly described as follows, to wit: Commencing at corner No. 6 of the Moose Creek Hydraulic Placer portion of Mineral Survey No. 3057, run thence S. 0°10′ W., 525.1 feet to the point of beginning, and the northeasterly corner of the tract of land hereby described; continuing thence S. 0°10′ W., 335.9 feet; thence N. 89°50′ W., 650.0 feet, more or less, to a point in the center of Moose Creek; thence northerly along the center of Moose Creek 355.9 feet; thence S. 89°50′ E., 650.0 feet to the point of beginning. Containing 5 acres.

A fraction of the Moose Creek Hydraulic Placer, Mineral Survey No. 3057, more particularly described as follows, to wit: Beginning at corner No. 7 of the said Moose Creek Hydraulic Placer, run thence N. 89°50′ W., 503.9 feet; thence N. 0°10′ E., 518.7 feet; thence S. 89°50′ E., 503.9 feet to a point on the easterly boundary of the Moose Creek Hydraulic Placer; thence S. 0°10′ W., along the easterly boundary of the Moose Creek Hydraulic Placer a distance of 518.7 feet to the point of beginning. Containing 6 acres.

A fraction of the Moose Creek Hydraulic Placer, Mineral Survey No. 3057, more particularly described as follows, to wit: Commencing at corner No. 7 of said Moose Creek Hydraulic Placer, run thence N. 0° E., 518.7 feet to the point of beginning and the southeast corner of the tract of land herein described; continuing thence N. 0°10′ E., 360 feet; thence N. 89°50′ W., 624.9 feet, more or less, to a point in the center of Moose Creek; thence southerly along the center of Moose Creek 369 feet, more or less, to a point which lies N. 89°50′ W., from the point of beginning; thence S. 89°50′ E., 622.5 feet to the point of beginning. Containing 5 acres.

The area described contains 271.02 acres, more or less, in Lemhi County.

VINCENT S. STROBEL,
Chief, Branch of L&M Operations.

[FR Doc.72–16883 Filed 10–3–72;8:48 am]

Geological Survey

[Cancellation 295]

HOOD RIVER BASIN, OREG.

Power Site Cancellation

Pursuant to authority under the Act of March 3, 1879 (20 Stat. 394; 43 U.S.C. 31), and 220 Departmental Manual 6.1, Power Site Classification 276 of September 5, 1933, is hereby canceled in its entirety. The affected land is described as follows:

WILLAMETTE MERIDIAN

T. 1 N., R. 9 E.,
Sec. 1, lot 7;
Sec. 11, SE¼NE¼.
T. 1 N., R. 10 E.,
Sec. 18, SW¼SE¼.

The area described aggregates 123.5 acres.

The effective date of this cancellation is January 26, 1973.

Dated: September 26, 1972.

V. E. MCKELVEY,
Director.

[FR Doc.72–16882 Filed 10–3–72;8:48 am]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

MEAT IMPORT LIMITATIONS

Fourth Quarterly Estimate

Public Law 88–482, approved August 22, 1964 (hereinafter referred to as the Act), provides for limiting the quantity of fresh, chilled, or frozen cattle meat (TSUS 106.10) and fresh, chilled, or frozen meat of goats and sheep, except lamb (TSUS 106.20), which may be imported into the United States in any calendar year. Such limitations are to be imposed when it is estimated by the Secretary of Agriculture that imports of such articles, in the absence of limitations during such calendar year, would equal or exceed 110 percent of the estimated quantity of such articles, prescribed by section 2(a) of the Act.

In accordance with the requirements of the Act, the following fourth quarterly estimate is published:

1. The estimated aggregate quantity of such articles which would, in the absence of limitations under the Act, be imported during calendar year 1972 is 1,275.0 million pounds.

2. The estimated quantity of such articles prescribed by section 2(a) of the Act during the calendar year 1972 is 1,042.4 million pounds.

Since the estimated quantity of imports continues to exceed 110 percent of the estimated quantity prescribed by section 2(a) of the Act, under the Act limitations for the calendar year 1972 on the importation of fresh, chilled, or frozen cattle meat (TSUS 106.10) and fresh, chilled, or frozen meat of goats and sheep (TSUS 106.20), are required to be imposed but may be suspended. Such limitations were imposed by Proclamation 4114 of March 9, 1972, and were suspended during the balance of the calendar year 1972 unless because of changed circumstances further action under the Act becomes necessary.

Done at Washington, D.C., this 29th day of September 1972.

EARL L. BUTZ,
Secretary of Agriculture.

[FR Doc.72–16881 Filed 10–3–72;8:48 am]

DEPARTMENT OF COMMERCE

Office of Import Programs

STANFORD 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 (37 F.R. 3892 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. 72–00537–33–09300. Applicant: Stanford University, 820 Quarry Road, Palo Alto, CA 94304. Article: "Staput Velocity Sedimentation Cell Separator." Manufacturer: Johns Scientific, Canada. Intended use of article: The article is intended to be used for separation of mouse lymphoid cells (spleen, bone marrow lymph, node, thymus) to identify and quantitate types of cells involved in the immune (antibody) response which is needed for understanding the basic mechanisms of antibody formation, graft rejection, tumor protection, etc. The article will also be used by graduate and postgraduate students and participants in Genetics 299.

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's use in studies of antibody formation and immune responses requires an instrument with the ability to separate living cells on the basis of their size for separation, quantitation, and identification of various mouse lymphoid cells. The foreign article provides this capability. We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated September 8, 1972, that the capabilities of the foreign article described above are pertinent to the applicant's research studies. HEW further advises it knows of no comparable domestic instrument of equivalent scientific value to the article for such purposes as 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.72-16861 Filed 10-3-72;8:46 am]

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UNIVERSITY OF CHICAGO ET AL.

Notice of Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Special Import Programs Division, Office of Import Programs, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the FEDERAL REGISTER. Amended regulations issued under cited Act, as published in the February 24, 1972, issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Special Import Programs Division, Department of Commerce, Washington, D.C.

Docket No. 73–00148–75–14200. Applicant: University of Chicago, Operator of Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. Article: Image analysing computer, Model Quantimet 720. Manufacturer: Metals Research Ltd., United Kingdom. Intended use of article: The article is intended to be used for quantitative assessment of such material characteristics as gain size distributions, gas bubble and void size distributions, and second phase and inclusion size distributions of uranium-plutonium dioxide fuel materials as well as cladding and structural materials of interest in reactor development in both irradiated and unirradiated conditions. Application received by Commissioner of Customs: September 5, 1972.

Docket No. 73–00149–99–66700. Applicant: University of North Carolina, Department of Computer Science, New West Hall, Chapel Hill, N.C. 27514. Article: Teleprinter projector, Model 251OT. Manufacturer: I. P. Sharp Associates, Canada. Intended use of article: The article is intended to be used in the following courses in computer science, whose objectives are to train teachers and instructors in the Ph.D. level in computer science, to train practitioners of computer science via the professional M.S. program, and to furnish vocational competence in computer use to undergraduate:

116. Numerical Methods.
118. Data Processing Techniques.
120. Data Representation and Manipulation.
125. Mathematical Structures in Computer Science.
140. Programming Systems.
151–152. Applied Mathematics in Computer Science.
155. Numerical Analysis.

Application received by Commissioner of Customs: September 8, 1972.

Docket No. 73–00150–33–46040. Applicant: Harvard University, Purchasing Department, 75 Mount Auburn Street, Cambridge, MA 02138. Article: Electron microscope, Model EM 300. Manufacturer: Philips Electron Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used in experiments directed to identification of mechanisms controlling oogenesis, ovulation and implantation or vulnerable steps in spermatogenesis and sperm maturation that might be exploited for control of human reproduction. Application received by Commissioner of Customs: September 11, 1972.

Docket No. 73–00153–33–46070. Applicant: University of Rhode Island, Kingston, R.I. 02881. Article: Scanning electron microscope, Model S4. Manufacturer: Cambridge Scientific Instruments, Ltd., United Kingdom. Intended use of article: The article is intended to be used for a wide range of research in the areas of micropaleontology, bacteriology, phycology, marine microbiology, invertebrate and vertebrate zoology, sedimentation, particulate chemistry, and botany, More specifically some of the research activities for which the article is to be used are:

1. The study of the surfaces and ultrastructure of recent and fossil Foraminifera, Radiolaria and sediment grain surface related to paleoecological and paleoenvironmental studies.

2. The examination in detail of the surface characteristics of a wide variety of both hard and soft animal and plant tissues. These will include pelagic larval stages of invertebrates, mollusca and crustacea, fungi (Hypomycetes), fish olfactory and sound apparatus and epiphytic bacterial colonies living on surfaces of marine algae and invertebrates. Studies are being carried out on the detailed surface ornamentation and structure of *Equisetum* for which many species have siliceous ornamentation on the stem surfaces. A general study of nematode morphology is planned including forms that are plant-parasitic, free living in soil, in fresh water, and in the marine environment.

3. The study of the taxonomy life cycles of marine phytoplankton, including coccolithophorids, diatoms, and silicoflagellates.

The article will also be used to provide information and teaching materials which are to be used in the following courses:

Ocean 694 Marine Paleoecology.
Ocean 567 Marine Bacteriology.
Ocean 647 Recent Sedimentary Environments.
Ocean 661 Phytoplankton Taxonomy.
Ocean 664 Phytoplankton Ecology.
Ocean 666 Zooplankton.
Ocean 672 Marine Invertebrates and Environment.
Geol 225 Animal Micropaleontology.
Bot 116 Phycology.
Bot 111 Plant Anatomy.
Plant Path 182 Plant Nematology.

Application received by Commissioner of Customs: August 24, 1972.

Docket No. 73–00154–01–40500. Applicant: Colorado School of Mines, Department of Physics, Golden, Colo. 80401. Article: SOPRA "Michelson" Interferometer. Manufacturer: Societe de Production et de Recherches appliquees, France. Intended use of article: The article is intended to be used partly for students' research in general Fourier spectroscopy. In particular it will be valuable in work on near infrared spectra of gases,

liquids, and solids of relevance to mineral studies. The article will also be used in the course Optics PH 332, which includes theory and laboratory work in geometrical and physical optics at the intermediate level. Application received by Commissioner of Customs: August 24, 1972.

SETH M. BODNER,
Director, Office of Import Programs.

[FR Doc.72-16862 Filed 10-3-72;8:46 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[FAP 3H2837]

MOSINEE PAPER CORP.

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 3H2837) has been filed by Mosinee Paper Corp., Mosinee, WI 54455, proposing the issuance of a regulation to provide for the safe use of copper 8-quinolinolate as a fungicide in paper and paperboard intended for contact with dry foods.

Dated: September 27, 1972.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.72-16875 Filed 10-3-72;8:47 am]

[FAP 3B2841]

ROHM AND HAAS CO.

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 3B2841) has been filed by Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, proposing that § 121.2519 *Defoaming agents used in the manufacture of paper and paperboard* (21 CFR 121.2519) be amended to provide for the safe use of mixed alkyl methacrylate esters-butyl methacrylate, N-vinyl pyrrolidone-modified copolymers as components of defoaming agents in the manufacture of paper and paperboard intended for food contact use.

Dated: September 26, 1972.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.72-16876 Filed 10-3-72;8:47 am]

Health Services and Mental Health Administration

NATIONAL ADVISORY COUNCIL

October Meeting

Pursuant to Executive Order 11671, the Administrator, Health Services and Mental Health Administration, announces the meeting date and other required information for the following National Advisory body scheduled to assemble the month of October 1972, in accordance with provisions set forth in section 13(a) (1) and (2) of that Executive Order:

Committee name, date, time, place, and type of meeting and/or contact person

Federal Hospital Council, October 20, 9 a.m., Conference Room E, Parklawn Building, 5600 Fishers Lane, Rockville, MD, Open, Contact Mrs. Arliz Morstad, Room 9-05, Parklawn Building, 5600 Fishers Lane, Rockville, MD, Code 301—443-1910.

Purpose.—The Council is charged with advising on policies and regulations under Title VI of the Public Health Service Act.

Agenda.—The Council will consider regulations pertaining to § 53.111 of Title 42 CFR entitled "Services for persons unable to pay."

A period will be reserved at the beginning of the meeting for comments and discussion from the general public.

Interested persons may submit written information or views addressed to the contact person named above. Members of the public who wish to participate in this Council meeting must furnish the contact person, at least 24 hours prior to the meeting, with their name(s), issues to be discussed, and any documentation to be submitted.

Dated: September 27, 1972.

VERNON E. WILSON,
Administrator, Health Services and Mental Health Administration.

[FR Doc.72-16873 Filed 10-3-72;8:47 am]

Office of the Secretary

ADVISORY COMMITTEE ON DENTAL HEALTH

Subcommittee Meeting

The six-member Subcommittee of the Advisory Committee on Dental Health, established to advise the Secretary regarding all significant aspects of dental health programs and other dental activities coming under the purview of the Department of Health, Education, and Welfare, is scheduled to hold a meeting on October 5, 1972. The meeting will be held in the Food and Drug Administration Building located at 200 C Street SW., Washington, DC, Room 1409. The meeting is scheduled to convene at 9 a.m. and will continue until 4 p.m.

The subcommittee will review the first draft of a final report of the recommendations of the full committee to be submitted to the Secretary relative to the dental activities under the purview of the Department of Health, Education, and Welfare. The subcommittee will make such changes, additions, or deletions it deems necessary prior to a more formal review of the report by the full committee at a meeting to be scheduled during the month of November 1972. The meeting is open for public observation.

Dated: September 29, 1972.

MELVIN L. DOLLAR,
Executive Secretary.

[FR Doc.72-16959 Filed 10-3-72;8:55 am]

TECHNICAL ADVISORY COMMITTEE ON AGING RESEARCH

Committee Meeting

This committee was established to advise the Secretary of Health, Education, and Welfare to develop a comprehensive, coordinated research program in the field of aging, which program will include disciplines ranging from biomedical research to transportation systems analysis, from psychology and sociology to management science and economics.

The first meeting of the committee will be on Tuesday, October 10, 1972 at 9 a.m. to 4 p.m., in Room 5169 North Building, HEW, 330 Independence Avenue SW., Washington, DC. The first meeting of the committee will be devoted to organization, a discussion of the present status of research in aging, and the formulation of the role, scope, objectives and goals for the committee and its staff. The meeting will be open for public observation.

ALFRED H. LAWTON,
Executive Director.

SEPTEMBER 28, 1972.

[FR Doc.72-16958 Filed 10-3-72;8:55 am]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE

Notice of Public Meeting

On October 4 and 5, 1972, the Subcommittee on Research and Program Development of the National Highway Safety Advisory Committee will hold open meetings in Washington, D.C., in Room 4238, 400 Seventh Street SW.

The National Highway Safety Advisory Committee is composed of 35 members appointed by the President in accordance with the Highway Safety Act, 23 U.S.C. 401 et seq. The committee consists of representatives of State and local governments, State legislatures, public and private interests contributing to, affected by, or concerned with highway safety, other public and private agencies, organizations, and groups demonstrating an active interest in highway safety, and research scientists and other experts in highway safety.

The Advisory Committee advises, consults with, and makes recommendations to the Secretary of Transportation on matters relating to the activities of the

Department in the field of highway safety. The committee is specifically authorized to (1) review research and programs, and (2) review, prior to issuance, standards proposed to be issued by the Secretary under the State and community highway safety program.

The Subcommittee on Research and Program Development will hold the following meetings:

OCTOBER 4, 9 A.M. TO 4 P.M.

Review of subcommittee resolutions: Standards Revision, Highway Salting.
Status of Standards Revision.
Report on Vehicles-in-Use Program.
New Business.

OCTOBER 5, 9 A.M. TO 12 NOON

Review of Alcohol Countermeasures Program.

This notice is given pursuant to section 13 of Executive Order 11671, dated June 5, 1972.

Issued on September 28, 1972.

DOUGLAS W. TOMS,
Administrator.

[FR Doc.72-17042 Filed 10-2-72;11:15 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50-404 and 50-405]

VIRGINIA ELECTRIC & POWER CO.

Notice of Hearing on Application for Construction Permits

In the matter of the Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 3 and 4).

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10, Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities," and Part 2, "Rules of Practice," notice is hereby given that a hearing will be held, at a time and place to be set in the future by an Atomic Safety and Licensing Board (Board), to consider the application filed under the Act by the Virginia Electric & Power Co. (the applicant), for construction permits for two pressurized water nuclear reactors designated as the North Anna Nuclear Power Station, Units 3 and 4 (the facilities), each of which is designed for initial operation at approximately 2631 thermal magawatts with a net electrical output of approximately 900 magawatts. The proposed facilities are to be located on the applicant's site located south of the North Anna River, approximately 24 miles southwest of Fredericksburg, 40 miles north-northwest of Richmond, and 38 miles east of Charlottesville, Va., in Louisa County, Va. The hearing will be scheduled to begin in the vicinity of the site of the proposed facilities.

The Board will be designated by the Atomic Energy Commission (Commission). Notice as to its membership will be published in the FEDERAL REGISTER.

Upon receipt of a report by the Advisory Committee on Reactor Safeguards and upon completion by the Commission's regulatory staff of a favorable safety evaluation of the application and an environmental review, the Director of Regulation will consider making affirmative findings on Items 1–3, a negative finding on Item 4, and an affirmative finding on Item 5 specified below as a basis for the issuance of construction permits to the applicant:

Issues pursuant to the Atomic Energy Act of 1954, as amended:

1. Whether in accordance with the provisions of 10 CFR 50.35(a):

(a) The applicant has described the proposed design of the facilities including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public;

(b) Such further technical or design information as may be required to complete the safety analysis and which can reasonably be left for later consideration, will be supplied in the final safety analysis report;

(c) Safety features or components, if any, which require research and development have been described by the applicant and the applicant has identified, and there will be conducted a research and development program reasonably designed to resolve any safety questions associated with such features or components; and

(d) On the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of construction of the proposed facilities, and (ii) taking into consideration the site criteria contained in 10 CFR Part 100, the proposed facilities can be constructed and operated at the proposed location without undue risk to the health and safety of the public.

2. Whether the applicant is technically qualified to design and construct the proposed facilities;

3. Whether the applicant is financially qualified to design and construct the proposed facilities; and

4. Whether the issuance of permits for construction of the facilities will be inimical to the common defense and security or to the health and safety of the public.

Issue pursuant to National Environmental Policy Act of 1969 (NEPA):

5. Whether, in accordance with the requirements of Appendix D of 10 CFR Part 50, the construction permits should be issued as proposed.

In the event that this proceeding is not a contested proceeding, as defined by 10 CFR 2.4(n), the Board will determine (1) without conducting a de novo evaluation of the application, whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, to support the findings proposed to be made by the Director of Regulation on Items 1–4 above, and to support, insofar as the Commission's licensing requirements under the Act are concerned, the issuance of the construction permits proposed by the Director of Regulation; and (2) determine whether the review conducted by the Commission pursuant to NEPA has been adequate. In the event that this proceeding is not contested, the Board will convene a prehearing conference of the parties within sixty (60) days after this notice of hearing or such time as may be appropriate, at a time and place to be set by the Board. It will also set the schedule for the evidentiary hearing. Notice of the prehearing conference and the hearing will be published in the FEDERAL REGISTER.

In the event that this proceeding becomes a contested proceeding, the Board will consider and initially decide, as issues in this proceeding, Items 1–5 above as a basis for determining whether the construction permits should be issued to the applicant.

The Board will convene a special prehearing conference of the parties to the proceeding and persons who have filed petitions for leave to intervene, or their counsel, to be held within sixty (60) days from the date of publication of this notice in the FEDERAL REGISTER, or within such other time as may be appropriate, at a place to be set by the Board for the purpose of dealing with the matters specified in 10 CFR 2.751a.

The Board will convene a prehearing conference of the parties, or their counsel, to be held subsequent to any special prehearing conference and within sixty (60) days after discovery has been completed, or within such other time as may be appropriate, at a place to be set by the Board for the purpose of dealing with the matters specified in 10 CFR 2.752.

Notices of the dates and places of the special prehearing conference, the prehearing conference and the hearing will be published in the FEDERAL REGISTER.

With respect to the Commission's responsibilities under NEPA, and regardless of whether the proceeding is contested or uncontested, the Board will, in accordance with section A.11 of Appendix D of 10 CFR Part 50, (1) determine whether the requirements of section 102 (2) (C) and (D) of NEPA and Appendix D of 10 CFR Part 50 have been complied with in this proceeding; (2) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and (3) determine whether the construction permits should be issued, denied, or appropriately conditioned to protect environmental values.

For further details, see the application for construction permits dated September 15, 1971, and amendments thereto, and the applicant's Environmental Report dated March 15, 1972, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, between the hours of 8:30 a.m. and 5 p.m. on weekdays. Copies of those documents will also be made available at the Office

of Dean P. Agee, Executive Secretary, Board of Supervisors, Louisa County Courthouse, Louisa, Va. 23093, for inspection by members of the public between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, and 8:30 a.m. and 12 noon on Saturday. As they become available, a copy of the report of the Advisory Committee on Reactor Safeguards (ACRS), the safety evaluation by the Commission's Directorate of Licensing, the Commission's draft and final detailed statements on environmental considerations, the proposed construction permits, other relevant documents, and the transcripts of the prehearing conferences and of the hearing will also be available at the above locations. Copies of the proposed construction permits, the ACRS report, the Directorate of Licensing's safety evaluation and the Commission's draft and final detailed statement on environmental considerations may be obtained, when available, by request to the Deputy Director for Reactor Projects, Directorate of Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

Any person who does not wish to, or is not qualified to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715. A person making a limited appearance may only make an oral or written statement on the record, and may not participate in the proceeding in any other way. Limited appearances will be permitted at the time of the hearing in the discretion of the Board, within such limits and on such conditions as may be fixed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, not later than thirty (30) days from the date of publication of this notice in the FEDERAL REGISTER.

A person permitted to make a limited appearance does not become a party, but may state his position and raise questions which he would like to have answered to the extent that the questions are within the scope of the hearing as specified in the issues set out above.

Any person whose interest may be affected by the proceeding, who does not wish to make a limited appearance and who wishes to participate as a party in the proceeding must file a written petition under oath or affirmation for leave to intervene in accordance with the provisions of 10 CFR 2.714.

A petition for leave to intervene shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and any other contentions of the petitioner including the facts and reasons why he should be permitted to intervene, with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. Any such petition shall be accompanied by a supporting affidavit identifying the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene and setting forth with particularity both the facts pertaining to his interest and the basis for his contentions with regard to each aspect on which he desires to intervene. A petition that sets forth contentions relating only to matters outside the jurisdiction of the Commission will be denied.

A petition for leave to intervene must be filed with the Office of the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff, or the Commission's Public Document Room, 1717 H Street NW., Washington, DC, not later than thirty (30) days from the date of publication of this notice in the FEDERAL REGISTER. A petition for leave to intervene which is not timely will not be granted unless the Board determines that the petitioner has made a substantial showing of good cause for failure to file on time and after the Board has considered those factors specified in 10 CFR 2.714(a).

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have all the rights of the applicant to participate fully in the conduct of the hearing, such as the examination and cross-examination of witnesses, with respect to their contentions related to the matters at issue in the proceeding.

An answer to this notice, pursuant to the provisions of 10 CFR 2.705, must be filed by the applicant not later than twenty (20) days from the date of publication of this notice in the FEDERAL REGISTER.

Papers required to be filed in this proceeding may be filed by mail or telegram addressed to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

Pending further order of the Board, parties are required to file, pursuant to the provisions of 10 CFR 2.708, an original and twenty (20) conformed copies of each such paper with the Commission.

With respect to this proceeding, the Commission will delegate to the Atomic Safety and Licensing Appeal Board the authority and the review function which would otherwise be exercised and performed by the Commission. The Commission will establish the Appeal Board pursuant to 10 CFR 2.785 and will make the delegation pursuant to paragraph (a)(1) of that section. The Appeal Board will be composed of a chairman, and two other members to be designated by the Commission. Notice as to the membership of the Appeal Board will be published in the FEDERAL REGISTER.

Dated at Germantown, Md., this 21st day of September 1972.

UNITED STATES ATOMIC ENERGY COMMISSION,
PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.72-16474 Filed 10-3-72;8:45 am]

[Docket No. 50-341]

DETROIT EDISON CO.

Notice of Issuance of Construction Permit

Notice is hereby given that, pursuant to the initial decision of the Atomic Safety and Licensing Board, dated September 22, 1972, the Deputy Director for Reactor Projects, Directorate of Licensing, has issued Construction Permit No. CPPR-87 to the Detroit Edison Co. for construction of a boiling water nuclear reactor at the applicant's site on the western shore of Lake Erie in Frenchtown Township, Monroe County, Mich., about 30 miles southwest of downtown Detroit, Mich.

The reactor, known as the Enrico Fermi Atomic Power Plant Unit 2, is designed for initial operation at approximately 3,293 thermal megawatts with a gross electrical output of 1,150 megawatts.

Copies of the initial decision and Construction Permit No. CPPR-87 are available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and in the Monroe County Library System, 3700 South Custer Road, Monroe, MI.

Single copies of the construction permit may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Md., this 26th day of September 1972.

For the Atomic Energy Commission.

ROGER S. BOYD,
Assistant Director for Boiling Water Reactors, Directorate of Licensing.

[FR Doc.72-16943 Filed 10-3-72;8:53 am]

[Docket No. 50-267]

PUBLIC SERVICE CO. OF COLORADO

Order Extending Provisional Construction Permit Completion Date

By application dated September 12, 1972, the Public Service Co. of Colorado requested an extension of the latest completion date specified in Provisional Construction Permit No. CPPR-54. The permit authorizes the construction of a high temperature gas cooled nuclear reactor, known as the Fort St. Vrain Nuclear Generating Station, at the applicant's site in Weld County, Colo., about 3½ miles northwest of Platteville, Colo.

Good cause having been shown for this extension pursuant to section 185 of the Atomic Energy Act of 1954, as amended, and § 50.55(b) of 10 CFR Part 50 of the Commission's regulations: *It is hereby ordered*, That the latest completion date specified in Provisional Construction Permit No. CPPR–54 is extended from October 31, 1972, to October 31, 1973.

Dated at Bethesda, Md., this 26th day of September 1972.

For the Atomic Energy Commission.

A. GIAMBUSSO,
Deputy Director for Reactor Projects, Directorate of Licensing.

[FR Doc.72–16942 Filed 10–3–72;8:53 am]

[Docket No. 50–259]

TENNESSEE VALLEY AUTHORITY

Order Extending Provisional Construction Permit Completion Date

By application dated August 25, 1972, and supplement thereto, dated September 15, 1972, the Tennessee Valley Authority requested an extension of the latest completion date specified in Provisional Construction Permit No. CPPR–29. The permit authorizes the construction of a single cycle, forced circulation, boiling water nuclear reactor, known as the Browns Ferry Nuclear Plant Unit No. 1, on the Tennessee Valley Authority's site at Wheeler Lake, Limestone County, Ala., about 10 miles southwest of Athens, Ala.

Good cause having been shown for this extension pursuant to section 185 of the Atomic Energy Act of 1954, as amended, and § 50.55(b) of 10 CFR Part 50 of the Commission's regulations: *It is hereby ordered*, That the latest completion date specified in Provisional Construction Permit No. CPPR–29 is extended from December 31, 1972, to December 1, 1973.

Dated at Bethesda, Md., this 26th day of September 1972.

For the Atomic Energy Commission.

A. GIAMBUSSO,
Deputy Director for Reactor Projects, Directorate of Licensing.

[FR Doc.72–16856 Filed 10–3–72;8:46 am]

[Docket No. 50–260]

TENNESSEE VALLEY AUTHORITY

Order Extending Provisional Construction Permit Completion Date

By application dated August 25, 1972, and supplement thereto, dated September 15, 1972, the Tennessee Valley Authority requested an extension of the latest completion date specified in Provisional Construction Permit No. CPPR–30. The permit authorizes the construction of a single cycle, forced circulation, boiling water nuclear reactor, known as the Browns Ferry Nuclear Plant Unit No. 2, on the Tennessee Valley Authority's site at Wheeler Lake, Limestone County, Ala., about 10 miles southwest of Athens, Ala.

Good cause having been shown for this extension pursuant to section 185 of the Atomic Energy Act of 1954, as amended, and § 50.55(b) of 10 CFR Part 50 of the Commission's regulations: *It is hereby ordered*, That the latest completion date specified in Provisional Construction Permit No. CPPR–30 is extended from July 15, 1973, to August 1, 1974.

Dated at Bethesda, Md., this 26th day of September 1972.

For the Atomic Energy Commission.

A. GIAMBUSSO,
Deputy Director for Reactor Projects, Directorate of Licensing.

[FR Doc.72–16857 Filed 10–3–72;8:46 am]

[Docket No. 50–296]

TENNESSEE VALLEY AUTHORITY

Order Extending Provisional Construction Permit Completion Date

By application dated August 25, 1972, and supplement thereto, dated September 15, 1972, the Tennessee Valley Authority requested an extension of the latest completion date specified in Provisional Construction Permit No. CPPR–48. The permit authorizes the construction of a single cycle, forced circulation, boiling water nuclear reactor, known as the Browns Ferry Nuclear Plant Unit No. 3, on the Tennessee Valley Authority's site at Wheeler Lake, Limestone County, Ala., about 10 miles southwest of Athens, Ala.

Good cause having been shown for this extension pursuant to section 185 of the Atomic Energy Act of 1954, as amended, and § 50.55(b) of 10 CFR Part 50 of the Commission's regulations: *It is hereby ordered*, That the latest completion date specified in Provisional Construction Permit No. CPPR–48 is extended from October 1, 1972, to February 1, 1975.

Dated at Bethesda, Md., this 26th day of September 1972.

For the Atomic Energy Commission.

A. GIAMBUSSO,
Deputy Director for Reactor Projects, Directorate of Licensing.

[FR Doc.72–16858 Filed 10–3–72;8:46 am]

CIVIL AERONAUTICS BOARD

[Docket No. 24603]

CARIB WEST AIRWAYS, LTD.

Notice of Hearing

Notice is hereby given pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on October 6, 1972, at 10 a.m. (local time) in Room 503, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before the undersigned Administrative Law Judge.

Dated at Washington, D.C., September 29, 1972.

[SEAL] LOUIS W. SORNSON,
Administrative Law Judge.

[FR Doc.72–16957 Filed 10–3–72;8:55 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN HAITI

Entry or Withdrawal From Warehouse for Consumption

SEPTEMBER 29, 1972.

On November 3, 1971, 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 comprehensive bilateral cotton textile agreement with the Government of Haiti concerning exports of cotton textiles and cotton textile products from Haiti to the United States over a 5-year period beginning on October 1, 1971, and extending through September 30, 1976. Among the provisions of the agreement are those establishing an aggregate limit for the 64 categories, and within the aggregate limit specific limits on categories 39, 53, and 54 for the second agreement year beginning October 1, 1972.

There is published below a letter of September 29, 1972, from the chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, directing that the amounts of cotton textile products in categories 39, 53, and 54 produced or manufactured in Haiti, which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning October 1, 1972, and extending through September 30, 1973, 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.

The bilateral agreement also established a consultation level for cotton textile products in category 51 for the first agreement year. Imports of cotton textile products in this category during the first half of the first agreement year, however, reached a level more than double that year's consultation level. On April 25, 1972, the chairman of the Committee for the Implementation of Textile Agreements in a letter to the Commissioner of Customs prohibited further entry into the United States for consumption and withdrawal from

warehouse for consumption of cotton textile products in category 51 during the first agreement year. The U.S. Government has requested consultations with the Government of Haiti concerning these overshipments. Pending the outcome of these consultations with the Government of Haiti, the U.S. Government has decided to extend the prohibition against further imports in category 51 to the second agreement year. The letter published below also implements this decision.

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

SEPTEMBER 29, 1972.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

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 3, 1971, between the Governments of the United States and Haiti, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective October 1, 1972 and for the 12-month period extending through September 30, 1973, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 39, 53, and 54, produced or manufactured in Haiti, in excess of the following levels of restraint:

Category		12-month levels of restraint
39	dozen pairs	210,000
53	dozen	19,702
54	do	31,500

In carrying out this directive, entries of cotton textile products in Categories 39, 53, and 54, produced or manufactured in Haiti and which have been exported to the United States from Haiti prior to October 1, 1972, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period October 1, 1971, through September 30, 1972. In the event that the levels of restraint established for such goods for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of November 3, 1971, between Governments of the United States and Haiti which provide, in part, that within the aggregate limit, the limits of certain 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 further letter.

The first paragraph of the directive of April 25, 1972 is amended, effective as soon as possible, to read as follows:

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 3, 1971, between the Governments of the United States and Haiti, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective upon publication of this letter in the FEDERAL REGISTER, and until further notice, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 51, produced or manufactured in Haiti and which have been exported to the United States during the period beginning October 1, 1971, and extending through September 30, 1973.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on April 29, 1972 (37 F.R. 8802).

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 Haiti and with respect to imports of cotton textiles and cotton textile products from Haiti have been determined by the Committee for the Implementation of Textile Agreements 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 rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources.

[FR Doc.72-16974 Filed 10-3-72;8:56 am]

CERTAIN COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN THE REPUBLIC OF KOREA

Entry or Withdrawal From Warehouse for Consumption; Levels of Restraint

SEPTEMBER 28, 1972.

On January 6, 1972, there was published in the FEDERAL REGISTER (37 F.R. 161), a letter dated December 30, 1971, from the Chairman, President's Cabinet Textile Advisory Committee, to the Commissioner of Customs, establishing levels of restraint applicable to certain specified categories of cotton textiles and cotton textile products produced or manufactured in the Republic of Korea and exported to the United States during the 9-month period beginning January 1, 1972. As set forth in that letter, the levels of restraint are subject to adjustment pursuant to paragraph 6 of the bilateral cotton textile agreement of December 30, 1971, as amended, between the Governments of the United States and the Republic of Korea, which provides that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than five (5) percent.

Accordingly, at the request of the Government of the Republic of Korea and pursuant to the provision of the bilateral agreement referred to above, there is published below a letter of September 28, 1972, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs amending the level of restraint applicable to cotton textile products in Category 50 for the 9-month period which began on January 1, 1972.

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

SEPTEMBER 28, 1972.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

DEAR MR. COMMISSIONER: On December 30, 1971, the Chairman, President's Cabinet Textile Advisory Committee, directed you to prohibit entry during the 9-month period beginning January 1, 1972, of cotton textiles and cotton textile products in certain specified categories, produced or manufactured in the Republic of Korea, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to paragraph 6 of the bilateral cotton textile agreement of December 30, 1971, as amended, between the Governments of the United States and the Republic of Korea, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to amend, effective as soon as possible, the level of restraint established in the aforesaid directive of Decemebr 30, 1971, for cotton textile products in Category 50 to 48,547 dozen for the 9-month period beginning January 1, 1972.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton textiles and cotton textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements 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 rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely yours,

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources.

[FR Doc.72-16937 Filed 10-3-72;8:53 am]

[1] The term "adjustment" refers to those provisions of the bilateral cotton textile agreement of Dec. 30, 1971, between the Governments of the United States and the Republic of Korea which provide in part that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than five (5) percent; for limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements.

CERTAIN WOOL AND MANMADE FIBER TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN THE REPUBLIC OF CHINA

Entry or Withdrawal from Warehouse for Consumption

SEPTEMBER 29, 1972.

On December 30, 1971, the United States Government concluded a comprehensive bilateral wool and manmade fiber textile agreement with the Government of the Republic of China concerning exports of wool and manmade fiber textiles from the Republic of China to the United States over a 5-year period beginning October 1, 1971, and extending through September 30, 1976. Among the provisions of the agreement are those establishing specific export limitations on Categories 116, 117, 211, 213, 216, 219, 221, 222, 228, 232, 234, and 235 for the second agreement year beginning October 1, 1972. The agreement also contains provisions for the establishing of consultation levels for those categories not having specific export limitations for the agreement year beginning October 1, 1972. These consultation levels, except for the level established for Category 224 which is controlled by the U.S. Government, are initially to be controlled by the Government of the Republic of China. At a later date these other levels could be controlled by the U.S. Government like those categories having specific export limitations.

Accordingly, there is published below, a letter of September 28, 1972, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, directing that the amounts of wool and manmade fiber textile products in the above categories produced or manufactured in the Republic of China which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning October 1, 1972, and extending through September 30, 1973, 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, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

SEPTEMBER 29, 1972.

DEAR MR. COMMISSIONER: Under the provisions of the bilateral Wool and Manmade Fiber Textile Agreement of December 30, 1971, between the Governments of the United States and the Republic of China and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective October 1, 1972, and for the 12-month period extending through September 30, 1973, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Categories 116 and 117 and manmade fiber textile products in Categories 211, 213, 216, 219, 221, 222, 224, 228, 232, 234, and 235, produced or manufactured in the Republic of China, in excess of the following 12-month levels of restraint:

Category		12-month levels of Restraint
116	lbs.	828,718
117	do.	517,949
211	do.	701,923
213	do.	7,019,231
216	doz.	604,305
219	do.	4,651,961
221	do.	3,273,098
222	do.	3,075,843
224 [1]	lbs.	8,333,333
228	doz.	376,807
232	do.	526,848
234	do.	986,931
235	do.	1,432,543

[1] Consultation category—level established in accordance with provisions of paragraph 3 of the wool and manmade fiber textile agreement with the Republic of China.

In carrying out this directive, entries of wool and manmade fiber textile products in the above categories, produced or manufactured in the Republic of China, which have been exported to the United State prior to October 1, 1972, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period October 1, 1971, through September 30, 1972. In the event that the levels of restraint for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of December 30, 1971, between the Governments of the United States and the Republic of China which provide in part that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; for limited interfiber flexibility between cotton textiles and manmade fiber textile products of the comparable category; and for administrative arrangements.

A detailed description of the wool and manmade fiber textile categories in terms of T.S.U.S.A. numbers and conversion factors were published in the FEDERAL REGISTER on April 29, 1972 (37 F.R. 8802).

In carrying out this directive, 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 the Republic of China and with respect to imports of wool and manmade fiber textile products from the Republic of China have been determined by the Committee for the Implementation of Textile Agreements 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 rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources.

[FR Doc.72-16973 Filed 10-3-72;8:56 am]

CERTAIN WOOL AND MANMADE FIBER TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN THE REPUBLIC OF KOREA

Entry or Withdrawal From Warehouse for Consumption

SEPTEMBER 28, 1972.

On January 4, 1972, the U.S. Government concluded a comprehensive bilateral wool and manmade fiber textile agreement with the Government of the Republic of Korea concerning exports of wool and manmade fiber textiles from the Republic of Korea to the United States over a 5-year period beginning October 1, 1971, and extending through September 30, 1976. Among the provisions of the agreement are those establishing export limitations for the second agreement year beginning October 1, 1972, on wool textile products in Categories 104 and 120; manmade fiber textile products in Categories 200–205 and 241–243, as a group, as well as on the nine individual categories within the group; manmade fiber textile products in Categories 206–213, as a group, as well as the eight individual categories within the group; and manmade fiber textile products in Categories 214–240, as a group, as well as the 27 individual categories within that group.

Accordingly, there is published below a letter of September 28, 1972, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directing that the amounts of wool and manmade fiber textile products in the above categories produced or manufactured in the Republic of Korea which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning October 1, 1972, and extending through September 30, 1973, 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, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

SEPTEMBER 28, 1972.

DEAR MR. COMMISSIONER: Under the provisions of the bilateral Wool and Manmade Fiber Textile Agreement of January 4, 1972, between the Governments of the United States and the Republic of Korea and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective October 1, 1972, and for the 12-month period extending through September 30, 1973, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Categories 104 and

120; manmade fiber textile products in Categories 200–205 and 241–243, as a group, and the nine constituent categories comprising that group; Categories 206–213, as a group, and the eight constituent categories comprising that group; and Categories 214–240, as a group, and the 27 constituent categories comprising that group, in excess of the following 12-month levels of restraint:

Category		12-month level of restraint
104	square yards	1,520,959
120	pieces	317,275
200–205 and 241–243	square yards equivalent	34,676,300
200[1]	pounds	1,709,402
201[1]	do	96,339
202[1]	do	2,586,207
203[1]	do	147,059
204[1]	do	121,359
205[1]	do	142,450
241[1]	square feet	4,545,455
242[1]	pounds	128,205
243[1]	do	256,410
206–213	square yards equivalent	17,488,600
206[1]	square yards	500,000
207[1]	do	500,000
208[1]	do	8,000,000
209[1]	do	500,000
210[1]	do	500,000
211	pounds	1,856,144
212[1]	square yards	500,000
213[1]	pounds	89,744
214–240	square yards equivalent	323,122,100
214[1]	dozen pairs	198,300
215[1]	do	163,043
216	dozen	126,332
217[1]	do	8,661
218[1]	do	552,486
219	do	3,461,231
220[1]	do	28,090
221	do	2,375,095
Part 222 (excluding T.S.U.S.A. No. 380.0428 and 380.8165)	do	678,513
223[1]	do	468,750
224/part 222 (only T.S.U.S.A. No. 380.0428 and 380.8165)[1]	pounds	4,230,769
225[1]	dozen	73,684
226[1]	do	210,843
227[1]	pounds	44,872
228	dozen	650,002
229	do	652,663
230[1]	do	14,349
231[1]	do	6,863
232[1]	do	6,736
233[1]	do	16,432
234	do	3,260,588
235	do	1,206,451
236[1]	do	19,663
237[1]	numbers	84,444
238	dozen	161,798
239[1]	do	31,250
240[2]	pounds	689,103

[1] Consultation categories—levels established in accordance with provisions of paragraph 3 of the wool and manmade fiber textile agreement with the Republic of Korea.

In carrying out this directive, entries of wool and manmade fiber textile products in the above categories, produced or manufactured in the Republic of Korea, which have been exported to the United States prior to October 1, 1972, shall, to the extent of any unfilled balances be charged against the levels of restraint established for such goods during the period October 1, 1971, through September 30, 1972. In the event that the levels of restraint for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of January 4, 1972, between the Governments of the United States and the Republic of Korea which provide in part that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; for limited interfiber flexibility between cotton textiles and manmade fiber textile products of the comparable category; and for administrative arrangements.

A detailed description of the wool and manmade fiber textile categories in terms of T.S.U.S.A. numbers and conversion factors was published in the FEDERAL REGISTER on April 29, 1972 (37 F.R. 8802).

In carrying out this directive, 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 the Republic of Korea and with respect to imports of wool and manmade fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements 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 rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources.

[FR Doc.72-16936 Filed 10-3-72;8:53 am]

ENVIRONMENTAL PROTECTION AGENCY

AMERICAN CYANAMID CO.

Notice of Filing of Petition Regarding Pesticide Chemicals

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 3F1301) has been filed by American Cyanamid Co., Post Office Box 400, Princeton, NJ 08540, proposing establishment of a tolerance (40 CFR Part 180) for combined residues of the insecticide dimethoate (*O,O*-dimethyl *S*-(*N*-methylcarbamoylmethyl) phosphorodithioate) including its oxygen analog *O,O*-dimethyl *S*-(*N*-methylcarbamoylmethyl) phosphorothioate in or on the raw agricultural commodity grapes at 1 part per million.

The analytical method proposed in the petition for determining residues of the insecticide is a gas-liquid chromatographic procedure using a flame photometric detector equipped with a phosphorus filter (526 nanometers).

Dated: September 25, 1972.

EDWIN L. JOHNSON,
Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.72-16948 Filed 10-3-72;8:54 am]

ETHYL 4-(METHYLTHIO)-*m*-TOLYL ISOPROPYLPHOSPHORAMIDATE

Notice of Establishment of Temporary Tolerances

Chemagro Corp., Post Office Box 4913, Kansas City, MO 64120, submitted a petition (PP 1G1168) requesting establishment of temporary tolerances for combined residues of the nematocide ethyl 4-(methylthio)-*m*-tolyl isopropylphosphoramidate and its cholinesterase-inhibiting metabolites in or on pineapple forage at 1 part per million and pineapples at 0.04 part per million.

It has been determined that temporary tolerances on pineapple forage at 1 part per million and on pineapples at 0.04 part per million (negligible residue) are safe and will protect the public health. It has also been determined that the 0.04 part per million temporary tolerance on pineapples is a negligible residue. They are therefore established as requested on condition that the nematocide be used in accordance with the temporary permits being issued concurrently by the Environmental Protection Agency and which provide for distribution under the Chemagro Corp. name.

These temporary tolerances expire September 25, 1973.

This action is being taken pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(j), 68 Stat. 516; 21 U.S.C. 346a(j)), the authority transferred to the Administrator of the Environmental Protection Agency (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs (36 F.R. 9038).

Dated: September 25, 1972.

EDWIN L. JOHNSON,
Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.72-16947 Filed 10-3-72;8:54 am]

UNIROYAL CHEMICAL

Notice of Filing of Petition Regarding Pesticide Chemical

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 3F1305) has been filed by Uniroyal Chemical, Division of Uniroyal, Inc., Bethany, Conn. 06525, proposing to increase the established 3 parts per million tolerance (40 CFR Part 180) for residues

of the insecticide 2-(*p-tert*-butylphenoxy) cyclohexyl 2-propynyl sulfite in or on the raw agricultural commodity plums (fresh prunes) to 7 parts per million.

The analytical method proposed in the petition for determining residues of the insecticide is gas chromatography using a sulfur detector.

Dated: September 25, 1972.

EDWIN L. JOHNSON,
Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.72-16949 Filed 10-3-72;8:54 am]

FEDERAL COMMUNICATIONS COMMISSION

[Report 615]

COMMON CARRIER SERVICES INFORMATION [1]

Domestic Public Radio Services Applications Accepted for Filing [2]

SEPTEMBER 25, 1972.

Pursuant to §§ 1.227(b)(3) and 21.30 (b) of the Commission's rules, an application, in order to be considered with any domestic public radio services application appearing on the attached list, must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cutoff dates are set forth in the alternative—applications will be entitled to consideration with those listed in the appendix below if filed by the end of the 60 day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier filed conflicting applications.

The attention of any party in interest desiring to file pleadings pursuant to section 309 of the Communications Act of 1934, as amended, concerning any domestic public radio services application accepted for filing, is directed to § 21.27 of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

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

APPENDIX

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

8265-C2-P-72—The Diamond State Telephone Co. (KGA471), replace transmitter operating on 157.83 and 158.04 MHz test located at 901 Tatnall Street, Wilmington, DE.

1704-C2-P-73—The Mountain States Telephone & Telegraph Co. (KOA795), change the antenna system for test facilities operating on 157.86, 157.92, 157.98, and 158.01 MHz at 285 Second Avenue, Yuma, AZ.

1705-C2-P-73—Mutual Telephone Co. (New), for a new 2-way station to be located at 1 mile east of Sioux Center, Iowa, to operate on 152.570 MHz.

1741-C2-P-AL-73—Mobilfone, consent to assignment of license from Communications Industries, Inc., doing business as Mobilfone, Assignor, to: Ralph C. Parker, doing business as Ratel Communications Co., Assignee.

1742-C2-P-(2)-73—Pacific Northwest Bell Telephone Co. (KOA732), for additional facilities to operation 454.375 and 454.450 MHz at a new site described as location No. 3: 1708 East Pike Street, Seattle, WA, and operate on 459.375 and 459.450 MHz test at 1200 Third Avenue, Seattle, WA.

1743-C2-P-73—Lafayette Radiofone (New), for a new 2-way station to be located at 1302 Maude Street, Abbeville, La., to operate on 454.150 MHz.

1744-C2-P-(3)-73—Massachusetts-Connecticut Mobile Telephone Co. (KCC803), for additional facilities to operate on 454.225 and 454.250 MHz at a new site described as location No. 4: Glastonbury, Conn., and to operate on 454.275 MHz at another new site described as location No. 5: 750 Main Street, Hartford, CT.

1745-C2-MP-73—Zipcall (KTS212), replace transmitter operating on 35.22 MHz at the end of Tower Road, Fall River, Mass.

1746-C2-P-73—Mahaffey Message Relay (KDT223), change the antenna system and relocate facilities operating on 152.090 MHz to 305 South Bellevue, Memphis, TN, location No. 1.

1763-C2-P-(2)-73—The Bell Telephone Co. of Pennsylvania (KGA475), change the antenna system operating on 152.510 and 152.540 MHz at 3.5 miles northwest of Enola, Pa.

1764-C2-P-73—B. & C. Mobile Communications, Inc. (New), for a new 2-way station to be located on U.S. Highway No. 287, near Lamar, Colo., to operate on 152.030 MHz.

1765-C2-P-73—Industrial Communications Systems, Inc. (KSV926), for additional facilities to operate on 158.700 MHz at 3.5 miles north-northeast of Malibu, Calif.

1766-C2-P-73—Auto Phone Service (KIB384), for additional facilities to operate on 454.125 MHz at 250 North Orange Avenue, Orlando, FL.

1782-C2-P-73—Tel-Illinois, Inc. (New), for a new 1-way station to be located at Alton Box Board Building, Alton, Ill., to operate on 158.700 MHz.

1783-C2-P-73—Same as above except to be located at St. Johns Orphanage, Belleville, Ill.

1906-C2-MP-73—Zipcall (KTS213), replace transmitter operating on 35.22 MHz at 274 Page Street, Avon, MA.

INFORMATIVE: Pursuant to § 21.15(c)(5) of the Commission's rules, all applicants applying for new site locations for stations in the Domestic Public Radio Services should include in their applications, a statement concerning the availability of the sites and, if not owned by the applicant, the terms of (or copy of) any agreements for the use of the sites and free access to the station facilities.

RURAL RADIO SERVICE

1706-C1-P-73—Duratronics, Inc. (New), for a new central office fixed station to be located 3 miles north of Grand Marais, Minn., to operate on 152.780 and 152.810 MHz.

1707-C2-P-73—Sawbill Canoe Outfitters, Inc. (New), for a new rural subscriber station to operate on 158.070 MHz at Southern Tip of Sawbill Lake, Minn.

1708-C2-P-73—Howell Pomeroy Skoglung (New), for a new rural subscriber station to operate on 158.040 MHz at the Southern Tip of Greenwood Lake, Minn.

INFORMATIVE: Pursuant to § 21.15(c)(5) of the Commission's rules, all applicants applying for new site locations for stations in the Domestic Public Radio Services should include in their applications, a statement concerning the availability of the sites, and, if not owned by the applicant, the terms of (or copy of) any agreements for the use of the sites and free access to the station facilities.

POINT-TO-POINT MICROWAVE RADIO SERVICE

1698-C1-P-73—Southern Bell Telephone & Telegraph Co. (New), Terminal Building, Hartsfield Airport, Atlanta, Ga. (latitude 33°39'10" N., longitude 84°25'34" W.) C.P. for a new station on frequency 2176.8V MHz toward Hampton, Ga.

1699-C1-P-73—Same (New), FAA Air Traffic Control Center, Hampton, Ga. (latitude 33°22'47" N., longitude 84°17'49" W.) C.P. for a new station on frequency 2126.8V MHz toward Hartsfield Airport, Atlanta, Ga.

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[1] All applications listed in the appendix below are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations, and other requirements.

[2] The above alternative cutoff rules apply to those applications listed in the appendix below as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio and Local Television Transmission Services (Part 21 of the rules).

POINT-TO-POINT MICROWAVE RADIO SERVICE—continued

1700–C1–P–73—The Mountain States Telephone & Telegraph Co. (KPS81), Twin Buttes, 1.8 miles north-northwest of Green Valley, Ariz. (latitude 31°54'09" N., longitude 110°59'52" W.) C.P. to add frequencies 10,875V, 11,115H MHz toward Tucson, Ariz.

1701–C1–P–73—Same (KOS52), 120 East Pennington Street, Tucson, Ariz. (latitude 32°13'26" N., longitude 110°58'08" W.) C.P. to add frequencies 11,325V, 11,565H MHz toward Twin Buttes, Ariz.

1709–C1–P–73—American Telephone & Telegraph Co. (KQA88), 2.9 miles south of Ayersville, Ohio, (latitude 41°11'47" N., longitude 84°15'57" W.) C.P. to add frequency 4090H MHz toward Grand Rapids, Ohio.

1710–C1–P–73—Same (KVU71), 1.5 miles southwest of Grand Rapids, Ohio, (latitude 41°23'07" N., longitude 83°53'13" W.) C.P. to add frequency 4050H MHz toward Ayersville, Ohio; frequency 4050V MHz toward Lyons, Ohio.

1711–C1–P–73—Same (KVU72), 1.1 miles northwest of Lyons, Ohio. (latitude 41°42'47" N., longitude 84°04'50" W.) C.P. to add frequency 4090V MHz toward Grand Rapids, Ohio; frequency 4090V MHz toward Clinton, Mich.

1712–C1–P–73—Same (KVU73), Clinton, 1.7 miles northwest of Macon, Mich. (latitude 42°05'21" N., longitude 83°53'04" W.) C.P. to add frequency 4050V MHz toward Lyons, Ohio; frequency 4050V MHz toward Plymouth Junction, Mich.

1713–C1–P–73—Same (KVU74), 4 miles west of Plymouth, Mich. (latitude 42°21'52" N., longitude 83°32'50" W.) C.P. to add frequency 4090V MHz toward Clinton, Mich.

1714–C1–P–73—Same (KQE91), 4.5 miles southwest of Milford, Mich. (latitude 42°33'25" N., longitude 83°41'38" W.) C.P. to add frequency 4190H MHz toward Dansville, Mich.

1715–C1–P–73—Same (KQD73), 1 mile northwest of Dansville, Mich. (latitude 42°33'38" N., longitude 84°19'04" W.) C.P. to add frequency 4070H MHz toward Parma, Mich.

1716–C1–P–73—American Telephone & Telegraph Co. (KQA26), 336 South Burdick Street, Kalamazoo, MI (latitude 42°17'20" N., longitude 85°35'01" W.) C.P. to add frequency 4170H MHz toward Kalamazoo, Mich.

1717–C1–P–73—Same (KQD79), 2.5 miles northwest of Kalamazoo, Mich. (latitude 42°20'36" N., longitude 85°37'38" W.) C.P. to add frequency 3790V MHz toward Kalamazoo C.O., Mich.; frequency 4030H MHz toward Jones, Mich.

1718–C1–P–73—Same (KQD78), 1.5 miles north of Jones, Mich. (latitude 41°55'18" N., longitude 85°47'52" W.) C.P. to add frequency 3770V MHz toward Kalamazoo, Mich.; frequency 4050V MHz toward Mishawaka, Ind.

1719–C1–P–73—Same (KSA43), 1.2 miles southwest of Mishawaka, Ind. (latitude 41°38'00" N,. longitude 86°11'52" W.) C.P. to add frequency 3750H MHz toward Jones, Mich.; frequencies 3750H, 3830H MHz toward Plymouth, Ind.

1720–C1–P–73—Same (KVI57), 2.4 miles south of Plymouth, Ind. (latitude 41°18'31" N., longitude 86°19'04" W.) C.P. to add frequencies 3710H, 3790H MHz toward Mishawaka, Ind.; frequencies 3710H, 3790H MHz toward Winamac, Ind.

1721–C1–P–73—Same (KVI56), 2.5 miles northeast of Winamac, Ind. (latitude 41°05'32" N., longitude 86°34'52" W.) C.P. to add frequencies 3750H, and 3830H MHz toward Plymouth, Ind.; frequencies 3750H, and 3830H MHz toward Monon, Ind.

1722–C1–P–73—Same ( ), 2 miles east-northeast of Bruceville, Ind. (latitude 38°45'44" N., longitude 87°22'16" W.) C.P. to add frequency 3770V MHz toward Graysville, Ind.; frequency 3930V MHz toward Petersburg, Ind.

1723–C1–P–73—Same (KSO82), 1.5 miles west of Monon, Ind. (latitude 40°52'03" N., longitude 86°54'35" W.) C.P. to add frequencies 3710H, and 3790H MHz toward Winamac, Ind.

1724–C1–P–73—Same (KSB69), 663 Ohio Street, Terre Haute, Ind. (latitude 39°27'54" N., longitude 87°24'31" W.) C.P. to add frequency 3930V MHz toward Graysville, Ind.

1725–C1–P–73—Same (KSF77), 2.5 miles northeast of Graysville, Ind. (latitude 39°08'25" N., longitude 87°31'27" W.) C.P. to add frequency 3730V MHz toward Terre Haute, Ind.; frequency 3890V MHz toward Bruceville, Ind.

1726–C1–P–73—Same (KSE79), 4.7 miles southeast of Petersburg, Ind. (latitude 38°25'43" N., longitude 87°13'45" W.) C.P. to add frequency 3730V MHz toward Bruceville, Ind.; frequency 3930V MHz toward Stanley, Ind.

1727–C1–P–73—Same (KSF80), 2 miles southwest of Stanley, Ind. (latitude 38°08'37" N., longitude 87°22'29" W.) C.P. to add frequency 3730V MHz toward Petersburg, Ind.; frequency 3890V MHz toward Evansville, Ind.

POINT-TO-POINT MICROWAVE RADIO SERVICE—continued

1728–C1–P–73—Same (KSF81), 129 Northwest 5th Street, Evansville, IN (latitude 37°58'26" N., longitude 87°34'16" W.) C.P. to add frequency 3770V MHz toward Stanley, Ind.

1729–C1–P–73—American Telephone & Telegraph Co. (KQF58), 0.5 mile south of West Unity, Ohio (latitude 41°34'43" N., longitude 84°26'03" W.) C.P. to add frequency 3950H MHz toward Paulding, Ohio.

1730–C1–P–73—Same (KQH52), 3.25 miles northwest of Paulding, Ohio (latitude 41°10'44" N., longitude 84°37'38" W.) C.P. to add frequency 3990H MHz toward Schumm, Ohio.

1731–C1–P–73—Same (KQH51), 1.5 miles east-southeast of Schumm, Ohio (latitude 40°44'44" N., longitude 84°41'54" W.) C.P. to add frequency 3950H MHz toward Rose Hill, Ohio.

1732–C1–P–73—Same (KQH50), 3.2 miles northwest of Rose Hill, Ohio (latitude 40°20'34" N., longitude 84°46'41" W.) C.P. to add frequency 3950H MHz toward Lynn, Ohio.

1733–C1–P–73—Same (KSI27), 3 miles west-northwest of Lynn, Ind. (latitude 40°03'51" N., longitude 85°00'06" W.) C.P. to add frequency 3990H MHz toward New Hope, Ohio.

1734–C1–P–73—Same (KQA87), 2.2 miles south-southwest of New Hope, Ohio (latitude 39°45'51" N., longitude 84°43'59" W.) C.P. to add frequency 3950V MHz toward Mount Carmel, Ind.

1735–C1–P–73—Same (KSI26), 2.2 miles northeast of Mount Carmel, Ind. (latitude 39°-25'55" N., longitude 84°50'45" W.) C.P. to add frequency 3990H MHz toward Manchester, Ind.

1736–C1–P–73—Same (KSI25), 2.2 miles southeast of Manchester, Ind. (latitude 39°10'31" N., longitude 85°02'29" W.) C.P. to add frequency 3950H MHz toward East Enterprise, Ind.

1737–C1–P–73—Same (KSI24), 2.8 miles southeast of East Enterprise, Ind. (latitude 38°-51'12" N., longitude 84°56'20" W.) C.P. to add frequency 3950H MHz toward Williamstown, Ky.

1738–C1–P–73—Same (KVI43), 106 West Rayen Avenue, Youngstown, Ohio (latitude 41°-06'16" N., longitude 80°38'56" W.) C.P. to add frequency 3930V MHz toward Campbell, Ohio.

1739–C1–P–73—Same (KVI44), 1.5 miles north of Lowellville, Ohio (latitude 41°03'47" N., longitude 80°32'19" W.) C.P. to add frequency 3890V MHz toward Youngstown, Ohio; frequency 3890V MHz toward Lillyville, Pa.

1740–C1–P–73—Same (KGH36), 0.25 mile west of Lillyville, Pa. (latitude 40°50'43" N., longitude 80°13'23" W.) C.P. to add frequency 3930V MHz toward Campbell, Ohio.

INFORMATIVE: MCI Texas East Microwave, Inc., has filed three new applications for stations at Mount Calm, Mostyn, and Kinwood, Tex. Frequencies and points of communication contained in these new applications have been deleted from applications, files Nos. 6070, 6084, and 6087–C1–P–70, for these same three stations. This action separates into five parts MCI Texas East's specialized carrier proposal contained in applications 6066 through 6099–C1–P–70, 8902 through 8909–C1–P–70, and 6520 through 6542–C1–P–72. Since these new applications make no change to the existing proposal (other than separation into five parts), the 30-day period specified by section 309(b) of the Communications Act does not apply.

Applications 6070, 6084, and 6087–C1–P–70 were filed April 10, 1970, and appeared on Public Notice April 20, 1970. Subsequent amendments appeared on Public Notice July 10, 1972, and August 14, 1972.

1749–C1–P–73—MCI Texas East Microwave, Inc. (New), Station 1.5 miles north-northwest of Mount Calm, Tex. (latitude 31°44'14" N., longitude 96°52'39" W.) frequencies 11,285V and 11,685V MHz toward Waco, Tex., azimuth 230°23'.

1750–C1–P–73—Same (New), station 1.2 miles south-southeast of Mostyn, Tex. (latitude 30°12'46" N., longitude 95°40'44" W.) frequency 5945.2H MHz toward Beach, Tex., azimuth 64°30'.

1751–C1–P–73—Same (New), station 3 miles east-southeast of Kinwood, Tex. (latitude 29°-54'00" N., longitude 95°15'05" W.) frequency 5974.8H MHz toward Baytown, Tex., azimuth 128°14'.

1752–C1–P–73—Southern Bell Telephone & Telegraph Co. (KLJ30), 322 Drayton Street, Savannah, GA (latitude 32°04'23" N., longitude 81°05'33" W.) C.P. to add frequency 3910H MHz toward Marlow, Ga.

1753–C1–P–73—Same (KIL90), 5.2 miles southeast of Marlow, Ga. (latitude 32°12'03'' N., longitude 81°21'38'' W.) C.P. to add frequency 4110V MHz toward Savannah, Ga.; frequency 3870V MHz toward Newington, Ga.

1754–C1–P–73—Same (KIL89), 1.9 miles southeast of Newington, Ga. (latitude 32°33'57'' N., longitude 81°29'17'' W.) C.P. to add frequencies 4150H and 4070H MHz toward Marlow, Ga.

1755–C1–P–73—Same (KJC89), 3 miles northwest of Allendale, S.C. (latitude 33°01'56'' N., longitude 81°20'53'' W.) C.P. to add frequency 3730V MHz toward Hancock Landing, Ga.; frequencies 3810H and 3730H MHz toward Blackville, S.C.; frequencies 4110V and 4030V MHz toward Newington, Ga.

1756–C1–P–73—Southern Bell Telephone & Telegraph Co. (New), 2 miles west of Hancock Landing, Ga. (latitude 33°09'13'' N., longitude 81°47'43'' W.) C.P. for a new station on frequency 3970V MHz toward Augusta, Ga.; frequency 4070H MHz toward Allendale, S.C.

1757–C1–P–73—Same (KTF45), 937 Greene Street, Hancock Landing, GA (latitude 33°28'30'' N., longitude 81°58'10'' W.) C.P. to add frequency 4030H MHz toward Hancock Landing, Ga.; to move existing frequencies 5945.2H, 6004.5H, 6063.8H, and 6123.1H from existing parabolic antennas to new tower and KS15676–L9BC horn reflector antennas.

1758–C1–ML–73—Same (KJC88), approximately 4 miles north-northwest of Blackville, S.C. (latitude 33°24'55'' N., longitude 81°17'02'' W.) Modification of license to change polarization from H to V on frequencies 3750V and 3830V MHz toward Allendale, S.C.; change from V to H on frequencies 3770H and 3850H MHz toward Allendale, S.C.

1759–C1–MP–73—The Mountain States Telephone & Telegraph Co. (KGG29), 5.2 miles northwest of Sweet, Idaho (latitude 44°01'08'' N., longitude 116°24'15'' W.) Modification of C.P. to increase power output from TL–2 to TL–2/TL–A2(2 watt) on frequencies 11,565V and 11,325H MHz toward Boise Junction, Idaho; frequencies 11,365H and 11,605V MHz toward Mesa, Idaho.

1760–C1–MP–73—Same (KPZ64), 12.3 miles southeast of Boise, Idaho (latitude 43°29'20'' N., longitude 116°01'36'' W.) Modification of C.P. to increase power output from TL–2 to TL–2/TL–A2 (2 watt) on frequencies 10,875H and 11,115V MHz toward Squaw Butte, Idaho.

1761–C1–MP–73—Same (WJM28), approximately 1 mile north of Mesa, Idaho (latitude 44°38'23'' N., longitude 116°26'56'' W.) Modification of C.P. to increase power output from TL–2 to TL–2/TL–A2 on frequencies 10,915H and 11,155V MHz toward Squaw Butte, Idaho.

1762–C1–P–73—Michigan Bell Telephone Co. (KZI65), 514 East Mitchell Street, Petoskey, MI. C.P. to change geographic coordinates to latitude 45°22'25'' N., longitude 84°57'06'' W.; to relocate antenna system; to correct transmitter power output from 2 to 3.5; to change azimuth of radio path from 15' to 13'.

1767–C1–ML–73—Same (KQI80), 1365 Cass Avenue, Detroit, MI (latitude 42°19'57'' N., longitude 83°03'14'' W.) Modification of license to increase power output to TM–1/e/w TM–B1 Amp. on frequency 5937.8V toward Plymouth, Mich.

1768–C1–ML–73—Same (KQA79), 4 miles west of Plymouth, Mich. (latitude 42°21'52'' N., longitude 83°32'50'' W.) Modification of license to increase power output to TM–1/e/w TM–B1 Amp. on frequency 6189.8V MHz toward Detroit, Mich.; correct address and height of antennas Nos. 5 and 6.

1792–C1–P–73—New Jersey Bell Telephone Co. (KEL24), 216 East State Street, Trenton, NJ (latitude 40°13'14'' N., longitude 74°45'40'' W.) C.P. to add frequency 6019.3H MHz toward Philadelphia, Pa.

1793–C1–P–73—American Telephone & Telegraph Co. (KJJ69), 4 miles west-southwest of Boynton Beach, Fla. (latitude 26°30'45'' N., longitude 80°07'27'' W.) C.P. to change antenna azimuths on frequencies 3730H, 3810H, 4050H, and 4130H MHz toward West Palm Beach, Fla., from 49 minutes to 58 minutes.

1794–C1–P–73—Same (KIN43), 325 Gardenia Street, West Palm Beach, FL (latitude 26°42'34'' N., longitude 80°03'11'' W.) C.P. to change antenna azimuths on frequencies 3770V, 3830H, 3850V, 3910H, 3930V, 4010V, 4070H, 4090V, 4150H, and 4170V MHz toward Jupiter, Fla., from 30 minutes to 24 minutes; frequencies 3750V, 3770H, 3830V, 3850H, 3910V, 3930H, 4010H, 4090H, and 4170H MHz toward Boynton Beach, Fla., from 197°51' to 198°0'.

1795–C1–P–73—Same (KIN42), 0.1 mile west of Jupiter, Fla. (latitude 26°56'04'' N., longitude 80°06'33'' W.) C.P. to change antenna azimuth on frequencies 3710, 3730, 3790, 3810, 3870, 3890, 3950, 3970, 4030, 4050, 4110, and 4130 MHz toward West Palm Beach, Fla. from 29 minutes to 23 minutes.

1796–C1–P–73—Citizens Utilities Rural Co., Inc. (KPS65), 415 East Andy Devine Street, Kingman, AZ (latitude 35°11'20'' N., longitude 114°02'45'' W.) C.P. to add transmitter 6301.0V MHz toward Getz Peak (repeater), Ariz.

1797–C1–P–73—Same (KPS66), 10.54 miles southeast of Kingman, Getz Peak, Ariz. (latitude 35°06'39'' N., longitude 113°53'09'' W.) C.P. for a new station on frequency 6049.0V MHz toward Kingman, Ariz.; frequency 6049.0V MHz toward Wikieup, Ariz.

1798–C1–P–73—Same (KPS67), 300 feet west of Highway 93 in Wikieup, Ariz. (latitude 34°43'54'' N., longitude 113°36'58'' W.) C.P. to add transmitter 6301.0V MHz toward Getz Peak (repeater), Ariz.

1807–C1–P–73—Research Associates (New), 3 miles southeast of Kilgore, Tex. (latitude 32°21'06'' N., longitude 94°51'05'' W.) C.P. for new station, frequencies 6345.5H MHz and 6404.8H MHz toward Marshall, Tex.

1808–C1–P–73—Same (New), 2.5 miles northwest of Marshall, Tex. (latitude 32°33'59'' N., longitude 94°23'47'' W.) C.P. for new station, frequencies 6063.8V MHz and 6123.1V MHz toward Vivian, La.

1809–C1–P–73—Same (New), 2.5 miles north-northwest of Vivian, La. (latitude 32°54'10'' N., longitude 94°00'20'' W.) C.P. for new station, frequency 6226.9V MHz toward Atlanta, Tex. and Shreveport (Bossier City), La., and frequency 6286.2V MHz toward Atlanta.

1810–C1–P–73—Same (New), 1.3 miles west-northwest of Atlanta, Tex. (latitude 33°07'25'' N., longitude 94°11'08'' W.) C.P. for new station, frequencies 6034.2H MHz and 6093.5H MHz toward Texarkana, Tex.

1811–C1–P–73—Same (New), Texarkana, Tex. (latitude 33°26'52'' N., longitude 94°04'00'' W.) C.P. for new station, frequencies 6286.2H MHz and 6404.8H MHz toward Hope, Ark.

1812–C1–P–73—Same (New), 2.4 miles northeast of Hope, Ark. (latitude 33°41'46'' N., longitude 93°33'53'' W.) C.P. for new station, frequencies 6063.8V MHz and 6123.1V MHz toward Gurdon, Ark.

1813–C1–P–73—Same (New), 4.8 miles south of Gurdon, Ark. (latitude 33°50'46'' N., longitude 93°08'49'' W.) C.P. for new station, frequencies 6197.2V MHz, 6256.5V MHz, 6315.9V MHz, and 6375.2V MHz toward Jack Mountain, Ark., and frequencies 6256.5V MHz and 6315.9V MHz toward Camden, Ark.

1814–C1–P–73—Same (New), 1.9 miles northwest of Camden, Ark. (latitude 33°36'06'' N., longitude 92°51'31'' W.) C.P. for new station, 6093.5V MHz and 6152.8V MHz toward Magnolia, Ark.

1815–C1–P–73—Same (New), Jack Mountain, 9.1 miles south of Hot Springs, Ark. (latitude 34°22'21'' N., longitude 93°02'42'' W.) C.P. for new station, frequencies 10,715V MHz, 10,855V MHz, 11,015V MHz, and 11,175V MHz toward Hot Springs, Ark.

1816–C1–P–73—Same (New), 1.5 miles west-southwest of Hot Springs, Ark. (latitude 34°30'18'' N., longitude 93°04'42'' W.): C.P. for new station, frequencies 6226.9H MHz, 6286.2H MHz, 6345.5H MHz, and 6404.8H MHz toward Benton, Ark.

1817–C1–P–73—Same (New), 2.7 miles north of Benton, Ark. (latitude 34°36'05'' N., longitude 92°34'40'' W.): C.P. for new station, frequencies 5974.8H MHz, 6034.2H MHz, 6063.8V MHz, and 6123.1V MHz toward Sheridan, Ark., and frequencies 5974.8H MHz and 6034.2H MHz toward Little Rock, Ark.

1818–C1–P–73—Same (New), 1.65 miles south-southwest of Sheridan, Ark. (latitude 34°17'04'' N., longitude 92°24'38'' W.) C.P. for new station, frequencies 6197.2H MHz, 6256.5H MHz, 6315.9H MHz, and 6375.2H MHz toward Pine Bluff, Ark. (Informative: Applicant proposes to provide the following television signals to the following communities: KTVT, Fort Worth, Tex., to Bossier City, La.; KDTV and KERA, Dallas, Tex., to Texarkana, Tex.; KDTV and KTVT, Dallas/Fort Worth, Tex., to North Little Rock, Hope, and Camden, Ark.; KARK–TV and KTHV, Little Rock, Ark., to Magnolia, Ark.; and, finally, KDTV and KTVT and KSLA–TV and KTAL–TV (Shreveport/Texarkana-Shreveport, La.) to Hot Springs and Pine Bluff, Ark.).

1825–C1–P–73—Florida Telephone Corp. (KIO66), 425 North Third Street, Leesburg (Lake), FL (latitude 28°48'54'' N., longitude 81°52'38'' W.) C.P. to change antenna system on frequencies 6152.8V and 6034.2V MHz toward Groveland, Fla.

POINT-TO-POINT MICROWAVE RADIO SERVICE—continued

1826-C1-P-73—Same (KJA59), corner of Lake Avenue and Orange Street, Groveland, Fla. (latitude 28°33'35" N., longitude 81°51'25" W.) C.P. to change antenna system on frequencies 6404.8V and 6286.2V MHz toward Leesburg, Fla.; frequencies 6256.5V and 6375.2V MHz toward Dade City, Fla.

Correction

1260-C1-P-73—Pacific Northwest Bell Telephone Co. (New), correct to read: C.P. for a new station on frequency 2115.2V MHz toward Condor, Oreg. via Passive Reflector. (Report No. 612, dated Sept. 5, 1972.)

[FR Doc.72-16715 Filed 10-3-72;8:55 am]

FEDERAL COUNCIL FOR SCIENCE AND TECHNOLOGY

COMMITTEE ON FEDERAL LABORATORIES

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given of a meeting of the Committee on Federal Laboratories to be held in Lecture Room B at the National Bureau of Standards, Administration Building, Gaithersburg, Md., from 9 a.m. to 5 p.m. on October 12 and from 9 a.m. to 12 m. on October 13, 1972.

The purpose of the Committee, which was established by Executive Order 10807 in 1959 as a standing Committee of the Federal Council for Science and Technology, is to provide a forum for the consideration of administrative policies and procedures relating to Federal research and development activities and to make pertinent recommendations concerning same.

The Committee is composed of a Steering Group made up of approximately 15 scientist-administrator members and observers from Federal agencies in the Washington, D.C., area and 30 directors and deputy directors of Federal laboratories and federally related research contract centers located throughout the country.

The agenda for the meeting on October 12 will consist of a review and discussion of recent developments and areas of program emphasis having particular relevance to the current missions and activities of the Federal laboratories. The morning of October 13 will be devoted to small group discussion and consideration of appropriate areas for Committee study and analysis during the coming year.

A limited number of seats will be available to the public and the press. Persons desiring to attend the meeting should contact Mr. George E. Auman, Executive Secretary, Committee on Federal Laboratories, National Bureau of Standards, Washington, D.C. 20234, telephone 301—921-2441.

Dated: September 29, 1972.

LAWRENCE GOLDMUNTZ,
Executive Secretary, Federal Council for Science and Technology.

[FR Doc.72-16953 Filed 10-3-72;8:54 am]

FEDERAL POWER COMMISSION

[Docket No. CS72-302, etc.]

PETRODYNAMICS, INC., ET AL.

Notice of Applications for "Small Producer" Certificates [1]

SEPTEMBER 27, 1972.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications 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 October 24, 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 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.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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.	Date filed	Name of applicant
CS72-302 [1]	9-15-72	Petro Dynamics, Inc., Post Office Box 10006, Amarillo, TX 79106.
CS73-202	9- 6-72	K-Sam Oil Co., Post Office Box 1190, Kilgore, TX 75662.
CS73-203	8-11-72	Lora B. McAlpin (Operator) et al., 5700 Waltham Ave., Fort Worth, TX 76133.
CS73-204	9-11-72	James K. Anderson, 816 Bldg. of the Southwest, Midland, Tex. 79701.
CS73-205	9-12-72	Dennis O'Connor, 400 Victoria Bank & Trust Bldg., Victoria, Tex. 77901.
CS73-206	9-12-72	Tom O'Connor, 400 Victoria Bank & Trust Bldg., Victoria, Tex. 77901.
CS73-207	9-12-72	D. H. Braman, Jr., 400 Victoria Bank & Trust Bldg., Victoria, Tex. 77901.
CS73-208	9-12-72	H & L Operating Co., Post Office Box 10161, Amarillo, TX 79106.
CS73-209	9-12-72	Chace Oil Co., Inc., 313 Washington, SE., Albuquerque, NM 87108.
CS73-210	9-12-72	Gemini Explorations, Inc., Post Office Box 1224, Monroe, LA 71201.
CS73-211	9-12-72	James F. O'Connell and Terry L. Brown, doing business as O'Connell and Brown, Post Office Box 7006, Amarillo, TX 79109.
CS73-212	9-14-72	Mrs. Mary Key Henley, Post Office Box 293, Dallas, TX 75221.
CS73-213	9-11-72	T. L. Bates Estate, 1515 Broadway, New York, NY 10036.
CS73-214	9-11-72	Mustang Exploration Co., Inc., Post Office Box 272, Louise, TX 77455.
CS73-215	9-14-72	Birch LOG Co., 140 Broadway, New York, NY 10005.
CS73-216	9-14-72	Dallas Resources, Inc. et al., 900 Empire Life Bldg., Dallas, Tex. 75201.
CS73-217	9-18-72	Laco Gas Exploration, Inc., 830 Denver Club Bldg., Denver, Colo. 80202.
CS73-218	9-14-72	Pacific Lighting Exploration Co., 720 West 8th St., Los Angeles, CA 90017.
CS73-219	9-15-72	Nancy Key Burton, 511 East Austin, Marshall, TX 75670.
CS73-220	9-15-72	Special CORAL 1972 Drilling Venture I, 1818 Guaranty Bank Plaza, Corpus Christi, TX 78401.
CS73-221	9-15-72	Special CORAL 1972 Drilling Venture II, 1818 Guaranty Bank Plaza, Corpus Christi, TX 78401.
CS73-222	9-15-72	Special Security 1972 Drilling Venture, 1818 Guaranty Bank Plaza, Corpus Christi, TX 78401.
CS73-223	9-15-72	Special MAE 1972 Drilling Venture, 1818 Guaranty Bank Plaza, Corpus Christi, TX 78401.
CS73-224	9-15-72	Special GOE 1972 Drilling Venture, 1818 Guaranty Bank Plaza, Corpus Christi TX 78401.
CS73-225	9-15-72	Special RADWTKM 1972 Drilling Venture, 1818 Guaranty Bank Plaza, Corpus Christi, TX 78401.
CS73-226	9-15-72	Geo Resources Drilling Fund—1972 Annual Program, 1818 Guaranty Bank Plaza, Corpus Christi, TX 78401.
CS73-227	9-21-72	Harold D. Powell, Box 1146, Levelland, TX 79336.
CS73-228	9-21-72	Sunland Refining Corp., Post Office Box 1512, Fresno, CA 93716.

[1] Applicant proposes to amend its small producer certificate to include the interests of Semco Gas, Inc.

[FR Doc.72-16755 Filed 10-3-72;8:45 am]

[Docket Nos. CI73-136, CI73-148, CI73-156]

CITIES SERVICE OIL CO. ET AL.

Further Notice of Applications

SEPTEMBER 29, 1972.

Take notice that on August 25, 1972, in Docket No. CI73-136 Cities Service Oil Co., Post Office Box 300, Tulsa, OK 74102; on August 31, 1972, in Docket No. CI73-148 Continental Oil Co., 1300 Main Street, Houston, TX 77001; and on August 31, 1972, in Docket No. CI73-156 Getty Oil Co., Post Office Box 1404, Houston, TX 77001, filed applications pursuant to section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing sales for resale of natural gas in interstate commerce to Tennessee Gas Pipeline Co., a division of Tenneco, Inc. (Tennessee), from Block 77, East Cameron Block 89 Field, offshore Louisiana, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.[1]

Applicants seek authorization to sell 75 percent of their interest in the natural gas produced from Block 77 to Tennessee. Pursuant to their contracts with Tennessee, Applicants will have the right to require Tennessee to transport to a mutually agreeable point on Tennessee's onshore pipeline system the 25 percent interest in the production from said block which they have retained for themselves. The contracts provide further that if Applicants fail to elect to have such retained reserves transported by Tennessee within 3 years from July 25, 1972, said reserves will be committed to Tennessee.

The subject contracts provide for an initial rate of 35 cents per Mc.f. at 15.025 p.s.i.a.; however, Cities Service Oil Co. and Continental Oil Co. have agreed to accept a certificate conditioned to the applicable area rate as established in Opinion No. 598 of 26 cents.

Any person desiring to be heard or to make any protest with reference to said applications should on or before October 18, 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). 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. Persons who have heretofore filed petitions to intervene need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-16938 Filed 10-3-72;8:53 am]

[1] The applications in Docket Nos. CI73-136 and CI73-156 were previously noticed on Sept. 19, 1972, in Docket No. G-2629, et al., and the application in Docket No. CI73-148 was previously noticed on Sept. 27, 1972, in Docket No. G-4424, et al.

[Docket No. CP73-62]

EL PASO NATURAL GAS CO.

Notice of Application

SEPTEMBER 28, 1972.

Take notice that on September 1, 1972, El Paso Natural Gas Co. (Applicant), Box 1492, El Paso, TX 79978, filed in Docket No. CP73-62 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain meter station and pipeline facilities located on its Southern Division System in Maricopa County, Ariz., all as set forth in the application on file with the Commission and open to public inspection.

Applicant states that by Commission order issued January 11, 1944, in Docket No. G-288 (4 FPC 486) it was authorized, inter alia, to continue operation of the Phoenix Powerplant meter station, approximately 0.392 mile of 12¾ inch O.D. pipeline and approximately 0.041 mile of 10¾ inch O.D. pipeline located on its Southern Division System in Maricopa County, Ariz. Such facilities were utilized to transport, measure, and deliver natural gas on a direct sale basis to Central Arizona Light & Power Co. (Central) for use as fuel in its Phoenix Powerplant. El Paso proposes to abandon such metering and pipeline facilities by transfer, without cost, to Arizona Public Service Co. (APS), successor in interest to Central.

Applicant states that the meter station and pipeline facilities proposed to be abandoned are located, except for approximately 100 feet of the 12¾ inch O.D. pipeline, within the boundaries of the powerplant yard. The proposed abandonment will eliminate Applicant's need to own, maintain, and operate the subject facilities within the boundaries of the powerplant yard and will permit APS' use as may be necessary in the operation of its powerplant facilities.

Applicant states that no interruption, reduction, termination, or change in natural gas service presently rendered by it to APS or to any of its or APS' customers will result upon effectuation of the proposed abandonment. Applicant states the facilities will be abandoned in place for transfer, without cost, to APS.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 24, 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 permission and approval for the proposed abandonment are 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.72-16866 Filed 10-3-72;8:46 am]

[Docket No. CP73-69]

GREAT LAKES GAS TRANSMISSION CO.

Notice of Application

SEPTEMBER 28, 1972.

Take notice that on September 12, 1972, Great Lakes Gas Transmission Co. (Applicant), One Woodward Avenue, Detroit, MI 48226, filed in Docket No. CP73-69 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to exchange, by means of existing facilities, natural gas with Northern Natural Gas Co. (Northern) and Michigan Wisconsin Pipe Line Co. (Michigan Wisconsin), 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, dated July 15, 1972, with Northern and Michigan Wisconsin whereby Applicant will deliver not less than 25,000 Mcf of natural gas per day to Northern at existing points of interconnection near Carlton and Grand Rapids, Minn. Northern will concurrently redeliver equivalent volumes to Applicant, in whole or in part, at either or both of the existing Wakefield, Mich., interconnection with Applicant or to Michigan Wisconsin for the account of Applicant at the existing Janesville, Wis., interconnection. The exchange agreement, Applicant states, is for a basic term of 1 year and thereafter until canceled by any party on 6 months' written notice.

The application indicates that the proposed exchange recognizes that Applicant's system has capability to transport gas to the Carlton interconnection which cannot be transported beyond that point due to present capacity restrictions in Applicant's line from station 5 to station

8. Applicant states that, as a result, delivery of the exchange volumes at Carlton will increase capability of the system so as to enable Applicant to deliver contract volumes to Natural Gas Pipeline Co. of America, Michigan Consolidated Gas Co., and Michigan Wisconsin, and that without the proposed exchange, Applicant would be unable during the 1972–73 contract year to meet its full contract obligations to these customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 20, 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.72–16867 Filed 10–3–72;8:47 am]

[Docket No. CP73–76]

MICHIGAN WISCONSIN PIPE LINE CO.

Notice of Application

SEPTEMBER 28, 1972.

Take notice that on September 20, 1972, Michigan Wisconsin Pipe Line Co. (Applicant), 1 Woodward Avenue, Detroit, MI 48226, filed in Docket No. CP73–76 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to exchange, by means of existing facilities, natural gas with Great Lakes Gas Transmission Co. (Great Lakes) and Northern Natural Gas Co. (Northern) all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application indicates that the three companies have entered into an agreement, dated July 15, 1972, providing for the exchange of gas for a basic term of 1 year and continuing thereafter until canceled by any party on 6 months' written notice. Applicant states that Great Lakes will deliver not less than 25,000 Mcf of gas per day to Northern at Carlton and Grand Rapids, Minn., and Northern will concurrently redeliver equivalent volumes, as directed by Great Lakes or Applicant, to Great Lakes at Wakefield, Mich., or to Applicant for the account of Great Lakes at Janesville, Wis. Applicant states further that the exchange will require the construction of no facilities and no charge will be made by any party incident to the exchange.

Applicant alleges that the proposal will be of mutual benefit to the three companies. Further, the application indicates that during the summer months of reduced market requirements in Wisconsin, Applicant is unable, because of capacity limitations, to purchase from Midwestern Gas Transmission Co., the full volumes to which it is contractually entitled while taking from Great Lakes the full volumes it is entitled and obligated to receive. Applicant states that this situation can be corrected, without the construction of additional facilities, by delivery of a part of the Great Lakes' gas to Applicant at Janesville, Wis., rather than at Crystal Falls, Mich., and that the arrangement thus maximizes the volumes of gas Applicant can receive into its system in Wisconsin and transport to storage.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 20, 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.72–16869 Filed 10–3–72;8:47 am]

[Docket No. CP73–77]

MICHIGAN WISCONSIN PIPE LINE CO.

Notice of Application

SEPTEMBER 28, 1972.

Take notice that on September 20, 1972, Michigan Wisconsin Pipe Line Co. (Applicant), 1 Woodward Avenue, Detroit, MI 48226, filed in Docket No. CP73–77 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the offshore and onshore transportation of natural gas for Natural Gas Pipeline Co. of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Natural up to 1,000 Mcf of natural gas per day until January 1, 1973, and up to 4,000 Mcf of natural gas per day thereafter until January 1, 1974, from Block 58, South Marsh Island Area, offshore Louisiana, to a point of redelivery at the existing point of interconnection of the pipelines of Applicant and Natural near Lake Arthur, La. Applicant states that Natural has contracted to purchase such gas from Shell Oil Co. in Block 58 and that the proposed service is the most efficient means of transporting such gas onshore. Applicant states further that its ability to render the proposed transportation service on a firm basis is dependent upon the installation of offshore facilities authorized by the Commission in Docket No. CP72–87; however pending the installation of such facilities, it proposes to transport such gas on a best-efforts basis.

Applicant proposes to charge Natural a monthly demand charge of $1.25 per Mcf of contract demand plus a commodity charge of 1.65 cents per Mcf of gas redelivered for the transportation service.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 24, 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 proceedings.

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.72-16868 Filed 10-3-72;8:47 am]

[Project 2492]

ST. CROIX PAPER CO.

Notice of Application for Transfer of Major License

SEPTEMBER 27, 1972.

Public notice is hereby given that application for transfer of major license for Vanceboro Project No. 2492 was filed June 27, 1972, under the Federal Power Act (16 U.S.C. 791a-825r) by St. Croix Paper Co. (Licensee) and Georgia-Pacific Corp. (Transferee) (Correspondence to: Mr. George Wittemyer, Attorney, Georgia-Pacific Corp., 900 Southwest Fifth Avenue, Portland, OR 97204). The project is located at the outlet of Spendic Lake, in the town of Vanceboro, Washington County, Maine, in the vicinity of Vanceboro, Maine, USA, and St. Croix, New Brunswick, Canada on the East Branch of the St. Croix River, an international boundary stream.

Commission approval is requested by the Applicants to transfer the license for Vanceboro Project No. 2492 to Georgia-Pacific Corp. which owns more than 99 percent of the St. Croix Paper Co.

The project consists of: (1) A concrete dam about 69 feet long, including: (a) A spillway section with two tainter gates (each about 22.5 feet long) and (b) a fishway about 8 feet wide; (2) an earth embankment on each side of the concrete dam (total length about 400 feet wide); (3) a reservoir—the portion of Spendic Lake within the United States; (4) and appurtenant facilities.

The dam is used to regulate the discharge from Spendic Lake into the East Branch of the St. Croix River for use in generating electrical and mechanical energy at two plants, 25 and 37 miles downstream.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1972, file with the Federal Power Commission 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 protestants parties to the proceeding. Persons wishing to become parties to the proceeding 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.72-16870 Filed 10-3-72;8:47 am]

[Docket No. CP73-34]

TRANSCONTINENTAL GAS PIPE LINE CORP. AND NORTH PENN GAS CO.

Notice of Application

SEPTEMBER 28, 1972.

Take notice that on August 4, 1972, Transcontinental Gas Pipe Line Corp. (Transco), Post Office Box 1396, Houston, TX 77001, and North Penn Gas Co. (North Penn), 76-80 Mill Street, Port Allegany, PA 16743, filed in Docket No. CP73-34 an application pursuant to section 7(c) of the Natural Gas Act authorizing the exchange and delivery of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants seek authorization for the exchange of natural gas by means of present and future points of interconnection between their systems. The systems presently interconnect in the Wharton Storage Pool, Potter County, Pa. Applicants do not presently propose to construct any additional facilities to carry out the exchange arrangement.

The agreement between Applicants provide that the gas will be returned within 60 days unless they agree to a longer time. If either party is unable to return the gas within the time required, it may, with the consent of the other party, pay for such gas at the 100 percent load factor CD-3 rate schedule of Transco or the G-1 rate schedule of North Penn, whichever is applicable.

Any person desiring to be heard or to make any protest with reference to said application should, on or before, October 20, 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 certificates 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 Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-16871 Filed 10-3-72;8:47 am]

FEDERAL RESERVE SYSTEM

FIRST AT ORLANDO CORP.

Order Approving Acquisition of Banks

First at Orlando Corp., Orlando, Fla., a bank holding company within the meaning of the Bank Holding Company Act, has filed separate applications for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire at least 90 percent of the voting shares of The City Bank and Trust Co. of St. Petersburg (City Bank), and The Suncoast City Bank of St. Petersburg (Suncoast Bank), both located in St. Petersburg, Fla.

Notice of the applications, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the applications and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls 26 banks with aggregate deposits of $904.6 million, representing 5.6 percent of the deposits for commercial banks in Florida, and is the fourth largest banking organization in the State. (All banking data are as of December 31, 1971, and reflect holding company formations and acquisitions approved through August 31, 1972.) The acquisition of City Bank ($44.4 million in deposits) and Suncoast Bank ($5 million in deposits) would increase Applicant's control of State deposits to 5.9 percentage points. Applicant's rank among State

banking organizations would remain unchanged, and the concentration of banking resources on a local and State level would not increase significantly.

Subject banks are located in the city of St. Petersburg, in the South Pinellas banking market, and their acquisitions would represent Applicant's initial entry into the area. City Bank and Suncoast Bank hold 4.53 and 0.52 percent of total market deposits and rank seventh and 23d, respectively, among the 23 banks represented in this market area. Six multibank holding companies and three banking groups are represented in the market, and six banks control 57 percent of total market deposits. Although subject banks are less than 3 miles apart and their service areas overlap, they do not actively compete with each other. Suncoast Bank was organized by City Bank in 1971, and both are under common management and control. It appears that no present or future competition between subject banks would be eliminated by consummation of this proposal.

Applicant's closest subsidiary banking offices are located approximately 25 miles from subject banks. There is no significant present competition between any of these offices, and due to the densely populated areas, the distances between banking offices, and Florida's restrictive branching laws, it appears that there is little likelihood of the development of future competition. Consequently, competitive considerations are consistent with approval of the applications.

The capital positions of eight of Applicant's subsidiaries are deemed to be somewhat low; however, Applicant has made a commitment to increase the equity capital in these banks by the end of 1972, and after the proposed increases each of the banks would have adequate equity capital bases. Accordingly, the financial condition of Applicant and its subsidiary banks are deemed to be generally satisfactory; their managements are considered to be capable and prospects for the group are favorable. The financial conditions and managements of City and Suncoast Banks are also believed to be generally satisfactory and prospects for both banks appear favorable. Banking factors are consistent with approval of the applications.

Although the primary banking needs of the communities are presently being served, Applicant's expansion and improvement of services now available at both subject banks, especially trust services, would benefit the public and enable banks to become stronger competitors with the larger area banking offices. Therefore, considerations relating to the convenience and needs of the communities to be served are consistent with and lend some support toward approval of the applications. It is the Board's judgment that consummation of the proposed acquisitions would be in the public interest and that the applications should be approved.

On the basis of the record, the applications are approved for the reasons summarized above. The transactions shall not be consummated (a) before the 30th calendar day following the effective date of this order or (b) later than 3 months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[1] effective September 26, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-16944 Filed 10-3-72;8:54 am]

UNITED VIRGINIA BANKSHARES INC.

Order Approving Retention of United Virginia Mortgage Corp.

United Virginia Bankshares Inc., Richmond, Va., a bank holding company within the meaning of the Bank Holding Company Act, 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 retain all of the voting shares of United Virginia Mortgage Corp., Richmond, Va., a company that engages in the activities of a mortgage company and proposes to engage de novo in acting as agent for the sale of credit life, credit disability, and mortgage redemption insurance. Such activities have been determined by the Board to be closely related to the business of banking (12 CFR 225.4(a) (1) and (9)).

Notice of the application, affording opportunity for interested persons to submit comments and views on the public interest factors, has been duly published (37 F.R. 15896). The time for filing comments and views has expired, and none have been timely received.

Applicant, the largest banking organization in Virginia, controls 12 banks with aggregate deposits of approximately $1.3 billion, representing 14.2 percent of the total deposits in commercial banks in Virginia.[2] Applicant's nonbanking subsidiaries include a service corporation, an insurance agency, a leasing company, and United Virginia Mortgage Corp. (Company).

The Company, with offices in Richmond, Roanoke, Annandale, Manassas, Norfolk, Newport News, and Alexandria, Va., and Langley Park, Md., engages in the activities of a mortgage company which include originating loans as principal, originating loans as agent, servicing loans for nonaffiliated individuals, partnerships and corporations, and servicing loans for affiliates of United Virginia Bankshares Inc. In addition, Applicant proposes to engage de novo in acting as agent for the sale of credit life, credit disability and mortgage redemption insurance in connection with the origination or servicing of such mortgages.

Prior to this application the Company, which was acquired on October 1, 1968, has been operated pursuant to section 4(c)(5) of the Bank Holding Company Act.[3] Under section 4(c)(5), the Company is not authorized to conduct full service mortgage banking operations at locations other than such locations where Applicant's subsidiary banks are authorized to engage in business.[4] Applicant now seeks permission to operate the Company under the broader authority of section 4(c)(8) so that none of the Company's offices would be subject to the "loan production" restriction.

The Board regards the standards of section 4(c)(8) for the retention of shares in a nonbanking company, previously operated by a bank holding company pursuant to section 4(c)(5), to be the same as the standards for a proposed section 4(c)(8) acquisition. Accordingly, the Board must find that neither the operation of the nonbanking company under section 4(c)(5), nor the Board's approval of the section 4(c)(8) application would result in an undue concentration of resources, decreased or unfair competition, conflict of interest, or unsound banking practices.

Since Applicant's acquisition of the Company in 1968, the Company's assets have quadrupled. The Company derives business from all of Applicant's subsidiary banks located throughout Virginia and from one "loan production" office located in the Maryland suburbs of Washington, D.C. With permanent mortgage servicing contracts in excess of $204 million, as of June 30, 1971, the Company was the third largest mortgage banking company in Virginia on that date.

The Company is primarily engaged in originating mortgage loans for the account of others and servicing such loans. Although Applicant's subsidiary banks do originate a limited volume of mortgage loans for their own account, this activity does not overlap significantly with the Company's activities. Accordingly, no significant competition exists between the Company and Applicant's subsidiary banks. Further, it does not appear that any significant potential competition would be foreclosed upon consummation of the proposal because it is unlikely that the Company would remain a significant competitor without access to Applicant's resources.

Under Applicant's operations the Company, originally a small, local mortgage company, has become a larger and more

[1] Voting for this action: Governors Mitchell, Brimmer, Sheehan, and Bucher. Absent and not voting: Chairman Burns and Governors Robertson and Daane.

[2] All banking data are as of December 31, 1971.

[3] Prior to June 30, 1971, a bank holding company could, under section 4(c)(5), directly acquire shares of a corporation to perform, at locations at which its subsidiary banks are authorized to engage in business, functions, such as mortgage banking, that national banks are empowered to perform directly (12 CFR 7.7379; 225.4(e); 250.141).

[4] The Company's offices that are not located on the premises of Applicant's subsidiary banks are "loan production offices" where the Company may solicit loans, assemble credit information, prepare applications for loans, and perform other similar agent type activities for mortgage offices located on the premises of Applicant's subsidiary banks (12 CFR 250.141).

viable competitor among mortgage companies in Virginia. Although the proposed retention would change only the company's operating authority, some benefits may accrue to the public through the proposed retention, since Applicant would be able to offer full service mortgage banking facilities at locations other than its subsidiary banking offices, thereby providing greater convenience to its customers. There is no evidence in the record to indicate that the proposed retention would lead to an undue concentration of resources, conflicts of interest, or unsound banking practices.

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 conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority 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] effective September 26, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-16872 Filed 10-3-72;8:47 am]

FOREIGN-TRADE ZONES BOARD

[Order 89]

CITY OF NEW YORK

Approval of Application To Relocate Foreign-Trade Zone

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) has adopted the following Order:

Whereas, the city of New York, grantee of Foreign-Trade Zone No. 1, has made application (filed July 6, 1972) for authority to temporarily relocate Foreign-Trade Zone No. 1 from its site at Stapleton, Staten Island, to Building 77 (Third floor), Brooklyn Navy Yard, New York City, for a period of 3 years from the date of this order;

Whereas, public notice of the application has been given and full opportunity has been afforded all interested parties to be heard;

Whereas, an Examiners Committee has investigated the proposal and recommends approval of the application; and

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Foreign-Trade Zones Board regulations are satisfied and that the proposal is in the public interest;

Now, therefore, the Board hereby approves the temporary relocation of Foreign-Trade Zone No. 1 from its site at Stapleton, Staten Island, to Building 77 (third floor), Brooklyn Navy Yard, New York City for a period not to exceed 3 years from the date of this order, subject to extension by the Board. The grantee shall prenotify the Board's Executive Secretary for clearance concerning any proposal to use Foreign-Trade Zone No. 1 for manufacturing operations prior to their commencement. In taking this action the Board concurs in the termination of zone operations at the Stapleton, Staten Island, site.

Signed at Washington, D.C., this 26th day of September 1972.

[SEAL] PETER G. PETERSON,
Secretary of Commerce, Chairman and Executive Officer, Foreign-Trade Zones Board.

Attest: JOHN J. DA PONTE, Jr.,
Executive Secretary, Foreign-Trade Zones Board.

[FR Doc.72-16863 Filed 10-3-72;8:46 am]

PRICE COMMISSION

[Notice 36]

ECONOMIC STABILIZATION PROGRAM

Regulatory Agencies Certified Under Price Commission Regulations

Section 300.16a(d) of the regulations of the Price Commission provides for the issuance by the Price Commission of certificates of compliance to State and Federal regulatory agencies whose rules for implementing the Economic Stabilization Program, with respect to public utilities, have been approved by the Price Commission. In accordance with the Commission's policy, this notice is issued on a biweekly basis, to inform all interested persons of those regulatory agencies that have been certified by the Commission.

As of September 28, 1972, certificates of compliance have been issued to the following agencies:

Federal:

Civil Aeronautics Board.
Interstate Commerce Commission.

State:

Alabama Public Service Commission.
Arkansas Public Service Commission.
California Public Utilities Commission.
Colorado Public Utilities Commission.
Delaware Public Service Commission.
District of Columbia Public Service Commission.
Georgia Public Service Commission.
Indiana Public Service Commission.
Maryland Public Service Commission.
Michigan Public Service Commission.
Mississippi Public Service Commission.
Montana Public Service Commission.
New York Public Service Commission.
North Carolina Utilities Commission.
Pennsylvania Public Utility Commission.
Virginia State Corporation Commission.
Washington Utilities and Transportation Commission.

By direction of the Commission.

Issued in Washington, D.C., on September 29, 1972.

JAMES B. MINOR,
General Counsel, Price Commission.

[FR Doc.72-16903 Filed 10-3-72;8:50 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

ACCURATE CALCULATOR CORP.

Order Suspending Trading

SEPTEMBER 26, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.01 par value, and all other securities of Accurate Calculator Corp., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from September 27, 1972, through October 6, 1972.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-16888 Filed 10-3-72;8:49 am]

[File No. 500-1]

FIRST WORLD CORP.

Order Suspending Trading

SEPTEMBER 26, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the Class A and Class B common stocks, $0.15 par value, and all other securities of First World Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from September 27, 1972, through October 6, 1972.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-16889 Filed 10-3-72;8:49 am]

[4] Voting for this action: Governors Mitchell, Brimmer, Sheehan, and Bucher. Absent and not voting: Chairman Burns and Governors Robertson and Daane.

[File No. 500–1]

LDS DENTAL SUPPLIES, INC.

Order Suspending Trading

SEPTEMBER 27, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.01 par value, and all other securities of LDS Dental Supplies, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from September 28, 1972, through October 7, 1972.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72–16890 Filed 10–3–72;8:49 am]

[File No. 500–1]

OCEANOGRAPHY MARICULTURE INDUSTRIES, INC.

Order Suspending Trading

SEPTEMBER 27, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.01 par value, and all other securities of Oceanography Mariculture Industries, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from 11:30 a.m. on September 27, 1972, through October 6, 1972.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72–16891 Filed 10–3–72;8:49 am]

[812–3248]

TECHNICAL FUND INVESTMENT PLANS AND PIONEER INTERPRISE FUND, INC.

Notice of Filing of Application and for an Order of Exemption

SEPTEMBER 27, 1972.

Notice is hereby given that the New England Merchants National Bank (Bank), % New England Merchants National Bank, 28 State Street, Boston, MA 02109, custodian for Technical Fund Investment Plans (Plans), a unit investment trust registered under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 26(b) of the Act to permit, with respect to all future investments under existing Plans, the substitution of shares of Pioneer Enterprise Fund, Inc. (Enterprise), 28 Stat Street, Boston, MA 02109, an open end diversified management investment company registered under the Act, for shares of Technical Fund, Inc. (Technical Fund), as the underlying investment medium for the Plans, and the Bank and Enterprise also apply for an order of exemption pursuant to section 6(c) of the Act from the provisions of section 22(d) of the Act to the extent necessary to permit the sale of shares of Enterprise to the Plans for the benefit of existing Planholders at net asset value without any sales charge. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

The underlying investment medium for the Plans has, since their inception, been Technical Fund, an open end diversified management investment company incorporated in Massachusetts and registered under the Act. The Bank serves as custodian for the Plans by virtue of a custodian agreement dated January 14, 1964 (amended March 6, 1964), between the Bank, as custodian, and Security Planners Associates, Inc. (SPA), formerly sponsor for the Plans and investment adviser and distributor for Technical Fund.

On May 25, 1972, the Commission filed suit in the U.S. district court for the District of Massachusetts against Technical Fund and four individuals alleging that the defendants had violated certain provisions of the Securities Exchange Act of 1934 and of the Act. On May 26, 1972, the court appointed a receiver for all assets and property owned by Technical Fund and for all assets which it carries or maintains for the account of others. The appointment of the receiver was subsequently confirmed, and a temporary injunction against certain of the acts and practices alleged in the complaint was issued. On June 26, 1972, the receiver notified all shareholders of Technical Fund and all holders of Plans that the net asset value of shares of Technical Fund is unclear and, therefore, that publication of such net asset value has ceased and that the receiver has, with approval of the court, suspended redemption of shares of Technical Fund for an indefinite period. As a result of the uncertainty of the net asset value of the shares of Technical Fund, it is not presently possible either to invest payments by holders of Plans in shares of Technical Fund or to process redemptions of shares held for the benefit of Planholders. The Bank, therefore, has returned to holders of Plans without insurance all investor payments in its hands as of June 26, 1972, and has returned to holders of Plans with insurance all investor payments in its hands, less amounts required to maintain insurance in force up to the next date on which an insurance payment is due. The insurance is an optional feature in the Plans whereby an investor, for an additional periodic payment, can insure the completion of his Plan in the event that he should die before making all of his required payments. There are presently outstanding 612 Plans with insurance and 64 Plans without insurance.

The Bank represents that, to the best of its knowledge, no post-effective amendment to the registration statement of Technical Fund under the Securities Act of 1933 has been filed since October 31, 1969, and no post-effective amendment to the registration statement of the Plans under the Securities Act of 1933 has been filed since November 5, 1969. The Bank also represents that SPA is not carrying on any business and, although SPA has not terminated its legal existence, it may be considered inactive.

Section 26(b). Under the General Plan Provisions (Provisions) which were delivered to investors in all Plans issued, there is a provision entitled "Substitution of Fund Shares" which covers the circumstances under which, and the manner in which, another security may be substituted for Technical Fund shares. The substitution provision begins as follows:

> No other security may be substituted for Technical Fund shares except by action beyond the control of the Sponsor or Custodian, or unless Technical Fund shares become unavailable for a period which, in the opinion of the Sponsor, makes it impracticable to continue with such shares as the underlying security. In the event that substitution becomes necessary, the Sponsor shall provide that such substituted Fund shares are generally comparable in character and quality to the Fund shares theretofore purchased under this Plan and meet with the reasonable approval of the Custodian, and are shares registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended.

This provision goes on to describe the procedures the Sponsor must follow in order to effect a substitution, and then continues:

> In the event that Fund shares are no longer purchaseable for a period of more than 120 days, and neither the Sponsor nor the Custodian substitutes other Fund shares, it shall be conclusively presumed that it is necessary to terminate this plan, and in such event the Custodian is authorized to follow the procedure specified in article 9 below in case of termination in the event of delinquency.

The Bank contends that since a Receiver has been appointed for Technical Fund and since shares of Technical Fund cannot be purchased or redeemed, action is required to substitute a new underlying investment medium so that planholders may be able to complete their existing Plans. Therefore, the Bank proposes, upon approval of this application, to enter into an agreement with Enterprise pursuant to which Enterprise would become the underlying investment medium with respect to all future payments under existing Plans. The Bank also proposes, after approval of

this application, to send to all Planholders a copy of the prospectus of Enterprise and a notice stating that on a given date, which will either be the 15th or the 30th day of a month, Planholders who so desire may resume their payments on the same schedule which was in effect for their Plans prior to the appointment of the Receiver as if the hiatus in making purchases had not taken place, and these payments will be applied to the purchase of shares of Enterprise at the net asset value of those shares in effect from time to time instead of the shares of Technical Fund. The Bank further proposes that the period of the Plans will be automatically extended by the number of months for which payments were not accepted by the Bank as Custodian. The Bank, moreover, represents that, in the case of Plans with insurance, the insurance will apply to the Plans as so extended.

Planholders who do not indicate that they wish to continue purchases under the existing Plans on the foregoing basis, and Planholders who fail to return the card, which will be provided them for the purpose of so indicating, within 30 days after the date of mailing of the notice, will not thereafter be permitted to have payments invested in either shares of Technical Fund or shares of Enterprise and their plans will be terminated as to all future payments. The administration of the plans of all Planholders with respect to the existing shares of technical fund held for their respective accounts is contingent upon future developments in the administration of technical fund itself.

On the date stated in the notice, and from that date on, the Bank, as Custodian, will apply all investments under existing Plans in accordance with the applicable payment schedule of each Planholder to the purchase of shares of Enterprise at the then current net asset value after deduction of all charges, other than the sales and creation charges, described in the Provisions and in the Plan's prospectus dated November 5, 1969.

Both Technical Fund and Enterprise seek growth of capital and both are only secondarily interested in income. While the investment objectives and policies of both funds are not exactly the same, there are many similarities.

Section 26(b) of the Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved the substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

The Bank represents that the requested substitution is consistent with the provisions of section 26(b) of the Act in that Planholders have paid a "front-end load" in connection with their purchase of Plans so that a major part of the entire sales and creation charge has been deducted from their first year's payments. If a new investment medium is not provided, the Bank contends that Planholders will, at best, be able to resume investments in Technical Fund only after some presently undetermined period of time which may be quite lengthy, and that Technical Fund, if reconstituted, will probably bear little resemblance to the fund in which Planholders originally chose to invest. If, on the other hand, Technical Fund is liquidated and a new investment medium is not provided, Planholders will lose the major benefit of their front-end load payments.

The Bank, believing that problems of administration of the unit investment trust would be severe if the new investment medium were not a fund located in Boston, limited its search for a new underlying investment medium to funds in the Boston area. Of these funds the Bank submits that Enterprise is a highly suitable underlying investment medium for the Plans.

Section 22(d). Section 22(d) provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it to any person except either to or through a principal underwriter for distribution or at a current public offering price described in the prospectus.

The Bank and Enterprise request an exemption pursuant to section 6(c) of the Act from the provisions of section 22(d) of the Act to the extent necessary to permit the Bank, as Custodian, to invest payments from Planholders, after applicable deductions other than sales and creation charges, in shares of Enterprise at net asset value. Shares of Enterprise are currently sold to the public at net asset value plus a sales charge.

The Bank and Enterprise contend that the Planholders have already suffered as a result of being unable to have their payments invested and as a result of being unable to redeem their existing investments since May 26, 1972. Since the number of eligible purchasers of shares of Enterprise will be relatively small, and since substantial equities appear to exist in favor of the Planholders, applicants represent that the proposed exemption will not result in discrimination against present Enterprise shareholders.

Section 6(c) of the Act provides that the Commission, by order upon application, may exempt any person, security or transaction from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than October 23, 1972, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. 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.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72–16887 Filed 10–3–72;8:49 am]

[File No. 500–1]

TRANS-EAST AIR, INC.

Order Suspending Trading

SEPTEMBER 26, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.50 par value, and all other securities of Trans-East Air, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from September 27, 1972, through October 6, 1972.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72–16892 Filed 10–3–72;8:49 am]

[811–568]

VALUE LINE FUND, INC.

Notice of Proposal To Terminate Registration

SEPTEMBER 27, 1972.

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940 (Act), to declare by order upon its own motion that the Value Line Fund, Inc. (Fund), 5 East 44th Street, New

York, NY 10017, formerly a Delaware corporation and registered under the Act as an open-end diversified management investment company, has ceased to be an investment company.

Fund registered under the Act on November 17, 1949. On March 29, 1972, shareholders of the Fund approved a proposal to merge the Fund with and into a newly organized Maryland corporation bearing the same name, the sole purpose of the merger being to change the place of incorporation of the Fund to effect a saving in State franchise taxes. The merger became effective on April 3, 1972, at which time all of the assets and liabilities of the Fund were transferred to the surviving company, and the corporate existence of the Fund as a Delaware corporation ceased to exist.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, on its own motion, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that upon the effectiveness of such order, which may be issued upon the Commission's own motion where appropriate, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than October 18, 1972, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communications should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the matter herein may be issued on the Commission's own motion. 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 Investment Company Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72–16895 Filed 10–3–72;8:49 am]

[811–612]

VALUE LINE INCOME FUND, INC.

Notice of Proposal To Terminate Registration

SEPTEMBER 27, 1972.

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940 (Act), to declare by order upon its own motion that the Value Line Income Fund, Inc. (Fund), 5 East 44th Street, New York, NY 10017, formerly a Delaware corporation and registered under the Act as an open-end diversified management investment company, has ceased to be an investment company.

Fund registered under the Act on August 4, 1952. On March 29, 1972, shareholders of the Fund approved a proposal to merge the Fund with and into a newly organized Maryland corporation bearing the same name, the sole purpose of the merger being to change the place of incorporation of the Fund to effect a saving in State franchise taxes. The merger became effective on April 3, 1972, at which time all of the assets and liabilities of the Fund were transferred to the surviving company, and the corporate existence of the Fund as a Delaware corporation ceased to exist.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, on its own motion, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that upon the effectiveness of such order, which may be issued upon the Commission's own motion where appropriate, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than October 18, 1972, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communications should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the matter herein may be issued on the Commission's own motion. 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 Investment Company Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72–16894 Filed 10–3–72;8:49 am]

[811–719]

VALUE LINE SPECIAL SITUATIONS FUND, INC.

Notice of Proposal To Terminate Registration

SEPTEMBER 27, 1972.

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940 (Act), to declare by order upon its own motion that the Value Line Special Situations Fund, Inc. (Fund), 5 East 44th Street, New York, NY 10017, formerly a Delaware corporation and registered under the Act as an open-end diversified management investment company, has ceased to be an investment company.

Fund registered under the Act on April 18, 1956. On March 29, 1972, shareholders of the Fund approved a proposal to merge the Fund with and into a newly organized Maryland corporation bearing the same name, the sole purpose of the merger being to change the place of incorporation of the Fund to effect a saving in State franchise taxes. The merger became effective on April 3, 1972, at which time all of the assets and liabilities of the Fund were transferred to the surviving company, and the corporate existence of the Fund as a Delaware corporation ceased to exist.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, on its own motion, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that upon the effectiveness of such order, which may be issued upon the Commission's own motion where appropriate, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than October 18, 1972, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communications should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the matter herein may be issued on the Commission's own motion. 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 Investment Company Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-16893 Filed 10-3-72;8:49 am]

TARIFF COMMISSION

[AA1921-100]

CAST-IRON SOIL-PIPE FITTINGS FROM POLAND

Determination of No Injury or Likelihood Thereof

SEPTEMBER 29, 1972.

The Treasury Department advised the Tariff Commission on June 30, 1972, that cast-iron soil-pipe fittings from Poland are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. In accordance with the requirements of section 201(a) of the Antidumping Act (19 U.S.C. 160(a)), the Tariff Commission instituted Investigation No. AA1921-100 to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

A public hearing was held on August 22, 1972. Notice of the investigation and hearing was published in the FEDERAL REGISTER of July 14, 1972 (37 F.R. 13839).

In arriving at a determination in this case, the Commission gave due consideration to all written submissions from interested parties, evidence adduced at the hearing, and all factual information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of the investigation, the Commission[1] determined that an industry in the United States is not being or is not likely to be injured, or is not prevented from being established, by reason of the importation of cast-iron soil-pipe fittings from Poland covered by the aforementioned less than fair value determination of the Treasury Department.

STATEMENT OF REASONS[2]

The Antidumping Act, 1921, as amended, requires that the Tariff Commission find two conditions satisfied before an affirmative determination can be made.

First, there must be injury, or likelihood of injury, to an industry in the United States, or an industry in the United States must be prevented from being established. Second, such injury (or likelihood of injury or prevention of establishment of an industry[3]) must be "by reason of" the importation into the United States of the class or kind of foreign merchandise the Secretary of the Treasury determined is being, or is likely to be, sold at less than fair value (LTFV).

In our judgment neither of the aforementioned conditions is satisfied in the instant case. Accordingly, we have made a negative determination based primarily on the following considerations:

1. Imports of cast-iron soil-pipe fittings from Poland—which Treasury's investigation covering the 12-month period July 1970 through June 1971 indicated were all sold at LTFV—have been extremely small in relation to the shipments by domestic producers into the three-State market area (New York, New Jersey, and Pennsylvania) where the imports were concentrated.

2. Prices of domestic cast-iron soil pipe increased almost steadily during 1967–71, and the only price decrease—a decline of less than 4½ percent in effect for about 2 months during 1970—was a consequence of competition among domestic producers.

3. In the period 1967–71, domestic shipments of cast-iron soil-pipe fittings into the three-State area where the LTFV imports were concentrated increased substantially, whereas total imports in general, and LTFV imports in particular, declined.

4. Prices of cast-iron soil-pipe fittings from Poland paid by the importer of such fittings have increased in recent years, and the supply available to the importer for sale in the United States has decreased markedly.

DESCRIPTION OF PRODUCT

Cast-iron soil-pipe fittings are made in specific shapes and sizes, and within the given specifications they are fungible products. Because of their high transportation costs relative to their value, such fittings are more profitably sold near their point of manufacture, or, as with imports, near their point of entry. Price is the principal factor of competition.

THE INDUSTRY

In making its determination in this case, the Commission gave consideration to all the facilities in the United States used in the production of cast-iron soil-pipe fittings. However, inasmuch as the sale of the LTFV imports was concentrated in the three-State area of New York, New Jersey, and Pennsylvania, the Commission gave special attention to U.S. facilities that produced most of the domestic cast-iron soil-pipe fittings sold in recent years in that area.

IMPORT PENETRATION

The ratio of LTFV imports to consumption of cast-iron soil-pipe fittings in the three-State area declined from 8.5 percent in 1967 to 2.7 percent in 1970 and 1971. Moreover, some 80 percent of the total LTFV imports during 1967–71 did not compete directly with domestically produced fittings because such imports were sold to certain domestic foundries that sourced their fittings almost exclusively from abroad.

The decline in import penetration in the three-State area occurred when the consumption of cast-iron soil-pipe fittings therein increased substantially—from about 23,000 short tons in 1967 to about 32,000 short tons in 1971. Inasmuch as LTFV imports, as well as all other imports of this product, declined during the period 1967–71, the upward trend in consumption reflects the significant increase in domestic shipments during those years. Indeed, domestic shipments increased each year, from about 21,000 tons in 1967 to about 30,000 tons in 1971.

PRICES

Prices of cast-iron soil-pipe fittings sold by the domestic industry in the three-State market area increased throughout the period 1967–71, except when the prevailing domestic price declined by about 4½ percent during a 2-month period in 1970. The upward trend in domestic prices was in response to the high demand for fittings in that market area. A proposed further price increase by the domestic producers of fittings was denied by the Price Commission in May 1972.

U.S. prices of LTFV imports increased steadily throughout the period 1967–71. Moreover, the rate of price increases on the LTFV imports was greater than that on the domestic products, resulting in a narrower spread between domestic and LTFV import prices. No evidence was obtained by the Commission that prices for domestic fittings were depressed or suppressed by LTFV imports. Prices of imported cast-iron soil-pipe fittings from Poland paid by the importer of such fittings have been increasing and the supply available for export to the United States is expected to be curtailed as demand in that country and elsewhere increases.

FINANCIAL EXPERIENCE

The financial data made available to the Commission by the domestic producers covered the period 1967–71, the period in which domestic sales increased substantially at generally rising prices. In our judgment there is no evidence of a causal connection between the LTFV sales and the financial health of the industry.

CONCLUSION

On the basis of the foregoing, we conclude that the domestic industry is not being, or is not likely to be, injured by reason of imports of cast-iron soil-pipe fittings from Poland.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.72-16950 Filed 10-3-72;8:54 am]

[1] Vice Chairman Parker was absent and Commissioner Young did not participate.

[2] Commissioner Ablondi concurs in the result.

[3] Prevention of establishment of an industry is not an issue in this investigation.

[AA1921-104]

COLOR TELEVISION PICTURE TUBES FROM JAPAN

Notice of Investigation and Hearing

Having received advice from the Treasury Department on September 26,

1972, that color television picture tubes from Japan are being, or are likely to be, sold at less than fair value, the U.S. Tariff Commission has instituted an investigation under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Hearing. A public hearing in connection with the investigation will be held in the Tariff Commission's Hearing Room, Tariff Commission Building, 8th and E Streets NW., Washington, DC. beginning at 10 a.m., e.s.t., on November 28, 1972. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received by the Secretary of the Tariff Commission, in writing, at its offices in Washington, D.C., not later than noon, Thursday, November 23, 1972.

Issued: September 29, 1972.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.72-16952 Filed 10-3-72;8:54 am]

[AA1921-99]

DRYCLEANING MACHINERY FROM WEST GERMANY

Determination of Injury

SEPTEMBER 29, 1972.

On June 29, 1972, the Tariff Commission received advice from the Treasury Department that drycleaning machinery from West Germany is being, or is likely to be, sold in the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended. In accordance with the requirements of section 201(a) of the Antidumping Act (19 U.S.C. 160(a)), the Tariff Commission instituted investigation No. AA1921-99 to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

A public hearing was held on August 15 and 16, 1972. Notice of the investigation and hearing was published in the FEDERAL REGISTER of July 14, 1972 (37 F.R. 13840).

In arriving at its determination, the Commission gave due consideration to all written submissions from interested parties, evidence adduced at the hearing, and all factual information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of its investigation, the Commission has unanimously determined [1] that an industry in the United States is being injured by reason of the importation or drycleaning machinery from West Germany that is being or is likely to be sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

STATEMENT OF REASONS OF CHAIRMAN BEDELL, VICE CHAIRMAN PARKER, COMMISSIONER LEONARD, AND COMMISSIONER MOORE [2]

The imported drycleaning machinery that is the subject of this investigation includes machines equipped with a coin-metering device and those not so equipped. These imported machines, like those produced domestically, utilize a solvent to remove soils and stains from textile fabrics, clothing, or other made-up textile articles.

THE INJURED DOMESTIC INDUSTRY

In 1971, drycleaning machines were produced by 18 firms in the United States; 14 of these firms produced units having capacities of 16 pounds and over per load. The bulk of the U.S. output of coin-operated units having load capacities of 16 pounds and over was supplied by firms which are predominantly manufacturers of noncoin-operated machines, whereas small capacity coin-operated units were made primarily by manufacturers of household-type washing machines.

We have determined that the domestic industry injured by the less than fair value (LTFV) imports herein considered consists of facilities in the United States used in the production of all types of drycleaning machines irrespective of their load capacities.[3]

MARKET PENETRATION

The Treasury Department's investigation showed that about half of the drycleaning machines exported to the United States from West Germany during the period covered by its investigation were sold at LTFV. We find that the price advantage afforded by such sales in the United States at LTFV enabled West German exporters of drycleaning machines to make severe inroads into an already declining market.

The value of apparent U.S. consumption of drycleaning machines declined irregularly from $16.3 million in 1968 to $15.8 million in 1971 (a decline of 5 percent). This decline in consumption was largely attributable to the widespread use of the new wash-and-wear fabrics that do not require drycleaning and to the trend towards a less formal style of dress among young people.

During 1968-71 annual U.S. imports (including fair value imports) of all types and sizes of drycleaning machines from the two LTFV suppliers in West Germany ranged from 9 percent in 1969 to 19 percent in 1970 of the value of apparent U.S. consumption. A small decline in import penetration occurred in 1971 subsequent to the filing of the dumping complaint with the Treasury Department in March 1971.

The market penetration by LTFV imports is more than adequate to warrant an injury determination. Moreover, it should be noted that the data presented above are based on the reported dutiable value of the imported drycleaning machinery. If the wholesale value of the imports in the U.S. market (i.e., a value comparable to the wholesale value of domestic machines) was used in the foregoing computations, significantly higher penetration percentages would result.

PRICE SUPPRESSION

In the presence of LTFV imports in the U.S. market, the prices realized by U.S. producers on their sales of drycleaning machines have been suppressed. Prices received by U.S. producers for the machines that were found by Treasury to have been sold at LTFV remained static or showed relatively insignificant increases during 1969-71, a period in which the manufacturing costs of these firms were increasing rapidly, and during which the wholesale price index for textile machinery increased by 12 percent. This price suppression has denied the U.S. producers an opportunity to offset increasing production costs and coupled with a decline in sales volume has led to the deterioration of profits which is discussed below.

The adverse effect of LTFV prices upon the level of prices in the U.S. market is borne out in the bid prices offered to the Veterans Administration during 1971 and 1972. On those procurements where direct domestic and foreign competition existed, the largest LTFV importer underbid a domestic producer by margins ranging between 25 and 50 percent. Sales of some units to the Veterans Administration were found by Treasury to have been made at LTFV. The LTFV margin contributed substantially to the margin of underselling of those units.

PROFIT-AND-LOSS EXPERIENCE OF DOMESTIC PRODUCERS

The Commission received profit-and-loss data from U.S. firms which accounted for about half of the total value of U.S. sales of all drycleaning machines produced in the United States during 1967-71. The firms supplying these data were predominantly producers of drycleaning machines having load capacities of 16 pounds and over. The data received indicate that the drycleaning machinery operations of those firms were profitable in 1967 and 1968; they had small losses in 1969, and loss ratios as a percent of net sales of 18 and 16 percent, respectively, in 1970 and 1971, the period of the Treasury's investigation. There can be no doubt that the price suppression resulting from the LTFV sales contributed materially to the lack of profitability in the industry.

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[1] Commissioner Young did not participate in the investigation.

[2] Commissioner Ablondi concurs in the result.

[3] Vice Chairman Parker and Commissioner Moore note that the brunt of the injury to the domestic industry has been borne by those facilities used in the production of drycleaning machines having load capacities of 16 pounds and over.

CONCLUSION

In summary, the LTFV imports have enabled foreign suppliers to obtain a large share of the U.S. market for dry-cleaning machines (19 percent in 1970) during a period when overall U.S. demand for these machines was declining. The domestic industry's declining market share, combined with price suppression—both resulting from LTFV sales—have adversely affected the financial health of the domestic industry. Accordingly, we have determined that an industry in the United States is being injured by reason of such LTFV imports.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.72-16951 Filed 10-3-72;8:54 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

ARKANSAS DEVELOPMENTAL PLAN

State Occupational Safety and Health Standards and Their Enforcement; Notice of Submission of Plan and Availability for Public Comment

1. Submission and description of Plan. Pursuant to section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) and § 1902.11 of Title 29, Code of Federal Regulations, notice is hereby given that an Occupational Safety and Health Plan for the State of Arkansas has been submitted to the Assistant Secretary of Labor for Occupational Safety and Health. The Assistant Secretary has preliminarily reviewed the plan, and hereby gives notice that the question of approval of the plan is in issue before him.

The plan identifies the Department of Labor as the State agency designated by the Governor of the State to administer the plan throughout the State. It defines the covered occupational safety and health issues as defined by the Secretary of Labor in 29 CFR 1902.2(c)(1).

The plan includes proposed draft legislation to be considered by the Arkansas Legislature during its 1973 session. Under the legislation the Department of Labor will have full authority to enforce and administer laws respecting safety and health of employees in all workplaces of the State with the exception of employees of the United States or employees protected under other Federal Occupational Safety and Health Laws such as the Atomic Energy Act of 1954, 42 U.S.C. 2021; the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 801; and the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 941.

The legislation further proposes to bring the plan into conformity with the requirements of 29 CFR Part 1902 in areas such as procedures for variances and the protection of employees from hazards, procedures for the development and promulgation of standards, including standards for protection of employees against new and unforeseen hazards; procedures for prompt restraint, or elimination of imminent danger situations.

The legislation is also intended to insure inspections in response to complaints; give employer and employee representatives opportunity to accompany inspectors in order to aid inspections; notification of employees or their representatives when no compliance action is taken as a result of alleged violations, including informal review; notification of employees of their protections and obligations; protection of employees against discharge or discrimination in terms and conditions of employment; adequate safeguards to protect trade secrets; provisions for prompt notice to employers and employees of alleged violations of standards and abatement requirements; a system of sanctions against employers for violations of standards and others; employer right of review and employee participation in review proceedings, and coverage of employees of political subdivisions.

Included in the plan is a statement of the Governor's support for the proposed legislation and a statement of legal opinion that it will meet the requirements of the Occupational Safety and Health Act of 1970, and is consistent with the Constitution and laws of Arkansas. The plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 including provision for a merit system for personnel upon enactment of the proposed legislation by the State legislature.

2. *Location of plan for inspection and copying.* A copy of the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, Room 305, Railway Labor Building, 400 First Street NW., Washington, DC 20210; Regional Administrator, Occupational Safety and Health Administration, Department of Labor, Seventh Floor, Texaco Building, 1512 Commerce Street, Dallas, TX 75201; Office of the Commissioner, Department of Labor, Capitol Hill Building, Little Rock, Ark. 72201. Copies of the plan may be obtained at the expense of the person(s) requesting the copies.

3. *Public participation.* Interested persons are hereby given 30 days from the day of this publication in which to submit to the Assistant Secretary written data, views, and arguments concerning the plan. The submissions are to be addressed to the Director, Office of State Programs, OSHA, Railway Labor Building, Room 305, U.S. Department of Labor, Washington, D.C. 20210. The written comments will be available for public inspection and copying, at the expense of the person(s) requesting such copies, at the above address.

Any interested person(s) may request an informal hearing concerning the proposed plan, or any part thereof, whenever particularized written objections thereto are filed within the 30 days specified above. If the Assistant Secretary finds that substantial objections are filed, he shall hold a formal or informal hearing on the subjects and issues involved.

The Assistant Secretary of Labor for Occupational Safety and Health shall thereafter consider all relevant comments and arguments presented and issue his decision as to approval or disapproval of the plan.

Signed at Washington, D.C., this 29th day of September 1972.

G. C. GUENTHER, *Assistant Secretary of Labor.*

[FR Doc.72-16909 Filed 10-3-72;8:51 am]

CONSTRUCTION SAFETY ADVISORY COMMITTEE

Notice of Meeting

Notice is hereby given that the Construction Safety Advisory Committee, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act and section 7(b) of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 656) will meet at 9 a.m. on Wednesday, October 11, 1972, in Room 216 A and B of the Main Labor Building, 14th Street and Constitution Avenue NW., Washington, DC.

The committee will take up the matter of improvement of standards relating to tunnel construction and such other matters as the Assistant Secretary of Labor for Occupational Safety and Health may wish to bring before it.

The meeting shall be open to the public.

Signed at Washington, D.C., this 29th day of September 1972.

G. C. GUENTHER, *Assistant Secretary of Labor.*

[FR Doc.72-16910 Filed 10-3-72;8:51 am]

UNITED STATES LINES, INC.

Withdrawal of Application for Variance

On May 10, 1972, United States Lines, Inc., One Broadway, New York, NY 10004, made application pursuant to section 6(b)(6)(A) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1594) and 29 CFR 1905.10 for a temporary variance, and for an interim order pending a decision on the application for the variance, from the standard prescribed in 29 CFR 1918.85(b)(3) and (5), concerning the weighing of containerized cargo. Notice of the application, and of the granting of an interim order pending a decision on the application, was published in the FEDERAL REGISTER on July 19, 1972 (37 F.R. 14346). The notice invited interested persons, including affected employers and employees, to submit written data, views, and arguments regarding the grant or

denial of the variance. In addition, affected employers and employees were permitted to request a hearing on the application for a variance. One petition has been filed, requesting a public hearing on the application.

On September 5, 1972, a request was received from United States Lines, Inc., to withdraw its May 10, 1972, application for a variance. The request was granted. Accordingly, the petition for a hearing on the application for a variance of the United States Lines is hereby denied, because the application is no longer before the Assistant Secretary of Labor for action. For the same reason the interim order granted to United States Lines, pending action on its application, is deemed terminated.

Signed at Washington, D.C., this 29th day of September 1972.

G. C. GUENTHER,
Assistant Secretary of Labor.

[FR Doc.72-16972 Filed 10-3-72;8:56 am]

INTERSTATE COMMERCE COMMISSION

[Notice 90]

ASSIGNMENT OF HEARINGS

SEPTEMBER 29, 1972.

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. No amendments will be entertained after the date of this publication.

MC 30837 Sub 440, Kenosha Auto Transport Corp. Extension-Import Automobiles, MC 52657 Sub. 685, Arco Auto Carriers, Inc., Extension-Import Automobiles, now assigned October 2, 1972, at St. Paul, Minn., hearing is postponed indefinitely.

MC 83835 Sub 87, Wales Transportation, Inc., continued to October 18, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 51146 Sub 247, Schneider Transport, Inc., hearing continued to October 25, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-2202 Sub 401, Roadway Express, Inc., hearing continued to October 13, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 106398 Sub 607, National Trailer Convoy, Inc., application is dismissed.

MCF-11586, Aero Trucking, Inc.—Purchase (Portion)—Kenyon Motor Express, Inc. (directly/related) MC 60014 Sub 31, Aero Trucking, Inc., now being assigned November 6, 1972, at Columbus, Ohio, in a hearing room to be later designated.

MC-F-11504, Indianhead Truck Line, Inc.—Control and Merger—Dundee Truck Line, Inc., et al., now assigned December 20, 1972, at Columbus, Ohio, is postponed indefinitely.

MC-51312 Sub 12, Bowling Green Transfer, Inc., now being assigned December 20, 1972 (1 day), at Columbus, Ohio, in a hearing room to be later designated.

MC 109397 Sub 277, Tri-State Motor Transit Co., now being assigned December 21, 1972 (2 days), at Columbus, Ohio, in a hearing room to be later designated.

MC 2890 Sub 43, American Buslines, Inc., Extension—Sterling, Colo., now being assigned November 14, 1972 (2 days), at Sidney, Nebr., in a hearing room to be later designated.

MC-113459 Sub 70, H. J. Jeffries Truck Line, Inc., now being assigned hearing November 2, 1972 (1 day), at Dallas, Tex., in a hearing room to be later designated.

MC-115841 Sub 434, Colonial Refrigerated Transportation, Inc., now being assigned hearing November 3, 1972 (1 day), at Dallas, Tex., in a hearing room to be later designated.

MC-F-11545, Miller Transfer and Rigging Co.—Purchase—Engel Trucking, Inc., et al., now being assigned hearing November 1, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 61592 Sub 270, Jenkins Truck Line, Inc., now being assigned hearing November 7, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 114211 Sub 169, Warren Transport, Inc., and MC 123048 Sub 215, Diamond Transportation System, Inc., now being assigned hearing November 14, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 51146 Sub 211, Schneider Transport & Storage, Inc., now being assigned continued hearing December 18, 1972 (3 days), at Phoenix, Ariz., in a hearing room to be later designated.

MC 133565 Sub 7, TrueTransport, Inc., now assigned October 30, 1972, at New York City, N.Y., is postponed to January 8, 1973, at New York City, N.Y., in a hearing room to be later designated.

MCF-11023, Dundee Truck Line, Inc.—Control—Modern Motor Express, Inc., MC 109914 Sub 27, Dundee Truck Line, Inc., now assigned November 6, 1972, at Columbus, Ohio, hearing is postponed indefinitely.

MC-C-7330, Allied Van Lines, Inc. vs. Clark Transfer, Inc., now being assigned hearing November 1, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-16969 Filed 10-3-72;8:56 am]

[Ex Parte 241; Rule 19, 2d Rev. Exemption 19]

BALTIMORE AND OHIO RAILROAD CO. ET AL.

Exemption from Mandatory Car Service Rules

It appearing, that there has been a substantial increase in the movement of grain and grain products originating at stations on the railroads listed herein; that major harvests of corn, milo, and soybeans are commencing in the areas served by these railroads; that boxcar supplies available to these railroads are inadequate to meet all of the needs of the shippers served by them; that surpluses of plain boxcars exist on certain railroads; and that these railroads have consented to the use of their cars by the railroads listed herein.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, ICC R.E.R. No. 384, issued by W. J. Treziser, or successive issues thereof, as having mechanical designation XM, with inside length 44 feet 6 inches or less and regardless of door width, owned by the following railroads:

The Baltimore and Ohio Railroad Co.
Bangor and Aroostook Railroad Co.
The Chesapeake and Ohio Railway Co.
Delaware and Hudson Railway Co.
The Denver and Rio Grande Western Railroad Co.
Illinois Terminal Railroad Co.
Toledo, Peoria & Western Railroad Co.

are exempt from the provisions of Car Service Rules 1 and 2 when located empty on, or loaded by, any of the lines named below:

The Atchison, Topeka and Santa Fe Railway Co.
Burlington Northern Inc.
The Colorado and Southern Railway Co.
Fort Worth and Denver Railway Co.
Chicago & Eastern Illinois Railroad Co.
Chicago and North Western Railway Co.
Chicago, Milwaukee, St. Paul and Pacific Railroad Co.
Chicago, Rock Island and Pacific Railroad Co.
Illinois Central Gulf Railroad Co.
The Kansas City Southern Railway Co.
Missouri-Kansas-Texas Railroad Co.
Missouri Pacific Railroad Co.
Norfolk and Western Railway Co.
(Lines Connersville, Indiana, and Montpelier, Ohio, and west, including stations on line between Connersville and Montpelier via New Castle, Muncie, Bluffton, Kingsland, Fort Wayne, and Butler, Ind.)
St. Louis-San Francisco Railway Co.
St. Louis Southwestern Railway Co.
Soo Line Railroad Co.
Union Pacific Railroad Co.

Effective September 30, 1972.

Expires November 15, 1972.

Issued at Washington, D.C., September 27, 1972.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.72-16965 Filed 10-3-72;8:55 am]

[Ex Parte 241; Rule 19, Exemption 22]

ATCHISON, TOPEKA, AND SANTA FE RAILWAY CO. ET AL.

Exemption from Mandatory Car Service Rules

It appearing, that there are substantial movements of grain and grain products moving in plain, 40-foot, narrow-door boxcars between points on the following railroads:

The Atchison, Topeka and Santa Fe Railway Co.

Chicago, Milwaukee, St. Paul and Pacific Railroad Co.
Chicago, Rock Island and Pacific Railroad Co.
Missouri Pacific Railroad Co.
Union Pacific Railroad Co.

and that unlimited exchange of such cars among these railroads will increase car utilization by reductions in switching and other movements of empty cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, ICC R.E.R. No. 384, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation XM, with inside length 44 feet 6 inches or less and equipped with doors less than 9 feet wide owned by any of the aforementioned railroads and located empty on such lines, may be loaded with grain or grain products, as defined herein, to stations located on any of the aforementioned railroads. When so loaded, such cars shall be exempt from the provisions of Car Service Rules 1 and 2.

The term grain and grain products shall comprise the commodities specifically named in lists 1, 2, 5, 6, 7, and 8 published in Western Trunk Lines Freight Tariff 330–U, ICC A–4797, issued by Fred Ofcky, supplements thereto or consecutive issues thereof.

Effective October 1, 1972.

Expires October 31, 1972.

Issued at Washington, D.C., September 27, 1972.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.72-16966 Filed 10-3-72;8:55 am]

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

SEPTEMBER 29, 1972.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

Tennessee Docket No. MC 5835, filed July 11, 1972. Applicant: THOMAS RICHARDSON, W. E. RICHARDSON, AND JACKIE RICHARDSON, doing business as RICHARDSON TRUCKING CO., INC., Tiptonville, Tenn. 38079. Applicant's representative: James H. Smith, Box 212, Tiptonville, TN 38079. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities,* except household goods, explosives, and commodities requiring special equipment. from Dyersburg, Tenn., to Bogota, Ridgely, Tiptonville, Samburg, Hornbeak, Troy, Obion, Trimble, Newbern, and back to Dyersburg, Tenn. Both intrastate and interstate authority sought.

HEARING: October 18, 1972, at the Commission's Courtroom, C–1 Cordell Hull Building, Nashville, Tenn., at 1:30 p.m. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Tennessee Public Service Commission, Cordell Hull Building, Nashville, Tenn. 37219, and should not be directed to the Interstate Commerce Commission.

Oklahoma Docket No. MC 21834 (Sub-No. 3) (amendment), filed September 12, 1972, published in the FEDERAL REGISTER issue of September 27, 1972 and republished as amended this issue. Applicant: MAURICE SMITH AUSLEY II, doing business as AUSLEY MOTOR FREIGHT, 1911 Northwest First Street, Oklahoma City, OK. Applicant's representative: Dean Williamson, 280 National Foundation Life Building, 3535 Northwest 58th Street, Oklahoma City, OK. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities,* (1) between Oklahoma City, Okla., and Cyril, Okla., over U.S. Highway 66 to its intersection with U.S. Highway 281, near Bridgeport, Okla., thence south on U.S. Highway 281 to its intersection with Oklahoma State Highway 19 at Apache, Okla., thence east on Oklahoma State Highway 19 to Cyril, Okla., serving the intermediate points of Anadarko and Apache, and the off route point of Stecker, Okla.; (2) between Anadarko, Okla., and Cyril, Okla., over Oklahoma State Highway 8; (3) as an alternate route, for operating convenience only, serving no intermediate points between Oklahoma City, Okla., and Anadarko, Okla., over U.S. Highway 62 to its intersection with H. E. Bailey Turnpike, thence Southwest on H. E. Bailey Turnpike to its intersection with U.S. Highway 62 at Chickasha, Okla., thence West on U.S. Highway 62 to Anadarko, Okla. Applicant requests his entire authority including the above requested routes be unitized to allow a complete service between all points requested to be served on the above routes, and all points on the routes which applicant is presently authorized to serve. Applicant also requests authority to conduct operations in both intrastate and interstate and foreign commerce over the above routes. NOTE: The purpose of this republication is to redescribe the authority sought.

HEARING: November 6, 1972, 9 a.m., third floor, Jim Thorpe Office Building, Oklahoma City, Okla. 73105. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Oklahoma Corporation Commission, Jim Thorpe Office Building, Oklahoma City, Okla. 73105, and should not be directed to the Interstate Commerce Commission.

Oklahoma Docket No. MC 23466 (Sub-No. 2), filed September 22, 1972. Applicant: CENTRAL OKLAHOMA FREIGHT LINES, INC., 207 North Cincinnati, Tulsa, OK 74103. Applicant's representative: Rufus H. Lawson, 106 Bixler Building, Post Office Box 75124, Oklahoma City, OK 73107. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities,* except those of unusual value, classes A and B explosives, household goods, commodities in bulk and commodities requiring special equipment, between Oklahoma City and Shawnee, Okla., serving all intermediate points, from Oklahoma City, Okla., over U.S. Highway 270 to Shawnee, Okla., and return over the same route, from Oklahoma City, Okla., over U.S. Highway 40 to Shawnee, Okla., and return over the same route. NOTICE: Notice is given that application includes the request to unitize applicant's present authority, and, if granted, the authority sought in this application, to provide service to, from and between all points under applicant's combined authorities. Both intrastate and interstate authority sought.

HEARING: On October 23, 1972, 9 a.m., in the Court Room of Corporation Commission of Oklahoma, Jim Thorpe Building, Oklahoma City, Okla. 73105. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Corporation Commission of Oklahoma, Jim Thorpe Building, Oklahoma City, Okla. 73105 and should not be directed to the Interstate Commerce Commission.

California Docket No. 53597 filed September 21, 1972. Applicant: MISSION CITIES FREIGHT LINES, INC., 1005 Railroad Avenue, Santa Clara, CA 95050. Applicant's representative: Raymond A. Greene, Jr., 405 Montgomery Street, San Francisco, CA 94104. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of (1) *General commodities,* except as hereinafter provided, between all points and places in the San Francisco Territory, which is described as follows: SAN FRANCISCO TERRITORY includes all of the city of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U.S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U.S. Highway 101 to its interary line to a point 1 mile west of and section with Southern Pacific Co. right of way at Arastradero Road; southeasterly along the Southern Pacific Co. right of way to Pollard Road, including industries served by the Southern Pacific

Co. spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to West Parr Avenue; easterly along West Parr Avenue to Capri Drive; southerly along Capri Drive to East Parr Avenue; easterly along East Parr Avenue to the Southern Pacific Co. right of way; southerly along the Southern Pacific Co. right of way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U.S. Highway 101; northwesterly along U.S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U.S. Highway 40 (San Pablo Avenue); northerly along U.S. Highway 40 to and including the city of Richmond; southwesterly along the highway extending from the city of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning; except that applicant shall not transport any shipments of: (1) Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A. (2) Automobiles, trucks and buses, viz.: New and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses, and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis. (3) Livestock, viz.: Bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags, or swine. (4) Liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers, or a combination of such highway vehicles. (5) Commodities when transported in bulk in dump trucks or in hopper-type trucks. (6) Commodities when transported in motor vehicles equipped for mechanical mixing in transit. (7) Cement. (8) Logs, and (9) Commodities of unusual extraordinary value. (2) The following specific commodities: Tile, linoleum, carpet and carpet padding, paint, conduit fittings and appliances between all points on or within 10 miles of the following routes: (A) State Highway 17 between its intersection with Los Gatos-San Jose Road at Los Gatos and it intersection with State Highway 1 at Santa Cruz, inclusive. (B) State Highway 1 between its intersection with State Highway 17 at Santa Cruz and its intersection with State Highway 68 at Monterey, inclusive. (C) State Highway 156 west from its intersection with State Highway 1 at Castroville to its intersection with U.S. Highway 101, inclusive. (D) State Highway 68 between its intersection with State Highway 1 at Monterey and its intersection with U.S. Highway 101 at Salinas, inclusive. (E) U.S. Highway 101 between its intersection with State Highway 68 at Salinas and its intersection with Tully Road at San Jose, inclusive. (F) State Highway 156 east between its intersection with U.S. Highway 101 near San Juan Bautista and its intersection with State Highway 152, inclusive. (G) State Highway 152 between its intersection with State Highway 156 east and its intersection with U.S. Highway 1 at Watsonville, inclusive. (3) Through routes and rates may be established between any and all points specified in paragraphs 1 and 2 above. (4) All intermediate points on said routes and all off-route points within the outer perimeters of the routes designated herein may be served. Both intrastate and interstate authority sought.

HEARING: Date, time, and place not shown. Requests for procedural information including the time for filing protests concerning this application should be addressed to the California Public Utilities Commission, State of California, State Building, Civic Center, 455 Golden Gate Avenue, San Francisco, CA 94102 and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-16967 Filed 10-3-72;8:56 am]

[Notice 26]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

SEPTEMBER 29, 1972.

The following letter-notices of proposals (except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules-Motor Carriers of Passengers, 1969 (49 CFR 1042.2(c)(9)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.2(c)(9)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PASSENGERS

No. MC-84728 (Deviation No. 7), SAFEWAY TRAILS, INC., 1200 Eye Street NW., Washington, DC 20005, filed September 19, 1972. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From junction U.S. Highway 29 and Maryland Highway 103 at or near Ellicott City, Md., over U.S. Highway 29 (an access road) to junction Interstate Highway 70N, thence over Interstate Highway 70N to junction Interstate Highway 695, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over pertinent service routes as follows: (1) from junction U.S. Highway 29 and Maryland Highway 198 at Burtonsville, Md., over U.S. Highway 29 to junction U.S. Highway 40 at Ellicott City, Md., thence over U.S. Highway 40 to Baltimore, Md., and (2) from junction U.S. Highway 40 and Interstate Highway 695 at or near Fullerton, Md., over Interstate Highway 695 to junction with the Baltimore-Washington Parkway, and return over the same routes.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-16968 Filed 10-3-72;8:56 am]

[Notice 80]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

SEPTEMBER 29, 1972.

The following publications[1] are governed by the new Special Rule 1100.247

[1] Except as otherwise specifically noted, each applicant (on applications filed after March 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

MOTOR CARRIERS OF PROPERTY

No. MC 119493 (Sub-No. 74) (Republication), filed June 9, 1971, published in the FEDERAL REGISTER issue of July 9, 1971, and republished this issue. Applicant: MONKEM COMPANY, INC., West 20th Street Road, Post Office Box 1196, Joplin, MO 64801. Applicant's representative: Ray F. Kempt, Post Office Box 1196, Joplin, MO 64801. A decision and order of the Commission, Review Board No. 3, dated September 13, 1972, and served September 22, 1972, finds that operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, in Part (3) of the application, of weed killing compounds, in containers, from Military, Kans., to points in Idaho, Minnesota, Montana, North Dakota, South Dakota, and Washington; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. That since it is possible that other parties who have relied upon the notice in the FEDERAL REGISTER of the application as originally published may have an interest in and would be prejudiced by the lack of proper notice of the grant of authority without the requested limitation in our findings herein, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of the certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in the proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 125650 (Sub-No. 7) (Republication), filed January 21, 1971, published in the FEDERAL REGISTER issue of February 19, 1971, and republished this issue. Applicant: MOUNTAIN PACIFIC TRUCKING CORPORATION, 910 Dickens Street, Missoula, MT 59801. Applicant's representative: Joseph O. Earp, 607 Third Avenue, Seattle, WA 98014. A decision and order of the Commission, Review Board No. 1, dated September 14, 1972, and served September 22, 1972, finds that operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of (1) frozen foods, canned goods, potato products, poultry, and meat from points in Idaho and Ontario, Oreg., to points in Montana, restricted against the transportation of meat from Roberts, Idaho, to points in Montana; and (2) canned goods from Salt Lake City, Roy, and Clearfield, Utah, to points in Montana, except Great Falls, Mont.; the authority granted in (1) and (2) above, restricted to traffic destined to points in Montana; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the appendix hereto, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of the certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in the proceeding setting forth in detail the precise manner in which it has been prejudiced.

No. MC 135728 (Republication), filed June 21, 1971, published in the FEDERAL REGISTER issue of July 22, 1971, and republished this issue. Applicant: RICHARD J. FRANKS, 6 Maple Street, Alliston, ON, Canada. Applicant's representative: Samuel Rosenthal, 530 Walbridge Building, Buffalo, N.Y. 14202. A report and order of the Commission, recommended by Hearing Examiner, effective September 11, 1972, served September 21, 1972, finds that the present and future public convenience and necessity require operation by applicant, as a common carrier by motor vehicle, in interstate or foreign commerce, over irregular routes, of rough and dressed lumber, between ports of entry along the United States-Canada International boundary line in the States of New York and Michigan (except those in the Upper Peninsula of Michigan), on the one hand, and, on the other, points in New York, Pennsylvania, Ohio, Indiana, Michigan, Illinois, Wisconsin, Massachusetts, and Vermont. The Hearing Examiner further finds that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition or other relief setting forth in detail the precise manner in which it has been so prejudiced.

NOTICES OF FILING OF PETITIONS

No. MC 5812 (Notice of filing of petition for clarification and modification of certificate), filed September 13, 1972. Petitioner: JOHN P. SORICE, doing business as JOHN P. SORICE TRUCKING, 150 Rosewood Avenue, Washington, PA 15301. Petitioner's representative: Paul F. Beery, 88 East Broad Street, Columbus, OH 43215. Petitioner presently holds a certificate in No. MC 5812 issued March 10, 1941, authorizing, as pertinent, operation as a common carrier by motor vehicle, over irregular routes of *heavy machinery* between points and places in that part of Pennsylvania south of U.S. Highway 422 and west of U.S. Highway 119, on the one hand, and, on the other, points and places in that part of Ohio east of U.S. Highway 23 and north of U.S. Highway 50, and that part of West Virginia north of U.S. Highway 50, including points and places on the indicated portions of the highways specified. By the instant petition, petitioner seeks to modify its certificate, for clarification purposes, by replacing the commodity description *heavy machinery* with (a) *Machinery;* (b) *Commodities* which because of size or weight, require the use of special equipment or special handling, and *related machinery parts and related contractors' equipment, materials and supplies* when their transportation is incidental to the transportation of commodities which because of size or weight require the use of special equipment; and, (c) *Self propelled articles,* each weighing 15,000 pounds or more, and *related machinery, tools, parts and supplies* moving in connection therewith. Any interested person desiring to participate may file one original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 12977 (Notice of filing of petition for removal of restriction), filed September 18, 1972. Petitioner: (HILLSEN'S) HOLIDAY TOURS, 1521 West Highland, Redlands, Calif. 92373. Petitioner's representative: Murchison & Davis, 9454 Wilshire Boulevard, Suite 400, Beverly Hills, CA 90212. Petitioner presently holds a license in No. MC 12977, issued December 2, 1968, authorizing brokerage service for passengers and their baggage, in round trip tours, (1) beginning and ending at points in San Bernardino, Kern, and Fresno Counties, Calif., and extending to points in the United States (except Alaska and Hawaii), (2) beginning and ending at points in Contra Costa, San Mateo, Santa Clara, and San Diego Counties, Calif., and extending to points in the United States (except Alaska and Hawaii), (3) beginning and ending at points in Los Angeles and Orange Counties, Calif., and extending to points in the United States (except Alaska and Hawaii), and (4) beginning and ending at points in San

Bernardino and Riverside Counties, Calif., and extending to points in the United States. Restriction: Subject to the right of the Commission, which is hereby expressly reserved, to impose, after final determination of the proceeding in Ex Parte No. MC 29 (Sub-No. 2), *Operations of Brokers and Passenger Transportation*, such terms and conditions, if any, as may be deemed necessary to insure that the transportation which applicant arranges is limited to bona fide service as a broker of transportation by motor vehicle of passengers and their baggage, in round trip tours, and authorized to engage in the above-specified operations as a broker at Redlands, Calif. By the instant petition, petitioner seeks removal of the restrictive language "authorized to engage in the above-specified operations as a broker at Redlands, Calif." from its license. Any interested person desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 41706 (Sub-No. 9) (Notice of filing of petition for removal of restriction), filed September 6, 1972. Petitioner: TOSE, INC., 64 West 4th Street, Bridgeport, PA 19405. Petitioner's representative: Anthony C. Vance, 1111 E Street NW., Suite 501, Washington, DC 20004. Petitioner presently holds a certificate in No. MC 41706 (Sub-No. 9), issued January 16, 1970, authorizing, as pertinent, operation as a common carrier by motor vehicle, over irregular routes, of *such merchandise* as it's ordinarily dealt in by retail stores, premium redemption companies, and mail-order houses, between New York, N.Y., Washington, D.C., points in Fairfield, Hartford, and New Haven Counties, Conn., Albany, Columbia, Dutchess, Fulton, Greene, Montgomery, Nassau, Orange, Putnam, Rensselaer, Rockland, Schenectady, Schoharie, Suffolk, Sullivan, Ulster, and Westchester Counties, N.Y., and points in Delaware, Maryland, New Jersey, and Pennsylvania. Restriction: (1) Restricted against the traffic transportation between Washington, D.C., on the one hand, and, on the other, points in Maryland; and (2) limited to delivery to the customers (ultimate consumers) of retail stores, premium redemption companies, and mail-order houses, and the transportation of shipments of this character returned by such customers to the shippers, and shall be restricted against transportation of any commodity intended for resale, manufacturing, or other commercial processing, and no transportation shall be provided for any shipment weighing more than 250 pounds. For the purpose of this restriction, a package or group of packages from a single consignor to a single consignee at a single destination shall be considered a shipment. By the instant petition, petitioner seeks modification of restriction section (2) above by removal of the restrictive language "limited to delivery to the customers (ultimate consumers) of retail stores, premium redemption companies, and mail-order houses, and the transportation of shipments of this character returned by such customers to the shippers, and shall be restricted against transportation of any commodity intended for resale, manufacturing, or other commercial processing". Any interested person desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 95540 (Sub-No. 814) (Notice of filing of petition for modification of certificate), filed August 3, 1972. Petitioner: WATKINS MOTOR LINES, INC., 1120 West Griffen Road, Lakeland, FL 33801. Petitioner's representative: A. J. Swanson, 521 South 14th Street, Post Office Box 80806, Lincoln, NE 68501. Petitioner presently holds a certificate in No. MC 95540 (Sub-No. 814), issued June 27, 1972, authorizing operation as a common carrier by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs*, in vehicles equipped with mechanical refrigeration (except in bulk and except meats, meat products, meat byproducts and articles distributed by meat packinghouses, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766), from points in Texas to points in Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee (except Memphis and points in its commercial zone as defined by the Commission), with no transportation for compensation on return except as otherwise authorized. Restriction: (a) Restricted against the transportation of canned foodstuffs originating at the plantsite and storage facilities of Campbell Soup Co., at Paris, Tex., and destined to points in Alabama, Florida, and Georgia; and (b) restricted against the transportation of unfrozen foods from Dallas and Fort Worth, Tex., and points in their commercial zones as defined by the Commission, to Birmingham, Huntsville, and Decatur, Ala., and points in the Atlanta, Ga., commercial zone as defined by the Commission; and (c) restricted against the transportation of nonfrozen foods from Houston, Tex., and points in its commercial zone as defined by the Commission, to Atlanta, Ga., and Birmingham, Ala., and points in their commercial zones as defined by the Commission; and (d) service at points in Tennessee restricted to shipments destined to points in Tennessee.

(2) *Foodstuffs*, in vehicles equipped with mechanical refrigeration (except in bulk and except frozen prepared foods), from points in Texas to points in Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, West Virginia, and the District of Columbia, with no transportation for compensation on return except as otherwise authorized. Restriction: Restricted against the transportation of nonfrozen foods from Dallas and Fort Worth, Tex., and points in their commercial zones as defined by the Commission, to Charleston and Huntington, W. Va., and points in their commercial zones as defined by the Commission. (3) *Foodstuffs*, in vehicles equipped with mechanical refrigeration (except in bulk), from points in Texas to points in Connecticut, Delaware, Maine, New Hampshire, Virginia, and Vermont, with no transportation for compensation on return except as otherwise authorized. (4) *Frozen fruits, berries, vegetables, and foodstuff concentrates*, from points in Texas (except San Antonio), to points in Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, West Virginia, and the District of Columbia, with no transportation for compensation on return except as otherwise authorized. (5) *Frozen foods*, from San Antonio, Tex., to points in Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, West Virginia, and the District of Columbia, with no transportation for compensation on return except as otherwise authorized. By the instant petition, petitioner seeks modification of its certificate to remove the restrictive language "in vehicles equipped with mechanical refrigeration" from the above listed sections (1), (2), and (3). Any interested person desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 105678 (Sub-Nos. 13, 18 and 22) (Notice of Filing of Petition for Modification of Permit To Add Shipper), Filed August 22, 1972. Petitioner: SECO TRUCKING CO., a corporation, 219 North Jackson Avenue, Post Office Box 887, Mason City, IA 50401. Petitioner's representative: Thomas F. Kilroy, Post Office Box 624, Springfield, VA 22150. Petitioner presently holds in No. MC 105678 (Sub-No. 13) a motor contract carrier permit authorizing, as pertinent, the transportation, over irregular routes, of: (1) *Explosives and explosives supplies*, except liquid nitroglycerin, from the sites of the plants and magazines of the Atlas Chemical Industries, Inc., at Atlas, Mo., and points in Missouri within 10 miles thereof to points in Illinois, North Dakota, and South Dakota; (2) *Blasting agents, ammonium nitrate and nitro-carbo-nitrate*, from the sites of the plants and magazines of the Atlas Chemical Industries, Inc., at Atlas, Mo., and points in Missouri within 10 miles thereof, to points in Iowa, Minnesota, Wisconsin, Illinois, Nebraska, North Dakota, and South Dakota; and returned shipments of the commodities described in (1) and (2) above. Restriction: Limited to a transportation service to be performed under a continuing contract, or contracts with; Atlas Chemical Industries, Inc. (ICI America, Inc.), of Wilmington, Del. and The Bowen Corp. Mason City, Iowa: in No. MC 105678 (Sub-No. 18) petitioner is authorized to transport:

(1) *Explosives and blasting supplies*, except in bulk, from Atlas, Mo., and the magazines of Atlas Chemical Industries, Inc., at or near Baxter Springs, Kans., and Picher, Okla., to points in Minnesota,

Wisconsin, Michigan, Kansas, Arkansas, Indiana, Ohio, Illinois, Pennsylvania, Missouri, Iowa, North Dakota, South Dakota, and Nebraska; and returned shipments of the commodities described above; and also shipping (2) *Ingredients, materials and supplies* used in the manufacture and sales of explosives and blasting supplies, except in bulk, from the above-named destination States to the above-named origins (except Missouri, North Dakota, South Dakota, and Nebraska), Restriction: Limited to a transportation service to be performed, under a continuing contract, or contracts, with ICI America, Inc., of Wilmington, Del.: in No. MC 105678 (Sub-No. 22) petitioner is authorized to transport the same commodities with the same origins, or destinations on return, and the same restrictions as immediately above-named, to destination or returning origin points, as applicable, in Arizona, Louisiana, New Mexico, Oklahoma, and Texas. By the instant petition, petitioner seeks to modify its permits by adding an additional shipper of Trojan U.S. Powder Division of Commercial Solvents Corp. to be served under a continuing contract, or contracts. Any interested person desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

(Notice of Filing of Petition for Modification of certificates), filed August 15, 1972. Petitioner: INTER-STATE TRUCK LINE, INC., 555 South 16th Street, Columbia, PA 17512. Petitioner's representative: S. Harrison Kahn, Suite 733 Investment Building, Washington, D.C. 20005. Petitioner presently holds a certificate in No. MC 111473 issued January 12, 1950, authorizing operation as a common carrier by motor vehicle, over irregular routes, of: (1) *Wearing apparel,* in boxes and cases, from points and places in that part of Pennsylvania on, east and south of a line beginning at the Pennsylvania-Maryland State line and extending along U.S. Highway 11 to Harrisburg, Pa., thence along U.S. Highway 22 to the Pennsylvania-New Jersey State line, to New York, N.Y.; (2) *Materials and supplies* used in or useful in the manufacture of wearing apparel, from New York, N.Y., to the above-described Pennsylvania territory; (3) *Ladies' wearing apparel,* loose, on hangers, or racks, from Newville, Pa., to New York, N.Y.; (4) *Hangers* for the above-specified commodities, from New York, N.Y., to Newville, Pa., and authority to traverse New Jersey for operating convenience only; and (5) *General commodities,* except those of unusual value, and except household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M.C.C. 467, commodities in bulk, and those requiring special equipment, between New York, N.Y., on the one hand, and, on the other, points and places in New Jersey within 25 miles of Columbus Circle, New York, N.Y. The above-named carrier is also authorized to perform the through service in the transportation of authorized commodities under a combination of the authorities described in section (A) on the one hand, and, on the other, section (B), when under one such section the carrier is authorized to transport the shipment to a gateway point from which the shipment may be transported under another section, provided in each instant the movement is made through the authorized gateway point. Petitioner also holds a certificate in No. MC 111473 (Sub-No. 1) issued January 12, 1950, authorizing similar transport of:

(1) *Wearing apparel,* in boxes and cases, from New York, N.Y., to points and places in that part of Pennsylvania on, east, and south of a line beginning at the Pennsylvania-Maryland State line and extending along U.S. Highway 11 to Harrisburg, Pa., thence along U.S. Highway 22 to the Pennsylvania-New Jersey State line; (2) *materials and supplies* used in the manufacture of wearing apparel, from the above-specified destination points and places to New York, N.Y., and (3) *ladies' wearing apparel,* on hangers, from Harrisburg, Pa., to New York, N.Y., with no transportation for compensation on return except as otherwise authorized, and authority to traverse New Jersey for operating convenience only. By the instant petition, petitioner seeks modification of its certificates to remove the restrictive language "in boxes and cases" from the above listed sections (1) of both certificates. Any interested person desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 114239 and MC 114239 (Sub-No. 12) (Notice of Filing of Petition for Modification), July 17, 1972. Applicant: FARRIS TRUCK LINE, a corporation, Faucett, Mo. Applicant's representative: Warren H. Sapp, 450 Professional Building, Kansas City, Mo. 64106. Petitioner holds authority under MC 114239, authorizing, as here pertinent, the transportation, in interstate or foreign commerce, over irregular routes, of: Urea, in dry form, in bulk, except in tank or hopper vehicles, from the site of the plant of W. R. Grace & Co., at or near Woodstock, Tenn., and from the warehouses of W. R. Grace & Co., at Memphis, Tenn., to points in Arizona, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming, with no transportation for compensation on return except as otherwise authorized. Restriction: The operations authorized above are subject to a transportation service to be performed under a continuing contract, or contracts, with W. R. Grace & Co. Applicant's permit under MC 114239 (Sub-No. 12), authorizes the transportation, in interstate or foreign commerce, over irregular routes, of: Fertilizer, (except in tank vehicles), from the plantsite of Illinois Nitrogen Co. at Marseilles, Ill., to points in Indiana, Michigan, Wisconsin, Minnesota, Ohio, Iowa, Missouri (except points in the St. Louis, Mo.-East St. Louis, Ill., commercial zone as defined by the Commission), Kansas, Nebraska, South Dakota, and Kentucky, with no transportation for compensation on return except as otherwise authorized. Restriction: The operations authorized herein are limited to transportation service to be performed under a continuing contract, or contracts, with W. R. Grace & Co., of Memphis, Tenn. By the instant petition, petitioner seeks to amend the permits issued to it in MC 114239 and MC 114239 (Sub-No. 12) by deleting therefrom the words "except in tank or hopper type vehicles," and "except in tank vehicles," respectively. Any interested person or persons desiring to participate and to be heard in the matter may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of this publication in the FEDERAL REGISTER.

No. MC 116923 (Sub-No. 2) (Notice of Filing of Petition for Modification of Certificate), filed July 14, 1972. Petitioner: KRAMER TRUCKING CO., INC., Elizabeth, N.J. Petitioner's representative: Paul F. Sullivan, Washington Building, Suite 711, 15th and New York Avenue NW., Washington, DC 20005. Petitioner presently holds a certificate in No. MC 116923 (Sub-No. 2) issued July 25, 1968, authorizing operation as a common carrier by motor vehicle, over irregular routes, of *Machinery* between points in the New York, N.Y., commercial zone, on the one hand, and, on the other, points in the Boston, Mass., commercial zone, those in New Jersey, those in Connecticut on and west of U.S. Highway 5, those in New York on and east of a line extending from the Pennsylvania-New York State line along New York Highway 7 to Binghamton and on and south of a line extending from Binghamton along New York Highway 7 to the New York-Vermont State line, and those in Pennsylvania on and east of a line extending from the Maryland-Pennsylvania State line along U.S. Highway 15 to Harrisburg and thence along U.S. Highway 11 to the Pennsylvania-New York State line. By the instant petition, petitioner seeks modification of its certificate to authorize the transportation of: *Commodities, the transportation of which because of their size or weight requires special handling or special equipment;* in lieu of the presently listed description which reads: *Machinery.* Any interested person desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 124373 (Sub-No. 7) (Notice of Filing Petition for Modification of a

Permit), filed August 24, 1972. Petitioner: NELMAR TRUCKING CO., Jersey City, N.J. 07306. Petitioner's representative: Irving Klein, 280 Broadway, New York, NY 10007. Petitioner states that it presently holds a permit dated June 28, 1972, under MC 124373 (Sub-No. 7), authorizing, as pertinent, operation as a contract carrier by motor vehicle, over irregular routes of, beverages in containers, and beverage preparations other than malt, and equipment, materials and supplies used in the manufacture and sale of beverages, between points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia, North Carolina, Kentucky, and the District of Columbia, limited to transportation service to be performed under a continuing contract, or contracts with Yoo-Hoo Chocolate Beverage Corp., and its wholly owned subsidiaries, of Carlstadt, N.J. Petitioner may also contract with Custom Canners of Baltimore, Md., and Shasta Beverage, a division of Consolidated Foods, Inc. By the instant petition, petitioner seeks at the request of Yoo-Hoo Chocolate Beverage Corp., and on behalf of that company, and its subsidiaries, to add the States of South Carolina, Alabama, Tennessee, Mississippi, Louisiana, Georgia, and Florida as additional States to the States between which operations may be conducted. The operations presently authorized are nonradial, and petitioner seeks nonradial authority respecting the additional States above named so that by adding such States to those presently authorized, petitioner would be able to conduct nonradial operations throughout its territory. Any person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 133318 (Sub-No. 3) (Notice of Filing of Petition To Amend Permit To Add a Shipper's Name), filed July 31, 1972. Petitioner: VAN DE HOGEN CARTAGE LIMITED, Chatham, Ontario, Canada. Petitioner's representative: John Peter Van De Hogen, Route 4, Chatham, Ontario, Canada. Petitioner states that it has pending before the Commission, an extension application under MC 133318 (Sub-No. 3), which reads in part, as follows: (1) Stone, from Brazil, Ind., Princess, Ky., Detroit, Mich., and points in Cuyahoga County, Ohio and Beaver County, Pa.; (2a) tile, from Brazil, Ind., Princess, Ky., Detroit, Mich., points in Ohio and points in Beaver County, Pa.; (2b) structural facing tile, from Summerville, Pa.; (3a) building brick, from Brazil, Ind., Princess, Ky., Detroit, Mich., points in Ohio, Lewis Run and Summerville and points in Beaver County, Pa.; (3b) firebrick, from Strasburg, Dover and Uhrichsville, Ohio; and (4) limestone in bags, from Detroit, Mich.; Oakfield, N.Y., and Genoa and Woodville, Ohio; to those ports of entry on the international boundary line between the United States and Canada located in Michigan and New York under continuing contracts with Windsor Builders Supply Ltd., doing business as Canadian Builders Supply, of Windsor, Ontario, Canada, Geo. E. White & Son, Ltd., of Windsor, Ontario, Canada. Petitioner further states that if said application results in a grant of authority, it will have the result of adding one shipper. This would leave petitioner then serving three shippers under the scope of its permit. By the instant petition, petitioner seeks to add the name of an additional shipper, Webster & Sons Ltd., of Weston, Ontario, Canada. Any interested person or persons desiring to participate and to be heard in the matter may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of this publication in the FEDERAL REGISTER.

No. MC 134145 (Sub-No. 1) (Correction) (Notice of Filing Petition for Modification of Permit and Motion To Dismiss), filed August 17, 1972, published in the FEDERAL REGISTER issue of September 20, 1972, and republished, as corrected in part, this issue. Petitioner: NORTH STAR TRANSPORT, INC., Post Office Box 51, Thief River Falls, MN 56701. Petitioner's representative: Anthony C. Vance, Suite 501, 1111 E Street NW., Washington, DC 20004. The purpose of this partial republication is to show petitioner's correct docket number as MC 134145 (Sub-No. 1), in lieu of MC 13415 (Sub-No. 1), which was erroneously published. The rest of the application remains as previously published.

No. MC 136683 (Notice of Filing of Petition for Clarification and Modification of Certificate), filed September 6, 1972. Petitioner: DEALERS AUTO TRANSPORT, INC., 14330 Cerise Street, Hawthorne, CA 90250. Petitioner's representative: Donald Murchison, 9454 Wilshire Boulevard, Suite 400, Beverly Hills, CA 90212. Petitioner presently holds a certificate in No. MC 136683 issued July 1, 1972, authorizing, as pertinent, operation as a common carrier, over irregular routes, of *Used Motor vehicles* which have been repossessed, embezzled, stolen, or damaged. By the instant petition, petitioner requests a modification, for clarification purposes, by elimination of the difficult to interpret qualifying words; "repossessed, embezzled, stolen, and damaged". Any person or person desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 71043 (Sub-No. 7) (Correction), filed September 5, 1972, and published in the FEDERAL REGISTER issue of September 27, 1972, republished in part, as corrected, this issue. Applicant: LAPORTE TRANSIT CO., INC., Post Office Box 578, LaPorte, IN 46350. Applicant's representative: Alki E. Scopelitis, 815 Merchants Bank Building, Indianapolis, Ind. 46204. NOTE: The purpose of this partial republication is to reflect that the application is directly related to MC-F 11651 inadvertently shown as MC-F 11659 in the previous publication of September 27, 1972.

No. MC 127602 (Sub-No. 12), filed September 18, 1972. Applicant: DENVER-MIDWEST MOTOR FREIGHT, INC., 525 Jones Street, Box 156 D.T.S., Omaha, NE 68101. Applicant's representative: Earl H. Scudder, Jr., Post Office Box 82028, 605 South 14th Street, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk, household goods as defined by the Commission, commodities which because of size or weight require the use of special equipment, and classes A and B explosives), (a) between points within a 50 mile radius of Chicago, Ill.; and (b) between points within a 50 mile radius of Chicago, Ill., on the one hand, and, on the other, points in Illinois. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. This application is a matter directly related to MC-F-11662, published in the FEDERAL REGISTER issue of September 27, 1972. The instant application seeks to convert the certificate of registration of Streator Transfer & Storage Co. under MC 98297 into a certificate of public convenience and necessity. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-11630. (Correction) (EAST TEXAS MOTOR FREIGHT LINES, INC.—POOLING—SILVER EAGLE COMPANY), published in the August 31, 1972, issue of the FEDERAL REGISTER on page 17789. Prior notice should be modified to read to and from the named points in Washington.

No. MC-F-11667. Authority sought for purchase by ROADWAY EXPRESS, INC., Post Office Box 471, Akron, OH 44309, of the operating rights and property of ATLAS TRANSPORTATION CO., INC., OF CAMBRIDGE, 12 Norfolk St., Cambridge, MA 02139, and for acquisition by GALEN J. ROUSH, also of Akron, Ohio 44309, of control of such rights and property through the purchase. Applicants' attorneys: William O. Turney,

2001 Massachusetts Avenue NW., Washington, DC 20036, and Kenneth B. Williams, 111 State Street, Boston, MA 02109. Operating rights sought to be transferred: *General commodities*, excepting among others, class A and B explosives, household goods, and commodities in bulk, as a *common carrier* over regular routes, between Boston, Mass., and Bangor, Maine; *shoes, leather, shoe findings,* and *shoe manufacturing supplies* and *machinery* between Boston, Mass., and Springvale, Maine, between Boston, Mass., and South Sanford, Maine, between Boston, Mass., and Seabrook, N.H. Vendee is authorized to operate as a *common carrier* in Ohio, Texas, Oklahoma, Connecticut, Michigan, Missouri, Indiana, Massachusetts, Pennsylvania, Kansas, Illinois, Kentucky, Rhode Island, Alabama, Georgia, North Carolina, Tennessee, South Carolina, New Jersey, New York, Virginia, Delaware, Maryland, West Virginia, Wisconsin, and the District of Columbia. Application has not been filed for temporary authority under Section 210a(b).

No. MC–F–11668. Authority sought for merger by CHEMICAL EXPRESS CARRIERS, INC., 1200 Simons Building, Dallas, Tex. 75201, of the operating rights and property of CHEMICAL EXPRESS CARRIERS OF OKLAHOMA, INC., also of Dallas, Tex. 75201. Applicants' attorney: Wm. E. Livingstone, III, 4555 First National Bank Building, Dallas, Tex. 75201. The above-mentioned applicants are commonly controlled. Operating rights sought to be merged: *Asphaltic roofing materials,* as a *common carrier* over irregular routes, from Stroud, Okla., and points within 1 mile thereof, to Wichita, Kans., and points in Kansas within 200 miles of Wichita; *asphaltic roofing materials,* in rolls, containers, and bundles, and *liquid asphalt* and *asphaltic products,* in containers, from Stroud, Okla., and points within 1 mile thereof, to certain specified points in Arkansas; and return with *empty containers; liquid asphalt,* in bulk, in tank trucks, from Stroud, Okla., and points within 1 mile thereof, to points in Kansas within 200 miles of Stroud, Okla.; *liquid asphalt* and *asphaltic products,* in bulk, in tank vehicles, from Stroud, Okla., and points within 1 mile thereof, and Cushing, Okla., to points within 150 miles of Fort Smith, Ark., including Fort Smith (except points located in Missouri), with restriction; *liquid asphalt,* in bulk, in tank vehicles, from Stroud and Cushing, Okla., to certain specified points in Missouri, from Tulsa, Okla., to certain specified points in Missouri; *liquid asphalt,* in bulk, from Okmulgee, Okla., to points in Missouri; *cement,* between points in Arkansas and Oklahoma; cement, in bulk, from Ada, Okla., to points within 200 miles thereof in Arkansas, Kansas, Missouri, and Texas, from Dewey, Okla., to points within 200 miles thereof in Arkansas, Kansas, and Missouri: *cement* in bags or packages, from Dewey, Okla., to points in Kansas, Missouri, and Arkansas within 200 miles of Dewey, from Ada, Okla., to points in Kansas, Missouri, and Arkansas within 200 miles of Ada, with restrictions; *cement* in bulk and packages, from Ada, Okla., to points in Arkansas; *dry cement,* in bulk, in tank vehicles, from Ada and Dewey, Okla., to points in Kansas and Texas, from Fredonia, Kans., to points in Texas, between points in Oklahoma, Kansas, and Texas, with restrictions; *dry cement,* in containers, from Ada, Okla., to points in Kansas and Texas; *dry cement,* from Dewey, Okla., to points in Kansas, Missouri, and Arkansas, between certain specified points in Texas, with restriction, from the plantsite of the Oklahoma Cement Co. at or near Pryor, Okla., to certain specified points in Kansas, Arkansas, and Missouri, from the plantsite of the Oklahoma Cement Co. at or near Pryor, Okla., to points in Shannon and Oregon Counties, Mo., from Tulsa, Okla., to points in Kansas, Missouri, and Arkansas, and certain specified points in Texas, from the plantsite of the Oklahoma Cement Co., near Pryor, Okla., to points in Texas, from Muskogee, Okla., to points in Arkansas, Kansas, and Missouri; *lime,* from the plantsite of the St. Clair Lime Co., about 3 miles north of Marble City, Okla., to points in Kansas, and certain specified points in Missouri, Arkansas, and Texas; *lime,* either packaged or in bulk, from the plantsite of the St. Clair Lime Co. in or near Sallisaw, Okla., to certain specified points in Kansas, Missouri, Arkansas, and Texas; *fly ash,* from the site of the Montrose powerplant of the Kansas City Power and Light Co., located at or near La Due (Henry County), Mo., to points in Arkansas and Oklahoma; *alumina,* calcined and hydrated, in bulk, from Bauxite, Ark., to points in Oklahoma and Texas (except Houston, Tex., and points within 50 miles thereof); *sand,* from points in Arkansas, to points in Kansas, Missouri, and Oklahoma, from Mill Creek, Okla., to certain specified points in Arkansas, Kansas, Louisiana, and Texas; *dry urea, dry ammonium nitrate, dry fertilizer,* and *dry fertilizer materials,* in bulk, in tank vehicles, from Tulsa, Okla., and the plantsites of Nipak, Inc., and Cherokee Nitrogen Co. at or near Pryor, Okla., to certain specified points in Kansas, Arkansas, and Texas; *dry fertilizer,* in bulk, from the plantsite and storage facilities of Monsanto Co. at El Dorado, Ark., to points in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, Oklahoma, South Carolina, Tennessee, and Texas, with restriction; *fertilizer and fertilizer ingredients,* from Greenville, Tex., to points in Oklahoma and Arkansas; *corn products* and *soybean products* (except animal and poultry feed and feed ingredients, flour, and vegetable oil products), in bulk, from Muskogee, Okla., to points in Arkansas, Colorado, Louisiana, Missouri, New Mexico, Kansas, and Texas; *dry chemicals,* from Military, Kans., to points in Arkansas, Colorado, Iowa, Missouri, Nebraska, Oklahoma, and Texas, with restriction; *dry chemicals,* in bags, when moving in mixed loads with *dry chemicals,* in bulk, from Military, Kans., to points in Iowa, Nebraska, and points in that part of Missouri north of U.S. Highway 50; *dry fertilizer* and *fertilizer materials,* and *insecticides,* fungicides and herbicides (except liquid, in bulk), from the port of Catoosa, Okla., to points in Arkansas, Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, South Dakota, Texas, and Wisconsin, with restriction; *dry fertilizer* and *fertilizer materials,* in bags, when moving in mixed loads with dry fertilizer and fertilizer materials in bulk, from port of Catoosa, Okla., to points in Iowa, Nebraska, and points in that part of Missouri north of U.S. Highway 50; *dry fertilizer* and *fertilizer materials,* in bulk, when moving in mixed loads with dry fertilizer and fertilizer materials, in bags, from port of Catoosa, Okla., to points in the St. Louis, Mo.-East St. Louis, Ill., commercial zone as defined by the Commission. CHEMICAL EXPRESS CARRIERS, INC., is authorized to operate as a *common carrier,* in Texas, New Mexico, Arkansas, Louisiana, Oklahoma, Colorado, Kansas, Alabama, Mississippi, Missouri, Tennessee, Arizona, Utah, Georgia, Illinois, Indiana, Ohio, North Carolina, South Carolina, Wisconsin, Florida, Nebraska, Kentucky, Michigan, New Jersey, and Pennsylvania. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11669. Authority sought for purchase by McDUFFEE MOTOR FREIGHT, INC., 3047 Lonyo Road, Detroit, MI 48209, of a portion of the operating rights and property of WEBB TRANSFER LINE, INC., Post Office Box 231, Shelbyville, KY 40065, and for acquisition by UNITED TRUCKING SERVICE, INC., and in turn by, JOHN J. DOOLEY, Sr., both of 3047 Lonyo Road, Detroit, MI 48209, of control of such rights and property through the purchase. Applicants' attorney: Robert H. Kinker, Post Office Box 461, Frankfort, KY 40601. Operating rights sought to be transferred: *General commodities,* excepting among others, dangerous explosives, household goods, and commodities in bulk, as a *common carrier* over regular routes, between Shelbyville, Ky., and Louisville, Ky.; service is authorized to and from points in the Louisville, Ky., commercial zone, as defined in Commercial Zones and Terminal Areas, 48 M.C.C. 95, and points in Shelby County, Ky., as off-route points in connection with said carrier's presently authorized regular route operations between Louisville and Shelbyville over U.S. Highway 60. Vendee is authorized to operate as a *common carrier* in Kentucky, Tennesse, Ohio, and Virginia. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11670. Authority sought for control by HENRY P. WILLIMON, a noncarrier, Post Office Box 1075, Greenville, SC 29602, of (1) TRANSIT HOMES, INC., Post Office Box 1628, Greenville, SC 29602, and (2) CAROLINA CARTAGE COMPANY, INC., Post Office Box 6726, Station B, Greenville, SC 29606. Applicants' attorneys:

Harry C. Ames, Jr., 666 11th Street, NW., Washington, DC 20001, and Mitchell King, Jr., Box 1628, Greenville, SC 29602. Operating rights sought to be controlled: (1) *Numerous specified commodities*, as a *common carrier* over irregular routes, from, to, and between all points in the United States, with certain restriction, as more specifically described in Docket No. MC–94350 and Subnumbers thereunder. This notice does not purport to be a complete description of all of the operating rights of the carrier involved. The foregoing summary is believed to be sufficient for purposes of public notice regarding the nature and extent of this carrier's operating rights, without stating, in full, the entirety, thereof. (2) *General commodities*, excepting among others, household goods, classes A and B explosives, and commodities in bulk, as a *common carrier* over irregular routes, between points in South Carolina on the one hand, and, on the other, airports at Atlanta, Ga., and Charlotte, N.C., with restriction. Application has not been filed for temporary authority under section 210a(b). NOTE: Motion to dismiss application is filed simultaneously herewith.

No. MC–F–11671. Authority sought for purchase by REFINERS TRANSPORT & TERMINAL CORPORATION, 445 Earlwood Avenue, Oregon (Toledo) OH 43616, of the operating rights and property of KENDRICK CARTAGE CO., Box 63, Salem, IL 62881, and for acquisition by LEASEWAY TRANSPORTATION CORP., 21111 Chagrin Boulevard, Cleveland OH 44122, of control of such rights through the purchase. Applicants' attorneys: John Andrew Kundtz, 1100 National City Bank Building, Cleveland, Ohio 44114, and Roland Rice, 618 Perpetual Building, Washington, D.C. 20004. Operating rights sought to be transferred: *Numerous specified commodities*, as a *common carrier* over irregular routes, from, to, and between specified points in the States of Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Ohio, Oklahoma, Tennessee, Wisconsin, South Dakota, Texas, Alabama, Florida, Georgia, Louisiana, Mississippi, Pennsylvania, New York, New Jersey, Massachusetts, Maryland, North Dakota, Virginia, West Virginia, and the District of Columbia, with certain restrictions, as more specifically described in Docket No. MC–127215 and Sub numbers thereunder. This notice does not purport to be a complete description of all of the operating rights of the carrier involved. The foregoing summary is believed to be sufficient for purposes of public notice regarding the nature and extent of this carrier's operating rights, without stating, in full, the entirety, thereof. Vendee is authorized to operate as a *common carrier* in all States in the United States (except Alaska and Hawaii). Application has been filed for temporary authority under section 210a(b).

No. MC–F–11672. Authority sought for purchase by SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53246, of a portion of the operating rights and property of FRONTIER DELIVERY, INC., 620 Elk Street, Buffalo, NY 14210, and for acquisition by FRED J. SCHWERMAN and CARL L. SCHWERMAN, both of 611 South 28th Street, Milwaukee, WI 53246, of control of such rights and property through the purchase. Applicants' attorney and representative: James R. Ziperski, 611 South 28th Street, Milwaukee, WI 53246, and E. Russell Whiteman, 620 Elk Street, Buffalo, NY 14210. Operating rights sought to be transferred: *Silica sand* and *feldspar*, in vehicles other than dump trucks, as a *common carrier* over irregular routes, from Middletown, Conn., to points in Rhode Island, Massachusetts, New Jersey, and New York (except points in Nassau and Suffolk Counties); *mica*, in vehicles other than dump trucks, from Middletown, Conn., to points in Delaware, Maryland, Massachusetts, New York (except points in Nassau and Suffolk Counties), New Jersey, Pennsylvania, and Rhode Island; and return with *returned shipments; silica sand and silica products*, from the plantsite of the Ottawa Silica Co., at or near North Stonington, Conn., to points in Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, Vermont, and New Jersey (except those points in Cumberland, Salem, Gloucester, Cape May, Camden, Atlantic, and Burlington Counties, N.J.). Vendee is authorized to operate as a *common carrier* in Alabama, Arkansas, Georgia, Kentucky, Indiana, Michigan, Mississippi, North Carolina, Ohio, South Carolina, Virginia, Illinois, West Virginia, Connecticut, Kentucky, Maryland Massachusetts, New Jersey, New York, Pennsylvania, Tennessee, Iowa, Kansas, Minnesota, Missouri, North Dakota, South Dakota, Wisconsin, Louisiana, Oklahoma, Texas, Delaware, Nebraska, Maine, New Hampshire, Rhode Island, Vermont, Florida, Colorado, Montana, New Mexico, Wyoming, California, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72–16970 Filed 10–3–72;8:56 am]

[Notice 132]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

SEPTEMBER 28, 1972.

The following are notices of filing of applications[1] for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC–67, (49 CFR Part 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 1756 (Sub-No. 24 TA), filed September 18, 1972. Applicant: PEOPLES EXPRESS CO., 497 Raymond Boulevard, Newark, NJ 07105. Applicant's representative: Bert Collins, 140 Cedar Street, New York, NY 10006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cans and can ends*, from Hillside, Jersey City, and Edison Township, N.J., to New Hyde Park and New Rochelle, N.Y., for 180 days. Supporting shipper: American Can Co., American Lane, Greenwich, Conn. 06830. Send protests to: District Supervisor Robert S. H. Vance, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 07102.

No. MC 22195 (Sub-No. 145 TA), filed September 18, 1972. Applicant: DAN DUGAN TRANSPORT COMPANY, Post Office Box 946—41st and Grange Avenue, Sioux Falls, SD 57101. Applicant's representative: J. P. Everist (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products*, in bulk, in tank vehicles, from points in Morton County, N. Dak., to points in Minnesota, for 180 days. Supporting shipper: American Oil Co., General Offices, 500 North Michigan Avenue, Chicago, IL 60611, David Sinise, Traffic Specialist. Send protests to: J. L. Hammond, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 369, Federal Building, Pierre, S. Dak. 57501.

No. MC 27817 (Sub-No. 103 TA), filed September 15, 1972. Applicant: H. C. GABLER, INC., Rural Delivery No. 3, Post Office Box 220, Chambersburg, PA 17201. Applicant's representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned or preserved foodstuffs*, from Winchester and Mount Jackson, Va., to points in Florida and Atlanta, Ga., for 180 days. Supporting shippers: Shenandoah Apple Co-operative, Inc., Post Office Box 435, Winchester, VA 22601; Bowman Apple

[1] Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

Products Co., Inc., Mount Jackson, Va. 22842. Send protests to: Robert W. Ritenour, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 503 Federal Building, Post Office Box 869, Harrisburg, PA 17108.

No. MC 30844 (Sub-No. 426 TA), filed September 18, 1972. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 2125 Commercial Street, Post Office Box 5000 (50704), Waterloo, IA 50702. Applicant's representative: Paul Rhodes (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Unpackaged and packaged aquariums and pets supplies*, from Benicia, Calif., to points in Arizona, Arkansas, California, Colorado, Idaho, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming, for 180 days. Supporting shipper: O'Dell Manufacturing, Inc., 1930 South 23d Street, Saginaw, MI 48601. Send protests to: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 30887 (Sub-No. 180 TA), filed September 15, 1972. Applicant: SHIPLEY TRANSFER, INC., Post Office Box 55, 49 Main Street, Reisterstown, MD 21136. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry plastic granules*, in bulk, in tank vehicles, restricted to transportation having an immediately prior movement by rail, from Baltimore, Md., to West Chester, Pa., for 180 days. Supporting shipper: E. I. du Pont de Nemours & Co., Inc., Wilmington, Del. 19898, Attention: G. W. Fillingame, Manager. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 814–B Federal Building, Baltimore, Md. 21201.

No. MC 35807 (Sub-No. 25 TA), filed September 14, 1972. Applicant: WELLS FARGO ARMORED SERVICE CORPORATION, 210 Baker Street NW., Mailing: Post Office Box 4313 (30302), Atlanta, GA 30313. Applicant's representative: Melvin E. Bailet (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coin, currency, negotiable and nonnegotiable securities and other valuables* in armored cars accompanied by armed guards, between Denver, Colo., on the one hand, and, on the other, points in Cheyenne, Kimball, Scotts Bluff, Duel, and Banner Counties, Nebr., and Goshen and Platte Counties, Wyo., for 180 days. NOTE: Applicant states it intends to tack with its existing authority. Supporting shipper: Denver Branch, Federal Reserve Bank of Kansas City, Denver, Colo. 80217. Send protests to: William L. Scroggs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 309, 1252 West Peachtree Street NW., Atlanta, GA 30309.

No. MC 94350 (Sub-No. 317 TA), filed September 18, 1972. Applicant: TRANSIT HOMES, INC., Post Office Box 1628, Haywood Road at Transit Drive, Greenville, SC 29602. Applicant's representative: Mitchell King, Jr. (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles in initial shipments, from Reidsville, N.C., to dealers in South Carolina, Tennessee, Kentucky, Virginia, and West Virginia, for 180 days. Supporting shipper: Broadmore Homes of North Carolina, Inc., Post Office Box 665, Reidsville, NC 27320. Send protests to: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 300 Columbia Building, 1200 Main Street, Columbia, SC 29201.

No. MC 109649 (Sub-No. 12 TA), filed September 18, 1972. Applicant: L. P. TRANSPORTATION, INC., Cross and Main Streets, Chester, NY 10918. Applicant's representative: Werner & Alfano, 2 W. 45th Street, New York, NY 10036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquefied petroleum gases*, in bulk, in tank vehicles, from Providence, R.I., to points in Connecticut, Maine, Massachusetts, Pennsylvania, New Hampshire, New Jersey, New York, Rhode Island, and Vermont, for 180 days. Supporting shipper: Petrolane, 1600 E. Hill Street, Long Beach, CA, and Providence, R.I. Send protests to: Joseph H. Barnini, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 518 Federal Building, Albany, N.Y. 12207.

No. MC 109689 (Sub-No. 239 TA), filed September 12, 1972. Applicant: W. S. HATCH CO., Post Office Box 1825, Salt Lake City, UT 84110, Office: 643 S. 800 West Street, Woods Cross, UT 84087. Applicant's representative: Mark K. Boyle, 345 South State Street, Salt Lake City, UT 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizers and fire retardants*, from Erda, Utah, to points in Oregon, Washington, Idaho, Montana, Wyoming, California, Nevada, Utah, Colorado, Nebraska, Oklahoma, North Dakota, South Dakota, Kansas, Arizona, New Mexico, and Texas, and *return with material* used in the production of the commodity described above, for 180 days. Supporting shipper: Micronutrients International, Inc., R.F.D. No. 1, Box 130 D, Tooele, UT 84074 (D. W. Stoll, Secretary). Send protests to: Lyle D. Helfer, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5239 Federal Building, 125 South State Street, Salt Lake City, UT 84111.

No. MC 117765 (Sub-No. 150 TA), filed September 13, 1972. Applicant: HAHN TRUCK LINE, INC., 5315 NW. 5th, Post Office Box 75267, Oklahoma City, OK 73107. Applicant's representative: R. E. Hagan (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building materials, gypsum and gypsum products and materials and supplies* (excluding liquid commodities in bulk), used in the installation or distribution of such commodities, from the plantsite of United States Gypsum Co., in Martin County, Ind., to points in Michigan, Ohio, and West Virginia, for 180 days. Supporting shipper: D. R. Vandermyde, T. M. Central Division, United States Gypsum Co., 101 South Wacker Drive, Chicago, IL 60604. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240, Old Post Office Building, 215 NW. Third, Oklahoma City, OK 73102.

No. MC 118127 (Sub-No. 23 TA), filed September 15, 1972. Applicant: HALE DISTRIBUTING COMPANY, INC., 914 South Vail Avenue, Montebello, CA 90640. Applicant's representative: D. W. Hale (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen bakery products*, from points in Los Angeles and Orange Counties, Calif., to points in Connecticut, Delaware, Maryland, New York, New Jersey, Massachusetts, Pennsylvania, Rhode Island, Virginia, and Washington, D.C., for 150 days. Supporting shipper: Bavarian Pastry Shop, 750 Basin Street, San Pedro, CA 90731. Send protests to: John E. Nance, Officer-in-Charge, Interstate Commerce Commission, Bureau of Operations, 300 North Los Angeles Street, Room 7708, Los Angeles, CA 90012.

No. MC 133708 (Sub-No. 4 TA), filed September 14, 1972. Applicant: FIKSE BROS., INC., 12647 East South Street, Artesia, CA 90701. Applicant's representative: Russell & Schureman, 1545 Wilshire Boulevard, Los Angeles, CA 90017. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand*, in bulk, from plants and mine sites of Simplot Silica Products at or near Overton, Nev., to points in Los Angeles, Orange, Riverside, San Diego, and San Bernardino Counties, Calif., for 180 days. Supporting shippers: West Coast Engineered Products Co., Inc., 2535 E. 54th Street, Huntington Park, CA 90255; Barker Foundry Supply, 2522 Malt Avenue, Los Angeles, CA 90040. Send protests to: John E. Nance, Officer-in-Charge, Interstate Commerce Commission, Bureau of Operations, Room 7708 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 136426 (Sub-No. 1 TA) (Correction), filed June 29, 1972, published in the FEDERAL REGISTER issues of July 18, 1972, and August 30, 1972, respectively; corrected and republished as corrected this issue. Applicant: LESCO, INC., 3900 Dahlman Avenue, Omaha, NE 68107. Applicant's representative: Patrick E. Quinn, Post Office Box 82028, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Unprocessed edible fats*, in containers, from points in Iowa, Missouri, and Kansas City, Kans., to Waterloo, Nebr., under contract with Midwest Animal Products,

Inc., for 180 days. Supporting shipper: Midwest Animal Products, Inc., 3900 Dahlman Avenue, Omaha, NE 68107. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 711 Federal Building, 106 South 15th Street, Omaha, NE 68102. NOTE: The purpose of this republication is to include the State of Missouri.

No. MC 136545 (Sub-No. 4 TA), filed September 15, 1972. Applicant: NUSSBERGER BROS. TRUCKING CO., INC., Post Office Box 95, 1109 Railroad Street, Prentice, WI 54556. Applicant's representative: A. R. Fowler, 228 University Avenue, St. Paul, MN 55114. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mink feed*, from Abbotsford, Wis., to points in Delta, Dickinson, and Menominee Counties, Mich., for 180 days. Supporting shipper: Wisco Milling Co., Box 10, Abbotsford, Wis. 54405. Send protests to: Barney L. Hardin, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 139 West Wilson Street, Room 206, Madison, WI 53703.

No. MC 136935 (Sub-No. 1 TA), filed September 13, 1972. Applicant: WRANGELL TRANSPORT CO., INC., Post Office Box 908, Wrangell, AK 99929. Applicant's representative: Joseph O. Earp, 411 Lyon Building, 607 Third Avenue, Seattle, WA 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, from Seattle and Tacoma, Wash., to Wrangell, Alaska, for 180 days. Supporting shippers: Tyler Bros. Logging, Inc., Post Office Box 630, Petersburg, AK 99833; The Huddle, Wrangell, Alaska 99929; The Snack Shack, Post Office Box 199, Wrangell, AK 99929; Totem Bakery, Post Office Box 704, Wrangell, AK 99929; Aunt Winnies Cafe, Wrangell, Alaska 99929; Zimovia Market, Wrangell, Alaska 99929. Send protests to: District Supervisor Hugh H. Chaffee, Interstate Commerce Commission, Bureau of Operations, Post Office Box 1532, Anchorage, AK 99510.

No. MC 138035 TA, filed September 14, 1972. Applicant: ARTHUR J. SCHUH, doing business as SCHUH BROS. TRUCKING, Kelliher, Minn. 56650. Applicant's representative: Arthur J. Schuh (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wooden shingles*, from the plantsite of Minnesota Cedar Products located on U.S. Highway 71, approximately 3 miles southwest of Northome, Minn., to Houston, Tex., for 180 days. Supporting shipper: Minnesota Cedar Products, Northome, Minn. 56661. Send protests to: J. H. Ambs, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Post Office Box 2340, Fargo, ND 58102.

No. MC 138043 TA, filed September 14, 1972. Applicant: F. W. CASPERSEN, 622 Madison Avenue, Glencoe, IL 60022. Applicant's representative: George S. Mullins, 4704 West Irving Park Road, Chicago, IL 60641. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Radiopharmaceuticals, radioactive drugs, medical isotopes, and medical test kits*, between St. Louis, Mo., and Chicago, Ill., on the one hand, and, on the other, points in Illinois, Indiana, and Wisconsin, restricted to shipments weighing not more than 50 pounds, for 180 days. Supporting shipper: Mallinckrodt Nuclear, Box 10172, Lambert Field, St. Louis, Mo. 63145. Send protests to: William Grey, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 1086, 219 South Dearborn Street, Chicago, IL 60604.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-16971 Filed 10-3-72;8:56 am]

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Volume 37 ■ Number 193

PART II

ENVIRONMENTAL PROTECTION AGENCY

■

CONTROL OF AIR POLLUTION FROM LIGHT DUTY DIESEL MOTOR VEHICLES

■

Notice of Proposed Rule Making

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 85]

CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES

Standards and Test Procedures for Light Duty Diesel Motor Vehicles

Emission control standards for light duty vehicles have to date been imposed by the Federal Government only on gasoline-fueled vehicles. The Environmental Protection Agency now proposes to amend the regulations in 40 CFR Part 85 to:

(a) Extend the applicability of exhaust emission standards to new diesel-fueled light duty vehicles, beginning with the 1975 model year; and

(b) Extend the applicability of the analytical procedures and instrumentation for the measurement of carbon monoxide and oxides of nitrogen to new diesel-fueled light duty vehicles; and

(c) Prescribe special analytical procedures and instrumentation for the measurement of hydrocarbon emissions from new diesel-fueled light duty vehicles.

The section number system contained in this proposed subpart is designed to coordinate with a renumbering of the motor vehicle regulations which is now in process. All cross-references to sections in existing subparts conform to the numbering system presently in effect.

40 CFR Part 85 as so amended would become effective 30 days after republication and would be applicable to 1975 and subsequent model year diesel-fueled light duty vehicles.

The Agency has determined that gaseous-fueled light duty vehicles are likely to be offered for sale by model year 1975. The analytical procedure currently prescribed for gasoline-fueled vehicles is appropriate for the testing of gaseous-fueled vehicles. The Agency will soon propose amendments to make existing standards and test procedures for gasoline-fueled light duty vehicles to apply to gaseous-fueled vehicles as well. Those procedures will include fuel specifications for gaseous-fueled vehicles.

Interested persons may submit written data, views, or arguments (in quadruplicate) in regard to the proposed regulations to the Administrator, Environmental Protection Agency, Attention: Office of Air Programs, 4th and M Streets SW., Washington, DC 20460. All relevant material received not later than 60 days after publication of this notice will be considered. The Environmental Protection Agency is particularly interested in receiving data pertinent to the hydrocarbon sampling system and in particular related to the locations of the hydrocarbon sampling point in the system. Comments submitted shall be available for public inspection during normal business hours at the Office of Public Affairs, Environmental Protection Agency, 4th and M Streets SW., Washington, DC 20460.

This notice of proposed rule making is issued under the authority of section 202 of the Clean Air Act (42 U.S.C. 1857f–1).

Dated: September 22, 1972.

WILLIAM D. RUCKELSHAUS,
Administrator.

Subpart L—Standards and Test Procedures for Vehicle Exhaust Emissions (Diesel-Fueled Light Duty Vehicles)

Sec.

85.175–1 Applicability (1975 model year).
85.175–2 Standards for exhaust emissions.
85.175–3 Test procedures.
85.175–4 Diesel fuel specifications.
85.175–5 Vehicle preconditioning.
85.175–6 Dynamometer driving schedule.
85.175–7 Dynamometer procedure.
85.175–8 Three-speed manual transmissions.
85.175–9 Four-speed and five-speed manual transmissions.
85.175–10 Automatic transmissions.
85.175–11 Engine starting and re-starting.
85.175–12 Sampling and analytical system (exhaust emissions).
85.175–13 Information to be recorded.
85.175–14 Analytical system calibration and sample handling.
85.175–15 Dynamometer test runs.
85.175–16 Chart reading.
85.175–17 Calculations (exhaust emissions).
85.175–18 Test vehicles.
85.175–19 Maintenance.
85.175–20 Mileage accumulations and emission measurements.
85.175–21 Compliance with emission standards.
85.176–1 Applicability (1976 model year).
85.176–2 Standards for exhaust emissions.

AUTHORITY: The provisions of this Subpart L issued under section 202 of the Clean Air Act (42 U.S.C. 1857f–1).

Subpart L—Standards and Test Procedures for Vehicle Exhaust Emissions (Diesel-Fueled Light Duty Vehicles)

§ 85.175–1 Applicability (1975 model year).

The provisions of this subpart are applicable to new diesel fueled light duty motor vehicles beginning with the model year specified therein.

§ 85.175–2 Standards for exhaust emissions.

(a) Exhaust emissions from 1975 model year vehicles shall not exceed:

(1) Hydrocarbons—0.41 grams per vehicle mile.

(2) Carbon monoxide—3.4 grams per vehicle mile.

(3) Oxides of nitrogen—3.1 grams per vehicle mile.

(b) The standards set forth in paragraph (a) of this section refer to the exhaust emitted over a driving schedule as set forth in the following sections of this subpart and measured and calculated in accordance with these sections.

(c) Every manufacturer of new motor vehicles subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicles in accordance with the following test procedures to ascertain that such test vehicles meet the requirements of this section as applicable.

§ 85.175–3 Test procedures.

The procedures described in this subpart will be the test program to determine the conformity of diesel fueled light duty vehicles with the applicable standards set forth in this subpart.

(a) The test consists of prescribed sequences of fueling, parking, and operating conditions. The exhaust gases generated during vehicle operation are diluted with air and sampled continuously for analysis of diesel exhaust hydrocarbons and subsequent analysis of other specific components by prescribed techniques. This test applies to vehicles equipped with catalytic or direct flame afterburners, other control systems or to uncontrolled vehicles and engines. All test phases are conducted with an ambient temperature range between 68° and 86° F.

(b) The exhaust emission test is designed to determine hydrocarbon, carbon monoxide, and oxides of nitrogen mass emissions while simulating an average trip in an urban area of 7.5 miles. The test consists of engine startups and vehicle operation on a chassis dynamometer through a specified driving schedule, as described in Appendix A to this part. Using a constant volume (variable dilution) sampler, a proportional part of the diluted exhaust gas is analyzed continuously for hydrocarbons and an additional proportional part of the diluted exhaust gas is collected in a bag for subsequent analysis of the other components.

§ 85.175–4 Diesel fuel specifications.

(a) The diesel fuels employed for testing shall be clean and bright, with pour and cloud points adequate for operability. The fuels may contain nonmetallic additives as follows: Cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, and dispersant.

(b) Fuel meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emissions testing. The grade of fuel recommended by the engine manufacturer, commercially designated as "Type 1–D" or "Type 2–D", shall be used.

Item	ASTM test method No.	Type 1-D	Type 2-D
Cetane	D 613	48-54	42-50
Distillation range	D 86		
IBP, °F		330-390	340-400
10-percent point, °F		370-430	400-460
50-percent point, °F		410-480	470-540
90-percent point, °F		460-520	550-610
EP, °F		500-560	580-660
Gravity, ° API	D 287	40-44	33-37
Total Sulfur, percent	D 129 or D 2622	0.05-0.20	0.2-0.5
Hydrocarbon composition	D 1319		
Aromatics, percent		8-15	27 (Min.)
Paraffins, Naphthenes, Olefins		Remainder.	Remainder.
Flashpoint, °F. (minutes)	D 93	120	130
Viscosity, Centistokes	D 445	1.6-2.0	2.0-3.2

(c) Fuel meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of fuel recommended by the engine manufacturer, commercially designated as "Type 1-D" or "Type 2-D", shall be used.

Item	ASTM test method No.	Type 1-D	Type 2-D
Cetane	D 613	48-54	42-55
Distillation range	D 86		
IBP, ° F		330-390	340-410
10-percent point, ° F		370-430	400-470
50-percent point, ° F		410-480	470-540
90-percent point, ° F		460-520	550-610
EP, ° F		500-560	580-660
Gravity, ° API	D 287	40-44	33-40
Total Sulfur, percent	D 129 or D 2622	0.05-0.20	0.2-0.5
Flash point, ° F. (minute)	D 93	120	130
Viscosity, Centistokes	D 445	1.6-2.0	2.0-3.2

(d) Other Petroleum Distillation Fuel Specifications:

(i) Other petroleum distillate fuels may be used for testing and service accumulation provided they are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraphs (b) and (c) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications was provided prior to the start of testing.

(e) The specification range of the fuels to be used under paragraphs (b), (c), and (d) of this section shall be reported in accordance with § 85.51.

§ 85.175–5 Vehicle preconditioning.

Vehicles to be tested for compliance with the exhaust emission standards of this part shall be preconditioned as follows:

(a) The fuel tank shall be drained and specified test fuel added.

(b) The test vehicle shall be placed on the dynamometer and operated over a simulated trip, according to the applicable requirements and procedures of §§ 85.175–6 to 85.175–11 except that the engine need not be cold when starting the run on the dynamometer and only a single trip of 7.5 miles shall be run, or the vehicle may be driven on a road route covering a distance of 7 to 8 miles and a total elapsed time of 20 to 25 minutes.

(c) The engine and cooling fan shall be stopped upon completion of the dynamometer operation and the vehicle permitted to soak either on or off the dynamometer stand for a period of not less than 12 hours prior to the dynamometer test.

§ 85.175–6 Dynamometer driving schedule.

(a) The dynamometer driving schedule to be followed consists of a nonrepetitive series of idle, acceleration, cruise, and deceleration modes of various time sequences and rates. The driving schedule is defined by a smooth transition through the speed vs. time relationships listed in Appendix A to this part. The time sequence begins upon starting the vehicle according to the startup procedure described in § 85.175–11.

(b) The speed tolerance at any given time on the dynamometer driving schedule prescribed in Appendix A to this part or as printed on a driver's aid chart approved by the Administrator is defined by upper and lower limits. The upper limit is 2 m.p.h. higher than the highest point on the trace within 1 second of the given time. The lower limit is 2 m.p.h. lower than the lowest point on the trace within 1 second of the given time. Speed variations greater than the tolerances (such as occur when shifting manual transmission vehicles) are acceptable provided they occur for less than 2 seconds on any one occasion. Speeds lower than those prescribed are acceptable provided the vehicle is operated at maximum available power during such occurances. Further, speed deviations from those prescribed due to stalling are acceptable provided the provisions of § 85.175–11(d) are adhered to.

§ 85.175–7 Dynamometer procedure.

(a) The dynamometer run consists of two tests, a "cold" start test after a minimum 12 hour soak and a "hot" start test with a 10 minute soak between the two tests. Engine startup, operation over the driving schedule, and engine shutdown make a complete cold start test. Engine startup and operation over the first 505 seconds of the driving schedule complete the hot start test. The exhaust emissions are diluted with air to a constant volume and a portion is sampled continuously during each test. Diesel hydrocarbons are analyzed continuously, with electronic integration, during each test. The composite (flow integrated) samples collected in bags are analyzed for carbon monoxide, carbon dioxide, and oxides of nitrogen. A parallel sample of dilution air is analyzed for hydrocarbon, carbon monoxide and oxides of nitrogen.

(b) During dynamometer operation, a fixed speed cooling fan shall be positioned so as to direct cooling air to the vehicle in an appropriate manner with the engine compartment cover open. The fan capacity shall normally not exceed 5,300 c.f.m. If, however, the manufacturer can show that during field operation the vehicle received additional cooling, the fan capacity may be increased or additional fans used if approved in advance by the Administrator. In the case of vehicles with front engine compartments, the fan(s) shall be squarely positioned between 8 and 12 inches in front of the cooling air inlets (grill). In the case of vehicles with rear engine compartments (or if special designs make the above impractical), the cooling fan(s) shall be placed in a position to provide sufficient air to maintain engine cooling.

(c) The vehicle shall be nearly level when tested in order to prevent abnormal fuel distribution.

(d) Flywheels, electrical or other means of simulating inertia shall be used. If the equivalent inertia specified in the following table is not available on the dynamometer being used, the next higher equivalent inertia (not to exceed 250 lbs.) available shall be used.

Loaded vehicle weight, pounds	Equivalent inertia weight, pounds	Road load power at 50 m.p.h. horsepower
Up to 1,125	1,000	5.9
1,126 to 1,375	1,000	6.5
1,376 to 1,625	1,500	7.1
1,626 to 1,875	1,750	7.7
1,876 to 2,125	2,000	8.3
2,126 to 2,375	2,250	8.8
2,376 to 2,625	2,500	9.4
2,626 to 2,875	2,750	9.9
2,876 to 3,250	3,000	10.3
3,251 to 3,750	3,500	11.2
3,751 to 4,250	4,000	12.0
4,251 to 4,750	4,500	12.7
4,751 to 5,250	5,000	13.4
5,251 to 5,750	5,500	13.9
5,751 to above	5,500	14.4

(e) Power absorption unit adjustment:

(1) The power absorption unit shall be adjusted to reproduce road load power at 50 m.p.h. true speed. The indicated road load power setting shall take into account the dynamometer friction. The relationship between road load (absorbed) power and indicated road load power for a particular dynamometer shall be determined by the procedure outlined in Appendix B to this part or other suitable means.

(2) The road load power listed in the table above shall be used or the vehicle manufacturer may determine the road load power by the following procedure and request its use:

(i) Measuring the fuel flow rate of a representative vehicle of the same equivalent inertia weight class, when operated on a level road under balanced wind conditions at a true speed of 50 m.p.h., and

(ii) Noting the dynamometer indicated road load horsepower setting required to reproduce that fuel flow rate when the same vehicle is operated on the dynamometer at a true speed of 50 m.p.h. The tests on the road and on the dynamometer shall be performed with the same vehicle ambient absolute pressure (usually barometric), i.e. within ±5 mm. Hg.

(iii) The road load power shall be determined according to the procedure outlined in Appendix B to this part and adjusted according to the following if applicable.

(3) Where it is expected that more than 33 percent of the vehicles in an engine family will be equipped with air-conditioning, the road load power listed above or as determined in subparagraph (2) of this paragraph shall be increased by 10 percent for testing all test vehicles representing such engine family.

(f) The vehicle speed (m.p.h.) as measured from the dynamometer rolls shall be used for all conditions. A speed vs. time recording, as evidence of dynamometer test validity, shall be supplied on request of the Administrator.

(g) Practice runs over the prescribed driving schedule may be performed to find the minimum accelerator pedal action to maintain the proper speed-time relationship.

NOTE: When using two-roll dynamometers a truer speed-time trace may be obtained by minimizing the rocking of the vehicle in the rolls. The rocking of the vehicle changes the tire rolling radius on each roll. The rocking may be minimized by restraining the vehicle horizontally (or nearly so) by using a cable and winch.

(h) The drive wheel tires may be inflated up to 45 p.s.i.g. in order to prevent tire damage. The drive wheel tire pressure shall be reported with the test results.

(i) If the dynamometer has not been operated during the 2-hour period immediately preceding the test it shall be warmed up for 15 minutes by operating it at 30 m.p.h. using a nontest vehicle.

§ 85.175–8 Three-speed manual transmissions.

(a) All test conditions except as noted shall be run in highest gear.

(b) Cars equipped with free wheeling or overdrive units shall be tested with this unit (free wheeling or overdrive) locked out of operation.

(c) Idle shall be run with transmission in gear and with clutch disengaged (except first idle; see § 85.175–11).

(d) The vehicle shall be driven with minimum accelerator pedal movement to maintain the desired speed.

(e) Acceleration modes shall be driven smoothly with the shift speeds as recommended by the manufacturer. If the manufacturer does not recommend shift speeds, the vehicle shall be shifted from first to second gear at 15 m.p.h. and from second to third gear at 25 m.p.h. The operator shall release the accelerator pedal during the shift, and accomplish the shift with minimum time. If the vehicle cannot accelerate at the specified rates, the vehicle shall be accelerated at maximum available power until the vehicle speed reaches the speed at which it should be at that time during the test.

(f) The deceleration modes shall be run with clutch engaged and without shifting gears from the previous mode, using brakes or accelerator pedal as necessary to maintain the desired speed. For those modes which decelerate to zero, the clutch shall be depressed when the speed drops below 15 m.p.h. when engine roughness is evident, or when engine stalling is imminent.

(g) Downshifting is allowed at the beginning of or during a power mode if recommended by the manufacturer or if the engine obviously is lugging.

§ 85.175–9 Four-speed and five-speed manual transmissions.

(a) Use the same procedure as for three-speed manual transmissions for shifting from first to second gear and from second to third gear. If the manufacturer does not recommend shift speeds, the vehicle shall be shifted from third to fourth gear at 40 m.p.h. Fifth gear may be used at the manufacturer's option.

(b) If transmission ratio in first gear exceeds 5:1, follow the procedure for three- or four-speed manual transmission vehicles as if the first gear did not exist.

§ 85.175–10 Automatic transmissions.

(a) All test conditions shall be run with the transmission in "Drive" (highest gear). Automatic stick-shift transmissions may be shifted as manual transmissions at the option of the manufacturer.

(b) Idle modes shall be run with the transmission in "Drive" and the wheels braked (except first idle; see § 85.175–11).

(c) The vehicle shall be driven with minimum accelerator pedal movement to maintain the desired speed.

(d) Acceleration modes shall be driven smoothly allowing the transmission to shift automatically through the normal sequence of gears. If the vehicle cannot accelerate at the specified rates, the vehicle shall be accelerated at maximum available power until the vehicle speed reaches the speed at which it should be at that time during the driving schedule.

(e) The deceleration modes shall be run in gear using brakes or accelerator pedal as necessary to maintain the desired speed.

§ 85.175–11 Engine starting and restarting.

(a) The engine shall be started according to the manufacturer's recommended starting procedures. The initial 20-second-idle period shall begin when the engine starts. The transmission shall be placed in gear 15 seconds after the engine is started. If necessary, braking may be employed to keep the drive wheels from turning.

(b) If the vehicle does not start after 10 seconds of cranking, cranking shall cease and the reason for failure to start shall be determined. The revolution counter on the constant volume sampler and the hydrocarbon integrator (see § 85.175–15 *Dynamometer test runs*) shall be turned off and the sample solenoid valves placed in the "dump" position during this diagnostic period. In addition, either the positive displacement pump should be turned off or the exhaust tube disconnected from the tailpipe during the diagnostic period. If failure to start is an operational error, the vehicle shall be rescheduled for testing from a cold start. If failure to start is caused by vehicle malfunction, corrective action of less than 30 minutes duration may be taken and the test continued. The sampling system shall be reactivated at the same time cranking is started. When the engine starts, the driving schedule timing sequence shall begin. If failure to start is caused by vehicle malfunction and the vehicle cannot be started, the test shall be voided, the vehicle removed from the dynamometer, corrective action taken, and the vehicle rescheduled for test. The reason for the malfunction (if determined) and the corrective action taken shall be reported.

(c) If the engine "false starts", the operator shall repeat the recommended starting procedure.

(d) Stalling:

(1) If the engine stalls during an idle period, the engine shall be restarted immediately and the test continued. If the engine cannot be started soon enough to allow the vehicle to follow the next acceleration as prescribed, the driving schedule indicator shall be stopped. When the vehicle restarts the driving schedule indicator shall be reactivated.

(2) If the engine stalls during some operating mode other than idle, the driving schedule indicator shall be stopped, the vehicle restarted, accelerated to the speed required at that point in the driving schedule and the test continued.

(3) If the vehicle will not restart within 1 minute, the test shall be voided, the vehicle removed from the dynamometer, corrective action taken, and the vehicle rescheduled for test. The reason for the malfunction (if determined) and the corrective action taken shall be reported.

§ 85.175–12 Sampling and analytical system (exhaust emissions).

(a) *Schematic drawings.* The following figures (Fig. L 175–1, L 175–2 and L 175–3) are schematic drawings of the exhaust gas sampling and analytical systems which will be used for testing under the regulations in this part. Additional components such as instruments, valves, solenoids, pumps, and switches may be used to provide additional information and coordinate the functions of the component systems.

(b) *Component description (exhaust gas sampling system).* The following components will be used in the exhaust gas sampling system for testing under the regulations in this part. See Figure L 175–1. Other types of constant volume

samplers may be used if shown to yield equivalent results.

(1) A dilution air filter assembly consisting of a particulate (paper) filter to remove solid matter from the dilution air and thus increase the life of the charcoal filter; a charcoal filter to reduce and stabilize the background hydrocarbon level; and a second particulate filter to remove charcoal particles from the air stream. The filters shall be of sufficient capacity and the duct which carries the dilution air to the point where the exhaust gas is added shall be of sufficient size so that the pressure at the mixing point is less than 1 inch of water pressure below ambient when the constant volume sampler is operating at its maximum flow rate.

(2) A flexible, leak-tight connector and tube to the vehicle tailpipe. The flexible tubing shall be sized and connected in such a manner that the static pressure variations in the vehicle tailpipe(s) remain within ±3 inches of water of the static pressure variations measured during a dynamometer driving cycle with no connection to the tailpipe(s).

(3) A heating system to preheat the heat exchanger to with ±10° F. of its operating temperature before the test begins.

(4) A heat exchanger capable of limiting the gas mixture temperature variation during the entire test to ±10° F. as measured at the sample point.

(5) A positive displacement pump to pump dilute exhaust mixture. The pump capacity (300 to 350 c.f.m. is sufficient for testing most vehicles) shall be large enough to virtually eliminate water condensation in the system. See Appendix C to this part for flow calibration techniques.

(6) Temperature sensor (T1) with an accuracy of ±2°F. to allow continuous recording of the temperature of the dilute exhaust mixture entering the positive displacement pump. (See § 85.175–13(k)).

(7) Gauge (G1) with an accuracy of ±2 percent of reading to measure the pressure depression of the dilute exhaust mixture entering the positive displacement pump, relative to atmospheric pressure.

(8) Gauge (G2) with an accuracy of ±2 percent of reading to measure the pressure increase across the positive displacement pump.

(9) Sample probes (S1, S2, and S3) pointed upstream to collect samples from the dilution air stream and the dilute exhaust mixture. Additional sample probes may be used, for example to obtain continuous concentration traces of the dilute exhaust stream. In such case the sample flow rate, in standard cubic feet per test phase, must be added to the calculated dilute exhaust volume. The position of the sample probes in Figure L 175–1 is pictorial only. The heated sample line (S3) between the sampling point and the analyzer shall be as short as possible.

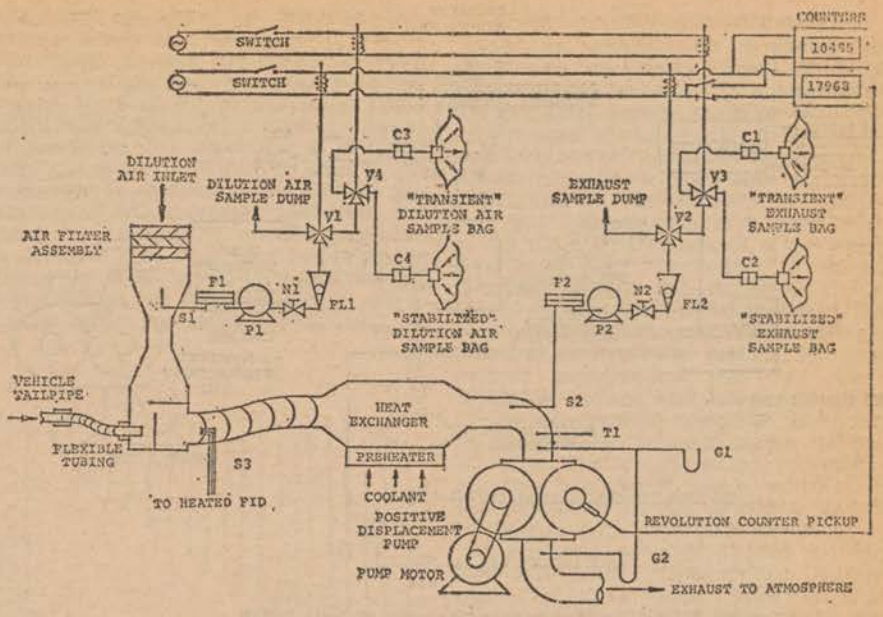


Figure L 175-1 Exhaust Gas Sampling System

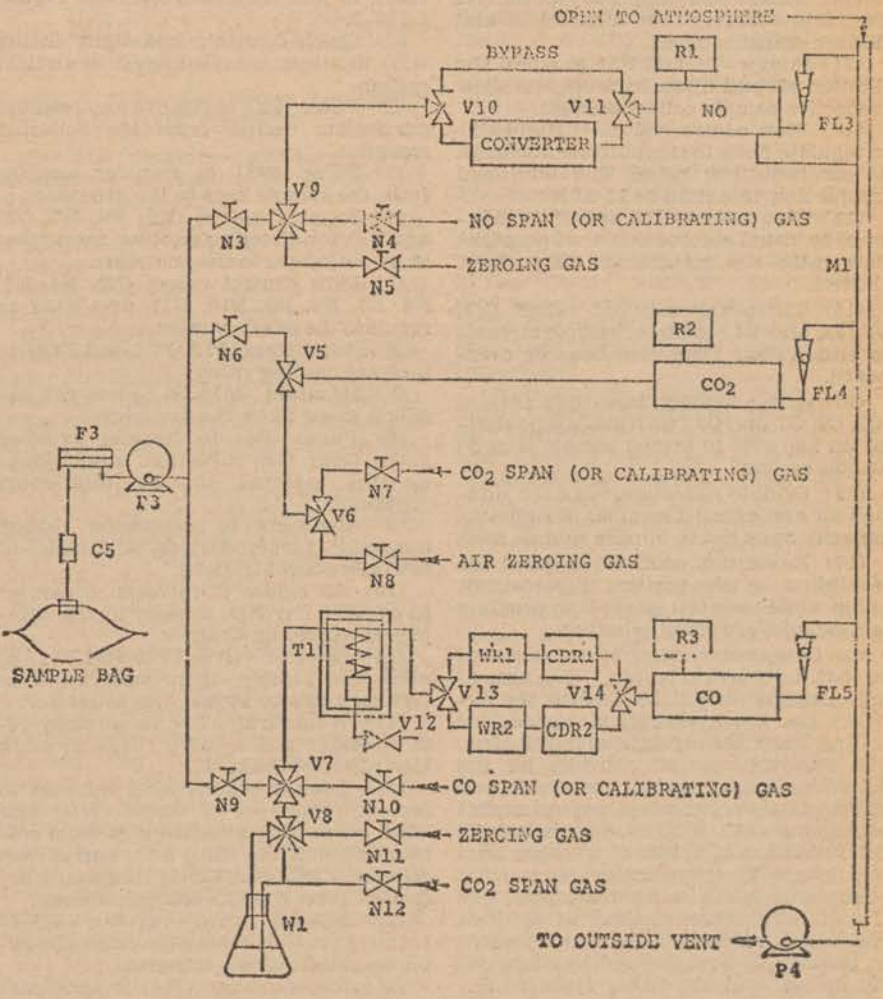


Figure L 175-2 Exhaust Gas Bench Analytical System

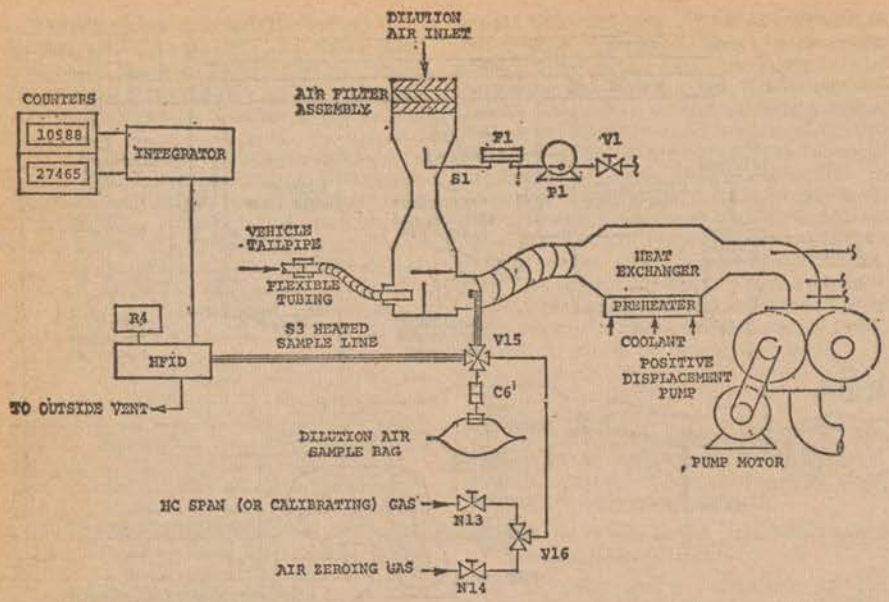


Figure L 175-3 Diesel Hydrocarbon Continuous Analysis System

(10) Filters (F1 and F2) to remove particulate matter from dilution air and dilute exhaust samples.

(11) Pumps (P1 and P2) to pump the dilution air and dilute exhaust into their respective sample collection bags.

(12) Flow control valves (N1 and N2) to regulate flows to sample collecton bags, at constant flow rates. The minimum sample flow rate shall be 10 c.f.h.

(13) Flowmeters (FL1 and FL2) to insure, by visual observation, that constant flow rates are maintained throughout the test.

(14) Three-way solenoid valves (V1, V2, V3, and V4) to direct sample streams to either their respective bags or overboard.

(15) Quick-connect, leak-tight fittings (C1, C2, C3, and C4) with automatic shut-off on bag side to attach sample bags to sample system.

(16) Sample collection bags for dilution air and exhaust samples of sufficient capacity so as not to impede sample flow.

(17) Revolution counters to count the revolutions of the positive displacement pump while each test phase is in progress and samples are being collected.

(c) *Component description (exhaust gas batch analytical system).* The following components will be used in the exhaust gas batch analytical system for testing under the regulations in this part. The analytical system provides for the determination of carbon monoxide and carbon dioxide concentrations by nondispersive infrared (NDIR) analysis and the determination of oxides of nitrogen concentrations by chemiluminescence (CL) analysis in dilute exhaust samples. The chemiluminescence method of analysis requires that the nitrogen dioxide present in the sample be converted to nitric oxide before analysis. Other types of analyzers may be used if shown to yield equivalent results and if approved in advance by the Administrator. See Figure L 175–2.

(1) Quick-connect, leak-tight fitting (C5) to attach sample bags to analytical system.

(2) Filter (F3) to remove any residual particulate matter from the collected sample.

(3) Pump (P3) to transfer samples from the sample bags to the analyzers.

(4) Selector valves (V5, V6, V7, V8, and V9) for directing samples, span gases or zeroing gases to the analyzers.

(5) Flow control valves (N3, N4, N5, N6, N7, N8, N9, N10, N11, and N12) to regulate the gas flow rates.

(6) Flowmeters (FL3, FL4, and FL5) to indicate gas flow rates.

(7) Manifold (M1) to collect the expelled gases from the analyzers.

(8) Pump (P4) to transfer expelled gases from the collection manifold to a vent external to the test room (optional).

(9) Analyzers to determine carbon monoxide, carbon dioxide, and oxides of nitrogen concentrations.

(10) An oxides of nitrogen converter to convert any NO_2 present in the samples to NO before analysis.

(11) Selector valves (V10 and V11) to allow the sample, span, calibrating or zeroing gases to bypass the converter.

(12) Water trap (T1) to partially remove water and a valve (V12) to allow the trap to be drained.

(13) Sample conditioning columns to remove remainder of water (WR1 and WR2 containing indicating calcium sulfate or indicating silica gel), and carbon dioxide (CDR1 and CDR2 containing ascarite) from the CO analysis stream.

(14) Selector valves (V13 and V14) to permit switching from exhausted absorbing columns to fresh columns.

(15) Water bubbler (W1) to allow saturation of the CO_2 span gas to check efficiency of absorbing columns.

(16) Recorders (R1, R2, and R3) or digital printers to provide permanent records of calibration, spanning and sample measurements; or in those facilities where computerized data acquisition systems are incorporated, the computer facility printout may be used.

(d) *Component description (exhaust gas continuous analytical system).* The following components will be used in the exhaust gas continuous analytical system for testing under the regulations in this part. This analytical system provides for the continuous determination of exhaust hydrocarbon concentration by heated flame ionization detector (HFID) analysis. See Figure L 175–3.

(1) Heated continuous sampling line (S3).

(2) Selector valves (V15, and V16) for directing the continuous dilute exhaust sample, dilution air bag sample, span or zeroing gases to the analyzers.

(3) Quick-connect, leak-tight fitting (C6) to attach dilution air sample bag to analytical system.

(4) Heated hydrocarbon analyzer (HFID) complete with heated pump, filter, and flow control system. The response time of this instrument shall be less than 1 second for 90 percent of full scale response.

(5) Chart recorded (R4) and analog integrator with two readouts or chart recorder (R4) and on-line digital computer for manual or electronic integration of analyzer output signal during the three operating phases of the test.

(6) Flow control valves (N13 and N14) to regulate the gas flow rates.

§ 85.175–13 Information to be recorded.

The following information shall be recorded with respect to each test:

(a) Test number.

(b) System or device tested (brief description).

(c) Date and time of day for each part of the test schedule.

(d) Instrument operator.

(e) Driver or operator.

(f) Vehicle: Make—Vehicle identification number—Model year—Transmission type—Odometer reading—Engine displacement—Engine family—Idle r.p.m.—Inertia loading—Actual road load HP. at 50 m.p.h. and drive wheel tire pressure.

(g) Dynamometer serial number and indicated road load power absorption at 50 m.p.h.

(h) All pertinent instrument information such as tuning—gain—serial numbers—detector numbers—range.

(i) Recorder charts: Identify zero, span, exhaust gas, and dilution air sample traces.

(j) Barometric pressure, ambient temperature and humidity and the temperature of the air in front (from 6 to 12 inches from the grill) of the radiator during the test.

(k) The temperature and pressure of the mixture of exhaust and dilution air entering the positive displacement pump and the pressure increase across the pump. The temperature of the mixture shall be recorded continuously or digi-

tally at a rate often enough to determine temperature variations, or it may be controlled to ±5° F. of the set point of the temperature control system. In the last case only the set point need be recorded.

(l) The number of revolutions of the positive displacement pump accumulated while the test is in progress and exhaust flow samples are being collected.

(m) The humidity of the dilution air.

(n) Operating temperature of the heated sample line and of the heated hydrocarbon detector.

§ 85.175–14 Analytical system calibration and sample handling.

(a) Calibrate the analytical assembly at least once every 30 days. Use the same flow rate as when analyzing samples.

(1) Adjust analyzers to optimize performance. Operate heated hydrocarbon analyzer and sampling line at set point (300–380° F.) ±5° F.

(2) Zero the hydrocarbon analyzer with zero grade air and the carbon monoxide, carbon dioxide, and oxides of nitrogen analyzers with zero grade nitrogen. The allowable zero gas impurity concentrations should not exceed 1 p.p.m. equivalent carbon response, 1 p.p.m. carbon monoxide, 300 p.p.m. (0.03 mole percent) carbon dioxide, and 0.1 p.p.m. nitric oxide.

(3) Set the CO and CO_2 analyzer gains to give the desired ranges. Select the desired attenuation scale of the HC analyzer, set the sample capillary flow rate by adjusting the back pressure regulator, and adjust the electronic gain control, if provided, to give the desired range. Select the desired scale of the NO_x analyzer and adjust the phototube high voltage supply or amplifier gain to give the desired range.

(4) Calibrate the HC analyzer with propane (air diluent) gases having nominal concentrations equal to 50 and 100 percent of full scale. Calibrate the CO analyzer with carbon monoxide (nitrogen diluent) gases and the CO_2 analyzer with carbon dioxide (nitrogen diluent) gases having nominal concentrations equal to 10, 25, 40, 50, 60, 70, 85, and 100 percent of full scale. Calibrate the NO_x analyzer with nitric oxide (nitrogen diluent) gases having nominal concentrations equal to 50 and 100 percent of full scale. The actual concentrations should be known tc with ±2 percent of the true values.

(5) Compare values obtained on the CO and CO_2 analyzers with previous calibration curves. Any significant change reflects some problem in the system. Locate and correct problem, and recalibrate. Use best judgment in selecting curves for data reduction.

(6) Check the NO_x to NO converter efficiency by the following procedure:

(i) Fill a new (not previously used to collect exhaust gas samples) sample bag with air (or oxygen), and NO span gas in proportions which result in a mix in the operating range of the analyzer. Provide enough oxygen for substantial conversion of NO to NO_2.

(ii) Knead bag and immediately connect the bag to the sample inlet and alternately measure the NO and NO_x concentration at 1-minute intervals by alternately passing the sample through the converter and the bypass (close valves N6 and N9 to minimize pump down rate of bag). After several minutes of operation, the recording of NO and NO_x will resemble Figure L 175–4 if the converter is efficient. Even though the amount of NO_2 increases with time, the total NO_x ($NO+NO_2$) remains constant. A decay of NO_x with time indicates the converter is not essentially 100 percent efficient and the cause should be determined before the instrument is used.

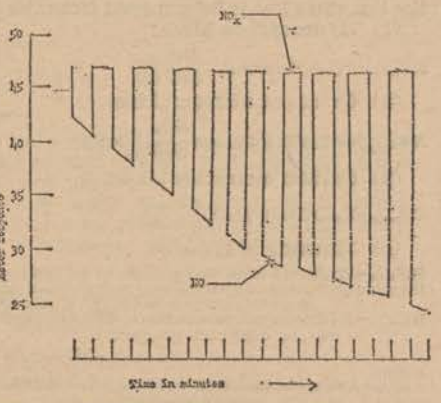


FIGURE L 175–4. CONVERTER EFFICIENCY CHECK RESPONSE

(iii) The converter efficiency should be checked at least once weekly and preferably once daily.

(7) Check the efficiency of the sample conditioning system by the following procedure:

(i) Zero and span the CO instrument on its most sensitive scale.

(ii) Recheck zero.

(iii) Bubble CO_2 span gas through water and then through the sample conditioning system into the CO instrument. If the CO instrument shows no response to the wet CO_2, the columns are in good condition.

(iv) If the CO instrument responds to wet CO_2, replace columns as necessary to bring response back to zero.

(v) The conditioning system efficiency should be checked daily.

(b) HC, CO, CO_2, and NO_x measurement; Allow HC analyzer and sample line to heat to set point (300–380°F.) ±5°F. and allow a minimum of 20 minutes warmup for the HC analyzer electronics and 2 hours for the CO, CO_2 and NO_x analyzers. (Power is normally left on infrared and chemiluminescence analyzers; but when not in use, the chopper motors of the infrared analyzers are turned off and the phototube high voltage supply of the chemiluminescence analyzer is placed in the standby position.) The following sequence of operations should be performed in conjunction with each series of measurements:

(c) For the purposes of this section, the term "zero grade air" includes artificial "air" consisting of a blend of nitrogen and oxygen with oxygen concentrations between 18 and 21 mole percent.

§ 85.175–15 Dynamometer test runs.

(a) The vehicle shall be allowed to stand with the engine turned off for a period of not less than 12 hours before the cold start exhaust emission test. The vehicle shall be stored prior to the emission tests in such a manner that precipitation (e.g. rain or dew) does not occur on the vehicle. The complete dynamometer test consists of a cold start drive of 7.5 miles and simulates a hot start drive of 7.5 miles. The vehicle is allowed to stand on the dynamometer during the 10-minute time period between the cold and hot start tests. The cold start test is divided into two periods. The first period, representing the cold start "transient" phase, terminates at the end of the deceleration which is scheduled to occur at 505 seconds of the driving schedule. The second period, representing the "stabilized" phase, consists of the remainder of the driving schedule including engine shutdown. The hot start test similarly consists of two periods. The first period, representing the hot start "transient" phase, terminates at the same point in the driving schedule as the first phase of the cold start test. The second period of the hot start test, "stabilized" phase is assumed to be identical to the second period of the cold start test. Therefore, the hot start test terminates after the first period (505 seconds) is run.

(b) The following steps shall be taken for each test:

(1) Place drive wheels of vehicle on dynamometer without starting engine.

(2) Open the vehicle engine compartment cover and start the cooling fan.

(3) With the sample solenoid valves in the "dump" position connect evacuated sample collection bags to the two dilute exhaust sample connectors and to the two dilution air sample line connectors.

(4) Start the positive displacement pump, the sample pumps, the temperature recorder, and the heated hydrocarbon analysis recorder. (The constant volume sampler heat exchanger, the hydrocarbon analyzer and continuous sample line should be preheated to their respective operating temperatures before the test begin.)

(5) Adjust the sample flow rates to the desired flow rate (minimum of 10 c.f.h.). Set the hydrocarbon integrator counters and pump revolution counters to zero.

(6) Attach the flexible exhaust tube to the vehicle tailpipe(s).

(7) Simultaneously start the revolution counter for the positive displacement pump, position the sample solenoid valves to direct the sample flows into the "transient" exhaust sample bag and the "transient" dilution air sample bag, turn on the hydrocarbon analyzer system integrator and mark recorder chart, and start cranking engine.

(8) Fifteen seconds after the engine starts, place the transmission in gear.

(9) Twenty seconds after the engine starts, begin the initial vehicle acceleration of the driving schedule.

(10) Operate the vehicle according to the dynamometer driving schedule.

(11) At the end of the deceleration which is scheduled to occur at 505 seconds, simultaneously switch the sample flows from the "transient" bags to the "stabilized" bags, switch off revolution counter No. 1 and hydrocarbon integrator No. 1, mark hydrocarbon recorder chart and start counter No. 2 and hydrocarbon integrator No. 2. As soon as possible and in no case longer than 20 minutes after the end of this portion of the test disconnect the "transient" exhaust and dilution air sample bags, transfer them to the analytical system and process the samples according to § 85.175–14.

(12) Turn the engine off 2 seconds after the end of the last deceleration (at 1,369 seconds).

(13) Five seconds after the engine stops running, simultaneously turn off revolution counter No. 2 and hydrocarbon integrator No. 2, mark hydrocarbon recorder chart and position the sample solenoid valves to the "dump" position. As soon as possible and in no case longer than 20 minutes after the end of this portion of the test disconnect the "stabilized" exhaust and dilution air sample bags, transfer them to the analytical system and process the samples according to § 85.175–14.

(14) Immediately after the end of the sample period disconnect the exhaust tube from the tailpipe(s), turn off the cooling fan and close the engine compartment cover.

(15) Turn off the positive displacement pump.

(16) Repeat the steps in subparagraphs (2) through (10) of this paragraph for the hot start test except only one evacuated sample bag is required for sampling exhaust gas and one for dilution air. The step in subparagraph (7) of this paragraph shall begin between 9 and 11 minutes after the end of the sample period for the cold start test.

(17) At the end of the deceleration which is scheduled to occur at 505 seconds, simultaneously turn off the No. 1 revolution counter and hydrocarbon integrator No. 1, mark hydrocarbon recorder chart and position the sample solenoid valve to the "dump" position. (Engine shutdown is not part of the hot start sample period.)

(18) As soon as possible and in no case longer than 20 minutes after the end of this portion of the test disconnect the hot start "transient" exhaust and dilution air sample bags, transfer them to the analytical system and process the samples according to § 85.175–14.

(19) Disconnect the exhaust tube from the vehicle tailpipe(s) and remove vehicle from dynamometer.

(20) The positive displacement pump may be turned off, if desired.

§ 85.175–16 Chart reading.

(a) Determine the HC, CO, CO_2, and NO_x concentrations of the dilution air and the CO, CO_2, and NO_x concentration of the dilute exhaust sample bags from the instrument deflection or recordings making use of appropriate calibration charts.

(b) Record integrated HC results, or manually integrate continuous chart. This chart provides a permanent record and can be graphically integrated if varification of the results of electronic integration is required.

(c) Determine the average dilute exhaust mixture temperatures from the temperature recorder trace if a recorder is used.

§ 85.175–17 Calculations (exhaust emissions).

The final reported test results shall be computed by use of the following formulae:

(a) For light duty vehicles:

$$Y_{wm}=(0.43\ Y_{ct}+0.57\ Y_{ht}+Y_s)/7.5$$

Where:
Y_{wm} = Weighted mass emissions of each pollutant, i.e. HC, CO, or NO_x, in grams per vehicle mile.
Y_{ct} = Mass emissions as calculated from the "transient" phase of the cold start test, in grams per test phase.
Y_{ht} = Mass emissions as calculated from the "transient" phase of the hot start test, in grams per test phase.
Y_s = Mass emissions as calculated from the "stablized" phase of the cold start test, in grams per test phase.

(b) The mass of each pollutant for each phase of both the cold start test and the hot start test is determined from the following:

(1) Hydrocarbon Mass:

$$HC_{mass}=V_{mix}\times Density_{HC}\times\frac{HC_{cone}}{1{,}000{,}000}$$

(2) Oxides of nitrogen Mass:

$$NO_{x_{mass}}=V_{mix}\times Density_{NO_2}\times\frac{NO_{x_{cone}}}{1{,}000{,}000}\times K_H$$

(3) Carbon monoxide Mass:

$$CO_{mass}=V_{mix}\times Density_{CO}\times\frac{CO_{cone}}{1{,}000{,}000}$$

(c) Meaning of symbols:

HC_{mass} = Hydrocarbon emissions, in grams per test phase.
$Density_{HC}$ = Density of hydrocarbons in the exhaust gas, assuming an average carbon to hydrogen ratio of 1.85 in grams per cubic foot at 68° F. and 700 mm. Hg pressure (16.33 gm./cu. ft.).
HC_{cone} = Hydrocarbon concentration of the dilute exhaust sample corrected for background, in p.p.m. carbon equivalent, i.e. equivalent propane×3.

$$HC_{cone}=HC_e-HC_d(1-1/\overline{DF})$$

Where:
HC_e = Average hydrocarbon concentrations of the dilute exhaust sample as calculated from the integrated HC traces, in p.p.m. carbon equivalent.
HC_d = Hydrocarbon concentration of the dilution air as measured in p.p.m. carbon equivalent.
$NO_{x_{mass}}$ = Oxides of nitrogen emissions, in grams per test phase.
$Density_{NO_2}$ = Density of oxides of nitrogen in the exhaust gas, assuming they are in the form of nitrogen dioxide, in grams per cubic foot at 68° F. and 700 mm. Hg pressure (54.16 gm./cu. ft.).
$NO_{x_{cone}}$ = Oxides of nitrogen concentration of the dilute exhaust sample corrected for background, in p.p.m.

$$NO_{x_{cone}}=NO_{x_e}-NO_{x_d}(1-1/DF)$$

Where:
NO_{x_e} = Oxides of nitrogen concentration of the dilute exhaust sample as measured, in p.p.m.
NO_{x_d} = Oxides of nitrogen concentration of the dilution air as measured, in p.p.m.
CO_{mass} = Carbon monoxide emissions, in grams per test phase.
$Density_{CO}$ = Density of carbon monoxide in grams per cubic foot at 68° F. and 700 mm. Hg pressure (32.97 gm./cu. ft.).
CO_{cone} = Carbon monoxide concentration of the dilute exhaust sample corrected for background, water vapor and CO_2 extraction, in p.p.m.

$$CO_{cone}=CO_e-CO_d\ (1-1/DF)$$

Where:
CO_e = Carbon monoxide concentration of the dilute exhaust sample volume corrected for water vapor and carbon dioxide extraction, in p.p.m. The calculation assumes the carbon to hydrogen ratio of the fuel is 1:1.85.

$$CO_e=(1-0.01925\ CO_{2e}-0.000323\ R)\ CO_{em}$$

Where:
CO_{em} = Carbon monoxide concentration of the dilute exhaust sample as measured in p.p.m.
CO_{2e} = Carbon dioxide concentration of the dilute exhaust sample, in mole percent.
R = Relative humidity of the dilution air, in percent.
CO_d = Carbon monoxide concentration of the dilution air corrected for water vapor extraction, in p.p.m.

$$CO_d=(1-0.000323\ R)\ CO_{dm}$$

Where:
CO_{dm} = Carbon monoxide concentration of the dilution air sample as measured, in p.p.m.

$$DF=\frac{13.4}{CO_{2e}+(HC_e+CO_e)\times10^{-4}}$$

V_{mix} = Total dilute exhaust volume in cubic feet per test phase corrected to standard conditions (528° R and 760 mm. Hg).

$$V_{mix}=V_o\times N\frac{(P_B-P_i)\ (528°\ R)}{(700\ mm.\ Hg)(T_p)}.$$

Where:
V_o = Volume of gas pumped by the positive displacement pump, in cubic feet per revolution. This volume is dependent on the pressure differential across the positive displacement pump.
N = Number of revolutions of the positive displacement pump during the test phase while samples are being collected.
P_B = Barometric pressure in mm. Hg.
P_i = Pressure depression below atmospheric measured at the inlet to the positive displacement pump.
T_p = Average temperature of dilute exhaust entering positive displacement pump during test while samples are being collected, in degrees Rankine.
K_H = Humidity correction factor.

$$K_H=\frac{1}{1-0.0047\ (H-75)}$$

NOTE: The constant 0.0047 will be updated to reflect any data which becomes available on Light-Duty diesel engine tests.

Where:
H = Abolute humidity in grains of water per pound of dry air.

$$H=\frac{(43.478)\ R_a\times P_d}{P_B-(P_d\times R_a/100)}$$

R_a = Relative humidity of the ambient air, in percent.
P_d = Saturated vapor pressure, in mm. Hg at the ambient dry bulb temperature.

(d) Example calculation of mass emissions values:

(1) For the "transient" phase of the cold start test assume V_0=0.29344 cu. ft. per revolution; N=10,485; R=48.0 percent; R_a=48.2 percent; P_B=762 mm. Hg; P_d=22.225 mm. Hg; P_1=70 mm. Hg; T_p=570° R; HC_e=105.8 p.p.m. carbon equivalent; NO_{xe}=11.2 p.p.m.; CO_{em}=306.6 p.p.m.; CO_{2e}=1.43 percent; HC_d=12.1 p.p.m.; NO_{xd}=0.8 p.p.m.; CO_{dm}=15.3 p.p.m. Then:

$$V_{mix}=\frac{(0.29344)\ (10{,}485)\ (762-70)\ (528)}{(760)\ (570)}=2595.0 \text{ cu. ft. per test phase.}$$

$$H=\frac{(43.478)\ (48.2)\ (22.225)}{762-(22.225\times 48.2/100)}$$

$$K_H=\frac{1}{1-0.0047(62-75)}=0.9424.$$

$$CO_e=(1-0.01925(1.43)-0.000323(48))306.0=293.4 \text{ p.p.m.}$$
$$CO_d=(1-0.000323(48))15.3=15.1 \text{ p.p.m.}$$

$$DF=\frac{13.4}{1.43+(105.8+293.4)\times 10^{-4}}=9.116.$$

$$HC_{conc}=105.8-12.1(1-1/9.116)=95.03.$$
$$HC_{mass}=(2595)(16.33)(95.03/1{,}000{,}000)=4.027 \text{ grams per test phase.}$$
$$NO_{x_{conc}}=11.2-0.8(1-1/9.116)=10.49.$$
$$NO_{x_{mass}}=(2595)(54.16)(10.49/1{,}000{,}000)(0.9424)=1.389 \text{ grams per test phase.}$$
$$CO_{conc}=293.4-15.1(1-1/9.116)=280.$$
$$CO_{mass}=(2595)(32.97)(280/1{,}000{,}000)=23.96 \text{ grams per test phase.}$$

(2) For the "stabilized" portion of the cold start test assume that similar calculations resulted in HC_{mass}=0.62 grams per test phase; NO_{xmass}=1.27 grams per test phase; and CO_{mass}=5.98 grams per test phase.

(3) For the "transient" portion of the hot start test assume that similar calculations resulted in HC_{mass}=0.51 grams per test phase; NO_{xmass}=1.38 grams per test phase; and CO_{mass}=5.01 grams per test phase.

(4) For a 1975 light-duty vehicle:

$$HC_{wm}=((0.43)(4.027)+(0.57)(0.51)+0.62)/7.5=0.352 \text{ grams per vehicle mile.}$$
$$NO_{xwm}=((0.43)(1.389)+(0.57)(1.38)+1.27)/7.5=0.354 \text{ grams per vehicle mile.}$$
$$CO_{wm}=((0.43)(23.96)+(0.57)(5.01)+5.98)/7.5=2.55 \text{ grams per vehicle mile.}$$

§ 85.175–18 Test vehicles.

(a)(1) The vehicles covered by the application for certification will be divided into groupings of vehicles whose engines are expected to have similar emission characteristics. Each group of engines with similar emission characteristics shall be defined as a separate engine family.

(2) To be classed in the same engine family, engines must be identical in all the following respects:

(i) The cylinder bore center to center dimensions.

(ii) The dimension from the centerline of the crankshaft to the centerline of the camshaft.

(iii) The dimension from the centerline of the crankshaft to the top of the cylinder block head face.

(iv) The cylinder block configuration (air-cooled or water-cooled; L–6, 90° V–8, etc.).

(v) The location of intake and exhaust valves and the valve sizes (within a ⅛-inch range on the valve head diameter).

(vi) The method of air aspiration.

(vii) The combustion cycle.

(3) Engines identical in all the respects listed in subparagraph (2) of this paragraph may be further divided into different engine families if the Administrator determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(i) The bore and stroke.

(ii) The surface to volume ratio of the nominally dimensioned cylinder at the top dead center position.

(iii) The intake manifold induction port size and configuration.

(iv) The exhaust manifold port size and configuration.

(v) The intake and exhaust valve sizes.

(vi) The fuel system.

(vii) The camshaft timing and ignition timing characteristics.

(4) Where engines are of a type which cannot be divided into engine families based upon the criteria listed in subparagraphs (2) and (3) of this paragraph, the Administrator will establish families for those engines based upon the features most related to their emission characteristics.

(b) Emission data vehicles:

(1) Vehicles will be chosen to be operated and tested for emission data based upon the engine family groupings. Within each engine family, the requirements of this paragraph must be met.

(2) Vehicles of each engine family will be divided into engine displacement-exhaust emission control system-combinations. A projected sales volume will be established for each combination for the model year for which certification is sought. One vehicle of each combination will be selected in order of decreasing projected sales volume until 70 percent of the projected sales of a manufacturer's total production of vehicles of that engine family is represented, or until a maximum of four vehicles is selected. If any single combination represents over 70 percent, then two vehicles of that combination will be selected. The vehicle selected for each combination will be specified by the Administrator as to transmission type, fuel system, and inertia weight class.

(3) The Administrator may select a maximum of four additional vehicles within each engine family based upon features indicating that they may have the highest emission levels of the vehicles in that engine family. In selecting these vehicles, the Administrator will consider such features as the emission control system combination, induction system characteristics, ignition system characteristics, fuel system, rated horsepower, rated torque, compression ratio, inertia weight class, transmission options and axle ratios.

(4) If the vehicles selected in accordance with subparagraphs (2) and (3) of this paragraph do not represent each engine-system combination, then one vehicle of each engine-system combination not represented will be selected by the Administrator. The vehicle selected shall be of the engine displacement with the largest projected sales volume of vehicles with the control system combination in the engine family and will be designated by the Administrator as to transmission type, fuel system, and inertia weight class.

(c) Durability data vehicles:

(1) A durability data vehicle will be selected by the Administrator to represent each engine-system combination. The vehicle selected shall be of the engine displacement with the largest projected sales volume of vehicles with that control system combination in that engine family and will be designated by the Administrator as to transmission type, fuel system and inertia weight class.

(2) If an exhaust emission control system is used in only one engine family, an additional vehicle using that system in that family will be selected so that the durability data fleet shall contain at least two vehicles with each system. The additional vehicle will be selected in the same manner as vehicles selected under subparagraph (1) of this paragraph.

(3) A manufacturer may elect to operate and test additional vehicles to represent any engine-system combination. The additional vehicles must be of the same engine displacement, transmission type, fuel system and inertia weight class as the vehicle selected for that engine-system combination in accordance with the provisions of subparagraph (1) of this paragraph. Notice of an intent to operate and test additional vehicles shall be given to the Administrator not later than 30 days following notification of the test fleet selection.

(d) For purposes of testing under § 85.175–20(g) the Administrator may require additional emission data vehicles and durability data vehicles identical in all material respects to vehicles selected in accordance with paragraphs (b) and (c) of this section: *Provided*, That the number of vehicles selected shall not increase the size of either the emission data fleet or the durability data fleet by more than 20 percent or one vehicle, whichever is greater.

(e) Any manufacturer whose projected sales of new motor vehicles subject to this subpart for the model year for which certification is sought is less than 2,000 vehicles may request a reduction in the number of test vehicles determined in accordance with the foregoing provisions of this section. The Administrator may agree to such lesser number as he determines would meet the objectives of this procedure.

(f) In lieu of testing an emission data or durability data vehicle selected under paragraph (b) or (c) of this section and

submitting data therefore, a manufacturer may, with the prior written approval of the Administrator, submit data on a similar vehicle for which certification has previously been obtained.

(g) (1) Where it is expected that more than 33 percent of an engine family will be equipped with an optional item, the full estimated weight of that item shall be included in the curb weight computation for the entire engine family. Where it is expected that 33 percent or less of the vehicles in an engine family will be equipped with an item of optional equipment, no weight for that item will be added in computing curb weight. Optional equipment weighing less than 3 pounds per item need not be considered.

(2) Where it is expected that more than 33 percent of an engine family will be equipped with an item of optional equipment that can reasonably be expected to influence exhaust emissions, then such items of optional equipment shall actually be installed on all emission data and durability data vehicles for such engine family.

§ 85.175–19 Maintenance.

(a) (1) Maintenance on the engines and fuel systems of durability vehicles may be performed only under the following provisions:

(i) One major engine tuneup to manufacturer's specifications may be performed at 24,000 miles (±250 miles) of scheduled driving with the following exception: On a vehicle with an engine displacement of 150 cubic inches or less (or a rating of at least 1.20 maximum rated horsepower per cubic inch of displacement) major engine tuneups may be performed at 12,000, 24,000, and 36,000 miles (±250 miles) of scheduled driving. A major engine tuneup shall be restricted to the following:

(*a*) Adjust low idle speed.

(*b*) Adjust valve lash if required.

(*c*) Adjust injector timing.

(*d*) Adjust governor.

(*e*) Clean and service injector tips.

(*f*) Adjust drive belt tension on engine accessories.

(*g*) Check engine bolt torque and tighten as required.

(ii) Injectors may be changed if a persistent misfire is detected.

(iii) Normal vehicle lubrication services (engine and transmission oil change and oil filter, fuel filter, and air filter servicing) will be allowed at manufacturer's recommended intervals.

(iv) The crankcase emission control system may be serviced at 12,000-mile intervals (±250 miles) of scheduled driving.

(v) Readjustment of the engine idle settings may be performed only if there is a problem of stalling at stops.

(vi) Leaks in the fuel system, engine lubrication system and cooling system may be repaired.

(vii) Engine idle speed may be adjusted at the 4,000-mile test point.

(viii) Any other engine or fuel system maintenance or repairs may be allowed with the advance approval of the Administrator.

(2) Repairs to vehicle components of the durability data vehicle, other than the engine or fuel system shall be performed only as a result of part failure or vehicle system malfunction.

(3) Allowable maintenance on emission data vehicles shall be limited to the adjustment of engine idle speed at the 4,000-mile test point, except that other maintenance or repairs may be allowed with the advance approval of the Administrator.

(4) Where the Administrator agrees under § 85.175–20 to a mileage accumulation of less than 50,000 miles for durability testing, he may modify the requirement of this paragraph.

(b) Complete emission tests (see §§ 85.175–3 to 85.175–17) shall be run before and after any vehicle maintenance which may reasonably be expected to affect emissions. These test data shall be supplied to the Administrator immediately after the tests, along with a complete record of all pertinent maintenance, including an engineering report of any malfunction diagnosis and the corrective action taken. In addition, all test data and maintenance reports shall be compiled and provided to the Administrator in accordance with § 85.53.

(c) If the Administrator determines that maintenance or repairs performed have resulted in a substantial change to the engine-system combination, the vehicle shall not be used as a durability data vehicle.

§ 85.175–20 Mileage accumulation and emission measurements.

The procedure for mileage accumulation will be the Durability Driving Schedule as specified in Appendix D to this part. A modified procedure may also be used if approved in advance by the Administrator.

(a) Emission data vehicles: Each emission data vehicle shall be driven 4,000 miles with all emission control systems installed and operating. Emission tests shall be conducted at zero miles and 4,000 miles.

(b) Durability data vehicles: Each durability data vehicle shall be driven with all emission control systems installed and operating, for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objectives of this procedure. Emission measurements from a cold start shall be made at zero miles and at each 4,000-mile interval.

(c) All tests required by this subpart to be conducted after 4,000 miles of driving or at any multiple of 4,000 miles may be conducted at any accumulated mileage within 250 miles of 4,000 miles or the appropriate multiple of 4,000 miles, respectively.

(d) The results of each emission test shall be supplied to the Administrator immediately after the test. Where a manufacturer conducts multiple tests at any test point or any tests between test points, data on these tests (including voided tests) shall be provided to the Administrator in accordance with § 85.53.

(e) Whenever the manufacturer proposes to operate and test a vehicle which may be used for emission or durability data, he shall provide the zero mile test data to the Administrator and make the vehicle available for such testing under § 85.54 as the Administrator may require before beginning to accumulate mileage on the vehicle. Failure to comply with this requirement will invalidate all test data submitted for this vehicle.

(f) Once a manufacturer begins to operate an emission data or durability data vehicle, as indicated by compliance with paragraph (e) of this section, he shall continue to run the vehicle to 4,000 miles or 50,000 miles, respectively, and the data from the vehicle will be used in the calculations under § 85.175–21. Discontinuation of a vehicle shall be allowed only with the written consent of the Administrator.

(g) (1) The Administrator may elect to operate and test any test vehicle during all or any part of the mileage accumulation and testing procedure. In such cases, the manufacturer shall provide the vehicle(s) to the Administrator with all information necessary to conduct this testing.

(2) The test procedures (§§ 85.175–3 to 85.175–17) will be followed by the Administrator. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

(3) The data developed by the Administrator for the engine system combination shall be combined with any applicable data supplied by the manufacturer on other vehicles of that combination to determine the applicable deterioration factors for the combination. In the case of a significant discrepancy between data developed by the Administrator and that submitted by the manufacturer the Administrator's data shall be used in the determination of deterioration factors.

§ 85.175–21 Compliance with emission standards.

(a) The exhaust emission standards in the regulations in this part apply to the emissions of vehicles for their useful life.

(b) Since it is expected that emission control efficiency will change with mileage accumulation on the vehicle, the emission level of a vehicle which has accumulated 50,000 miles will be used as the basis for determining compliance with the standards.

(c) The procedure for determining compliance of a new light-duty motor vehicle with exhaust emission standards is as follows:

(1) Separate emission deterioration factors shall be determined from the emissions results of the durability data vehicles for each engine-system combination. A separate factor shall be established for the combination for exhaust HC, exhaust CO, and exhaust NO_x.

(i) The applicable results to be used in determining the deterioration factors for each combination shall be:

(*a*) All emission data from the tests required under § 85.175–20(b), except the zero mile tests. This shall include the

official test results as determined in § 85.54 for all tests conducted on all durability vehicles of the combination selected under § 85.175–18(c) (including all vehicles elected to be operated by the manufacturer under § 85.175–18(c)(3)). Where the Administrator has agreed to a mileage less than 50,000 miles in accordance with § 85.175–20(b), the data for mileages greater than that actually run will be determined by extrapolating the test data generated at lesser mileages.

(*b*) All emission data from the tests conducted before and after the maintenance provided in § 85.175–19(a)(1)(i).

(ii) All applicable results shall be plotted as a function of the mileage on the system, rounded to the nearest mile, and the best fit straight lines, fitted by the method of least squares, shall be drawn through these data points. The interpolated 4,000 and 50,000 mile points on this line must be within the standards provided in § 85.175–2 or the data will not be acceptable for use in calculation of a deterioration factor.

(iii) An exhaust emission deterioration factor shall be calculated for each combination as follows:

$$\text{factor} = \frac{\text{exhaust emissions interpolated to 50,000 miles}}{\text{exhaust emissions interpolated to 4,000 miles.}}$$

(2) The exhaust emission test results for each emission data vehicle shall be multiplied by the appropriate deterioration factor: *Provided*, That if a deterioration factor as compared in subparagraph (1)(iii) of this paragraph is less than one, that deterioration factor shall be one for the purposes of this subparagraph.

(3) The emissions to compare with the standard shall be the adjusted emissions of subparagraph (2) of this paragraph for each emission data vehicle.

(4) Every test vehicle of an engine family must comply with all applicable standards, as determined in subparagraph (3) of this paragraph, before any vehicle of that family may be certified.

§ 85.176–1 Applicability (1976 model year).

With the exception of the nitrogen oxides exhaust emission standard, the standards and test procedures set forth in § 85.175–2(b) through § 85.175–21 remain applicable for the 1976 model year.

§ 85.176–2 Standards for exhaust emissions.

(a) Exhaust emissions from 1976 model year vehicles shall not exceed:

(1) Hydrocarbons—0.41 grams per vehicle mile.

(2) Carbon monoxide—3.4 grams per vehicle mile.

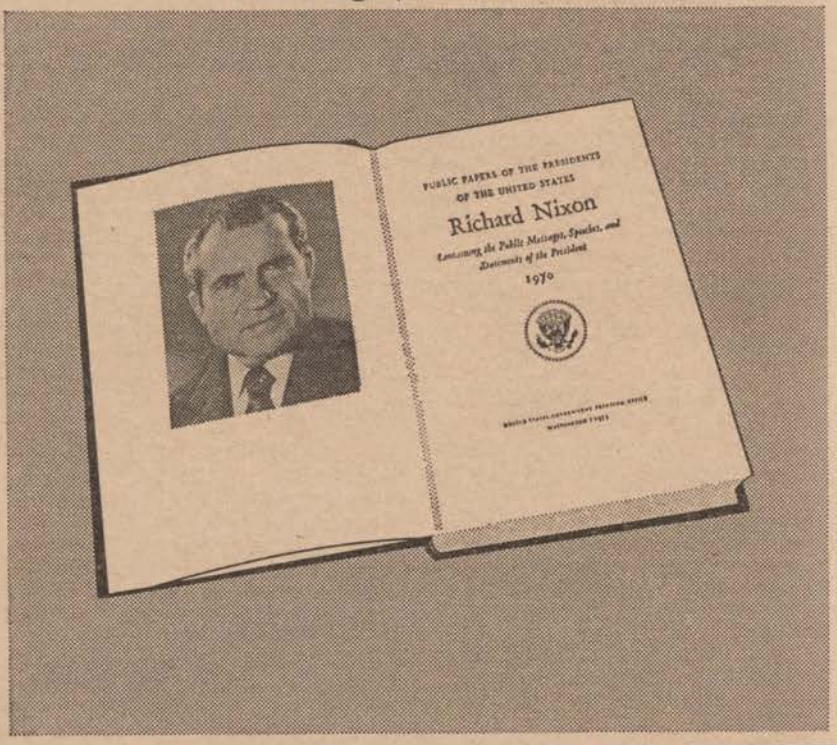
(3) Oxides of nitrogen—0.40 grams per vehicle mile.

[FR Doc.72–16530 Filed 10–3–72;8:45 am]

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